

Appeal Decision

Site visit made on 7 January 2020

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 March 2020

Appeal Ref: APP/H0520/W/19/3239708

Land adjacent Church of St Michael, High Street, Toseland PE19 6RX

- 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 Ivan Quince against the decision of Huntingdonshire District Council.
 - The application Ref 18/02151/FUL, dated 4 October 2018, was refused by notice dated 23 April 2019.
 - The development proposed was originally described as: Widening of existing vehicular field access, including culverting of the highway ditch, associated hardstanding and improvements to existing unmade lane.
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Decision

1. The appeal is allowed and planning permission is granted for widening of existing vehicular field access, including culverting of the highway ditch, associated hard standing in highway verge, at Land adjacent Church of St Michael, High Street, Toseland PE19 6RX, in accordance with the terms of the application Ref 18/02151/FUL, dated 4 October 2018 and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan ; 18.052.S0101 Rev A (Access Details Existing); 18.052.K0001_D (Access Details Proposed).
 - 3) Prior to the first use of the vehicular access hereby approved, the access where it crosses the public highway shall be laid out and constructed in accordance with the Cambridgeshire County Council construction specification.
 - 4) Prior to the first use of the vehicular access hereby approved, the access shall be constructed with drainage measures to prevent surface water run-off onto the adjacent public highway, in accordance with a scheme submitted to and approved in writing by the Local Planning Authority.

Application for costs

2. An application for costs was made by Mr Ivan Quince against Huntingdonshire District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The application originally sought the culverting of a highway ditch and provision of a hardstanding of some 7 metres wide by 10 metres deep, with further hard

surfacing proposed beyond this to demark a footpath to the gate of the Church of St Michael. During the course of the application, the proposal was amended to reduce the area of hard surfacing to only the area within the highway verge, with the surfacing of the footpath also omitted. The Council consulted on this amended scheme and duly determined the application on that basis, as have I.

4. The Council confirms that the Huntingdonshire's Local Plan to 2036 (the HLP) was formally adopted on 15 May 2019 and has replaced the policies of the Huntingdonshire Local Plan 1995 and the Core Strategy 2009. Thus, Policies T18 and CS1 of those documents, referred to in the Council's decision notice, are no longer relevant and I have not had regard to them in reaching my decision. The appellant has had the opportunity to comment on the adoption of the HLP and its relevant policies during the appeal.

Main Issues

5. The main issues in this case are the effect of the proposal on highway safety, and the effect on the character and appearance of the area, including the effect on the setting of the Grade II* listed Church of St Michael.

Reasons

Highway Safety

6. It is accepted by the main parties, and Cambridgeshire County Council as Local Highway Authority (LHA), that there is an existing access which would be altered. The proposal seeks to culvert a section of a shallow roadside ditch and lay an area of tarmac across the culvert within the highway verge, measuring some 7 metres wide by 2.4 metres deep.
7. Photographs submitted by the Council show the previous appearance of the access with hedgerows to the rear of the highway verge and alongside the lane known as Church Walk. I saw on site that these had been removed, but that a 'public footpath' signpost immediately next to the existing access remained in situ, with a ditch to the other side of this. As such, whilst the removal of hedgerows has opened up a wider area to potential vehicular movement to the interior of the site, including the possibility of accessing the field directly from the road instead of via the gate along Church Walk, the presence of the ditch and signpost mean access from the highway is still taken at the same point.
8. As the lane is unsurfaced, the Council's concern is that a wider access would disperse mud from the lane over a wider area of the highway. The appellant states that there would be no intensification of use of the access, nor is there any evidence of mud being brought onto the highway. The Council acknowledges in its delegated report that the LHA has not indicated there to be a significant problem with mud and nothing I have read indicates that it has caused incidents for motorists.
9. The Council also accepts in its delegated report that there is 'no evidence to show that many vehicles use the access at present'. Similar sentiments are expressed by interested parties who indicate the access is used more infrequently than is attested to by the appellant. Given these comments, it seems to me likely that use of the access is sporadic and occurrences of mud on the highway similarly so.

10. Making access to the field by larger vehicles easier may encourage rather than discourage use of the entrance, but there is little evidence before me to cast doubt on the appellant's contention that the use of the entrance would not intensify significantly as a result of the proposal. The access would be wider but would still see a similar number of vehicles entering and exiting the land at roughly the same point. Therefore, I find it unlikely that the spread of any mud tracked onto the highway would be materially greater or heavier than may occur at present. Moreover, the proposed surfacing of the area within the immediate highway verge would provide traction to remove some mud from vehicles leaving the lane before they enter the actual carriageway, which would lessen the amount and extent of any mud deposited.
11. The Council raises concern that allowing the proposal would make it difficult for it to resist pressure to allow up to 10 metres of hard surfacing in future to meet the LHA's desire to prevent mud on the highway. However, I have found little evidence that the existing access is causing a demonstrable problem with mud, or that the proposal would lead to such problems. Nor it is explained why a depth of 10 metres hard surfacing would be required. Therefore, I am not persuaded that allowing the appeal would make a further application more likely, or that the Council would be fettered in its decision making were one to be made, which would fall to be determined on its own merits.
12. Based on the evidence before me, I find that the proposal would not directly create conditions which would pose a danger to motorists or lead to harm to highway safety. As such, there would be no conflict with Policy LP17(c) of the HLP which requires that safe, physical access from the public highway is achieved, including the rights of way network where appropriate.

Character and appearance

13. Church Walk is a narrow, unmade lane framed by hedgerows which leads from the main road to the Church of St Michael. Beyond this, the public footpath continues into the countryside. The lane is clearly rural in character and offers a pleasant approach to the listed church. I concur with the comments of the Inspector in the decision referred to me from August 2014¹ that 'the grassed access from the road contributes positively towards [the tranquil and rural setting of the listed church]'. Church Walk is regarded as a non-designated heritage asset (NDHA) by the Council due to its forming part of the historic landscape of the village.
14. The Council accepts that the extent of works proposed within the highway verge, by themselves, would be acceptable in terms of their impact on the character and appearance of the area, and would not adversely affect the setting of the listed church. I saw that accesses along the main road through the settlement had a range of different surfaces. Though a new hard surface would initially look more prominent than others which have blended into the surroundings over time, I find that the proposal, given its modest surface area, would not be harmful in visual terms and would not adversely affect the verdant, rural character of Church Walk which still prevails in spite of the loss of sections of hedgerow.
15. The Council, however, argues that a wider access would lead to pressure for further hardstanding and would prevent reinstatement of hedgerows along the

¹ Appeal Ref: APP/H0520/A/13/2210669

road frontage and alongside Church Walk, which it considers contributed positively to the character of the area. It is a point of dispute between the parties as to whether such concerns are material to the appeal. The Council accepts that the hedgerows were not protected and that their removal could not have been prevented, though based on the plans and my site visit, it appears that their removal, at least in part, would be required in order to provide a wider access.

16. However, at the time of my visit, there appeared to be no evidence to indicate that unauthorised development had taken place, and no breach of planning control is alleged by the Council. On the evidence before me, therefore, it is unclear on what basis the Council could require the reinstatement of the hedgerow. This aside, the stated purpose of the hardstanding is to allow vehicles to make easier turns into and out of Church Walk at roughly the same point. It is evident that the widened access would preclude some of the hedgerow being reinstated, but it does not seem to me a certainty that none of it could be re-established at some point. Therefore, while I have had regard to this matter, it is of limited weight in my considerations.
17. As stated above, any proposal for further hard surfacing or other works would be a separate matter to be considered by the Council if an application is made. I have dealt with the scheme before me which relates only to the limited area within the highway verge. There is also concern over piecemeal infilling of ruts in the lane with various materials; however, this is to be expected from time to time as soil erodes or is washed away, and are common aspects of rural lanes everywhere. I am satisfied that the proposal, given its limited area and scope, would not directly lead to more repairs which would harm the character and appearance of Church Walk.
18. For the reasons given, I find that the proposal would not harm the character and appearance of the area, and so would not conflict with Policies LP10, LP11 and LP12 of the HLP which together seek to protect the intrinsic character and beauty of the countryside; and to support proposals which respond positively to their context to help create distinctive, high quality and well-designed places.
19. Furthermore, the proposal would not harm the setting of the Grade II* listed church, or the significance of Church Walk as a NDHA, and so would not conflict with Policy LP34 of the HLP, which requires proposals to demonstrate that they will protect the significance of designated heritage assets and their settings.

Other Matters

20. A number of other concerns have been raised by interested parties, many of which relate to the originally proposed scheme, or to matters I have already addressed as part of the main issues. Whilst I have had regard to these, they are not of sufficient weight to alter my overall conclusions. As regards the removal of hedgerows, it is for the Council, if it deems it expedient, to separately take forward with the landowner any concerns raised relating to this or any other works on or use of the land.
21. There are suggestions within the Council's evidence that the proposal is intended to facilitate future access to a residential dwelling. The appellant, informed by his interpretation of a recent High Court judgement², states that

² R on the application of Warren Farm (Wokingham) Limited vs Wokingham Borough Council [2019] EWHC 2007 (Admin)

permission exists for a dwelling as the Council did not determine an application for prior approval³ within statutory time frames. However, I have no evidence from the Council to indicate that the notice refusing prior approval which it issued has been nullified by this judgement or superseded by another decision. Ultimately, the proposal is for a limited area of hardstanding, which would not of itself provide a means of access to a proposed dwelling. As such, these arguments are not determinative in this case and I afford them limited weight.

Conditions

22. The Council has suggested conditions in the event the appeal is allowed, which I have considered in light of the tests of conditions within the Framework and guidance of the Planning Practice Guidance (PPG) and amended where necessary to ensure compliance with the tests.
23. To provide certainty, a condition is required specifying the relevant drawings. Conditions are necessary to ensure the access and associated drainage measures are constructed to the required specifications, in the interests of highway safety.
24. A condition is sought to prevent gates being installed across the access by removing permitted development (PD) rights⁴; however, the Framework advises that conditions restricting national PD rights should not be used unless there is clear justification to do so⁵. The reason given by the Council is in the interests of highway safety. However, a picture supplied by the Council shows a gate previously in situ, as there are to other accesses along the road, and I have no other evidence that a gate would pose a specific risk to highway safety. As such, I am not persuaded that such a condition is justified and I have not imposed it.
25. The Council sought a condition requiring a programme of archaeological work in accordance with a written scheme of investigation. However, it is clear from the submitted comments of the Archaeological Officer that this would not be required in respect of the scheme as revised. Given the very limited area affected by the proposal, I agree that such a condition is not necessary.
26. Finally, the Council has sought details of landscaping to the western boundary of the appeal site; however, there is no indication on the plans of any proposed landscaping or where it might be sited. Given the limited nature of the proposal, I am satisfied that there is no need for such a condition.

Conclusion

27. For the reasons given, the appeal is allowed.

K. Savage

INSPECTOR

³ Council Ref: 18/00539/PMBPA

⁴ Under Class A of Schedule 2, Part 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

⁵ Paragraph 53