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# Appeal Decision

Site visit made on 16 May 2022

**by Graham Chamberlain BA (Hons) MSc MRTPI**

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

**Decision date: 5<sup>th</sup> July 2022**

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**Appeal Ref: APP/M1595/W/21/3284058**

**South Ockendon Hall Farm, North Road, South Ockendon, Essex, RM15 6SJ**

- 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 Tom Benton of E & K Benton Ltd against the decision of Thurrock Borough Council.
  - The application Ref 21/00453/FUL, dated 18 March 2021, was refused by notice dated 20 August 2021.
  - The development proposed is described as 'Construction of new farm vehicular access and associated farm track'.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The Council had originally failed to advertise the application as effecting the setting of a listed buildings. The Council subsequently undertook this consultation at my request. Similarly, the Council consulted Historic England after confirming that, in its view, the proposal would affect the setting of the Church of St Nicholas, which is Grade I listed. Notwithstanding this, and the reference to non-designated heritage assets in the third reason for refusal, the Council subsequently confirmed that its heritage concerns relate to the effect on the setting of the Gatehouse and Moat of South Ockendon Old Hall, which is a Scheduled Ancient monument (SAM) and the Moat Bridge and Gatehouse at South Ockenden Old Hall, which is Grade II Listed.
3. The appellant sought to submit an additional landscaping plan, but I rejected this as it has not been seen by the Council or interested parties, and therefore they would have been prejudiced by my consideration of it.

## Main Issues

4. The main issues in this appeal are: 1) The effect of the proposed development on trees and biodiversity; 2) The effect of the proposed development on highway safety; and 3) Whether the proposal would preserve the setting of Gatehouse and Moat of South Ockendon Old Hall, (SAM) and Moat Bridge and Gatehouse at South Ockenden Old Hall (Grade II Listed).

## Reasons

*The effect of the proposed development on trees and biodiversity*

5. The proposed access would need to breach a hedgerow between two small pockets of woodland. Vegetation within the visibility splays would also need to

be removed or cut back. As a result, there would be a notable loss of trees. The appellant estimates that around 300sqm of the wooded area, out of a total of 5850sqm, would need to be removed or heavily cut back to accommodate the access and splays. Nevertheless, the appeal scheme is not supported by an arboricultural assessment to justify or assess this.

6. As a result, the value and amenity value of the trees, and section of hedgerow, which would be affected by the construction of the proposal has not been assessed and determined. I therefore share the view of the Council, informed by its landscape advisor, that this is a significant omission given the potential harmful impact on the landscape and character and appearance of the area from such a significant loss of landscaping in a prominent roadside location.
7. In reaching this view, I am mindful of the appellant's intention to implement a soft landscaping scheme. However, the details relating to this are sparse with no drawing or detailed specification provided. The 'scheme' simply amounts to a suggestion that around 2000sqm of land would be planted and that the planting in the visibility splays would also be retained and permitted to grow to 900mm in height.
8. The additional planting could be similar to that which exists, although there would be additional scope for feature trees and hedge planting along the farm track. Nevertheless, without understanding the baseline value of the trees and hedges which would be lost, it is unclear whether the new planting at the extent proposed would provide adequate mitigation in a reasonable timeframe for the loss of biomass. As a result, a landscaping condition would not mitigate the omission of an arboricultural assessment.
9. The National Planning Policy Framework (the Framework) refers to Circular 06/2005, which states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. To do otherwise could result in a situation where all relevant material considerations have not been addressed. That said, the Circular also advises that developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development.
10. This advice is echoed in the Planning Practice Guide (PPG), which states that it might be appropriate to undertake an ecological survey where protected species may be present or where biodiverse habitats may be lost<sup>1</sup>. Similarly, the PPG also states that ecological surveys should only be requested where clearly justified.
11. To this end the appellant has explained that the appeal site is not located near to any statutory or non-statutory biodiversity sites such as ancient woodland or Sites of Special Scientific Interest. Moreover, the intensively managed arable field around the appeal site is unlikely to support much biodiversity, the narrow roadside verge is not managed for wildlife and the wooded areas do not contain especially old trees. The latter is not however, informed by a tree survey and it is unclear if the appellant has taken advice from an Ecologist in reaching a conclusion that a preliminary ecological assessment would be unnecessary.

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<sup>1</sup> Paragraph: 018 Reference ID: 8-018-20190721

12. Conversely, the Council's Ecology Advisor has highlighted that the proposal should not be approved in the absence of an ecological survey. This is unsurprising, as standing advice from Natural England indicates that woodland and hedgerows are a likely habitat for several protected species including bats, breeding birds and badgers. The proposal would involve the direct loss of such habitat. The hedgerow, although thin, connects the two pockets of woodland and may be of added value as a wildlife corridor. It is unclear from the information before me whether the new planting proposed by the appellant would provide adequate mitigation for the habitat affected by the proposal.
13. Overall, and based on the evidence before me, I am satisfied that there is a reasonable likelihood protected species may be present and, if so, that they would be significantly affected by the proposal. Therefore, a preliminary ecological assessment or such like should be undertaken. It is reasonable to follow a precautionary approach given my duty under Section 40 of the Natural Environment and Rural Communities Act 2006. Circular 06/2005 states that surveys should only be secured through a planning condition in exceptional circumstances. Such circumstances are not present in this instance.
14. In conclusion, the appellant has failed to demonstrate that the proposal would not have a net adverse impact on trees or biodiversity. Accordingly, there would be a conflict with Policy PMD2 of the Core Strategy (CS)<sup>2</sup>, which seeks to secure development proposals that have followed a full investigation of the magnitude of change, protect features of landscape and wildlife value, such as woods and hedges, and mitigates negative impacts. There would also be a conflict with Policy PMD7 of the CS, which requires developers to submit a detailed justification, including ecology surveys where appropriate, when there would be biodiversity loss. The conflict carries significant weight because the policies are consistent with the National Planning Policy Framework.

*The effect of the proposed development on highway safety*

15. The proposed highway access would be taken from North Road (B186). This is classified as a Level 1 Urban Distributor Road in the CS. These roads are movement corridors that allow traffic to flow freely and safely between local centres and from local centres to the major road network. Policy PMD9 of the CS sets out four specific principles to be applied to new accesses onto Level 1 routes. It is unclear if all of the principles must be addressed by a proposal for it to adhere to the policy. I have assumed that they do.
16. The principles in Policy PMD9 explain that there is a general presumption against new accesses directly onto Level 1 routes, and that exceptions to this will be made only for developments of overriding national importance, strategic sites allocated in the local development plan and strategic public transport facilities. Moreover, no development would be permitted where it impacts adversely on capacity, safety or the free flow of traffic.
17. The appeal scheme would not meet any of these exceptions and would therefore be at odds with Policy PMD9. The appellant has however sought to make a case that the proposed access would be safe, and its construction would deliver benefits. It is submitted that when these factors are taken together, they outweigh the conflict with Policy PMD9.

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<sup>2</sup> Thurrock Local Development Framework Core Strategy and Policies for Management of Development Focussed Review 2015

18. Large agricultural vehicles using the proposed access would be travelling to and from the north due to weight restrictions on the B186. Swept path analysis provided by the appellant demonstrates that the access would be large enough to properly facilitate these movements. The position of a passing bay near the access would ensure motorists entering the access would not have to reverse back onto the highway if meeting a vehicle exiting. In addition, give way markings and a sign would be employed to ensure farm vehicles gave way to motorists already on the B186. Accordingly, it would be unnecessary for large agricultural vehicles to undertake convoluted manoeuvres in the highway.
19. Moreover, the access would include visibility splays of 90m to the north and 70m to the south. These splays have been based on the nature of the vehicles that would use the access and the 85th percentile speed<sup>3</sup> of traffic along the relevant stretch of North Road. The speed survey only covered a single day but there is nothing before me to suggest the results were untypical. Moreover, the stretch of road is covered by a 30mph speed limit, is close to existing access points and houses (which could naturally slow traffic) and accident data does not indicate this is a 'black spot'. The appellant has also suggested that the 30mph speed limit be moved to the north of Townfield Cottage to reduce speeds at an earlier point. As a result, I am content to base the visibility splay requirement on the recorded 85<sup>th</sup> percentile speeds.
20. Accordingly, to factor in the extra length of farm vehicles the 'X' distance of the splay would be 4.5m, which is an increase on the minimum 2.4m standard. The 'Y' distance would be 90m to the north and 70m to the south. This would exceed the 43m usually recommended by the Manual for Streets in areas covered by a 30mph speed limit. In fact, the splays would adhere to the higher standards set out in the Design Manual for Roads and Bridges. The splays would be within the highway or land in the appellants control and therefore a condition could be imposed to secure their provision and maintenance. This would include keeping any vegetation to a height below 900mm and the re siting of any street furniture. As a result, visibility at the access would be adequate.
21. In coming to this view, it is a point of note that a Stage 1 Road Safety Audit was undertaken, and this made only one recommendation. This being that the position of the access be moved slightly south. The appellant's drawings comply with this recommendation. There is nothing before me to suggest the audit was flawed or imprecise. Furthermore, there is no pavement on the eastern side of North Road in the vicinity of the proposed access so pedestrian safety or the use of bus stops would not be compromised.
22. The appeal has provided a schedule of the typical number of large agricultural vehicle movements that are likely to take place in a 12-month period. I have no reason to doubt this. It indicates that around 240 vehicle movements would take place in one year. There is likely to be some days when the access is more intensively used and others when it is not used at all. Thus, when averaged out there would be around 1 movement every one to two days in most months with this rising to a peak in August of around two movements a day. This demonstrates that overall usage would be very low and days of intensive use, such as during harvest, would be rare. The appellant has also indicated that the access would not be used at peak hours (0700 to 0930 and

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<sup>3</sup> 27.93mph in the north direction and 32.6 in the south

1600 to 1900), which means the impact on the free flow of traffic would be further reduced.

23. As already indicated, the swept path analysis demonstrates that large vehicles would be able to enter and exit the access through a single uncomplicated manoeuvre at a location where traffic is likely to be travelling at around 30mph. As a result, any delay would be minimal. Given the low level of overall use, the occasions of delay would also be minimal. Accordingly, the use of the access by large agricultural vehicles would not have an adverse impact on the free flow of traffic.
24. Moreover, the access would also serve displaced vehicle movements rather than new ones. Consequently, there would be no additional impact on highway capacity. The Highway Authority also has the relevant powers to require the removal of mud and dirt that may be deposited by agricultural vehicles which could otherwise slow or hamper the free movement of traffic.
25. The appellant's schedule only sets out the movements associated with large farm vehicles as it is these that the access is intended to serve. However, other smaller vehicles associated with the farm may use the access, such as delivery vans. This could result in daily movements, but it is unlikely to be especially intense. Nevertheless, if this form of farm traffic was below the weight limit in force along parts of the B186 it could approach from the south and turn right into the proposed access. This could result in delays to the free flow of traffic. However, it is more likely that this traffic would use the existing entrance as it would provide a more direct route to the farm. Alternatively, smaller vehicles approaching from the north would only cause a momentary delay when undertaking a left turn into the proposed access. Thus, the impact on the free flow of traffic from small farm vehicles is unlikely to be adverse and would not be severe. Especially as the access would not be used in peak hours.
26. In conclusion, the proposed access would not meet any of the exceptions listed in Policy PMD9 of the CS. As a result, there would be an overall conflict with this policy. However, the access would be safe, and its use would not harm the free flow of traffic or highway capacity. As a result, there would be no conflict with Policy PMD2 in this regard. In addition, and for reasons I go into, there would be clear benefits from providing the proposed access. Overall, the specific circumstances of the case indicate that in this instance, the conflict with Policy PMD9 of the CS is not determinative, being outweighed by other considerations.

*Whether the proposal would preserve the setting of Gatehouse and Moat of South Ockendon Old Hall (SAM) and Moat Bridge and Gatehouse at South Ockendon Old Hall (Grade II Listed)*

27. The proposed farm track would cut across an historic arable landscape located between South Ockendon and South Ockendon Hall Farm. The Council have suggested that insufficient information has been submitted to assess the proposal's impact on the SAM and Grade II Listed building at South Ockendon Old Hall. However, it is unclear what more the Council needs to see. These designated heritage assets draw much significance as an evolved medieval agrarian complex, which tells us much about rural society and the evolution of agriculture. The rural agricultural setting and link to the village are important to how this important historic site is experienced and understood.

28. The proposal would not harmfully alter the historic approach to this complex as the proposed track would provide an alternative route rather than extinguish the existing long-standing approach from the village. The track would also be a low-lying feature that could be softened by landscaping. It would therefore have little effect on views of the historic complex. Large agricultural vehicles already use the field and farmyard so there would be no change in this respect. Overall, the proposal would preserve (not harm) the general rural character of the setting of the historic complex and how it is experienced. As a result, there would be no conflict in this respect with Policy PMD4 of the CS.

### **Other Matters**

29. The provision of the proposed access would mean that large agricultural vehicles did not need to use the section of North Road between The Green and Wilsden Road. This would support the efficient operation of the agricultural business by simplifying the access arrangements. This would in turn reduce congestion along North Road and modestly support the rural economy.
30. Moreover, photographs supplied by the appellant demonstrate that the route from The Green into Hall Lane is difficult to use due to the width of farm vehicles relative to the carriageway. This results in large farm vehicles passing very close to residential properties and the Royal Oak Inn. There is also a sharp turn onto The Green from North Road and Hall Lane is also a public footpath. Thus, removing the large agricultural traffic, and the associated fumes and noise, from this location would provide benefits to living conditions, reduce the risk of property damage and improve the safety and efficient operation of the highway and rights of way network. These benefits weigh clearly and notably in favour of the proposal.
31. That said, the proposal would not enhance the setting of the Grade II listed Royal Oak Inn, as the vehicle movements are generally infrequent and do not detract from the buildings architectural/historic interest. Furthermore, there is no substantive evidence before me demonstrating that trade at the public house has suffered on account of disturbance caused by passing farm vehicles.
32. Overall, the benefits of the scheme, although of a high level, would not be of sufficient force to outweigh the conflict with Policies PMD9, PMD2 and PMD7 of the CS when taken together.
33. Various other concerns have been raised by interested parties such as those relating to noise and disturbance, which I have noted. However, given my findings above it has not been necessary for me to address these matters further as the appeal has failed on the main issues.

### **Conclusion**

34. The proposed development would not harm highway safety or heritage, but it would result in significant tree, hedge and habitat loss without adequate analysis and justification. The proposal would therefore conflict with the development plan taken as a whole and there are no other considerations which outweigh this finding. Accordingly, the appeal is dismissed.

*Graham Chamberlain*  
INSPECTOR