



Appeal Decision

Site visit made on 22 November 2022

by Mr Kim Bennett BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2022

Appeal Ref: APP/L2250/D/22/3298020

Almarina, Taylor Road, Lydd-on-Sea, Romney Marsh, Kent TN29 9PA

- 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 Alex Whittlesea against the decision of Folkestone & Hythe District Council.
 - The application 21/0548/FH, undated, was refused by notice dated 11 March 2022.
 - The development proposed is demolition of existing store/garage and provision of new garage.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed garage would cause highway safety issues to users of the adjacent public highway and the light railway.

Reasons

3. The appeal property comprises a detached bungalow located on the corner of Taylor Road at its junction with Coast Drive. It has a vehicular access and driveway on its western side and at the rear of this and set at right angles to the access is an existing store/garage. In front of that is a car port. Immediately to the west of the property is the Romney Hythe and Dymchurch District Railway line (RHDR) and there is a controlled automated barrier across Taylor Road. The RHDR runs in a north south direction and there are further barrier crossings across roads elsewhere in the estate. On the opposite side of the road and to either side of the railway are further bungalows.
4. The appellant argues that the previous visibility splay requirements are now redundant since the introduction of the automated safety barriers where the fail safe component is in the lowered position. Consequently, the engine driver would be able to proceed safely as the barriers would be lowered. Furthermore, rail has priority over road and therefore pedestrians and vehicles should refrain from crossing beyond the barriers.
5. However, rail has always had priority at crossing points when barriers were lowered but history has shown elsewhere on railway crossings in rural areas that road users often ignored warning lights and sought to cross until the last possible moment with the inevitable consequence of accidents. The automated barriers have been introduced here and elsewhere to reduce the level of risk

and to my mind, the key safety issue is therefore what happens if they should fail? Whilst I note the appellant's assertion that any failure should result in them being lowered, that does not seem to be corroborated by a response from the RHDR who specifically comment in an email exchange with the Council dated 22 December 2021, that *'the whole purpose is so that drivers of trains when approaching the crossing if the crossing does not operate automatically, allows them to see adequately up and down the road before they move off'*.

6. That does not suggest that the possibility of the barriers malfunctioning in a raised position can be ruled out. In that scenario, maintaining visibility would allow intervisibility between trains and crossing users so that there was mutual awareness in the event of a train crossing the road and the barriers were not lowered. Based on the evidence before me I consider that although the risk may be low, it cannot be ruled out altogether and therefore any worsening of existing visibility could result in potentially serious safety issues. In this context I noted the convenience store adjacent to the western side of the railway which generated a significant degree of traffic using the crossing at the time of my site visit. Although suggested otherwise by the appellant, I do not consider the relatively small cabinets installed to operate the barriers, would preclude some visibility.
7. I accept that there are other properties nearby, including one of the bungalows opposite and also elsewhere in the estate, where fences have been put up which also contravene the visibility requirements. However, there is no evidence before me to indicate as to whether they have been lawfully erected or not, or as to how long they have been there, and consequently they have not influenced my finding above. I also note the appellant's suggestion that other development could be put up without the need for permission which would also impede visibility. That may or may not be the case but it is not an issue which is currently before me to determine. Finally, whilst I note the desirability to provide electrical charging for vehicles, it seems to me that a garage in the proposed location would not be the only solution or location to provide such charging.
8. I acknowledge the desirability of providing some form of garage which is accessible to vehicles using the driveway whereas the current store/garage is not. There may be an alternative solution which might not reduce the visibility requirements to such an extent as the current proposal. However, that would have to be a matter for further discussion and agreement between the various parties involved.
9. The Council raises no objections to the design of the proposed garage, nor for any amenity reasons and having considered those issues I see no reason to disagree.
10. Notwithstanding the above, on the basis of the proposal and evidence before me, the siting of the proposed garage could result in an increased risk between trains and users of the crossing. It would therefore be contrary to Policies HB1 and T1 of the Folkestone & Hythe District Place & Policies Local Plan 2020 in that it would not be safe for all street users.
11. Accordingly, the appeal should be dismissed.

Kim Bennett INSPECTOR