



Appeal Decision

Site visit made on 28 January 2020

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 March 2020

Appeal Ref: APP/C2741/W/19/3240258

4 Croft Farm Close, Copmanthorpe, York YO23 3RW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Jon Browne against the decision of the City of York Council.
 - The application Ref 18/02614/FUL, dated 14 November 2018, was refused by notice dated 9 August 2019.
 - The development proposed is a one and a half storey new dwelling including detached double garage and new site access.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Jon Browne against the City of York Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is the effect of the proposed access on highway safety along Yorkfield Lane.

Reasons

4. Yorkfield Lane is a section of adopted highway running alongside the eastern boundary of the site. It provides a surfaced pedestrian and cycle route linking Merchant Way through to Low Green and in doing so provides access to two separate entrances to Copmanthorpe Primary School. It also forms part of a walking and cycling route from a large residential area in the northeast of the village to shops, services and other facilities located in the village centre to the southwest. The appeal proposal would see the introduction of a dwelling on land to the rear of 4 Croft Farm Close with vehicular access directly onto Yorkfield Lane.
5. The lane is subject to a Traffic Regulation Order (TRO) that prohibits motor vehicles except for a small number of exemptions including emergency vehicles, works vehicles and agricultural vehicles. Standard 'No motor vehicles' highway signage is displayed at each end of the lane. There are no physical restrictions from Low Green, but bollards restrict access from Merchant Way. As such, the lane is primarily a walking and cycling route with very limited use by motor vehicles.
6. The appellant has carried out a pedestrian and cyclist usage survey of the lane which, in their view, demonstrates a relatively low level of use. The data shows

that 42 pedestrians, including 10 children, used the lane during a one hour period in the afternoon (3pm to 4pm) and 28 pedestrians, including 3 children, used the lane during a one hour period in the morning (8am to 9am). In addition, 9 cyclists were recorded during the survey periods.

7. However, the scope of the survey was limited to two one hour periods aimed at capturing school traffic at the start and finish of the school day. There is no record of the weather conditions during the survey period and I see it was conducted in mid to late March when the weather can be poor, potentially deterring pedestrian and cycling activity. As a consequence, the survey data is not comprehensive and is therefore of limited use.
8. Nevertheless, the usage data in my opinion indicates more than a low level of pedestrian and cyclist usage, especially given the suburban character of the area. Indeed, during my site visit, that took place late morning on a damp but mild day in late-January, I observed a number of pedestrians and cyclists making use of the lane. It is therefore reasonable to suggest that during periods of warmer weather throughout Spring, Summer and early Autumn, the usage of the lane is likely to exceed that of the survey results and that of my own observations. The lane can, therefore, be described as a moderately-busy thoroughfare for both pedestrian and cyclists.
9. I accept that vehicle movements to and from the appeal site are likely to be low and consist of vehicles traveling at low speed with good forward visibility. However, the proposal would introduce regular vehicular traffic onto a well-used pedestrian and cycle route that is currently largely free of motorised traffic, which in turn would increase the highway safety risks associated with it. Furthermore, the proposal would in effect create a turning head on the lane and could therefore result in vehicles carrying out reversing manoeuvres within the relatively narrow confines of the lane. Taken together, these effects would give rise to potential conflicts between pedestrians and cyclists with motorised vehicles and would therefore jeopardise highway safety to an unacceptable degree.
10. In reaching this finding I am mindful of the site's close proximity to the adjacent primary school which has almost 400 pupils on roll. Consequently, it is reasonable to expect that vehicle movements to and from the site, by future occupants and delivery or service vehicles, could occur concurrently with children using the lane to access the school. This significantly adds to my concerns regarding highway safety and would not be conducive to promoting safe pedestrian and cycling movements throughout the area.
11. In recognition of the conflict that the proposed access arrangements would have with the existing TRO, the appellant has indicated that they would be willing to seek revisions to the TRO to allow for access to the proposed dwelling. However, such Orders are outside of the planning system and are governed by other legislative provisions and subject to their own separate procedure and public consultation. As such, there is no certainty that revisions to the TRO could be achieved and on the basis of the Council's evidence it appears to be somewhat unlikely.
12. For similar reasons, the suggested use of a 'Grampian' style condition, prohibiting development until revisions to the TRO or other works to the lane are secured, would be inappropriate. In this regard, the Planning Practice Guidance (PPG) advises that conditions requiring works on land that is not

controlled by the applicant, or that requires the consent or authorisation of another body, in this case the Local Highway Authority, often fail the tests of reasonableness and enforceability¹. The use of Grampian conditions should be exceptional and not used where there is no prospect of the action in question being achieved, as I have found in this case.

13. Nevertheless, revisions to the TRO alone would not overcome the harm I have found to highway safety but would instead facilitate potential conflicts between users of the lane. Therefore, even if revisions to the TRO could be achieved this would not alter my findings on the main issue in this case.
14. The appellant has cited examples of other schemes across the country where TROs have been introduced to provide restricted access with appropriate signage. However, I do not have the full details of these other schemes before me and cannot therefore be sure that they offer a direct comparison to the appeal proposal. As such, this attracts limited weight in my determination.
15. The Council does not rely on any local planning policies to support their case for refusal. They have advised that there is no adopted Local Plan for York other than the saved policies of the Yorkshire and Humber Regional Spatial Strategy which relate only to Green Belt. Instead, in its reason for refusal, the Council cite conflict with paragraph 109 of the National Planning Policy Framework (the Framework). Accordingly, in the absence of any development plan policies, I have considered the scheme against the provisions of the Framework.
16. Paragraph 109 of the Framework states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts of the proposal on the road network would be severe. In addition, paragraphs 108 and 110 require that a safe and suitable access to sites can be achieved for all users and that applications for development should give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas.
17. Consequently, I find that the proposed access would compromise the safety of pedestrian and cyclist movements along Yorkfield Lane, particularly in relation to children using the lane. The proposal would therefore have an unacceptable effect on highway safety along Yorkfield Lane. Thus, it would be contrary to paragraphs 108, 109 and 110 of the Framework, the provisions of which I have set out above.

Other Matters

18. I have had regard to the letters of support from third parties which suggest that the scheme would result in improvements to the lane and reduce anti-social behaviour. However, no substantive evidence in respect of this has been provided. It has also been put to me that there are pre-existing conflicts between pedestrians and motor vehicles using the lane. Be that as it may, this would not justify introducing further traffic onto the lane given the harm I have found. These matters do not, therefore, outweigh the increased risk to highway safety that I have identified.
19. A number of third party representations also raise concern in relation to nearby protected trees. However, I can see that the proposal has been revised to

¹ PPG Paragraph: 009 Reference ID: 21a-009-20140306

mitigate any adverse impacts to adjacent trees and as a result the Council's Landscape Architect does not object. Accordingly, I see no reason to take an alternative view in this regard.

20. The appellant alleges that the Council made a number of errors and omissions in the way it dealt with technical highway matters during the determination of the planning application. The evidence shows that opposing views were put forward regarding technical highway details and comprehensive arguments made by each party. I have considered this matter further in my accompanying costs decision, nevertheless it does not alter my findings on the main issue.

Planning Balance

21. In light of the status of the development plan, as set out above, paragraph 11.d)ii of the Framework is engaged. This means granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
22. Turning to the benefits, the proposal would provide an additional dwelling that would add to the local housing supply and provide some economic and social benefits derived from its construction and subsequent occupation. I also recognise that the proposal would be located in an area with good access to a range of local services and facilities including access to sustainable modes of transport. It has also been put to me that the proposal is for a 'lifetime home' for a retired local couple and has been designed to achieve 'passivhaus' standards. However, these benefits are limited by the fact that only a single dwelling is proposed.
23. Overall, in light of my findings above, the adverse impact on highway safety would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies of the Framework taken as a whole. Therefore, in the context of paragraph 11 of the Framework, the proposal would not represent sustainable development.

Conclusion

24. For the reasons I have set out, the appeal is dismissed.

Jeff Tweddle

INSPECTOR