

Appeal Decision

Site visit made on 2 December 2019

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

an Inspector appointed by the Secretary of State

Decision date: 11 February 2020

Appeal Ref: APP/C1435/W/19/3235334

Rutherford, Cross in Hand Road, Heathfield TN21 0UR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Hicks against the decision of Wealden District Council.
 - The application Ref WD/2018/1874/O, dated 24 August 2018, was refused by notice dated 13 May 2019.
 - The development proposed is a new-build, chalet bungalow dwelling.
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Decision

1. The appeal is allowed, and planning permission is granted for a new-build, chalet bungalow dwelling at Rutherford, Cross in Hand Road, Heathfield TN21 0UR, in accordance with the terms of the application, Ref WD/2018/1874/O, dated 24 August 2018, and the plans submitted with it, subject to the conditions at the end of this decision.

Preliminary Matters

2. The application was made in outline, with all matters reserved. A drawing indicating the access to the proposed dwelling from the Cross in Hand Road was submitted with the application. I have had regard to this as an indicative plan in determining the appeal. The Council has referred to policies in its emerging Local Plan. However, following the hearing sessions related to stage 1 of the examination in public, the Inspector concluded that as the Council had failed in its duty to co-operate, then the submitted plan cannot proceed further. In accordance with the Framework, this limits the weight I can give those policies.
3. An application for costs was made by Mr Hicks against Wealden District Council. This application is the subject of a separate decision.

Main Issue

4. Following the outcome of the stage 1 hearings into the emerging Local Plan, the Council withdrew its comments relating to the effects of the development on the Ashdown Forest Special Area of Conservation, and no longer considers that an appropriate assessment is necessary. I have no evidence or reason to disagree with that position.
 5. Accordingly, the main issue is the effect of the proposed development on highway safety, with particular regard to the intensification of use of and the inter-visibility at the existing crossover from the proposed development onto the A265 Cross in Hand Road.
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Reasons

6. The appeal site is located off a driveway shared by 2 houses. It leads to a footway crossover onto the Cross in Hand Road, which is shared by a third house. The Council raises no objection in terms of visibility to the left when emerging onto the road. But it considers that the visibility to the right would be so poor that the additional traffic movements from this development would threaten highway safety. In addition, it finds that a vehicle in connection with this development, waiting to emerge onto the road, would prevent another from entering the driveway, resulting in vehicles waiting in the carriageway, and a further threat to safety.

Planning Policy

7. Saved policy TR3 of the Wealden Local Plan 1998 (LP) which requires new development not to create or perpetuate unacceptable traffic conditions and to provide a satisfactory means of access to meet local planning and highway authority standards, is broadly consistent with the National Planning Policy Framework 2012 (the Framework) which states that development should only be refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
8. The Council considers that because of the status of the road as the primary route through Heathfield, the visibility splays to the access onto this section should meet the recommendations in the Department for Transport's Design Manual for Roads and Bridges (DMRB). However, the appellant contends that the DMRB is a design guide generally applied to trunk roads, motorways and derestricted roads, and that the advice in the Manual for Streets 1 (Mfs1) and Manual for Streets 2 (Mfs2), published by the Chartered Institution of Highways and Transportation in 2010, and endorsed by the Department for Transport, is more appropriate.
9. Mfs1 defines a street as a highway that has important public realm functions beyond the movement of traffic, and that most highways in built-up areas can therefore be considered as streets. My impression of this section of the Cross in Hand Road is that it does not have the character of a trunk road. It leads into the High Street through Heathfield, and with the numerous houses along both sides, many with direct access onto the road, together with the footway, street-lamps, and telegraph poles, its character appears firmly within the built-up area. It appears to me more of a residential street than a strategic road or trunk route. This suggests that rather than the DMRB, Mfs1 and Mfs2 are the guidance against which this proposal should be considered.
10. On the other hand, I appreciate that the volume of traffic which the Council gives as around 13,500 movements over an average 24 hours suggests the road is busy at times. The appellant's speed survey indicates that actual speeds of above 40mph occur for significant periods of the day, in which case, according to Mfs2, the parameters of DMRB are recommended.
11. However, MfS1 describes the strict application of the DMRB to non-trunk routes as rarely appropriate for highway design in built-up areas, regardless of traffic volume. Moreover, MfS2¹ states that MfS1 advice can be applied to a highway

¹ Manual for Streets 2, paragraph 1.3.2

regardless of speed limit and that it is the recommended starting point for any scheme affecting non-trunk roads. In these circumstances, I acknowledge that the site here may fall on the cusp between the 2 sets of design guidance, where neither is absolutely right, and neither is absolutely wrong. However, for the reasons above, in my view, the design guidance in Mfs1 and Mfs2 is the more relevant source to inform this determination.

Inter-visibility

12. There is no disagreement that the speed limit on this section is 40mph, and that the visibility to the right, when emerging from the access drive, at a point 2.4m back from the nearside kerb is 61m. The Council considers that based on the DMRB standards and the 85th percentile recorded speeds, this visibility splay should have an X-distance of 2.4m and a Y-distance of 90m. The appellant, however, contends that visibility can be assessed from a point 2m back, which, under Mfs2, and against the 85th percentile speed, should be at least 67m. At the 2m point, he claims that a Y-distance of 75m is available. This is the difference between the two parties.
13. First, as regards the X-distance, Mfs2 says that a dimension of 2.4m should normally be used in most built-up situations, as this represents a reasonable maximum distance between the front of a car and the driver's eye. However, it also indicates that a minimum X-distance of 2m may be considered in some slow-speed situations, when flows, on the minor arm, are low. Here the crossover would serve only 4 houses which would satisfy that low flow criterion. Moreover, this section of the Cross in Hand Road has numerous and conspicuous access points to driveways which form part of its streetscape, and it has a footway on one side.
14. These factors suggest that drivers would reasonably anticipate the risk of vehicles emerging from driveways, including this one, which is not new. I appreciate that traffic flow varies throughout the day, however, in the circumstances above, drivers emerging from the access would be able to move out slightly in regular breaks in traffic. This would significantly improve the sightline to and from the right. Given this, and the low intensity of movements from the crossover, a 2m X-distance is not unreasonable.
15. Turning to the Y-distance, the appellant calculates that based on the 40mph speed limit, and using a 1.5 second reaction time, Mfs1 recommends a Y-distance of 63m and Mfs2 a Y-distance of 70m. With a 2 second reaction time, the Council says that the Y-distance should be 95m. Notwithstanding this, the appellant's speed survey indicates that the 85th percentile speed of vehicles was 62.75kph (39mph). At this speed, he calculates, using a 1.5 second reaction time, that Mfs1 recommends a Y-distance of 61m and Mfs2 a Y-distance of 67m. I note the dispute between the parties as to whether a 2.5mph wet weather speed reduction can be made based on the speed survey. However, the Y-distance at the access meets the Mfs2 recommendation even without a wet weather reduction.
16. Given my conclusion that this site may fall on the border between the two sets of design guidance it is not surprising that the recommended Y-distances vary from around 55m to around 100m, against an on-site Y-distance of 75m, albeit at an X-distance of 2m. Notwithstanding this, the crossover onto the highway is already in place and has been serving three houses for some time. There is no suggestion that in the event of this appeal failing they would stop using it.

Moreover, the personal injury data shows that there have been no injury accidents in the last 3 years within 300m of this crossover. The appellant also points to neighbouring houses having accesses with shorter Y-distances to their right than here.

17. In terms of the increased intensity of cars using the crossover, the proposed development would generate around 5 trips to add to the present estimate of 15 trips from those already using the driveway, to which should be added the trips from the house sharing the same crossover onto the road. Whilst this is an intensification of the use of the crossover, the additional movements would equate to around one additional movement every 1.2 hours during a 12-hour day. In the context of the traffic flow along the Cross in Hand Road, this would not be significant.

Waiting

18. While the appellant has submitted a tracking diagram to show how 2 cars could pass each other at the crossover and at the opening of the driveway after its widening, the Council contends that land ownership issues would prevent this.
19. I have insufficient evidence to conclude on the land ownership issue. However, even if the head of the driveway could not be widened, the 3 houses sharing the crossover have managed to do so without causing accidents on the highway in the last 3 years. Given this, and the proposed incorporation of a passing place further up the shared driveway, in the unlikely event that 2 cars wanted to pass on the crossover at the same time, an outward travelling car could retreat momentarily. Even if the courtesy of retreat were not extended at the crossover, given the limited number of movements into and out of the drive, I see no material threat to safety from a vehicle waiting momentarily on the road to pass over the crossover.

Conclusion

20. In weighing the balance of risk against probability, and from my own observations on site, I do not consider that the proposed development would result in an unacceptable impact on highway safety. Taking into account the absence of evidence suggesting a highway safety problem with the existing access or with the numerous accesses in the vicinity of the site, as well as the limited amount of movements which would be generated by the proposal, as well as the guidance in Mfs1 and Mfs2, I conclude that the intensification of use of the access to the proposal, with particular reference to inter-visibility at the access to the A265 Cross in Hand Road, would not result in an unacceptable impact on highway safety, as required by LP policy TR3. Nor would it result in any severe residual, cumulative impacts as described by the Framework.

Other Matters

21. I have had regard to the planning permission at the Tilsmore site and the splays at its entrance. However, I do not have the full details of the entrance, which the highway authority insists meets the guidance in Mfs2. I have reached my decision on this proposal on the circumstances of this site and on the merits of this case.
22. The appeal site lies outside the development boundary identified in the Local Plan. However, the Council did not object on this ground because of the site's

lack of isolation and its location in the built-up area. Its single reason for refusal relates to the access to the development, addressed above.

23. The Council accepts that it has only a 2.62 year supply of deliverable housing sites. Despite the minor conflict with development boundary policy, I can identify no adverse impacts from this proposal which would significantly and demonstrably outweigh its benefits when assessed against the policies in the Framework taken as a whole.

Conditions

24. The Council has suggested a number of conditions that it considers would be appropriate were I minded to allow the appeal. I have considered these in the light of the Planning Practice Guidance (PPG); for clarity and to ensure compliance with the PPG, I have amended some of the Council's suggested wording. Conditions are necessary for the details of the reserved matters (1), and their deadlines (2). A condition is also necessary in respect of implementation (3). In order to protect the environment, conditions for tree protection (4), and for the details of foul (5) and surface water (6) drainage are also required. To be effective, the tree protection condition needs to bite before ground works begin.
25. The suggested conditions for a vehicle charging point, a personalised travel plan, and a high speed broadband connection are unnecessary to make the development acceptable in planning terms, so I have not applied these. The highways authority has suggested a condition for visibility splays. As access is a reserved matter, this is unnecessary at this stage. Given the size of the site, a condition for bicycle storage is unnecessary. However, given its location and its access, a condition (7) to retain parking and turning on site to enable egress in forward gear is necessary to maintain highway safety.

Conclusion

26. For the reasons given above, and taking account of all matters raised, I conclude that the appeal should be allowed.

Patrick Whelan

INSPECTOR

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) Before any below ground works associated with the dwelling hereby approved, details of the form and position of fencing, which shall comply with the recommendations in BS5837:2012 Trees in relation to design, demolition & construction, for the protection of those trees, shrubs and natural features not scheduled for removal, shall be submitted to the local planning authority and approved in writing. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.
 - i) Levels shall not be raised or lowered in relation to the existing ground level within the approved protection zone of the tree or hedgerow.
 - ii) No roots shall be cut, trenches dug, or soil removed within the approved protection zone of the tree or hedgerow.
 - iii) No buildings, roads or other engineering operations shall be constructed or carried out within the approved protection zone of the tree or hedgerow.
 - iv) No fires shall be lit within the approved protection zone or in a position where the flames could extend to within 5 metres of the foliage, branches or trunk of the tree or hedgerow.
 - v) No vehicles shall be driven over the area within the approved protection zone of the tree or hedgerow.
 - vi) No materials or equipment shall be stored within the approved protection zone of the tree or hedgerow.
- 5) The dwelling hereby permitted shall not be occupied until works for the disposal of sewage shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.
- 6) The dwelling hereby permitted shall not be occupied until works for the disposal of surface water shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.
- 7) The dwelling hereby permitted shall not be occupied until space has been laid out within the site for cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear, in accordance with details which shall have been submitted to the local planning authority and approved in writing, and that space shall thereafter be kept available at all times for those purposes.

END OF SCHEDULE OF CONDITIONS