



Appeal Decision

Site visit made on 3 December 2024 by L Clark MSc MRTPI

Decision by John Morrison BA (Hons) MSc MRPTI

an Inspector appointed by the Secretary of State

Decision date: 7 February 2025

Appeal Ref: APP/R1038/W/24/3350715

2 Clay Lane, Clay Cross, Chesterfield S45 9EN

- 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 Mark Rugman against North East Derbyshire District Council.
 - The application Ref is 24/00359/FLH.
 - The development proposed is the addition of a dropped kerb to provide vehicle access and off-road parking.
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Decision

1. The appeal is dismissed, and planning permission is refused for the addition of a dropped kerb to provide vehicle access and off-road parking.

Appeal Procedure

2. The site visit was undertaken by a representative of the Inspector whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matters

3. The description above is taken from the application form which also includes explanatory text. Namely 'addition of a dropped kerb at the Clay Lane boundary of the land (2 Clay Lane) to provide vehicle access to the land which will provide off-road parking for owners of 6 Clay Lane (shown as 4 & 6 Clay Lane on the plan but now single property)'. I have taken this detail into account but, for ease of identifying the development to which the appeal relates, I have omitted it from the banner header above. This has not changed anything fundamental nor prejudiced the ability of any party to make their case in respect of the appeal scheme.
4. The appellant contends, supported by evidence of submission dates, that they provided revised plans showing a visibility splay at the proposed access in light of comments received from the Highways Authority (HA). The Council have not offered comment on it in their statement, but the plan appears to have been submitted with the appellant's initial evidence. That said, and since the main concerns around the appeal scheme as a whole appear to relate to visibility, in the event the information provided by the appellant was wholly new at appeal stage, the Council has seen it, and it would have reasonably been the only way a response to the Council's substantive concerns could have been effectively made. It would therefore be neither unfair nor prejudicial to the Council's case for me to take the plan showing the splay into account.

5. At the time of my site visit, a vehicular access had been created but there was no dropped kerb. I have proceeded on this basis.

Background and Main Issue

6. The Council did not issue a decision on the appeal scheme, but their evidence suggests had they done so they would have refused planning permission given the effect of the proposal on highway safety with specific regard to visibility. This has formed the main issue of the appeal.

Reasons for the Recommendation

7. The appeal site is close to the junction between Clay Lane and High Street (A61). The access runs between Nos 14 and 16 Clay Lane. At the point where the access meets the back edge of the footway there is a hedge to the left adjacent No 16 (along with a low stone wall) and a cascading close boarded fence to the right at the side of No 14.
8. The position and height of these two boundary treatments would significantly constrain the ability of drivers of vehicles exiting the access to be able to see in both directions and thus observe if it is safe to enter Clay Lane. To gain sufficient visibility, drivers would have to position an exiting vehicle with its bonnet out into the highway which would all but block the footway. This would either cause conflict between a vehicle and a pedestrian or impinge on their ability to safely use the footway and cause them to have to walk into the carriageway. Should a driver exit quicker without blocking the footway, the insufficient visibility would result in vehicle to vehicle conflict. This would be a dangerous outcome in either scenario and exacerbated by the proximity of the access to what appears to be a busy main road junction, around which local services are concentrated.
9. The visibility splay shown in the submissions, which is to HA specifications, would cross over land that is out of the control of the appellant. As such, it could not be secured or maintained in practical reality. To be an effective solution, a visibility splay needs to be on land either in the control of the appellant or the HA. With this and the above in mind, the proposal would have a detrimental effect on highway safety. Such that it would conflict with Policy LC5 of the North East Derbyshire District Local Plan 2021 that is concerned with development not harming highway safety amongst other things.

Other Matters

10. The Council's Statement of Case refers to other matters including surface water drainage, a splayed area on the footpath and the dimensions of the dropped kerb that could be addressed via condition if the appeal was allowed.

Conclusion and Recommendation

11. For the reasons given above, the appeal scheme would conflict with the development plan and there are no sufficiently weighty material considerations to indicate a decision other than in accordance therewith. I therefore recommend that the appeal should be dismissed, and planning permission refused.

L Clark

APPEAL PLANNING OFFICER

Inspector's Decision

12. I have considered all the submitted evidence and my representative's report and on that basis the appeal is dismissed.

John Morrison

INSPECTOR