



---

# Appeal Decision

Site visit made on 7 June 2022

**by M Russell BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 4 July 2022**

---

**Appeal Ref: APP/A2470/W/21/3287842**

**9 Whitwell Road, Empingham LE15 8PX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
  - The appeal is made by Mr David Joyce against the decision of Rutland County Council.
  - The application Ref 2021/0455/FUL, dated 10 April 2021, was refused by notice dated 10 September 2021.
  - The development proposed is vehicular access.
- 

## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. I have taken the extensive description of the proposed development on the planning application form into consideration as part of my assessment. However, I have used the more concise description given on the Council's decision notice for the purposes of my banner heading.
3. The appellant contends that the Council does not have an active development plan. However, there is no objective evidence before me to suggest that Policy SP15 of the LP, which is referred to in the decision notice, cannot be considered as being up-to-date. In that regard, the highway safety requirements of this policy are clearly consistent with the Framework. On this basis, Policy SP15 carries full weight for the purposes of my considerations.

## Main Issues

4. The main issues are:
  - (a) the effect of the proposal on highway safety; and
  - (b) if there is any harm identified under main issue (a), whether such harm is outweighed by the personal circumstances put forward by the appellant.

## Reasons

### *Highway safety*

5. No 9 Whitwell Road sits within a two-storey terraced row comprising of four dwellings. The appeal dwelling's frontage includes a hard surfaced area set at a lower level to the dwelling. This area is flanked by high boundary walls to both side boundaries. To the front of this area there are gates mounted to stone pillars. Front boundary treatments serving the neighbouring terraced dwellings

at Nos 7 and 11 Whitwell Road sit forward of these pillars. There is a strip of paving between the pillars on the appeal site and the tarmac public footway and this closely aligns with grass verge areas to either side. The nearest neighbouring dwellings beyond the terraced row on this side of Whitwell Road have hedgerow boundaries which sit close to the edge of the public footway.

6. The section of the A606 which fronts the appeal site has a 30mph speed limit. There is a gentle curve to the road as it approaches the appeal site from the west. The road also bends further to the east towards the junction with Main Street. At the time of my site visit, there was a steady stream of traffic passing by the appeal site. This only represents a snapshot of traffic conditions in the area. Indeed, the appellant has drawn my attention to the fact that parts of the A1 in the locality were closed when I visited the site. I acknowledge that levels of traffic passing through Empingham may have been inflated compared with usual conditions at that time of the day. Even so, I have no reason to find that the A606 is not a well-used route.
7. There is insufficient space to turn a vehicle around within the appeal site. Consequently, the provision of a vehicular access from the A606 would lead to an increased potential for vehicles to be reversed from the site onto the highway. The high boundary walls and pillars at No 9 would combine with the front boundary treatments at Nos 7 and 11 to obstruct views to either side for drivers reversing from the site. Due to the seated position of drivers facing away from the highway, this would mean that the rear end of vehicles would be likely to encroach onto the tarmac public footway before drivers would have unobstructed views of oncoming pedestrians.
8. In addition, the front boundary hedges to the nearest neighbouring properties either side of the terraced row have the potential to add to the visibility constraints already identified. As a result, a vehicle being reversed from the site would potentially overhang the road edge before sufficient sight lines would be provided towards oncoming vehicular traffic. No detailed measurements showing visibility splays for a driver reversing from the site have been provided to persuade me otherwise.
9. The appellant contends that it is not illegal to reverse onto the highway or to reverse into the site. Whether or not this is the case, I must have regard to the relevant local and national planning policies which seek to prevent development which has an unacceptable effect on highway safety. Furthermore, a requirement for vehicles to only reverse into the site so that drivers would always be leaving in a forward direction could not be reasonably enforced. Such a manoeuvre would also be likely to lead to inconvenience for other drivers on the A606.
10. I am not aware of the full details under which planning permission was granted for other access points in the area. In any case, even if there are other access points with poor visibility close to the appeal site and whether or not there have been no incidents related to vehicles exiting properties onto the A606 in the last five years, these matters do not justify the site-specific harm identified. Accordingly, I have assessed the proposal on its own merits against the existing local and national policy requirements.
11. I conclude, the proposal would have an unacceptable impact on highway safety. In that regard it would conflict with the requirements for development

to be designed and located so that it does not have an unacceptable adverse impact on the highway network in Policy SP15 (Design and Amenity) of the Rutland Local Plan Site Allocations and Policies Development Plan Document (2014) (LP). It would also be contrary to Paragraph 111 of the National Planning Policy Framework (the Framework) which confirms amongst other things that development should be refused on highway grounds if there would be an unacceptable impact on highway safety.

### *Personal circumstances*

12. Paragraph 12 of the Framework confirms amongst other things that the development plan is the starting point for decision making and where a planning application conflicts with an up-to-date development plan permission should not usually be granted.
13. I have carefully considered the reasons why the appellant has applied for planning permission. The evidence before me indicates that the appellant's mother-in-law who resides at the appeal property has mobility issues and that no on-street parking is available close to the site. I sympathise with this situation and understand the desire for more convenient vehicular access. I also acknowledge the difficulties that would continue to be experienced for the occupier of the host dwelling without the proposed development. This is a personal circumstance to which I afford weight in favour of the appeal.
14. I have given due regard to the Public Sector Equality Duty (PSED) contained in Section 149 of the Equality Act 2010, which sets out the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. I have also had regard to the provisions of the Human Rights Act 1998.
15. However, in weighing the personal circumstances in the balance, this has to be considered against the unacceptable effect that the development would have upon highway safety. In this regard, a refusal of planning permission is a proportionate and necessary approach to the legitimate aim of ensuring that the safety of users of the highway can be reasonably safeguarded. Furthermore, the protection of the public interest cannot be achieved by means that are less interfering of the appellant and their family member's human rights. Overall, the personal circumstances put forward in this instance do not outweigh the unacceptable effect on highway safety.
16. No further material considerations have been advanced of sufficient weight to justify a decision other than in accordance with the up-to-date development plan.

### **Other Matter**

17. Concerns relating to the Council's handling of the planning application are not material to my assessment of the proposal under section 78 of the Act.

### **Conclusion**

18. The proposal would have an unacceptable effect on highway safety and therefore conflicts with the development plan taken as a whole and the Framework. There are no material considerations that indicate the decision

should be made other than in accordance with the development plan. The appeal is therefore dismissed.

*M Russell*

INSPECTOR