



Appeal Decision

Site visit made on 8 July 2020

by M Seaton DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 31 July 2020

Appeal Ref: APP/G2713/W/20/3249173

Warehouse Buffer Depot, Sowerby, North Yorkshire, YO7 1QY

- 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 Mrs Anne Douglas (on behalf of Blue Oak Homes (Yorkshire) Ltd) against the decision of Hambleton District Council.
 - The application Ref 19/02370/FUL, dated 7 November 2019, was refused by notice dated 21 February 2020.
 - The development is described as retrospective consent for provision of access across site to comply with regulations for adequate fire appliances, and pedestrian access and replacement of metal gate adjacent to Victoria Avenue.
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Decision

1. The appeal is allowed and planning permission is granted for a retrospective consent for provision of access across site to comply with regulations for adequate fire appliances, and pedestrian access and replacement of metal gate adjacent to Victoria Avenue at Warehouse Buffer Depot, Sowerby, North Yorkshire, YO7 1QY in accordance with the terms of application Ref 19/02370/FUL, dated 7 November 2019, subject to the conditions below;
 1. The development hereby permitted shall be retained in accordance with drawing numbers 1917-17 A and the location plan received by Hambleton District Council on 7 November 2019.
 2. The access hereby permitted shall be used only as pedestrian access and for emergency fire appliances only.
 3. Within two months of the date of this decision the gates shall be painted or stained dark brown, and thereafter maintained in the colour brown.

Main Issue

2. The main issues are;
 - Whether the access via Victoria Avenue is acceptable for use by emergency vehicles and pedestrians, having regard to the highway safety of all users; and,
 - The effect of the development on the character and appearance of the street scene and area.

Reasons

3. The appeal site accommodates a large industrial unit and associated land and hardstanding to the west of Victoria Avenue and Melbourne Place, and occupies a parcel of land largely bound by existing residential development. The appeal site possesses an existing access from Melbourne Place.
4. The scheme seeks the provision of a further access to the site for pedestrians and emergency vehicles only from Victoria Avenue, with an existing boundary indicated as having been replaced and an area of land to the south of the property known as The Bungalow on Victoria Avenue having been cleared to facilitate a link to the existing access and hardstanding within the site.

Highway safety

5. In determining the planning application, the Council has referred me to Policy DP4 of the Hambleton Development Policies 2008 (the Development Policies). This policy advises that development proposals must ensure that safe and easy access is available to all potential users, and that high standards of access for all are maintained.
6. I have carefully considered the Council's submission that the use of Victoria Avenue for pedestrian and emergency access is unsuitable due to on-street and on-pavement parking which affects carriageway and footway widths, with there being the ensuing dangers through shared use of carriageway for pedestrians and vehicles and the potential for obstruction to emergency vehicles.
7. I note that parking on Victoria Avenue does indeed occur on both sides of the street and that vehicles are parked partly on-street and on-pavement. However, I observed that despite the partial on-pavement parking both pavements remained passable for pedestrians without the need to deviate into the carriageway itself, and that an adequate width of single carriageway remained available for traffic for the full extent of Victoria Avenue. I also had regard to the availability of satisfactory visibility splays at the junction between Victoria Avenue and B1448 Topcliffe Road.
8. North Yorkshire County Council's Highways Team has referred me to the guidance for fire appliance access provided in Manual for Streets (MfS). The guidance in MfS identifies a required carriageway width of 3.7 metres for sufficient operating space with a reduction to 2.75 metres available over short stretches, with the local highway authority advising that the available carriageway was in fact reduced below this to 2.3 metres in different locations at the time of their assessment.
9. Whilst Victoria Avenue is clearly accessible and passable for smaller vehicles, I accept that the nature of the street and absence of any on-street parking restrictions does not ensure that the carriageway would necessarily be maintained in a manner sufficient to accommodate larger vehicles as suggested by MfS, including some emergency vehicles.
10. I have noted the testimony of interested parties regarding problems related to refuse vehicle access, although it cannot be ignored that emergency vehicles would potentially need to be able to access the properties on the street in its current condition for emergency purposes. However, I have not been provided with any compelling evidence to suggest that this has not proved possible in the past. Furthermore, if such a scenario had arisen, it is entirely conceivable

that the necessary remedial action would have had to have been taken to restrict parking on Victoria Avenue to ensure that emergency access could be adequately maintained for any future eventualities. No such action has seemingly occurred.

11. On the basis of the evidence before me and my own observations, and despite the guidance within the MfS I am not persuaded that Victoria Avenue would be either an impractical or unfeasible means of access for emergency vehicles. This conclusion would appear to be borne out by North Yorkshire Fire and Rescue Service who are reported by the Council as having not raised any objection to the provision of an access route via Victoria Avenue, considering it to be significantly better than the current arrangement.
12. Additionally, I do not consider that there would be any significant probability of an adverse impact on highway safety through conflict between pedestrians and emergency vehicles using Victoria Avenue, or given the very nature of the emergency access that the frequency of use would be any more than occasional. However, I am mindful that in the event that access could not be practically obtained from Victoria Avenue due to obstructions, then there is no reason to believe that the existing access from Melbourne Place would not continue to be used as an alternative as would currently be the case, and which I note as a means of access would also not meet the MfS requirements in certain places. In any event, I have had regard to the submission by North Yorkshire Fire and Rescue Services to the Council that this would be a matter for the emergency services to consider as part of a dynamic risk assessment.
13. I have noted the concerns of interested parties regarding the possibility of Heavy Goods Vehicles (HGVs) and vans utilising the access in the future, but I am satisfied that a condition restricting use to pedestrians and emergency vehicles would be an appropriate way of controlling this issue.
14. I am satisfied that the development does not result in an adverse impact on highway safety as a consequence of conflict between pedestrians and vehicles and provides a formalised pedestrian access and route from Topcliffe Road to the site. Furthermore, I am not persuaded of the unsuitability of the use of Victoria Avenue for emergency vehicles.
15. For these reasons, the development does not therefore conflict with Policies CP1 and CP2 of the Hambleton Core Strategy 2007 (the Core Strategy), or Policies DP3 and DP4 of the Development Policies. These policies seek to ensure that development proposals improve the general level of accessibility, ensure safe and easy access for all, and provide for and improve sustainable forms of access to the site including for pedestrians as a means of reducing the need to travel by private car.

Character and appearance

16. The Council has highlighted that the location of the access point is set just to the west of the boundary of the Thirsk and Sowerby Conservation Area. Whilst the Council does not suggest that the physical works to create the access itself would be harmful to the significance of the heritage asset, a conclusion with which I would agree, the access gate is held to create a stark feature within the street scene, which would not respect visual amenity or local character.

17. I note from the submitted evidence that prior to the installation of the existing timber gate, the boundary to the warehouse site at the end of Victoria Avenue was defined by a mesh link boundary which appeared to have become overgrown, with the removal of the vegetation cited in a number of interested parties submissions as an adverse aspect of the development. However, it would seem that the growth of the vegetation was an unplanned consequence of a lack of maintenance and that had the boundary been properly maintained its visual effect would have been more accurately of a mesh link boundary.
18. I accept the Council's contention that the existing gate has a somewhat stark appearance to it, but consider that this could have been more than adequately addressed through the imposition of a condition requiring the gate to be stained in appropriately dark colour, as has been suggested by the Council in the submitted conditions. Furthermore, and recognising that the gate provides a transition between the commercial property and primarily residential area, I do not find the form or design of the gate to be entirely uncharacteristic of that which may be found elsewhere at suburban residential properties. I am also not persuaded that the use of kerbing and permeable grassed cellipave interlocking matting has an adverse impact on the character and appearance of the area.
19. I recognise the contention of interested parties that trees have also been removed from the site, albeit that it would appear that this has happened over an extended period both prior to and when the works were carried out. However, whilst this is unfortunate there is no indication that any of the trees or other vegetation would have benefitted from any formal protection.
20. I am therefore satisfied that the development does not have an adverse effect on the character and appearance of the area. The scheme does not therefore conflict with Policy CP1 of the Core Strategy or Policy DP32 of the Development Policies, which seek to ensure that development pays attention to design quality and takes into account local character and setting.

Other Matters

21. In my decision-making I have noted the various references made by both the main parties and interested parties for a revised access to need to comply with relevant fire regulations, the contrary submissions on whether there is any overall clear justification or need for the access works, as well as the references to the existing carriageway environment and presence of a protected tree on Melbourne Place.
22. In this respect, I have fully reviewed the evidence as submitted. But I am mindful that the decision on the development must be made in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, which sets out that *if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.*
23. In this instance, I have considered the development against the development plan and have not found there to be any harm to highway safety or conflict with the relevant policies. I have also not been directed to any requirement within the development plan or other compelling material consideration that justification in the form of a case for need must be first made and accepted. If

as has been suggested, the Fire and Rescue Service opt not to use the provided access, then that is an operational decision which they are clearly entitled to make albeit that their submissions would suggest otherwise. However, that is not a matter which has had any influence on my decision which has been made on the planning merits of the case.

24. Turning to matters related to the protected tree on Melbourne Place, I agree that the presence of the tree does not justify the creation of the alternative pedestrian and emergency access on Victoria Avenue, and I have not attached any weight to this issue in my decision-making.
25. I have also had regard to other matters which have been raised including the previous use of the land and whether there has been a historic access to the appeal site in this location, whether biodiversity has been adversely affected by the development, the loss of privacy to the adjoining properties, and whether the development would enable a future redevelopment of the appeal site.
26. In light of the planning merits of the case, I have not found there to be any overriding need to conclusively establish that there was previously an access to the wider appeal site from Victoria Avenue. I have already concluded that trees and boundary vegetation appears to have been lost either prior to the undertaking of the works or during the works but have been presented with no evidence of an unacceptable loss of biodiversity. I am also not persuaded on the basis of the relationship between the neighbouring properties and the access that there would be an unacceptable loss of privacy through its use by pedestrians and occasional emergency vehicles.
27. Turning to the potential for a future development of the appeal site, the development must be assessed and determined on the basis on which it is applied for rather than the possibility of future development or land uses. As I have already indicated, the appeal has been determined on the basis of its planning merits for the current scheme and I have not therefore attached any weight to speculation as to a possible future development of the site.

Conditions

28. The Council has suggested conditions to ensure that the development is retained in its current form in order to safeguard the character and appearance of the area, with the use of the access restricted to pedestrians and emergency vehicles only in the interests of highway safety and residential amenity. The staining of the gate a dark brown colour would also be in the interests of the character and appearance of the area.

Conclusion

29. For the above reasons, and subject to the conditions listed, the appeal is allowed.

Martin Seaton

INSPECTOR