

---

## Appeal Decision

Site visit made on 18 May 2020

**by JP Longmuir BA (Hons) DipUD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12<sup>th</sup> June 2020**

---

**Appeal Ref: APP/W1850/W/20/3244475**

**Land adjacent to Amarant House, Harewood End, Herefordshire HR2 8JT**

- 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 John Honey against the decision of The County of Herefordshire District Council.
  - The application Ref 174193, dated 5 November 2017, was refused by notice dated 20 December 2019.
  - The development proposed is the erection of two cottages and garaging, construction of new vehicular access and track and associated works.
- 

### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Mr John Honey against The County of Herefordshire District Council. This application is the subject of a separate Decision.

### Procedural Matters

3. The planning application was submitted in outline with all matters reserved except for the layout and access. I have therefore taken any indication of reserved matters in the submission to be indicative.

### Main Issue

4. The main issue is the effects of the proposed access on highway safety.

### Reasons

5. The site is adjacent to the A49 Hereford to Ross-on-Wye road, which is part of the strategic road network and as such is overseen by Highways England (HE). There is a 40mph limit here, which is highlighted by road markings and signs just to the north of the site. The road is lined by a hedge and a narrow grass verge, which front the appeal site. The neighbouring land to the north is similar but there are also several trees with canopies extending towards the road as well as a telegraph pole and a tangential public footpath.
6. The proposal involves a new access on to the A49 at the northern end of the site. The two proposed cottages would then be connected by a new track.

7. The A49 is a busy road as I observed at mid-morning on my site visit. Indeed, the appellant's submitted Road Safety Audit Report (RSAR), notes the considerable presence of heavy good vehicles on this stretch of the A49. All parties accept that given the speed here, visibility splays of 120m by 2.4m should be provided in each direction to ensure a safe access. These splays are presented graphically on the submitted proposed entrance/visibility details drawing, which also annotates the height of the hedge reduced to 0.6m above the carriageway. Both parties also accept that visibility from the access to the south can be provided and maintained. This part of the splay crosses highway land and could be maintained by a condition. However, the parties disagree on the visibility splay to the north.
8. To the north of the access the hedge is well-established, which the appellant describes as tall and dense. The intended visibility splay broadly follows this hedge line and may include the canopy of a tree and a telegraph pole. HE in their statement indicate a detailed topographical survey was requested in December 2019 to ascertain the precise implications for the splay. I note that a topographical survey was used to plot the access on the submitted plans. I cannot be sure what additional information HE wanted; however, this plan does not annotate or clearly show the telegraph pole by the site access. There is also no annotation confirming or not the cutting back of any of the roadside tree(s), even though the canopies appear to overlap with the plotted splay line. The hedge is just shown as an outline extent (at that time) with no positions of the actual individual stems plotted.
9. The Council's decision notice and the case officer's report refer to the uncertainty of the proposed visibility splay, its maintenance in a closely cut state and potential crossing of the neighbouring land. It seems apparent to me that the full highway safety implications for the splay have not been wholly quantified. In any event, the evidence before me indicates that it is very likely to need the agreement of the neighbour.
10. The northern splay cannot be achieved by a condition if any part lies outside the appellant's and highway authority's ownership, and under the control of a third party: such a condition would be unenforceable and hence would not accord with all the six tests in paragraph 55 of the National Planning Policy Framework (the Framework).
11. The appellant suggests that a Grampian style condition could be imposed, whereby no development can take place until agreement is secured on its maintenance. It is understood that discussions have been ongoing for several years, however there does not appear to be any documentary evidence that the owner is so willing. The only correspondence appears to be two comments on 12 and 19 August 2019 in response to the planning application consultation: he acknowledges that the agent had been in contact but sought clarification on the extent of the splay in relation to his property, which is latterly acknowledged but there is no reference to being party to its maintenance. As the HE statement highlights this proposal would place a more onerous legal duty on the neighbour as at the moment there is no requirement to maintain the hedge.
12. The Planning Practice Guidance states that Grampian style conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission. Consequently, I

cannot accept that such a condition would be appropriate based on the details before me.

13. The appellant also suggests that HE has powers under the Highways Act 1980 to control the cutting back of the neighbour's hedge. However, the HE statement is clear that this does not cover third party responsibilities. Concern was expressed throughout the application process, which indicates to me that they did not feel that their powers could be used to consistently require such works. Moreover, they conversely appear to have been encouraging the appellant to seek an agreement with the neighbour. I noted on my site visit that the hedge (and the narrow grass verge), did not appear to have been cut for a considerable time.
14. Therefore, I am not persuaded that an acceptable visibility splay to the north of the access would be available at all times in the future. In the absence of a splay as set out above, visibility would be impaired, which would be harmful to highway safety, even accepting that the access itself can be wide and lined by bollards as advocated in the RSAR. It is apparent that HE was still asking for a further safety assessment up to the point of determination.
15. The appellant makes reference to a couple of other new houses in the vicinity of the appeal site with accesses on to the A49 which have been allowed. The HE statement explains one of these was an improvement on existing sightlines. In any event, I have not been given the full details and circumstances of such accesses. I have determined this appeal on its individual planning merits and the existence of such accesses does not outweigh or alter my conclusion on the main issue.
16. For the reasons above, I am unable to conclude that the proposal would not have an unacceptable impact on highway safety in respect of the proposed visibility splay. Consequently, the development would not accord with the highway safety requirements of policy MT1 of the Herefordshire Local Plan Core Strategy 2011-2031, adopted October 2015 (CS) or paragraphs 108 and 109 of the Framework.

#### *Other considerations*

17. Both parties accept that the principle of erecting two houses in this location is acceptable, albeit subject to the access. I do not disagree with such views and indeed Policy RA1 of the CS promotes housing growth in the Ross-on-Wye area. Both parties also agree that the Council is not meeting its housing land supply requirements, having only 4.05 years supply. Given the housing land supply paragraph 11 (d) of the Framework is engaged.
18. The provision of two dwellings would make a positive contribution towards the housing undersupply position. In addition, there would be some economic benefits arising from the construction of the dwellings and from the occupiers using nearby services and facilities. Nonetheless, these collective benefits would be limited given that only two dwellings are proposed to be erected. Such limited benefits need to be weighed up against my conclusion on the main issue which is a matter to which I afford significant weight.

#### **Conclusion**

19. I find that the identified highway safety concerns would significantly and demonstrably outweigh the aforementioned benefits of the proposal when

assessed against the policies in the Framework taken as a whole. Furthermore, there would be conflict with the highway safety requirements of policy MT1 of the CS. Therefore, and taking account of all other matters raised I conclude that the appeal should be dismissed.

*John Longmuir*

INSPECTOR