



Appeal Decision

Site visit made on 22 February 2022

by D M Young JP BSc (Hons) MPlan MRTPI MIHE

an Inspector appointed by the Secretary of State

Decision date: 26 May 2022

Appeal Ref: APP/P3040/W/21/3284904

Land adjacent and to the rear of 98 Melton Lane and 4 and 12 Trowell Lane, Sutton Bonington LE12 5RW

- 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 Peter Wilcox against the decision of Rushcliffe Borough Council.
 - The application Ref 21/00353/VAR, dated 1 February 2021, was refused by notice dated 28 April 2021.
 - The application sought planning permission for the erection of a new dwelling with associated access arrangements without complying with conditions 3 and 5 attached to planning permission 19/02189/OUT, dated 4 December 2020.
 - The conditions in dispute are Nos 3 and 5 which state that:
3) The approved dwelling shall not be occupied until the new vehicular access as shown indicatively on Drawing No. F19066/02 Rev B has been provided in accordance with the Highway Authority specification, to the satisfaction of the Local Planning Authority. The access shall be retained for the life of the development
5) The approved dwelling shall not be occupied until the visibility splays as detailed on Drawing No. F19066/02 Rev B have been provided. The area within the visibility splays referred to in this condition shall thereafter be kept free of all obstructions, structures or erections exceed 0.6m in height."
 - The reason given for the conditions is "to ensure the development has an acceptable impact to highway safety".
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This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes that issued on 9th March 2022

Decision

1. The appeal is allowed and planning permission is granted for the erection of a new dwelling with associated access arrangements at land adjacent and to the rear of 98 Melton Lane and 4 and 12 Trowell Lane, Sutton Bonington LE12 5RW in accordance with the application Ref 21/00353/VAR, dated 1 February 2021 without compliance with condition numbers 3 and 5 previously imposed on planning permission Ref 19/02189/OUT, dated 4 December 2020 subject to the conditions set out in the schedule to this decision.

Main Issue

2. This is the effect of the development on highway safety.

Reasons

3. The proposal seeks permission to relocate the vehicular access to a recently approved¹ but unbuilt dwelling. The plan submitted with the application² indicates that the access would be relocated approximately 5 metres west of its approved position.
4. The Council argues that the Appellant has not adequately demonstrated that the required visibility splays can be achieved. That position rests fundamentally on the premise that the Applicant does not control the vegetation fronting Melton Lane to the east of the proposed access point and cannot therefore guarantee delivery of the requisite visibility splays. It is notable that the Council's position is not supported by their specialist advisor on highway safety³ (NCC).
5. From my observations the vegetation is located on the highway side of a timber fence that demarks the boundary of 98 Melton Road. It therefore appears to be within the public highway although I note that the Highway Authority believes it falls within the responsibility of the adjoining landowner.
6. The first point to make is that land ownership matters are rarely material planning considerations, and it is not for me as part of this appeal to adjudicate on what is or is not private or public land. My assessment is based on the submitted plan which indicates the extent of the public highway to the east of the proposed access with a dashed blue line. There is no suggestion from NCC that the plan is inaccurate indeed the blue line is annotated with the words "*extent of highway boundary as confirmed by NCC plans and agreed with Highway Authority*". It is clear from the plan that the visibility splays do not encroach onto third party land. I do not therefore accept the proposition that third party consent is necessary to deliver the splays shown on the submitted plan.
7. If the vegetation is privately owned as asserted by NCC and others, this really makes no real difference since all occupiers of land have a legal responsibility under s154 of the Highway Act 1980 to maintain their vegetation at the highway boundary. Where they fail to do so, any Highway Authority has powers under s154 to remove the obstruction themselves where it "*obstructs or interferes with the view of drivers of vehicles (sic)*." Accordingly, I am satisfied that should the vegetation fronting No 98 cause a problem in the future then NCC would have powers to remedy the situation. Of course, that eventuality is most unlikely since the occupiers of 98 Melton Road are likely to be responsible, law-abiding citizens and would therefore maintain their vegetation in accordance with s154.
8. Even in the event that vegetation was to occasionally encroach into the splays, I am not persuaded this would necessarily have an unacceptable effect on highway safety. Based on my observations, Melton Lane in the vicinity of the appeal site is lightly trafficked and given the horizontal alignment of the carriageway to the east, vehicles approach well below the 40mph speed limit. That being the case and bearing in mind the small net-increase in traffic likely

¹ PINs ref: APP/P3040/W/20/3256980

² Drg No F19066/04 Rev A

³ Nottinghamshire County Council as Highway Authority

to be generated by a single dwelling, there would be scope to accept reduced X and Y distances without unduly compromising highway safety.

9. Based on the foregoing, I conclude that the proposal would not harm highway safety. Accordingly, there would be no conflict with Policy 1 of the Local Plan Part 2: Land and Planning Policies (2019) or paragraphs 110 and 111 of the National Planning Policy Framework.

Conclusion

10. I have re-imposed the conditions attached to the original permission save for condition 5 which I have omitted since the splays are already shown on the approved drawing and therefore a separate condition is unnecessary.
11. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should succeed.

D. M. Young

Inspector

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall only be carried out in accordance with detailed plans and particulars relating to the following items and the development shall not be commenced until the following details have been submitted to and approved in writing by the Local Planning Authority:
- a) The finishes for the hard-surfaced areas of the site;
 - b) Sections and cross sections of the site showing the relationship of the proposed development to adjoining land and premises;
 - c) The finished ground levels for the site and floor levels of the dwelling relative to existing levels and adjoining land; and
 - d) The means of enclosure to be erected on the site.
- The approved details shall be fully implemented prior to occupation of the dwelling and retained for the life of the development.
- 2) Before first occupation of the dwelling hereby approved, the new vehicular access shown indicatively on Drawing No. F19066/04 Rev A shall be provided and thereafter retained.
- 3) The approved dwelling shall not be occupied until the new access driveway has been surfaced in a hard bound material for a minimum distance of 5m to the rear of the highway boundary and has been constructed with provision to prevent the unregulated discharge of surface water from the driveway to the public highway and retained as such.