



Appeal Decision

Site visit made on 13 June 2023

by S Crossen BA (Hons) PgCert PgDip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 August 2023

Appeal Ref: APP/J1860/W/21/3277814

Feochan, Hillside, Martley WR6 6QN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Philip Robinson against the decision of Malvern Hills District Council.
 - The application Ref 21/00304/HP, dated 18 February 2021, was approved on 25 May 2021 and planning permission was granted subject to conditions.
 - The development permitted is for the erection of detached garage and creation of new driveway.
 - The conditions in dispute are Nos 4 and 5 which states that:
Condition 4: *"The Development hereby approved shall not be occupied until the any access gates have been set back 5 metres from the adjoining carriageway edge, and made to open inwards only"*.
Condition 5: *"The Development hereby approved shall not be brought into use until the access, turning area and parking facilities shown on Drawing PLA003 Rev B has been provided. These areas shall thereafter be retained and kept available for their respective approved uses at all times."*
 - The reason given for condition 4 is: *"In the interests of highway safety in accordance with Policies SWDP4 and SWDP21 of the South Worcestershire Development Plan"*;
 - The reason given for condition 5 is *"In the interests of highway safety and to ensure the free flow of traffic using the adjoining highway in accordance with Policies SWDP4 and SWDP21 of the South Worcestershire Development Plan."*
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Decision

1. The appeal is allowed and the planning permission Ref 21/00304/HP for the erection of detached garage and creation of new driveway at Feochan, Hillside, Martley WR6 6QN granted on 25 May 2021 by Malvern Hills District Council, is varied by deleting condition No 4 and 5, substituting number 5 for the following condition:

4) The Development hereby approved shall not be brought into use until the dedicated access and egress points, turning area and parking area shown on Drawing PLA005 have been fully implemented. These details shall thereafter be retained.

Background and Main Issue

2. The appellants appeal form and statement relate solely to the requirements of condition 4. However, the appellants statement quotes the reasons for conditions 4 and 5.
3. Condition 4 includes the words, "the" and "any" just prior to the word "access", which makes it unclear as to whether it relates to the new access, both the new

access and existing accesses or whether the condition requires gates to be installed.

4. Condition 5 refers to the plan PLA003 Rev B but this plan contains no details of the turning area or parking facilities. PLA005 provides all the details referred to in the condition.
5. I have dealt with the appeal on the basis that the appellant seeks removal of both conditions. The main issue is whether the conditions are related to the development proposal and reasonable or necessary in the interests of highway safety.

Reasons

6. Hillside is a 30mph speed limit road but which the evidence indicates has an average recorded speed of 37mph. Hillside has a shallow incline to the North and has a slight curve. I saw at my site visit that visibility to the proposed access for occupiers leaving the site would be better than the existing access. The existing access has a mirror opposite which currently aids visibility.
7. Both parties reference the 37mph average, the average speed indicates that there are no significant existing issues around traffic flow, the reason for the condition. This accords with what I found at the time of my site visit, where there was little highway traffic. Consequently, any delay to traffic flow because of the development would be very limited.
8. Plan PLA005 illustrates an in and out arrangement. This arrangement ensures vehicles entering the site would not need to wait in the event a vehicle is leaving at the same time. Overall visibility from the new point of egress would be an improvement to the current situation as the road straightens out at this point. That would result in a slight improvement to highway safety.
9. Permission is not required for the existing access, that already has gates, and the application does not increase the occupancy of the house, providing only a detached garage for existing occupiers with a new point of egress. Therefore, the development is unlikely to create any additional traffic, having little if any effect on traffic flow or highway safety. Because the need for condition 4 does not arise as a consequence of either the proposed garage or the new egress, is not relevant to the development permitted.
10. Given the layout of the proposed development, it is unclear where or how gates would be located 5 metres back from the highway edge.
11. I conclude that condition 4 is not reasonable or necessary in the interests of highway safety, and that the development without the condition would not adversely affect highway safety or the free flow of traffic. As such there would be compliance with Policy SWDP4 and SWDP21 of the South Worcestershire Development Plan, adopted February 2016

Other Matters

12. I note the comments made by both parties regarding the length of the appellants vehicles, which exceeds the setback of the access gate as required by the Council, which may leave too little remaining space for such a vehicle to reach the parking area. However, because I have found condition 4 not to be reasonable or necessary, I have not needed to consider this matter further.

Conditions

13. I will amend condition 5 to ensure that the access and egress points, turning area and parking are implemented and retained in accordance with a drawing that clearly shows them.

Conclusion

14. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition 4 and by varying condition 5.

S Crossen

INSPECTOR