



Appeal Decision

Site Visit made on 23 March 2021

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2021

Appeal Ref: APP/H1840/W/20/3259338

**Orchard Dene Hall, Broad Marston Road, Broad Marston, Pebworth
CV37 8XY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr and Mrs R Lambrecht against the decision of Wychavon District Council.
- The application Ref 19/02209/CU, dated 1 October 2019, was refused by notice dated 13 March 2020.
- The application sought planning permission for change of use of existing outbuilding to tourist accommodation and for owners recreational purposes without complying with a condition attached to planning permission Ref W/07/02211/CU dated 8 January 2008.
- The condition in dispute is No 4 which states that: *Before the development hereby approved is first occupied for tourist accommodation purposes, details of the means of permanent closure to vehicles of the access marked "existing vehicular access" on approved drawing number 1721/10, together with a plan indicating this site being served by the "existing access" to the north, as approved on Appeal under Plan No W/06/02209/CU, shall be submitted to and approved in writing by the Local Planning Authority. The "existing vehicular access" shall be permanently closed in accordance with the approved details before the building is first occupied as tourist accommodation.*
- The reason given for the condition is: *To prevent the increased use of a sub-standard access in the interests of highway safety.*

Decision

1. The appeal is allowed and planning permission is granted for the change of use of existing outbuilding to tourist accommodation and for owners recreational purposes at Orchard Dene Hall, Broad Marston Road, Broad Marston, Pebworth CV37 8XY in accordance with application Ref 19/02209/CU without complying with condition 4 previously imposed on planning permission Ref W/07/02211/CU, subject to the following condition:
 - 1) The outbuilding subject of this approval shall not be occupied as a person's sole or main place of residence and shall only be occupied as either tourist accommodation or for use incidental to the enjoyment of the occupiers of the existing adjoining dwelling, Orchard Dene Hall.

Background

2. In January 2008 planning permission was granted for the change of use of an existing outbuilding to a dual incidental residential use and as tourist accommodation. In doing so the Council imposed a condition for the existing

vehicular access serving the site to be permanently closed. The application sought to remove this condition.

Applications for costs

3. An application for costs was made by Mr and Mrs R Lambrecht against Wychavon District Council. This application is subject of a separate Decision.

Procedural Matters

4. The appellant has indicated that the incidental residential and tourist accommodation use has been taking place for approximately 11 years. The application has been submitted retrospectively and I have dealt with the appeal on this basis.

Main Issue

5. The main issue is the effect that removing condition 4 would have on the safe operation of the local highway network.

Reasons

6. The appeal building sits between Orchard Dene Hall and an existing dwelling. A shared access leads off Broad Marston Road which also serves a small number of dwellings positioned between two properties at its junction with the road. Orchard Dene Hall is also served by a second access further along Broad Marston Road. There are no Traffic Restriction Orders in place along this section of the road and the speed limit is 30mph.
7. Given the modest size of the building it is unlikely to be occupied other than by a couple or young family who are unlikely to travel to the site in more than one vehicle. Given the existence of an alternative access and that the building can be used for incidental residential purposes or modest sized tourist accommodation I am satisfied that the level of traffic movements associated with the development, even on the basis of a greater amount of accommodation, is likely to be infrequent and does not result in unacceptable levels of traffic either in isolation, or cumulatively with nearby dwellings using the access.
8. I acknowledge that visibility at the access does not meet the Sight Stopping Distance (SSD) set out in Manual for Streets (MfS). However, whilst it is technical guidance there is nothing before me to indicate its contents forms part of the adopted development plan. Moreover, it clearly states that in preparation of the document no relationship between SSDs and casualties was found. Despite this shortfall it is not an inevitable conclusion that the proposal would result in highway harm. As such, it is a matter of planning judgement based on the merits of the scheme.
9. The access onto the road already exists and has been serving a number of dwellings for some time. The road is relatively straight either side of the access without obstructions allowing visibility for drivers and the bends further along the road also provide visibility of the access. At the time of my visit, I observed low levels of traffic along Broad Marston Road and it appeared that traffic in both directions passed the site at relatively low speeds.
10. Whilst this is a snapshot in time, based on my observations and the evidence before me including that there is no record of any accidents associated with the

access since the tourist accommodation has been in use, in my view, demonstrates that the access is not unsafe and any additional vehicles entering or leaving the site have not resulted in an additional risk to highway safety. In this instance I find that visibility below the guidance has not led to a significant problem and there is no credible evidence before me to indicate the perceived lack of visibility has compromised highway safety along the road.

11. Local residents dispute the level of accidents and have submitted that there have been a number of accidents and 'close shaves' along the road. However, there is no substantive information in respect of the nature of the accidents or the time frame over which they occurred. Consequently, I give limited weight to this.
12. The access only serves a handful of properties which together with its stoned finish suggests traffic speeds are likely to be slow. There is reasonable visibility along the access and pedestrians and cars would be able to see each other. In addition, visitors that do not have knowledge of the road layout or area are likely to drive more carefully and consciously.
13. I accept that Orchard Dene Hall and the site benefit from an alternative access and that the stance of the Highways Authority has not changed since the previous application, but in the absence of any compelling evidence from the Council of existing problems related to the use of the access, I am not persuaded of the severity of the highway impact as claimed by the Council.
14. In conclusion the condition is not necessary or reasonable and its deletion would not conflict with paragraphs 108, 109 and 110 of the National Planning Policy Framework which, amongst other things, seeks safe and suitable access for all users and 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 on the road network would be severe.

Other Matters

15. The Council have made reference to a previous application and appeal for the conversion of the building to a live/work unit which was in part dismissed on highway safety grounds. However, every application and appeal must be considered on its own merits, as I have done in this case. The previous refused scheme is materially different to the one before me and likely to result in different traffic movements. As such I give it negligible weight in coming to my decision.
16. I note the representations made in respect of the proposal. References to alleged planning breaches at the site and the intentions of the appellant. However, it is incumbent upon me to assess the merits of the proposal before me in respect of its impact upon highway safety. These are not matters for me as part of this appeal and I give them negligible weight in coming to my decision.
17. Whilst reference has been made to occasions of multiple vehicles visiting the site resulting in inconsiderate parking there is no credible evidence before me to suggest that this is a regular occurrence. There is also no credible evidence to suggest that the building is being used as a permanent residence.
18. I acknowledge the comments in respect of car headlights shining into nearby properties and the potential for disturbance. However, the Council has not

raised concerns regarding the impact of the proposal on the living conditions of nearby residents. I find no reason to disagree.

19. I see no reason to conclude that the proposal would undermine the upkeep or management of the access road. The ownership of the road and access over it are matters which fall outside of what I consider in my decision.

Conditions

20. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect.

21. In the interests of clarity, I have imposed a condition on the original planning permission that I consider remains relevant.

Conclusion

22. I therefore find that the Condition is not necessary or reasonable. For this reason, the appeal is allowed and the planning permission varied by deleting condition 4.

B Thandi

INSPECTOR