
Appeal Decision

Site visit made on 26 April by T Bennett BA (Hons) MSc

Decision by Martin Seaton BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 May 2022

Appeal Ref: APP/A1015/D/22/3291333

142 Mansfield Road, Hasland, Chesterfield, S41 0JQ

- 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 James Toulson against the decision of Chesterfield Borough Council.
 - The application Ref CHE/21/00546/FUL, dated 19 July 2021, was refused by notice dated 17 December 2021.
 - The development proposed is creation of vehicle access.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matters

3. The description of development has been modified from that on the planning application form and appeal form for the purposes of clarity. This simplified description is detailed in the banner heading above.
4. The appellant has submitted amended plans with the appeal documentation which detail revisions to the location of the access point and boundary wall height. I have been provided with no evidence that shows the Council has had sight of these amended plans. I have therefore carefully considered the implications of accepting these plans in the light of the '*Procedural Guide – Planning Appeals – England*', and the principles of the '*Wheatcroft*' judgement.
5. The Procedural Guide advises that an amendment to planning application proposals to overcome a local planning authority's reasons for refusal should normally be made through a fresh planning application, and the appeal process should not be used to evolve a scheme. The guide continues by stating that it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.
6. With regards the '*Wheatcroft*' judgement, the main criterion on which consideration of revised plans should be exercised is whether the development is so changed that to grant it would deprive those who should have been consulted on the changed development of the opportunity of such consultation.

7. In this instance, the proposed revisions are seeking to improve the issue of visibility, upon which the Council partly based its decision at the application stage. As such, it is evident that the appellant has sought to evolve the proposed development through the appeal process, thus depriving the Council and interested parties of the opportunity to formally consider the revisions. Consequently, I have determined this appeal on the basis of the initial plans submitted with the original application and have not taken into account the revised plans in the determination of the appeal.

Main Issues

The main issues are the effect of the proposed development on:

- The character and appearance of the area
- Highway safety

Reasons for the Recommendation

Character and Appearance

8. The appeal site consists of a detached two storey property with a large front garden. Due to the topography of the area, the property is set in an elevated position behind a stone retaining boundary wall, next to the B6039 Mansfield Road and alongside a narrow pedestrian footway. It is one of five properties adjacent to each other that follow this form with the front gardens sloping gently upwards from the stone wall towards their front elevations.
9. Whilst the greenery to the frontage of these properties is an attractive feature, it does not define the street scene. The majority of properties in the wider vicinity have driveways or hardstanding for vehicles where front gardens would once have been.
10. I have been directed towards number 138 Mansfield Road as an example of how the hardstanding has had a negative effect on the character of the area. However, I do not find this to be directly comparable to the proposal before me as this example incorporates only hardstanding to the front of the property with no stone boundary wall. The appeal proposal, whilst involving re-levelling works, does include areas of soft landscaping, retaining the existing land levels at either side of the proposed entrance and at the rear of the proposed hardstanding. It also retains sections of the existing stone boundary wall and further utilises the material in other areas of the retaining wall. All of these elements would assist in assimilating the proposal into the existing environment.
11. As a consequence, I find that the proposal would have an acceptable impact on the character and appearance of the site and surrounding area. The proposal therefore accords with the requirements of Policy CLP20 of the Chesterfield Borough Local Plan (2020) (LP) which amongst other things, requires development to respect the character of the site and surroundings.

Highway safety

12. In observing the characteristics of the highway in the vicinity of the appeal site, I noted the traffic was intermittent, but that there was some significant variation in the speed by which vehicles travelled along Mansfield Road. There

- is a 40mph speed limit immediately outside the appeal site but this reduces to 30mph outside the neighbouring property at number 140 Mansfield Road.
13. I also observed the narrow footway, as well as the chevron markings in the centre of the road outside the appeal property and a nearby raised bollard in the road which facilitates a pedestrian crossing following the change in speed limit.
 14. I share the Council's view that the proposal is unlikely to result in vehicles reversing onto or off the public highway. The submitted drawings indicate an area large enough for vehicles to manoeuvre so that they could egress the site in a forward gear. However, despite this, the submitted visibility splays do not demonstrate that sufficient sightlines could be achieved on a 40mph road when leaving the site in forward gear. In this regard I have been presented with no technical data or analysis of the speeds of passing vehicles to suggest that marginal visibility splays would be acceptable.
 15. Furthermore, taking into account the change in speed limit to 30mph close to the appeal property, the submitted 19.06m visibility splay to the left as you exit the drive and 14.94m splay to the right, would not even be close to the 43 metres suggested in the *Manual for Streets* (2007) for a new access in a 30mph area. Whilst I accept that these standards are only guidelines, they have to be read in conjunction with the site context.
 16. Given the height of the proposed wall at the entrance of the site and gate pillar at the neighbouring property, the visibility of drivers emerging from the access point would be limited. Taken in combination with the narrow footway, it would mean that as vehicles exit the site they would have to edge out on to the highway before sufficient visibility is gained. I acknowledge the 'slow' markings on the road and that vehicles should be adjusting their speed. However, this would not overcome the harm identified nor justifies creating a potential hazard.
 17. I have had regard to the presence of other vehicular accesses in close proximity to the appeal site. The appellant asserts that none of the existing driveways would meet the visibility splay recommendations. I do not have any evidence to substantiate this claim. In any case, the site specific context of this case for the reasons discussed above has been taken into account. Accordingly, the other examples do not justify the appeal proposal.
 18. The appellant has directed me towards a letter dated 2016 from the highways department regarding an access created at number 130 Mansfield Road. The letter concludes that a highways objection could not be sustained to the access creation. Whilst I note the comments made in relation to a lack of accidents over the preceding 3 years, I have not been presented with any accident data since 2016 and so given the subsequent passage of time this carries limited weight. The site context of 130 Mansfield Road is also not directly comparable. Whilst the central hatching in the road at this location could allow for an oncoming driver to take evasive action, at the appeal site if a driver was to take such action, there would be limited time to undertake further manoeuvres prior to reaching the central bollard. Additionally, the property referred to is located within the 30mph section of road, where the pedestrian footway is wider and the surrounding land is flatter.

19. For the reasons given above, the development would fail to provide satisfactory visibility and would result in harm to highway safety. It would therefore be contrary to Policy CLP20 (g) of the LP which states development should provide adequate and safe vehicle access. It would also conflict with paragraph 111 of the National Planning Policy Framework which seeks to prevent development that would have an unacceptable impact on highway safety.

Other Matters

20. Representations were made to the effect that the rights of the appellant, under the Human Rights Act 1998, would be violated if the appeal was to be refused. I do not accept this argument to be well-founded, as I have concluded that the proposed development would cause harm to highway safety taking into account the site context of the appeal property and thus it is not an arbitrary decision. Moreover, there is no direction of an automatic right to vehicular access to the front of a property, and with the appellant still retaining pedestrian access to the front of the property and vehicle access to the rear, there is no disproportionate effect on the appellants freedoms, which are not being extinguished as a result of this appeal decision. Any lack of interference would therefore be insufficient to give rise to a violation of rights.
21. The appellant has referred me to the desire to restore and renovate the property to a high standard to improve their standard of living. However, as a private benefit this would not in itself represent a consideration that would outweigh the harm that I have identified in the main issue.
22. Whilst I sympathise with the appellant's claim regarding the Council's behaviour during the application process, this has had no bearing on my assessment of the proposed scheme which has focused on the planning merits of the proposed development.

Conclusion and Recommendation

23. I have found that the proposal would have an acceptable impact on the character and appearance of the site and surrounding area in accordance with Policy CLP20 of the LP. This, however, does not outweigh the harm I have identified to highway safety with regards to visibility and the conflict with Policy CLP20 (g) of the LP.
24. I conclude that for the reasons given above, the appeal should be dismissed.

T Bennett

APPEAL PLANNING OFFICER

Inspector's Decision

25. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

Martin Seaton

INSPECTOR