



Appeal Decision

Site visit made on 26 January 2022

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th February 2022

Appeal Ref: APP/U1430/W/21/3279247

Land adjacent to Fernbank, Rye Road, Northiam, TN31 6NL

- 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 G Fairbrass against the decision of Rother District Council.
 - The application Ref RR/2021/599/P, dated 11 March 2021, was refused by notice dated 21 June 2021.
 - The development proposed is relocation of vehicular access to the land and stop up existing vehicular access to the land.
-

Decision

1. The appeal is allowed and planning permission is granted for relocation of vehicular access to the land and stop up existing vehicular access to the land at land adjacent to Fernbank, Rye Road, Northiam, TN31 6NL in accordance with the terms of the application, Ref RR/2021/599/P, dated 11 March 2021, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. A vehicular access onto Rye Road has been created at the eastern end of the site frontage to serve a small parcel of land. The proposed development is therefore retrospective. As part of the proposal it is intended to block up the original entrance at the western end of the site.

Main Issues

3. These are the effect on highway safety along Rye Road (B2088) and on the character and appearance of the area which is within the High Weald Area of Outstanding Natural Beauty (AONB).

Reasons

Highway safety

4. The original gated entrance was unused for around ten years but has recently been brought back into use. Although there is an upstand along the edge of the carriageway there is no formal dropped kerb or hardstanding. However, if the appeal was dismissed and the unauthorised access closed up, then this entrance could continue to be used by vehicles to enter and leave the appeal site. There is no clear evidence to the contrary and nothing to indicate that this could be prevented. Therefore it is legitimate to compare the proposed access with the original one.
5. In this respect the local highway authority advises that visibility to the west from the original entrance is no more than 30m as it is obstructed by a bend in

the road and a hedge. In the same direction, visibility from the proposed access is around 55m. This dimension is well below that expected by the standards in the Design Manual for Roads and Bridges. However, it represents a modest improvement when judged against the vision available from the original entrance. Rye Road is subject to the national limit of 60mph. There is no survey data but the appellant's contention that vehicles move along it at speed is not disputed. Overall the proposal would result in tangible gains in terms of highway safety as emerging drivers have an enhanced view of fast-moving, on-coming traffic from the west.

6. Policy DHG12 of the Development and Site Allocations Local Plan confirms that new accesses will be supported where they involve the relocation of an existing access, if there are highway benefits of relocating the existing access, and the existing access will be stopped up. That is exactly the position here. Whilst the original entrance has been widened, a condition could be imposed to require it to be blocked up. This policy would therefore be adhered to.
7. Consequently there would be no unacceptable impact on highway safety in line with the National Planning Policy Framework. Indeed, the proposal would be advantageous so that there would also be no conflict with Policy CO6 of the Core Strategy which seeks to ensure that road safety is not prejudiced.

Character and appearance

8. Great weight should be given to conserving and enhancing the landscape and scenic beauty of the AONB according to the Framework. The supporting text for Policy DHG12 recognises that a balance is required between minimising the loss of hedging and providing sightlines. The proposal has created a gap in the bank and the excavation undertaken is close to a mature oak tree. However, breaks in the front boundaries are not uncommon along the road and replacement hedging could be required across the original entrance. Further planting around the new entrance and details of its final treatment could also be required by condition. There is no arboricultural evidence that the health or stability of the tree has been jeopardised.
9. The works undertaken appear somewhat stark but their appearance could be softened. In any event, they are not so significant that they detract from the wider qualities of the AONB. Subject to conditions there would be no harm to the character and appearance of the area.

Other Matters

10. Carrying out work without planning permission cannot be condoned but it does not represent a *fait accompli*. Rather the appeal has been assessed as if the new entrance had not been formed. A similar proposal was withdrawn prior to its determination in 2012 but that does not affect or alter the above findings.
11. The statement accompanying the application indicated that the appellant intends to establish a livestock enterprise. However, this appeal relates solely to the access. The future use of the land, including whether planning permission would be required, together with the structures and enclosures that have appeared, are separate matters for the Council. Nevertheless it is not unreasonable for the appellant to have vehicular access to his land.

Conditions

12. The conditions suggested by the Council do not take account of the fact that the vehicular access has already been formed. Therefore a condition requiring construction in accordance with the submitted block/site plan is unnecessary and it is unreasonable to limit use of the access to specific purposes.
13. As the appeal is being allowed because the new access would be beneficial in terms of highway safety, the stopping up of the existing access should be secured. To ensure a satisfactory appearance within the AONB this should include details of the treatment of the closure and planting. Details of the finishes of the permitted access and landscaping around it should be provided for the same reason. In accordance with Policy DHG12 measures to manage surface water run-off should be included.
14. The Council does not dispute that the sight lines from the new access are on highway land. Therefore a condition requiring that these are maintained is unnecessary because it would be the responsibility of the highway authority to ensure that any vegetation is kept cut back. In any case, the verge on either side of the new access is mainly grassed or bare earth.

Conclusion

15. The proposal accords with the development plan and there are no other material considerations to outweigh that finding. Therefore, for the reasons given, the relocation of the access is acceptable and the appeal should succeed.

David Smith

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Within one month of the date of this decision, details of the closure of the existing access as shown on the block/site plan shall be submitted to the local planning authority for its approval. These details shall include the reinstatement of the verge, hedge planting, fencing and any associated earthworks together with a programme for implementation. The existing access shall be permanently closed in accordance with the approved details and with the approved programme for implementation.
- 2) Within one month of the date of this decision, details of landscaping and the surfacing material of the vehicular access hereby permitted shall be submitted to the local planning authority for its approval. These details shall include measures to manage surface water run-off and a programme for implementation. The approved details shall be carried out in accordance with the approved programme for implementation.