



Appeal Decision

Site visit made on 24 January 2023

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 June 2023

Appeal Ref: APP/D0840/W/22/3304373

Azia Beach, Harlyn Bay Road, Harlyn Bay, Padstow PL28 8SB

- 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 Jonathan Bavin of Caultlystone against the decision of Cornwall Council.
 - The application Ref PA21/11219, dated 10 November 2021, was refused by notice dated 21 February 2022.
 - The application sought planning permission for revised design, siting and external appearance for an alternative extension to that approved under application number 2003/0206 without complying with a condition attached to planning permission Ref 2004/02715, dated 20 January 2005.
 - The condition in dispute is No 7 which states that: No vehicular or pedestrian access to and from the application site shall be via the private access drive to the north-east of the site.
 - The reason given for the condition is: In the interest of highway safety.
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Decision

1. The appeal is allowed and planning permission is granted for revised design, siting and external appearance for an alternative extension to that approved under 2003/0206 at Azia Beach, Harlyn Bay Road, Harlyn Bay, Padstow PL28 8SB in accordance with the application Ref PA21/11219 dated 10 November 2021, without compliance with condition number 7 previously imposed on planning permission Ref 2004/02715 dated 20 January 2005 and subject to the following conditions:
 1. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification) no development within Classes A-E of Part 1 of Schedule 2 of that Order shall be carried out without the express written consent of the local planning authority.
 2. The windows shown coloured orange on the approved plans for application 2004/02715 shall remain obscure glazed.
 3. The parking spaces identified on the approved plans for application 2004/02715 shall not be obstructed or used for any other purpose.
 4. The existing fence and planting along the site boundaries shall be retained and maintained, if necessary, by replacement.

Background and Main Issue

2. The access the subject of this appeal is already in situ and serves two residential properties. I will refer to this access as 'Access A'. This appeal relates to the use of Access A and the associated track by a further existing property known as 'Azia Beach'. Condition 7 prevents the use of Access A and the track by vehicles and pedestrians in connection with Azia Beach. Access is currently provided to the property from an access which serves a number of properties including the site referred to as the Harlyn Inn. I will refer to this access as 'Access B'.
3. The main issue in this appeal is the effect of the development, without condition 7, on highway safety.

Reasons

4. Harlyn Bay Road is a C-class road. There is no footway on either side of the carriageway and its width is constrained in the immediate vicinity of Access A by walls and hedges. To the east of Access A, Harlyn Bay Road narrows further to a single track bridge enclosed by stone walls. On the other side of the bridge, there is a sharp bend in the road which continues on to a large public car park. The beach and the South West Coast Path are located opposite Access A. The road is therefore well used by both vehicles and pedestrians and I accept that its use would increase in the summer months by visitors to the area.
5. Traffic slows considerably on the approach to the bridge from both directions and therefore traffic speeds on this section of Harlyn Bay Road are very low. My findings in this respect would appear to be consistent with the views of the Highway Authority in their consideration of the planning application for the redevelopment of the adjacent Harlyn Inn site¹. The constrained width of the bridge and its geometry also means that vehicles travelling over the bridge do so with care. In this context, drivers are likely to be relatively alert to conflicting movements in and around Access A and exercising caution when travelling along this section of Harlyn Bay Road.
6. The Council suggest that Access A should have a minimum Stopping Site Distance (SSD) of 40 metres² based on a 30mph speed limit. An interested party refers to the national speed limit of 60mph applying. Either way, SSD's relate to the actual speed of traffic rather than the speed limit and from my observations above, the SSD is likely to be lower than the Council suggest. There is no dispute between the Council and the appellant that Access A has limited visibility in both directions and there seems little doubt that the SSD referred to by the Council cannot be achieved³. I make no criticism of the Council for pursuing standard formulas for highway access arrangements but the technical advice set out in Manual for Streets and Manual for Streets 2 is to be applied flexibly depending on the particular circumstances of each situation.
7. In this case, vehicles and pedestrians approaching the bridge from the east can be seen from Access A as visibility is provided across the stream. The hump in the bridge allows oncoming cars and pedestrians to be seen.

¹ Planning application ref: PA19/08079 Mixed use development comprising 14 residential apartments, bar, restaurant and shop

² Or 43 metres if adjusted for bonnet length

³ Set out in Table 7.1 of Manual for Streets

8. To the west, visibility from Access A is impeded by the boundary wall of the neighbouring property. However, traffic approaching from this direction would be slowing down for the bridge. The wall of the neighbouring property is set back from the alignment of the wall of the bridge. Given the trajectory of vehicles travelling over the bridge from the east, vehicles using Access A can pull further out into the road without impeding the flow of traffic, to obtain reasonable visibility in a westerly direction. Evidence of this can be seen in the photographs provided by the Council at Para 5.17 of their Statement.
9. For these reasons, I am satisfied that the achievable visibility would not compromise the safety of users of the highway with regards to the traffic movements associated with one additional dwelling using Access A. In coming to this conclusion, I have also had regard to the fact that as recently as January 2020, the Council found the visibility at Access A to be sufficient to permit its use by the second dwelling, approved under reference PA19/08454.
10. The track slopes away from the point where Access A joins Harlyn Bay Road. However, my observations set out above were from the likely position of a driver using the track. I have therefore had regard to the effect of the gradient of the track in my assessment above.
11. The single width of the track could result in vehicles having to reverse back out onto Harlyn Bay Road should it meet a vehicle coming the other way. I acknowledge that this would not be ideal. However, as Access A would serve just one additional property, this is not likely to be a regular occurrence. Given my findings above with regards to traffic speeds and driver caution, it would not result in an unacceptable impact on highway safety.
12. Accordingly, the appeal proposal, without condition 7 imposed, would not be at odds with Policy 27 of the Cornwall Local Plan Strategic Policies 2010-2030 adopted November 2016 (LP) which seeks to provide safe and suitable access to development without causing a significantly adverse impact on the local road network. Equally, I find no conflict with Paragraphs 110 and 111 of the National Planning Policy Framework, which require safe and suitable access and that development should only be prevented on highways grounds if there would be an unacceptable impact on highway safety.

Other Matters

13. An interested party refers to self-catering accommodation and a business operating from Azia Beach and that as a result, traffic in excess of that associated with a single dwelling house would be using the track and Access A. However, no substantive evidence of this has been provided.
14. I understand that the track has been resurfaced to alleviating flooding rather than to allow additional vehicles movements. Notwithstanding this, I have considered the suitability of Access A and the track on the basis of the evidence before me and as they appeared to me at my visit.
15. Access B may well provide better visibility and the disruption caused by ongoing building works at the Harlyn Inn is likely to be temporary. However, the use of Access A has to be considered on its merits and I have found that it's use by vehicles associated with one additional dwelling would not be harmful to highway safety. Similarly, any applications to intensify the use of

Access A and the track in future would need to be considered on its own merits.

16. I have been referred to 2 appeal decisions. The appeal at Church Road⁴ appears to relate to the use of an access which served five properties, a parking area and two garages, located in a built-up area with parked cars in the vicinity of the junction. The appeal in Sancreed⁵ appears to relate to the use of an access located on the inside bend of the highway on an incline. I have only been provided with limited information with regards to both these appeals but from what I have read, the circumstances surrounding those appeals would not appear to be comparable to the appeal proposal.
17. Had I been minded to dismiss the appeal on highway safety grounds, I would have had to consider whether the condition was reasonable and enforceable given that it seeks to control the use of land outside the application site identified on the site location plan attached to planning permission Ref 2004/02715.

Conditions

18. The Planning Practice Guidance makes it clear that decisions under section 73 should restate the relevant conditions imposed on the earlier permission unless they have already been discharged. I have also had regard to the list of suggested conditions provided by the Council, in the event that the appeal is allowed, which the appellant has had an opportunity to comment upon.
19. As the development approved by the original permission has already been implemented, it is unnecessary to reimpose condition 1 which required commencement within a set timescale. A condition removing permitted development rights for extensions is still necessary in order to protect the character and appearance of the area. I have therefore reimposed condition 2 but in an amended format to reflect the updated legislation. Conditions 3 and 4 have been partly discharged so I have imposed amended conditions to ensure that the agreed details are retained. Finally, I have reimposed condition 5 omitting the original tailpiece mechanism 'unless otherwise agreed in writing with the local planning authority' as suggested by the Council, because it does not provide sufficient precision or certainty about what is being permitted.

Conclusion

20. For the reasons given I conclude that the appeal should succeed.

Alison Fish

INSPECTOR

⁴ Appeal ref: APP/D0840/W/21/3274815 25 Church Road, Penponds

⁵ Appeal ref: APP/D0840/W/21/3274704 Land to South of School House, Sancreed