



Appeal Decision

Site visit made on 16 January 2024

by N Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 February 2024

Appeal Ref: APP/W1850/W/23/3320040

Rock Cottage, Broken Bank, Kington HR5 3NE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Macleod-Needs against Herefordshire Council.
 - The application Ref P223150/F is dated 20 September 2022.
 - The development proposed is described as “application to retain a temporarily formed private parking area and footbridge serving Rock Cottage.”
-

Decision

1. The appeal is dismissed and planning permission described as “application to retain a temporarily formed private parking area and footbridge serving Rock Cottage” is refused.

Preliminary Matters

2. The Council failed to determine the application within the prescribed period. Following the submission of the appeal, the Council have prepared an appeal statement which advises that, had the Council determined the application, planning permission would have been refused for a putative reason relating to the effect of the proposal on highway safety and the operation of the A44. I shall formulate the appeal’s main issue accordingly.
3. On 19 December 2023, a revised National Planning Policy Framework (the Framework) was published. Those parts of the Framework most relevant to this appeal have not been significantly amended. As a result, I consider that there is no requirement for me to seek further submissions and I am satisfied that no party’s interests have been prejudiced by my taking this approach.
4. I have taken the description of the development from the appeal form as this more accurately describes the appeal proposal.

Main Issue

5. The main issue is the effect of the proposal on highway safety and the operation of the A44.

Reasons

6. The appeal site is a parcel of land adjacent to the A44, a strategic road. This stretch of the A44 is lined by grass verges and trees on both sides. At the time of my late-morning weekday site visit I saw that this road was well-trafficked commensurate with its classification as an A Road. This part of the highway is subject to a 50mph speed limit, and there is a ‘slow’ road marking close to the

- appeal site. From what I saw, traffic was moving quickly along the road, however there was no indication that it was travelling above the speed limit.
7. At my site visit I observed that this stretch of road incorporates junctions to other roads and accesses to properties. The host dwelling does not have a vehicular access or parking area. The property is currently accessed via a public footpath a considerable distance from the nearest highway and roadside parking area. The appellant states that this footpath has deteriorated in recent years and has become dangerous. At my site visit I observed that this footpath was uneven and steep in places with broken handrails. Consequently, it is stated that delivery vehicles park on the A44 or the grass verge while unloading goods.
 8. The appeal relates to a parking area and footbridge which would be served by a new access from the A44. Section 1.5 of the Highways Design Guide for New Developments (2006) (HDG) states that "It is not normal to allow access to the two highest categories of road in the hierarchy (Strategic roads and Main Distributors)" and that "any development that proposes new private accesses to a Secondary Distributor or higher category of road will only be considered where an improvement to an existing unsatisfactory situation is achieved".
 9. The Council state that vehicles slowing down to use the proposed access would lead to vehicles behind slowing down and even stopping while waiting for the vehicle to enter the parking area, which would increase the risk of collisions. In support of this, reference is made to a collision at a junction on the A44. However, on the basis of the evidence before me it appears that the speed limit has been reduced since that accident was recorded. There is no substantive evidence before me that average speeds on this stretch of road exceed the current speed limit. My attention has also been drawn to a collision on the A4111 in Kington, however, based on the information before me this would appear to relate to a different road. Consequently, these matters do not lead me to conclude that the existing junctions and accesses on this stretch of the A44 currently result in unsafe highway conditions.
 10. Given the presence of other junctions and accesses on this stretch of road, the prospect of vehicles slowing would appear to be part and parcel of the existing use of this road. Consequently, whilst it may well be the case that vehicles will have to slow down whilst waiting for vehicles to turn off to use the access, in particular for those who are unfamiliar with the exact location of the access, there is no particular evidence that this would result in crashes or cause significant interference with the free flow of traffic along the road.
 11. Furthermore, on the basis of the evidence before me it appears that the existing use of the site by delivery drivers causes the potential for disruption to the free flow of traffic whilst vehicles are stationary in the carriageway. This represents an existing unsatisfactory arrangement. The proposed access and parking area would provide a greater level of convenience for the occupiers of the host property and their visitors which would reduce the reliance on the existing footpath.
 12. Notwithstanding this, the Council has suggested that it is necessary to secure appropriate visibility splays for emerging traffic onto the highway. This would require a visibility splay of some considerable distance along the highway edge. I note from the submission that much of this land is not in the control of the appellant. Consequently, I do not consider the use of a condition to be suitable

to address this matter. Whilst the appellant has suggested that he is amenable to some sort of legal agreement that secures and maintains this visibility splay, nonetheless I don't have one before me. Therefore, I am not persuaded that the visibility splays could be adequately secured and maintained.

13. In light of this, I cannot be satisfied that a safe and suitable access would be achieved and maintained. Without this certainty, the safety of users of the proposal and the A44 would be prejudiced. Therefore, the proposal would not result in an improvement to an existing unsatisfactory situation.
14. I note the appellant's comments that the previous occupants parked their car at the location of the proposed access and that past occupants were offered an access onto the bypass when it was constructed. Whilst this may well be the case, the historic use of the site does not alleviate my concerns regarding the ability to secure and maintain adequate visibility splays and the consequence of this for highway safety. Thus, these matters do not lead me to an alternative conclusion.
15. Additionally, my attention has been drawn to a nearby permission for a new fence and gates¹. Whilst the full details of this application are not before me, there is nothing to indicate that this application involved the creation of a new access. Therefore, there is no evidence that this application is directly comparable to the appeal proposal.
16. Based on the above, the proposed development would have an unacceptable impact on highway safety. Therefore, the proposal would conflict with the relevant requirements of Policy MT1 of the Herefordshire Local Plan Core Strategy (2015) (CS) and the Framework. These seek, amongst other matters, to ensure that proposals do not adversely affect the safe and efficient flow of traffic, that safe and suitable access to a site can be achieved for all users and to prevent development which would have an unacceptable impact on highway safety. I also find conflict with those aims of the HDG, as set out above.

Other Matters

17. The proposal would enable the appellant to install an Electric Vehicle charger which would result in environmental benefits. This weighs in favour of the proposal.
18. The proposal would assist in providing a parking area for a family member who, due to mobility reasons, would benefit from the siting of parking close to the main dwelling. Accordingly, the development would bring demonstrable social benefits for the appellant and his family. These are personal circumstances to which I attribute further weight in favour of the appeal. In weighing the personal circumstances in the planning balance, this must be considered against the adverse effect on highway safety.
19. I have had due regard to the Public Sector Equality Duty contained in Section 149 of the Equality Act 2010, which specifies the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected

¹ Application reference P230132/FH

characteristic and people who do not share it. I have also had regard to rights conveyed within the Human Rights Act.

20. In respect of the above, a refusal of planning permission is a proportionate, and necessary approach to the legitimate aim of ensuring that development does not result in harm to highway safety. Therefore, whilst I acknowledge the personal circumstances of the appellant, I conclude that this is not a matter that outweighs the harm that would be caused by the proposed development in respect of my conclusions on the main issue.

21. Concerns regarding the manner in which the planning application was handled by the Council are noted, however, these fall outside the scope of this decision.

Conclusion

22. For the reasons given above, the proposal is contrary to the development plan taken as a whole. There are no material considerations advanced including the policies of the Framework that indicate the decision should be made other than in accordance with the development plan. Therefore, the appeal is dismissed.

N Robinson

INSPECTOR