

Appeal Decision

Site visit made on 2 September 2024

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th September 2024

Appeal Ref: APP/W1715/W/24/3341606

Land adjacent to the Brigadier Gerard, Botley Road, Horton Heath, Hampshire, SO50 7DQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Imperial Homes Southern Counties Ltd against the decision of Eastleigh Borough Council.
 - The application Ref X/23/96591 was refused by notice dated 2 February 2024.
 - The application sought planning permission for construction of 4 no. three bedroom semi-detached dwellings with associated amenity space, parking, landscaping, ecological buffer and new access from Botley Road without complying with a condition attached to planning permission Ref F/19/86328, dated 8 January 2020.
 - The condition in dispute is No.8 which states that:
'No development shall start until details of the access, including the proposed pedestrian footway and associated drop kerb pedestrian crossing points, have been submitted to and approved in writing by the Local Planning Authority. The access shall be designed to ensure the retention of the highway Oak tree (Tree 1) and details of the protection measures required to protect this tree during construction shall be submitted to, and agreed by, the Local Planning Authority, prior to access works commencing. The development shall not be occupied until the approved details have been fully implemented [unless agreed in writing by the Local Planning Authority]'.
 - The reason given for the condition is:
'To ensure satisfactory vehicular access'.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. Details of the access required by condition No.8 to serve the development described in the banner header above were submitted by the appellant and

approved by the Council¹. The approved access is a priority bell mouth junction, a section of pedestrian footway and an uncontrolled pedestrian crossing point with dropped kerbs and tactile paving. The Council also separately granted planning permission for another dwelling on the site, so five in all.

3. The permitted houses have been built and, notwithstanding the wording of condition No.8, occupied. A simple crossing has been constructed instead of the approved access and without the uncontrolled pedestrian crossing point, dropped kerbs or tactile paving. In essence, the appeal application seeks retrospective planning permission to carry out the development by varying the wording of condition No.8 and approve details of the existing access, so retain this access as built. The appellant has submitted a plan to this effect².
4. Considering this background, the main issues in this appeal are whether the existing access provides safe pedestrian access and, if it does, is condition No.8 necessary in its present form having regard to the reason it was imposed.

Reasons

5. The existing access is a private drive flanked either side by grass verges on the inside of a bend in the B3354 Botley Road. There is no pavement next to the site or streetlighting next to the existing access. This shared surface continues into the site and is how pedestrian occupants of the houses or pedestrian visitors enter or leave the site, as well as vehicles. With just five houses in this cul-de-sac the volume of pedestrian and vehicle movements is low, so also adds little to traffic generation along Botley Road. Vehicle speeds within the site are likely low.
6. However, though wide, the uneven grass verges are backed by a dense roadside hedgerow and partly damaged back to bare earth next to the existing access by vehicles cutting across. The verges are not suitable for pedestrian use or refuge, let alone if overgrown or during wet weather. Especially so for elderly or infirm persons, wheelchair or mobility scooter/buggy users and parents with pushchairs or young children.
7. There is no other place for pedestrians to use or wait before crossing the road than in the shared surface exposed to clear conflict when vehicles do leave or enter the site, which could include delivery vans or lorries as well as cars. Although slowing to turn in, drivers of vehicles entering the site are likely to concentrate on safely leaving the road than notice pedestrians unexpectedly in the shared surface, especially during hours of darkness or at any time for car drivers because the hedgerow is tall enough to restrict forward visibility into the site before committing to turn. This would be even more hazardous when vehicles enter and leave at the same time so take up most of the shared surface, especially if one is larger than a car.
8. Although this part of Botley Road is subject to a 30mph speed limit and a snapshot, there was a reasonably fast, continuous flow of traffic in both directions along this main road through Horton Heath with few large gaps, including lorries and buses. Although this bend is a long curve the existing

¹ Proposed highway works plan - drawing number 190074 202

² Existing access site plan - drawing number 190074 43

access is roughly at the inner apex. Pedestrians need to look in both directions in a wide arc of view over each shoulder. Traffic on the road emerges abruptly into view from both directions with little forewarning due to other hedgerow and trees closer to the edge of the road. With infrequent long gaps in traffic and no central pedestrian refuge there was little sustained opportunity to cross the road without undue haste or excessive risk, including to drivers. Pedestrians also need to remain aware of the approach of vehicles from behind leaving the site. These already quite complex circumstances would be exacerbated for elderly or infirm persons, wheelchair or mobility scooter/buggy users and parents with pushchairs or young children.

9. The existing access is flush with the carriageway and opposite a dropped kerb in the pavement on the west side of Botley Road. This assists all pedestrians, especially users of mobility scooters/buggies, parents with pushchairs or young children on bicycles or similar. However, this dropped kerb is part of a crossover for vehicle access to two dwellings. Crossing here also delivers pedestrians into conflict with vehicles when those accesses are used. The existing access is therefore convenient only in the sense that it is the most direct crossing point by shortest distance to walk. Moreover, it is only a desire line for that reason given that there is currently no other better, useable option.
10. In contrast, the approved access would provide a separate paved footpath within the site, beside the vehicle access, and along a section of the verge with a dropped kerb crossing and tactile paving on both sides of the road closer to streetlighting. It would not be overly distant, so not likely deter use nor be directly on the inner apex of the bend. This would substantially increase pedestrian sightlines and visibility in both directions when leaving the site, as well as forward visibility for approaching vehicles. Nor would the dropped kerb on the west side of Botley Road be directly in front of an existing vehicle access.
11. The proposed access incorporates different design features to the existing access but is not 'over-engineered' relative to the significant benefits it would deliver or only appropriate in an urban area such as a town or city. Albeit on an edge of the village, it would visually and spatially plainly be in the built-up area of Horton Heath. As such, there is no compelling need for an access to 'create a more rural style environment' or 'provide a more semi-rural feature'.
12. Even with the approved access in situ, some pedestrians including current occupants of the houses, might still choose to cross the road as now. But no recorded pedestrian accidents since the houses have been occupied in 2020 or 2021 is not mitigation. Nor is it the same as, or means the absence of, incidents such as near misses. If planning permission was granted the existing access would be retained in perpetuity and sustain an evident likelihood of an accident waiting to happen, which would not be in the wider public interest.
13. There is no guarantee that all visitors to the site will know the existing access, shared surface within the site or Botley Road; for instance delivery drivers. Nor that all transport movements to and from the site will be by car.

Local facilities and services are otherwise 'within comfortable walking distance' and pedestrians would need to walk to use bus stops on both sides of Botley Road. A safe access should be the objective of new development through good design from the outset, as has already been approved by the Council in this case.

14. A simple crossover access was endorsed by the Council and the Highway Authority to serve 14 dwellings. That development was on a different road and although a faster 40mph limit, without a formal crossing point and some pedestrians anyway taking a different route, it nonetheless provided a separate pedestrian access onto a straight section of that road³.
15. It is not clear where all the simple crossover accesses that I have been referred to are located in Botley Road relative to the site. In any event, the photographs appear to show they are on a straight section of this road and serve individual dwellings, not five houses in a cul-de-sac. The frontage of the Brigadier Gerard public house plot, next to the site, includes connection to the pavement on one side and is also on a straighter section of Botley Road. An extension to the pub car park would allow more cars to park, thus patrons arriving or leaving by that mode of transport, not walking.
16. It has not been suggested that the siting of some bus stops is development that requires planning permission. The safety or usability of these bus stops, including that roads need to be crossed without a crossing point to use them, is a matter for the bus operator or the Highway Authority.
17. None of these other circumstances are therefore directly comparable or relevant to the current appeal.
18. Taking all the above into account, I find that the existing access does not provide safe pedestrian access. Consequently the development does not comply with Policies DM1 or DM13 of the Eastleigh Borough Local Plan April 2022. These policies include that development should take account of the context of a site and be integrated with it in layout, provide for people with disabilities and create accessible communities that cater for all. In addition, it must have a safe and convenient access, including to pedestrian routes and not cause or increase danger to road users.
19. Amongst other things, the National Planning Policy Framework (NPPF) sets out that transport considerations, integral to the design of schemes, contribute to making high quality places. Development should ensure safe and suitable access can be achieved for all users, avoid unacceptable impact on highway safety and minimise the scope for conflicts between pedestrians and vehicles. The existing access would undermine relevant objectives of the Council's development plan in these regards which are broadly consistent with these aims of the NPPF.

Other Matters

20. The appellant overlooked implementing the approved access during the Covid-19 pandemic, while the houses were built and advertised for sale with discount for NHS workers. Nonetheless, the appellant still submitted the details for the now approved access to the Council. Nothing of any apparent

³ Ref 17/80382

significant planning or highway substance has changed in the intervening period, other than that the existing access was built and remains in situ. I have determined the appeal on its individual planning merits and the evidence before me.

Conclusion

21. Considering my finding above, condition No.8 is necessary in its present form having regard to the reason it was imposed. I am also satisfied that this condition is relevant to planning and to the development permitted by the Council. It is also precise, enforceable and reasonable in the context of the relevant local and national planning policy that I have outlined.
22. Accordingly, for the reasons set out above, planning permission should be granted with the same condition No.8 subject to which the previous planning permission F/19/8632 was granted. The appeal is therefore unsuccessful.

Robin Buchanan

INSPECTOR