



Appeal Decision

Site visit made on 30 November 2021

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2021

Appeal Ref: APP/Z0923/W/21/3277409

Elizabeth Crescent, Whitehaven CA28 6JQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mrs Katherine Bowe of Harras Park Estates against Copeland Borough Council.
 - The application Ref 4/19/2233/001, is dated 26 June 2019.
 - The development proposed is residential development of up to 50 dwellings.
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. The application was submitted in outline with approval of access sought. Detailed matters relating to layout, appearance, landscaping and scale are reserved for future consideration. I have determined the appeal on this basis, treating supporting plans as illustrative.

Background and Main Issues

3. The appeal scheme follows the refusal and dismissal at appeal for a similar proposal which was resisted on highway safety grounds with specific regard to the operation of the junction with Victoria Road and the capacity and condition of the access route along Elizabeth Crescent, with the previous Inspector concluding that it had not been demonstrated that the junction would continue to operate safely were the development to proceed. The scheme before me has sought to address this through a junction improvement at Victoria Road.
4. The appeal has been made following the Council's failure to determine the application within the required period. I have had regard to the key issues identified in its statement of case together with the appellant's submissions and comments from interested parties in formulating the main issues, which are the effect of the proposed development on highway safety with particular regard to the junction at Victoria Road and the use of Elizabeth Crescent, and whether or not it would be at an unacceptable risk of flooding.

Reasons

Highway Safety

5. Victoria Road slopes upwards from its junction with the A595 in the south to loop around the north of Harras Moor. A number of residential areas are accessed from it. The road gives access to Bay Vista. Bay Vista provides access

- to Elizabeth Crescent via a junction and Rosemary Close is a continuation of Bay Vista.
6. Although Victoria Road is subject to a 30mph speed limit at the point where it meets the junction with Bay Vista, the traffic surveys undertaken in February 2017 to inform the appellant's Transport Statement (TS) show that the 85th percentile speed of vehicles was 38.4 mph eastbound and 34.3 mph westbound.
 7. Visibility to the west is reasonable but is less so to the east due to the location of a low stone wall and vegetation near to the road. The TS states that current visibility at the junction of Victoria Road with Bay Vista is 55m to the west and 40m to the east from a 2.4m set back. Information presented by local residents considers the visibility splays to be 44.9m to the west and 31m to the east. Notwithstanding the different figures presented, there does not appear to be a dispute that the current visibility splays at the junction fall short of the requirements as set out in Manual for Streets (MfS) for the recorded 85th percentile speeds.
 8. For the previous proposal, which recorded very slightly lower speeds on Victoria Road, the Council specified that the visibility requirements should be 57m to the west and 53m to the east. The TS uses the formula in Manual for Streets 2 (MfS2) to calculate appropriate visibility splays. This takes account of the gradient of Victoria Road and includes a 2.4m "bonnet length" correction. The resulting visibility splay requirements would be 57m to the east and 55.6m to the west.
 9. The appellant has proposed a junction improvement scheme to provide these visibility splays. This would involve building out the kerb on both sides of the junction to enable the give way line on Bay Vista to be brought forward, with an associated reduction in the width of Victoria Road from 6.5m to 5.5m for a length of around 85m and new centreline hazard markings. This would be done alongside other measures to facilitate the reduction in vehicle speeds on Victoria Road on the approach to the junction, including upgrading the existing speed limit boundary with additional signage and road markings and new 'slow' markings. Other measures would include new and widened lengths of footway on the north and south side of Victoria Road, a new length of verge on its south side and new uncontrolled pedestrian crossings on Victoria Road and Bay Vista with dropped kerbs and tactile paving.
 10. Many of the interested parties have expressed concerns about the proposed junction improvement scheme, and a number of detailed submissions have been provided.
 11. MfS2 notes that the strict application of Design Manual for Roads and Bridges (DMRB) guidance to non-trunk routes is rarely appropriate for highway design in built up areas, regardless of traffic volume. Paragraph 1.3.6 of MfS2 states that it is only where actual speeds are above 40mph for significant periods of the day that DMRB parameters for stopping sight distance are recommended. Where speeds are lower, MfS parameters are recommended. Given the speed limit restriction and recorded speeds in the vicinity of the junction, I am satisfied that the use of the guidance in MfS and MfS2 to establish visibility requirements is appropriate.

12. Questions have been raised about the calculations presented in the TS, including a contention that the more onerous deceleration and reaction times advised in MfS2 should be used due to the surveyed speed of eastbound vehicles being above 60kph (37mph). Attention has been drawn to an appeal decision¹ that it is stated supports this approach. Using these deceleration and reaction times, visibility splays have been calculated as an absolute minimum of 69.2m to the west and an absolute minimum of 89m to the east.
13. I am mindful that the secondary aim of the junction improvement scheme would be to reduce the speed of vehicles. The TS states that reducing the carriageway width from 6.5m to 5.5m would be expected to result in a reduction in 85th percentile speeds of around 4mph. The use of gateway features such as the one proposed is a recognised way to help reduce speeds on the approach to settlements, especially when there is a change from the national speed limit to a more restrictive one as is the case here. I have not been presented with the details of the appeal scheme in question or whether it proposed a gateway feature that could contribute to reducing vehicle speeds. I cannot therefore draw any direct comparisons with this decision that would weigh in favour of the interested parties' position. Given this context, I am satisfied that the appellant's approach to defining the required visibility splays would be appropriate.
14. Concerns also include the effect of the proposed measures on HGVs using the junction. A swept path analysis² has been undertaken by the appellant based on a refuse collection vehicle, which is an appropriate vehicle to use given that it would likely be one of the more common HGVs using the junction on a regular basis. This indicates that there would be some overswing of the centre line and footways. However, this degree of overswing is not unusual in residential estates. I am also mindful that the swept path analysis shows a similar degree of overswing with the junction in its current form.
15. Other concerns expressed by the interested parties include an assertion that there would be a pinch point where the road would be only 5.1m in width which could cause a safety hazard; a safety risk for the use of the drive at 1 Rannerdale Drive which is opposite the junction; the lack of assessment of the implications of the proposed scheme on other junctions in the vicinity and the fact that cars park on streets in the vicinity during icy weather which affects traffic flow.
16. In this regard I am mindful that the scheme has been through a stage 1 road safety audit which made a number of further minor recommendations. In addition, two separate teams and a Network Engineer within Cumbria County Council, the Highway Authority, have scrutinised it. The Highway Authority has found the proposed junction improvements to be acceptable and capable of allowing the additional vehicles that would be generated by the proposed development to use the junction safely. In addition, in the event that planning permission was to be granted, further safety audits would be required as part of the Highway Authority's section 278 process.
17. The proposed scheme would offer some improvements for pedestrians and road users in the vicinity through the widened and extended footway and the

¹ APP/R0660/W/17/3167669

² Plan number C002 rev B

potential for slightly reduced speeds, offering the potential for a safer approach to the built-up area. The improvements would be reasonable and necessary.

18. A BT box would have to be set back slightly to ensure that visibility to the west would not be affected. This would be relocated in relatively close proximity to a large tree on the south side of Victoria Road, which could affect its root protection area (RPA). However, a condition could be imposed to control how excavations and other works within the RPA are undertaken were planning permission to be granted. Although some pruning of the tree may be required to provide clearance for machinery undertaking the junction improvements, this could be done without damaging the overall appearance of the tree and therefore its contribution to the character of the area.
19. The TS and the information contained in the Road Safety Audit documentation identify that there have been no recorded accidents in the five year period 2014-2018. Different accident figures have been presented by interested parties. This indicates that there have been 28 accidents in and around the housing estate, 22 of which were around the junction and access route. However, although a plan has been provided of the accident locations, there is only very limited information regarding the nature of the accidents and no information on the time frame over which they occurred. Consequently, I can give this little weight.
20. There has been no assessment of the operation of the junction based on total predicted traffic flows including the proposed development. I have no substantive evidence before me to indicate whether the TS would have taken account of traffic generated by The Mount housing development, although I do note that the TS produced for phase 3 of this development states that phases 1 and 2, amounting to 17 houses, was under construction at the time the TS was produced in February 2018. In any event, the increase in traffic due to the proposed development during peak hours would not be large, at 26 two-way trips during both of the weekday peak hours. The TS survey recorded total traffic flows on Victoria Road at 121 in the weekday morning peak and 149 in the afternoon peak.
21. With the junction improvement scheme in place, there is no compelling evidence that would demonstrate that traffic flows would result in an increased risk of accidents at the junction. I am satisfied that the proposed junction improvement scheme would enable the required visibility splays to be met in both directions, even taking account of the buildings to the west on Victoria Road. It has been through an independent assessment process which has not identified concerns about its safe operation, visibility for road users and pedestrians, or a risk of increased accidents.
22. Elizabeth Crescent, which would form the majority of the access route to the site, is a long cul-de-sac with a number of quite steep stretches and a 90 degree bend part of the way along its length.
23. The Inspector for the previous scheme noted that parts of Elizabeth Crescent have a steeper gradient than might be considered desirable for a new road, but it is an existing, adopted, highway and there was no substantive evidence to demonstrate that these gradients make the access route unsuitable to carry the additional vehicle movements that would be generated by the proposed development, that on-street parking causes a highway safety issue or that the road surface is such that vehicles cannot pass easily over it. They concluded

that Elizabeth Crescent would provide a practical access route to the site. From the information submitted and what I observed, I am of the same view.

24. Many of the interested parties have raised concerns about the difficulties that construction traffic would face travelling along Elizabeth Crescent and swept path analysis diagrams³ have been provided to support this contention. These indicate that, for the sample vehicles used, there would be some overswing of the centre line, mainly at those points where there is a bend in the road.
25. However, the use of such large vehicles during the construction phase would not be a regular occurrence. Whilst the delivery of larger construction vehicles or plant would require careful management, this could be achieved through a construction management plan which could be secured through a condition were planning permission granted. I am satisfied that with such a condition the construction traffic would not cause an unacceptable impact on highway safety.
26. The Cumbria Development Design Guide produced by Cumbria County Council recommends that an emergency vehicle access (EVA) is required for more than 50 dwellings. I note that section 3.2 of the MfS2 highlights the importance of using professional judgement. It states that guidance is just that, guidance, and cannot be expected to cover the precise conditions and circumstances applying at the site under examination. The Highway Authority, whilst considering that an EVA would be desirable, is satisfied that it has been demonstrated through the appellant's TS that the lack of one would not create an unacceptable impact. Given this context, the lack of consistency with the guidance in the Cumbria Design Guide, would be acceptable in this case.
27. Interested parties have raised concern about the potential for damage to the highway on Elizabeth Crescent arising from construction traffic. Were I minded to grant planning permission, a condition could be imposed to secure the repair of any damage to the highway caused by construction traffic.
28. Concluding on this main issue therefore, with the proposed junction improvement scheme, which could be secured through appropriately worded conditions, and my findings, I am satisfied that the proposed development would not have an unacceptable impact on highway safety at the junction of Victoria Road. I am also satisfied that Elizabeth Crescent would provide an acceptable access route to the proposed development.
29. Consequently, the proposed development would accord with Policy ST1 of the Copeland Local Plan 2013-2028 Core Strategy and Development Management Policies Development Plan Document, adopted 2013 (the Local Plan). This policy seeks to ensure that new development incorporates traffic and access arrangements in ways that make it safe and convenient for pedestrians and cyclists to move around, amongst other matters.

Flood Risk

30. A Flood Risk and Drainage Strategy (FRDS) has been prepared to support the proposed development. This identifies that the appeal site is located in flood zone 1 which the Planning Practice Guidance (PPG) identifies as having a low probability of flooding. The PPG defines dwellings as 'more vulnerable' in terms of flood risk and that such development is appropriate within flood zone 1.

³ Drawing numbers JG01, JG02, JG03

31. The FRDS states that the existing contours for the site and the surrounding area indicate that currently surface water discharges into the unnamed watercourse to the south west of the site. The FRDS anticipates that the point of discharge would remain the same post development and that any surface runoff post development would be collected on site and discharged into this watercourse at existing greenfield rates, thus mimicking the existing arrangements and following the Building Regulation hierarchy.
32. The watercourse to the south west, which is culverted beneath Victoria Road, is subject to flooding at the point of the interface between the older culvert and the sections that have been upgraded. The FRDS proposes the upgrading of approximately 33m of this culverted watercourse, which is in the appellant's control. It would appear that the culvert has not been fully investigated in terms of its condition or capacity, with the FRDS stating that it can be reviewed in full as part of the detailed drainage design to understand the viability of this option.
33. Greenfield runoff rates have been calculated using the proposed developed impermeable area and the indicative drainage details are based on these figures. To ensure that the proposed discharge rates can be achieved, it would be necessary to provide surface water attenuation within the development. The Local Lead Flood Authority identifies that it is the whole site that should be used in the calculations not just the developed space. There is therefore some uncertainty in the evidence presented about the greenfield runoff rates on which the indicative drainage details are based.
34. I acknowledge that the application is in outline with all matters other than access reserved for future consideration, and that a number of details relating to drainage cannot therefore be completed until more detail is available about the design of the development. However, the indicative drainage details are based on discharging to a watercourse that is subject to flooding, and there is a lack of detail presented about the viability of this option including its condition and capacity. This, together with the uncertainty over the greenfield runoff rates used give rise to concerns about whether the drainage proposals would be appropriate or achievable.
35. Accordingly, I am not satisfied that it has been adequately demonstrated that the proposed development would not give rise to an unacceptable flood risk. The proposed development would therefore be contrary to Policy ENV1 of the Local Plan which seeks to ensure that development is not prejudiced by flood risk. It would also be contrary to Policy DM24 which does not permit development where there is an unacceptable risk of flooding or the development would increase the risk of flooding elsewhere.

Other Matters

36. In November 2020 the Council's Five Year Housing Land Supply Statement demonstrated a 6.35 year housing land supply (HLS) and more than a 5 year supply against the Government's standard methodology figure, and confirmed that the Council had also met the most recent Housing Delivery Test. However, the Council considers that those parts of Policy ST2 of the Local Plan which refer to settlement boundaries are out-of-date, regardless of the HLS position. This is because the emerging Local Plan, which has been through a Preferred Options Consultation, has indicated that in order to meet housing needs

identified in the SHMA⁴, development will be required outside of those boundaries.

37. Policy ST2 is relevant to the proposed development. This means that the 'presumption in favour of sustainable development' at paragraph 11d) of the National Planning Policy Framework (the Framework) applies. As such, the most important policies should be deemed out of date and planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or 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.
38. Areas at risk of flooding are a particular policy protection referred to in footnote 7 to paragraph 11d) of the Framework. I have found that it has not been adequately demonstrated that the proposed development would not give rise to an unacceptable flood risk. This provides a clear reason to refuse the development proposed. Therefore, the presumption in favour of sustainable development set out at paragraph 11 of the Framework does not apply.

Conclusion

39. Although I have found no harm in respect of highway safety, this would not outweigh the harm I have found with regard to the effect of the proposed development on flood risk. This would lead to conflict with the development plan. There are no material considerations, including the approach of the Framework, worthy of sufficient weight that would indicate a decision otherwise than in accordance with it. The appeal should therefore be dismissed.

F Wilkinson

INSPECTOR

⁴ Strategic Housing Market Assessment