



Appeal Decision

Site visit made on 30 December 2019

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th January 2020

Appeal Ref: APP/X0415/X/19/3220882

15 Winters Way, Holmer Green, High Wycombe HP15 6YA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal in part to grant a certificate of lawful use or development ("certificate").
 - The appeal is made by Mrs Brenda Deaney against the decision of Chiltern District Council.
 - The application ref. PL/18/3875/SA, dated 14 October 2018, was refused in part by notice dated 19 December 2018.
 - The application was made under section 192(1) (b) of the Town and Country Planning Act 1990 as amended.
 - The proposed development for which a certificate is sought is described at section 8 of the application form as "*Lower curb to put driveway at front of property. Change front garden to part driveway.*"
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Decision

1. The appeal is dismissed.

Matters of clarification

2. An application for a certificate enables owners or others to ascertain whether specific uses, operations or other activities are or would be lawful. Lawfulness is equated with immunity from enforcement action.
3. A certificate is not a planning permission. Thus, the planning merits of the proposed development are not relevant in the context of an appeal made under section 195 of the 1990 Act as amended.
4. My decision must rest on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts in this appeal rests on the appellant. The test of the evidence is made on the balance of probabilities.
5. The Council granted a certificate for the proposed permeable hardstanding (shingle or stone) as shown on the submitted plans but refused the application insofar as it related to the proposed vehicular access as shown on the submitted plans. My focus in this appeal is therefore upon that part of the proposed development which has been refused.

Main issue

6. The main issue is whether the Council's decision to refuse in part to grant a certificate was well founded.

Reasons

7. The appeal property is a two-storey, semi-detached house which is positioned well behind the general building line off the western side of Winters Way. The appellant wishes to form a driveway or parking area in the long front garden of the property, served by a new vehicular access across the footway and grass verge. The current narrow dropped kerb, suitable only for pedestrians or cyclists, would be replaced by a dropped kerb 4 m wide. Winters Way, an unclassified, residential road subject to a 30 mph speed limit, has a rather tortuous horizontal carriageway alignment. I saw that on-street parking was widespread.
8. The main issue turns on whether or not the proposed vehicular access would have amounted to permitted development at the time of the application. At that time permitted development rights were contained in the Town and Country Planning (General Permitted Development) (England) Order 2015 ("GPDO").
9. Class B of Part 2 to Schedule 2 of the GPDO permits the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class of Schedule 2 (other than by Class A of Part 2). Here, the access is required in connection with the construction of a permeable hardstanding in the curtilage of the dwelling house, which, as the Council found, would have amounted to permitted development under the provisions of Class F of Part 1 to Schedule 2 of the GPDO.
10. However, the Council found conflict with Article 3(6) of the GPDO, the relevant part of which states that the permission granted by Schedule 2 does not authorise any development which creates an obstruction to the view of persons using any highway used by vehicular traffic, so as to be likely to cause danger to such persons.
11. I have not been made aware of any interpretation sections in the GPDO to guide the operation of Article 3(6). The parties have not brought my attention to any previous relevant appeal decisions. It seems to me that Article 3(6) could apply to control physical features like fencing and walls at the front or sides of a property which could create an obstruction to visibility or equally it could apply to control the creation of a substandard vehicular access which, in itself, could cause or result in similar levels of obstructed visibility. It was this latter route which was of concern to the Council and the County Highway Authority (CHA).
12. The CHA has referred to guidance in the document '*Manual for Streets*'. This advises that for the speed limit in force on Winters Way, visibility splays of 2.4 m by 43 m would be required on either side of the proposed vehicular access. The appeal property fronts on to the inside of an appreciable bend in the carriageway. The CHA reported that due to the curvature of the road and the proximity of third party land on either side of the appeal site's fairly narrow frontage, the achievable visibility splays from the proposed vehicular access would be 2.4 m by about 22 m to the north and 2.4 m by about 24 m to the south. The CHA says that these figures, which have not been disputed by the appellant and seemed to me to be accurate, are commensurate with vehicle speeds of about 19 mph. There is no speed survey data available to show that the actual speed of vehicles along this part of Winters Way might justify such limited visibility splays without resulting in danger to road users.

13. On the evidence available, I judge that it would be difficult for drivers making an exit from the appeal property to safely see vehicles approaching along Winters Way. This would result in an obstruction to visibility for drivers leaving the site. In turn, as drivers of vehicles approaching along Winters Way would not be adequately aware of vehicles emerging from the proposed vehicular access, they too would have an obstructed view of persons using the highway, so as to be likely to cause danger to those persons. I note also that the plans do not record whether there would be sufficient space within the appeal site for vehicles to turn and leave the site in a forward gear. Reversing manoeuvres into or out of the site at a point of poor visibility and between vehicles parked on the street near the site might well further add to the identified dangers to road users.
14. I therefore find that the proposed vehicular access would create an obstruction to the view of persons using a highway used by vehicular traffic, so as to be likely to cause danger to such persons. In the light of Article 3(6) of the GPDO, this part of the proposal cannot therefore be authorised by the permission granted by Class B of Part 2 to Schedule 2 of the GPDO.
15. The appellant has not directly addressed the reason why the certificate was not issued for the proposed vehicular access by elaborating on its characteristics, form, location and visibility splays with reference to Article 3(6) of the GPDO. Rather, the appellant says that several properties on the same side of the road have already had the kerb lowered to allow for off-street parking. No specific properties are cited. The Council makes a general observation that these other accesses may have been permitted under full planning applications which would have addressed the planning merits of those developments and not the criteria in the GPDO. Without being provided with any planning documents for the other properties, I cannot form any meaningful comparisons or conclusions of my own on this point. In any event, I must evaluate the relevant evidence and law as I find them for the particular appeal proposal and appeal site before me.
16. I am told that the homeowner at no. 15 has mobility issues and is a blue badge holder and that her carer is finding it increasingly difficult to park close to the property on the road. I can sympathise with these circumstances and can acknowledge that having the kerb lowered and the driveway put in place would improve access to and from the appeal property. However, with reference back to paragraph 3 above, these are material considerations that would be relevant in the assessment of a planning application. They do not carry any weight in this application for a certificate.
17. For the reasons given above, I conclude, on the balance of probabilities, that the Council's refusal in part to grant a certificate was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Andrew Dale

INSPECTOR