



Appeal Decision

Site visit made on 30 October 2024

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th December 2024

Appeal Ref: APP/B1550/W/24/3344185

Land to the north-east side of Hambro Hill, Adjacent Sandy Lodge, Hambro Hill, Rayleigh, Essex SS6 8DJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) 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 Alan Wood against Rochford District Council.
 - The application reference is 23/00643/FUL.
The development proposed was originally described as 'construct a vehicular access to the satisfaction of the Highway Authority. Existing trees and hedgerows to be retained. Planning permission previously granted for the same development as that now proposed - reference ROC/189/83.'
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Decision

1. The appeal is dismissed and planning permission to construct a vehicular access is refused.

Preliminary Matter

2. A new version of the National Planning Policy Framework (the Framework) was published on 12 December 2024. The parts of the Framework most relevant to the appeal have not substantively changed from the previous iteration. Consequently, this update does not fundamentally alter the main parties' cases, and it is not necessary to seek further comments.

Background and Main Issues

3. The Council did not issue a decision on the application within the prescribed time limit or within an agreed extension of time. The Council's putative reasons for refusal are set out in its statement of case.
4. The Council issued five reasons for refusal. However, they fall into two main issues. First, the effect of the proposed access on highway safety, and second, the effect of the proposal on trees.

Reasons

Highway Safety

5. The proposal seeks to create a vehicular access to land off Hambro Hill, opposite the junction with Lower Lambricks. The immediate stretch of road is straight in alignment but steeply sloped, falling towards the railway bridge to the north-west and rising up the hill to the south-east. The access would be created in a sloping verge that contains a number of mature trees subject to a tree preservation orders (TPO). It is indicated that the entrance is required to enable access to the appellant's land which is otherwise unachievable.

6. The Council describes the access as 'unnecessary' and that the appellant's land could be accessed via a field gate to the side of Sandy Lodge, the adjacent dwelling to the south-east. It adds that sufficient visibility splays have not been evidenced to demonstrate that safe egress could be achieved. It further states that a failure to demonstrate that the access would not adversely affect the integrity and structure of the highway verge is a further threat to highway safety. Finally, concern is raised that the proposal would set a precedent for future development to the detriment of highway safety.
7. On the first issue, the appellant indicates that no right of access exists to his land via Sandy Lodge. which despite being enclosed by the blue line on plans, is indicated to be in separate ownership within the appellant's extended family. However, the plans indicate that the land intended to be accessed would not be the open field extending directly up the hill from the access point, but a separate strip of land to the north-west, in an area that appears to comprise a dense expanse of woodland. The appellant has indicated the use of the land to be 'agriculture or forestry.'
8. Hambro Hill is classified as a Secondary Distributor on Essex County Council's Development Management Route Hierarchy. The Highway Authority seeks to protect the function of Secondary Distributors by ensuring that where there are overriding safety concerns and where access is available to a lower category of road, that this is used. In this case, there is a physical access to the wider land off Hambro Hill via a field gate to the side of Sandy Lodge.
9. The appellant argues that access is not possible via Sandy Lodge. It is stated that the wider land to the north-eastern side of Hambro Hill was subdivided between various family members in 1983 and that whilst Land Registry documents show a legal right of way across the front of the land, this is indicated not to extend over the front driveway of Sandy Lodge. However, I do not have full particulars of relevant Land Registry documents to be able to verify these claims. It also contradicts the labelling on the drawing dated 8 February 2024 of land within the blue line being '*owned by the appellant and family members which includes Sandy Lodge.*'
10. Even if there is no legal right of access for the appellant across the driveway of Sandy Lodge, the evidence does not explain whether or how access has been achieved in the 41 years since the land was subdivided. Nor is there any evidence as to whether efforts have been made to obtain a right of access via Sandy Lodge. Moreover, the land to be accessed is some distance to the north-west of the proposed access point. There is no explanation given as to why the proposed location was chosen or whether any other options have been considered. In short, therefore, I find the evidence does not substantively demonstrate that a new access onto this secondary distributor road is necessary.
11. The appellant has supplied drawings indicating that unobstructed visibility splays of 2.4m x 60m can be achieved in both directions. This would exceed the Manual for Streets (MfS) distance of 43m in each direction for roads with a 30mph speed limit. However, the Council points to the sloping gradient of the road and a lack of clarity on the plans as to whether these visibility splays would be achievable in practice.
12. I viewed the potential sight lines from the access on site. I saw that the view uphill was significant and not affected by the gradient. However, the view

downhill was obscured by dense verge undergrowth at a distance of only some 20-25m. This planting extends to the edge of the carriageway and blocks any view of oncoming traffic until it is within 20m or so of the access. This distance would fall significantly short of the required visibility. There is no indication on the plans that the appellant has control over the verges downhill of the access point and therefore there is no guarantee that this foliage could be cut back and so maintained to ensure sufficient visibility.

13. The consequence of this is that drivers emerging from the access point would make risky, blind exits as they would be unable to see oncoming traffic from the right until potentially too late. The lack of visibility would also mean drivers on Hasbro Hill would be unable to see a vehicle emerging until very close to the access. The risk of conflict would be exacerbated by the small size of the access, which would not have the same visual presence for oncoming drivers as the junction with Lower Lambricks opposite.
14. In respect of the stability of the verge, the plans do not indicate whether any excavation is required to create the access, but they would involve removal of one tree (T3). I address the impact on the trees themselves below, but in terms of the verge, I did not observe it to be particularly steep in incline or unstable. The access to Sandy Lodge is on a similar slope with no evidence of excavation having been necessary. There is no reason that the proposed access should involve significant alteration of the verge beyond removal of one tree, and conditions could be used to ensure necessary precautions are taken during works to ensure stability of the land.
15. I accept that the volume of traffic generated by the access would be low in absolute terms, and that it would not be at such a level as to have a harmful, cumulative impact on the capacity of the road network. However, for the reasons set out, I find that the location of the access would increase the risk of conflict between vehicles and prejudice the safe operation of the highway.
16. In reaching a view, I acknowledge that planning permission was granted for an access in a similar position in 1983. However, there is no evidence to suggest this permission was ever implemented, and therefore it does not represent a fall-back position for the appellant. Moreover, any highway safety assessment made at the time would have been different in terms of both the site conditions and prevailing standards and policies regarding highway design and operation. Therefore, I afford little weight to this as a relevant consideration.
17. Similarly, I afford little weight to the Council's concerns over this proposal setting a precedent, as the assessment of the effect on highway safety is inherently a site specific one and future cases would be determined on their own merits having regard to the particular circumstances of the case.
18. Drawing matters together, I find that the evidence before me does not establish a clear need for an access in this location. Even setting this aside, the proposal has not demonstrated that adequate visibility splays could be provided and so would not provide a safe means of access. Therefore, I conclude that the proposal would pose an unacceptable risk to highway safety.
19. The Council cites conflict with Policy DM1 and DM3 of Essex County Council's Development Management Policies document (February 2011). This document is not part of the development plan, but in so far as it is a material consideration, the proposal would conflict with the aims of these policies to

protect the function of Secondary Distributors and to generally protect the highway network for the safe and efficient movement of people and goods by all modes of travel.

20. The Council has not otherwise identified conflict with any development plan policy related to the provision of accesses. However, there would be conflict with the Framework which sets out that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

Effect on Trees

21. The proposal would necessitate the removal of tree T3, one of four trees opposite the junction with Lower Lambricks that are subject to a TPO. I saw these trees to have a strong visual presence, terminating the view along Lower Lambricks toward the junction and providing a strong, natural boundary between the built-up area and the open land beyond.
22. The trees contributes positively to an intact, natural roadside boundary that extends downhill to the railway bridge. The loss of T3 to an open, bellmouth access would jarringly interrupt this continuous greenery and would harm the visual amenity of the area.
23. The appellant has offered to replace the lost tree but it is unclear where this could be achieved within the verge without encroaching on the remaining trees, which would jeopardise their long-term health. There is also no certainty that a tree could be accommodated elsewhere. Even if one were planted in the adjoining field, it would not mitigate for the loss of the roadside greenery.
24. Moreover, no arboricultural survey has been provided with the application and it is unknown whether the roots of other trees would be affected by the works to create the access. Given their protected status, I am not satisfied that such matters can be left to be addressed by planning condition.
25. Therefore, I conclude that the proposal would have an unacceptable impact on trees, contrary to the aims of Policy DM25 of the Development Management Plan (2014) to conserve and enhance existing trees and woodlands.

Other Matters

26. The Council has not opposed the proposal for other reasons. Having regard to the evidence before me, including comments from interested parties, I have not identified any other matters attracting material weight in the planning balance.

Conclusion

27. For the reasons set out, the proposal would cause harm to the amenity of the area through loss and risk of damage to protected trees, in conflict with the development plan. There would also be unacceptable harm to highway safety, a scenario in which the Framework as a material consideration indicates should result in the refusal of permission. I afford significant weight to these conflicts.
28. I have considered the appellant's circumstances with respect to accessing his land, but the evidence before me is not persuasive that the proposed location is the only feasible option, and in any event it had not been shown to be a safe access. Therefore, whilst I acknowledge it would provide a benefit, it would be

a largely private one and so is a matter of limited weight in favour of the proposal. This would not outweigh the identified conflicts with the development plan and other material considerations, including the Framework.

29. Therefore, I conclude that the appeal should be dismissed and planning permission refused.

K Savage

INSPECTOR