

Appeal Decision

Site visit made on 13 August 2024

by K Jones BA (Hons) DipLA CMLI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2024

Appeal Ref: APP/P1133/W/23/3334792

37 High Street, Dawlish, Devon EX7 9HF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Paul Hayes against the decision of Teignbridge District Council.
 - The application Ref is 23/01260/VAR.
 - The application sought planning permission for demolition of Kingdom Hall and shed and construction of six houses without complying with a condition attached to planning permission Ref 18/00395/FUL, dated 28 November 2018.
 - The condition in dispute is No 13 which states that:
 - 13. The internal access road and manoeuvring space, as shown with the approved block plan (Drawing Number 1017-3E – Proposed Site Plan, received on 29 October 2018) shall only be used for access and loading/unloading by delivery and emergency vehicles and shall not be used for the parking of vehicles or any other purpose unless prior approval is granted in writing by the Local Planning Authority. Prior to the initial occupation of any of the dwellings hereby permitted, 'No Parking' signage for this area shall be installed in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority. The approved signage shall thereafter be retained and maintained.*
 - The reason given for the condition is:
 - 13. In the interests of highway safety and to ensure that parking on the access road does not restrict access to the site for other users.*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in the name of Ms Charlotte Ewart, and the appeal was made in the name of Mr Paul Hayes. The applicant has confirmed that she has authorised Mr Paul Hayes to act on her behalf in this appeal. I have used the appellant's name in the heading above.
3. The application subject to this appeal was determined under Section 73 of the Town and Country Planning Act 1990 (the Act). However, as parking at the appeal site had commenced prior to the submission of the application, Section 73A is the more relevant part of the Act. I have therefore dealt with the appeal on this basis.

Background and Main issue

4. Planning application Ref 18/00395/FUL granted planning permission for the demolition of Kingdom Hall and shed and construction of six houses. A subsequent application was approved Ref 20/01041/VAR, varying condition 8 on permission 18/00395/FUL, relating to windows in plots 4 & 5. The effect of this approved variation was to grant a new planning permission for the development subject to the modified condition, and leaving the original permission intact and unamended.
5. The appellant applied to the Council, application Ref 23/01260/VAR, to remove condition 13 of planning permission 18/00395/FUL, which, amongst other things, restricted the use of the internal access road and manoeuvring space to access and loading/unloading by delivery and emergency vehicles. The condition expressly does not grant permission for the use of the identified area for parking. The Council refused the application on the grounds of highway safety and the procedural remit of Section 73 applications regarding the lawful implementation of the proposed removal of the condition, and the ability to adequately control a shared parking space.
6. The evidence indicates that the implemented planning permission was the more recently approved 20/01041/VAR. As such, were this appeal to be allowed, it may not be possible to legally implement the change brought about by removing the disputed condition, as the (similarly worded) condition 13 attached to planning permission 20/01041/VAR would remain in force. Nevertheless, the purpose of this appeal is to determine whether the disputed condition should or should not be removed. It is not for me, under a Section 73A appeal to determine the lawful status of a development as implemented. Moreover, if the condition were to be removed and parking allowed on the site, whether or not a single shared parking space could be adequately controlled between more than one residential property would be a civil matter between the landowners.
7. I therefore consider the main issue to be whether condition 13 is reasonable and necessary in the interests of highway safety.

Reasons

8. Cygnet Court is a small cul-de-sac of housing accessed from High Street, which forms one of the main roads through the town. High Street is one-way, with occasional speed bumps, footways on both sides, and double yellow lines restricting parking along much of its length. While I acknowledge that it is a snapshot in time, I observed on my site visit that the road is well used by both vehicles and pedestrians.
9. The internal access road to Cygnet Court forms a typical 'T-shaped' turning head comprising short stretches of road to the front and side of 1 Cygnet Court. Utilising this turning head, the appellant identifies that a single vehicle can enter the site in forward gear, park in the area behind 37 High Street, and then exit the site in forward gear. However, with a car parked in this location, the eastern leg of the turning head would be obstructed by the parked vehicle to at least some extent.
10. There are no detailed tracking plans demonstrating that vehicle turning in the cul-de-sac would still be possible with a car parked at the appeal site. My observations on site were that it may be possible for two small cars (one

parked, one turning) to manoeuvre in the available space. However, if one or both of the vehicles were a larger estate car, van, delivery or emergency services vehicle, such manoeuvres would not be possible. In these circumstances, the second vehicle entering the cul-de-sac would be required to reverse out on to the road, contrary to guidance contained in the County Council's Highways Development Management Advice¹ (HDMa).

11. Visibility of approaching vehicles and particularly pedestrians using the adjacent footway is significantly restricted when exiting Cygnet Court. Two storey buildings directly to either side of the access prevent clear visibility splays in line with the HDMa and Manual for Streets (MfS). Such limited visibility for vehicles exiting the site, and especially in reverse, would lead to a high potential for conflict between users of the carriageway including pedestrians, and an inadequate level of highway safety.
12. There is a notable absence of safe stopping spaces outside the site for access and loading/unloading vehicles. It is also not possible to see whether the eastern leg of the turning head is clear without entering the cul-de-sac. In these circumstances, I consider it highly likely that there would be vehicles unknowingly entering the site with inadequate space to turn. Although the width of the access point restricts very large vehicles from entering the site, the plans indicate that this access is 3.1m wide. This would allow passage of most delivery, trade, or emergency vehicles. The limitations of the site access do not therefore persuade me that there would not be conflict caused by a parked car obstructing the turning head, even if only to a limited degree.
13. Even if turning manoeuvres as described may be possible with a small car, there can be no certainty of the future size of vehicles used by the appellant, the owners of the neighbouring properties, or future occupiers of the site. Moreover, while the appellant indicates that no car is parked at the site between 8am and 6pm Monday to Friday, this is established by the appellant's current working arrangements. These working arrangements may change seasonally and in the future, and future occupiers may follow a different pattern of use.
14. In addition, while there appears to be a mutual understanding between nearby properties to share the use of the space, such an arrangement would not be possible to secure through planning condition, and there is no certainty that future occupiers of the dwelling would be willing to enter into such an agreement. Without an explicit designation of the parking space, vehicles of the neighbouring properties may enter the site to see if the parking space is available, increasing the numbers of movements in and out of the site and the consequential risks to highway safety.
15. As imposed, condition 13 restricts parking within the site. This has the effect of limiting the number of day-to-day vehicle movements using the access, and maintains a clear and usable turning head for vehicles which enter the site for access and loading/unloading. Without the disputed condition in force, the increase in daily vehicle movements of the user(s) of the parking space, along with any movements of vehicles entering the site for access and being unable to turn, results in unsafe vehicle manoeuvres, and harm to the safety of pedestrians, cyclists and other road users.

¹ Devon County Council, Highways Development Management Advice For The Determination of Planning Applications, August 2008

16. Condition 13 is therefore necessary for the development to accord with Policies S1, S2, and S9 of the Teignbridge Local Plan 2013-2033. These seek, amongst other things, development that promotes safe street networks, performs well with regard to road safety, and minimises the negative impacts of transport. The condition is also necessary in order to accord with the HDMA and MfS, along with the Framework where it seeks to create places that are safe, minimising the scope for conflicts between pedestrians, cyclists and vehicles. It follows from the above that I conclude that condition 13 is reasonable and necessary in the interests of highway safety.

Other Matters

17. The appellant has identified that many other residents of High Street exit their properties onto the carriageway in a similar manner to that proposed by the removal of the condition. However, I have no details of the visibility splays or turning heads in those cases. Nor are there specific examples of schemes in which a parked car causes vehicles to reverse onto the highway with which to draw a direct comparison to the appeal site. I have considered the appeal on its own merits and concluded that it would cause harm.
18. The evidence indicates that the turning head is owned by different landowners, including the appellant, and that a small car could be contained within the ownership of No 37. Whether or not the vehicular use of the land in question may cross, obstruct, or otherwise affect land owned by another party is a civil matter between the parties involved, outside of planning control, and therefore carries minimal weight in my determination of this appeal. That the works would require no construction or additional planning permissions are neutral matters, and do not weigh in favour of allowing the appeal.

Conclusion

19. I recognise that parking in the area is heavily restricted, and that the appellant and their family would benefit from the convenience of being able to park close to their property. The appellant has also outlined the circumstances of neighbouring occupiers who share protected characteristics under the Equality Act 2010, and who would also benefit from having access to a parking space close to their homes.
20. I have had due regard to the Public Sector Equality Duty contained in the Equality Act 2010, and the best interests of the child in the context of Article 8 of the European Convention on Human Rights, as enshrined in UK law by the Human Rights Act 1998. Nevertheless, whilst the development would offer some benefits to the appellant's family and neighbours, these do not outweigh the considerable public risk to highway safety. A refusal of planning permission is therefore a proportionate and necessary approach to the legitimate aim of ensuring that the protection of the public interest in respect of highway safety can be reasonably safeguarded.
21. For the above reasons, I therefore conclude that the appeal should be dismissed.

K Jones

INSPECTOR