

Date of Meeting	31/03/2011
Application Number	E/11/0224/S73
Site Address	Land at Kennet Rise Axford Marlborough Wilts SN8 2HA
Proposal	Removal of condition 9 of permission E/09/0873/FUL to remove requirement for visibility splay.
Applicant	Sarsen Housing Association
Town/Parish Council	RAMSBURY
Grid Ref	423901 170160
Type of application	Full Planning
Case Officer	Mike Wilmott

Reason for the application being considered by Committee

This application is brought before the committee at the request of the Division Member, Councillor Humphries.

1. Purpose of Report

To consider the recommendation that the application be approved subject to conditions.

2. Main Issues

The main issue in this application is whether the removal of the condition would have an unacceptable adverse impact on highway safety.

3. Site Description

The site lies on the south side of the main road passing through the village. It has an existing vehicular access from the road that until recently served a car park and garage block positioned centrally on the site, although the garage block has since been cleared. It has an open frontage to the main road.

4. Planning History

The garage block was extant since before 1977. Permission for four bungalows was granted by Kennet District Council in 1977 but was never implemented and expired.

In 2009, planning permission was granted for the erection of five houses and a car park with 25 spaces (E/09/0873/FUL). It is a condition attached to this permission that the applicant seeks to remove.

5. The Proposal

The applicant wishes to carry out the development granted planning permission in 2010, but seeks the removal of one of the conditions attached to the permission. The condition states:

'Before any part of the development hereby permitted is commenced the highway visibility area shall be cleared and kept free of all obstructions to sight above 1 metre above the adjoining carriageway from a point of 2.4 metres from the edge of the carriageway measured along the centre line of the access, to the points on the edge of the carriageway 43 metres to the east and 43 metres to the west from the centre of the access. The visibility area shall be kept free of obstructions to visibility above this height thereafter'

Reason: In the interests of highway safety

The reasons advanced by the applicants for wishing to remove this condition can be summarised as:

1. The site previously provided informal parking for the general public for approximately 30 vehicles. This facility was well used and therefore produced a measurable number of traffic movements to/from this area at all times. The current proposal includes the provision of a replacement car park which would provide spaces for 25 vehicles. In this regard, it is considered that a traffic generation comparison between the existing and proposed use would be neutral;
2. The existing land use benefits from a site access onto the public highway which as part of the development proposal will be revised and formalized to include a new footpath. Wiltshire Council have confirmed that there is no accident record associated with the current access.
3. There is currently adequate visibility both to the east and west from a point 2.4 metres from the edge of the carriageway measured along the centre line of the access;
4. Safe visibility can be provided within land under the control of the applicant and/or within the adopted highway.

6. Planning Policy

Kennet Local Plan – policy PD1 is relevant

7. Consultations

Ramsbury Parish Council – awaited

Wiltshire Council Highways – No objection. In considering this application the main question must be "Is there a compelling case to resist the removal of the visibility condition having regard to the case made by the applicant and/or the interests of highway safety"

The parking area and its access have been in existence for over 25 years. Whilst it is normal practice to assess accidents over a 3 - 5 year period, I have checked for the last 20 years and can confirm that during that time there have been no recorded personal injury accidents relating to the use of the access. There is thus no evidence to suggest that the historic use of the existing access represents a hazard.

At the time of the original application for this development it was assumed that all the land required for the visibility splays was either under the applicant's control or formed part of the highway. It remains the Council's firm belief that the land is public highway, but that belief is disputed. Irrespective of the outcome of that dispute, the applicant has presented additional evidence beyond that contained in the original application, and has asked for the condition requiring a visibility splay to be removed.

In short, the applicant's position is that a comparison of traffic generation between existing and proposed uses is de minimus (therefore denying the basis upon which the need for improvement could be argued), and that when judged against contemporary standards, there is already sufficient visibility to reach a reasonable minimum standard of safety.

There is a clear and simple logic to the first point, and I agree that the evidence now submitted shows that levels of traffic associated with the historic and proposed uses are not likely to be materially different. On this point alone, there would not seem to be a valid argument for the condition to remain.

In more detail, visibility splays at junctions/accesses are based on guidance and are not a statutory requirement. The appropriate guidance in this case is given in "Manual for Streets" which in its preface stresses that the contents are guidance only. Detailed guidance on visibility is given with Chapter 7.

Visibility splays are based on calculated stopping sight distances which are listed in Table 7.1. The methodology for determining splays is given in section 7.7. Of particular relevance in this case is the sentence part way through paragraph 7.7.3 which relates to the measuring of the 'Y' distance. This states "**For simplicity it is measured along the nearside kerb line of the main arm, although vehicles will normally be travelling a distance from the kerb line**". It is widely interpreted that measurement along the nearside carriageway edge is for ease of measurement and is not an absolute requirement. Indeed the consultation draft of "Manual for Streets" suggested measuring to a point 1.0 metres into the carriageway to reflect the distance vehicles are travelling from the edge.

Measurements have been taken on site and these have shown that the visibility splay to left measures 2.4 metres by 43 metres taken to a point 1.0 metres into the carriageway. This complies with the guidance originally proposed in "Manual for Streets" and in my professional opinion is not such as to make the access unsafe. This opinion is supported by the lack of historic accidents relating to the previous use of the access.

In view of the above there is no highway objection to this application.

8. Publicity

The application has been advertised with a site notice and letters to neighbours. Representations raising objections have been received from 14 local residents. Whilst some of these restate objections to the original housing scheme (not a material consideration in this application), the ones relating to highway issues raise the following points:

- Having a poorer egress will not improve road safety;
- Parking restrictions should be imposed on the road to improve road safety;
- Highway safety should not be compromised;
- Cars will not be able to emerge or pass safely;
- Removing the condition will create a dangerous situation;
- There should be compliance with safety standards for housing development and the fact that there was previously unauthorized parking on the site should not lessen the visibility requirement now ;
- A neighbouring landowner disputes that land adjacent to the carriageway is highway and states that he has extended his hedge upto 1 metre from the road edge, materially altering the visibility achievable;
- Cars parked on the opposite side of the road force cars from the west to travel on the opposite side of the road;
- The claims made in support of the application by the agent are disputed;
- To allow the application would allow the creation of an unsafe access.

9. Planning Considerations

It is important to release that when dealing with applications to remove a condition, only the condition itself can be considered, not the whole of the planning permission.

It therefore follows that the only issue to be examined is the impact on highway safety.

There is no issue with regard to visibility to the east. This can still be achieved over the land owned by the applicants and when the development is complete, will lie over the public footway being created here.

The only issue is the visibility to the west of the existing access. Part of the visibility splay crosses land that the highway officers consider to be within the public highway, a claim that is disputed by the adjacent landowner. The far end of the proposed visibility splay is partially obstructed by vegetation from the neighbours' land that overhangs the disputed area. (Although the neighbour has planted new vegetation within the disputed area, because it is set back from the carriageway, it does not impinge on the visibility splay). Having reviewed the situation, the applicants have decided to apply to remove the planning condition, as they consider that it is not justified in the circumstances, particularly given the history of accident-free use of the existing access with the existing visibility to the west.

Although it is disputed by one of the objectors, it is a relevant material consideration that the access has previously served for as number of years a garage court and car park without any record of personal injury accidents. At the time of the original application, the highway authority had not carried out such a detailed search of the accident records and requested the standard visibility splay that is recommended for new accesses in government guidance.

The detailed comments of the highway officer on the application are set out above. Taking account of

the previous safe use of the existing access, as well as the other factors they refer to, they have concluded that there is no objection to the application.

Given the detailed assessment of the highway officer, it is considered that planning permission should be granted for the removal of the condition as there is no evidence that without it, the development would be unacceptable on road safety grounds.

As the decision amounts to a new planning permission, it is necessary for the remaining previous planning conditions to be attached, although where these have already been discharged, it is appropriate to refer to the subsequently agreed details.

RECOMMENDATION

Grant planning permission, for the following reasons, and subject to the conditions set out below:

The retention of the planning condition is not essential as satisfactory visibility can be safeguarded to the west and whilst there is limited obstruction of the visibility splay to the east, the access is in the same position as the long-existing access that has served a parking court and parking area on this site for more than 25 years without any accident record. As the levels of traffic from the use of the access to serve the development proposed are unlikely to be materially different from the historic use, it would be unreasonable to insist that the condition be retained. Removal of the condition would therefore not conflict with policy PD1 of the Kennet Local Plan.

- 1 The development hereby permitted shall be begun before 9th August 2013.

REASON:

To comply with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

- 2 The materials to be used for the external walls and roofs shall be those specified in the External Materials Schedule dated 20/09/10. Development shall be carried out in accordance with these approved details.

REASON: To secure harmonious architectural treatment.

- 3 All soft landscaping comprised in the approved details of landscaping shown on drawing no. KEN.AX.01 Rev B shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development whichever is the sooner; any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shown on drawing numbers 3166/002 dated 29/04/09 and E/3194/04 dated 06/10/09 shall be completed prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the local planning authority.

REASON: To ensure a satisfactory landscaped setting for the development.

- 4 In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars, including trees on land adjoining the site; and paragraphs (a) and (b) below shall have effect until the expiration of three years from the first occupation or the completion of the development, whichever is the earlier.

(a) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work).

(b) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted at such time, as may be specified in writing by the local planning authority.

(c) All retained trees shall before any equipment, machinery or materials are brought on to the site for the purpose of the development, be enclosed in accordance with British Standard 5837 (2005) Tress in Relation to Construction at the outer edge of the overhang of their branches by a chestnut paling fence (or other type of fencing agreed in writing by the local planning authority). The exact position of this fencing shall be as shown on drawing no. CON/281/TP1. This fencing shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the local planning authority.

REASON: To enable the local planning authority to ensure the retention of trees on and adjoining the site in the interests of visual amenity.

- 5 The proposed 1.8 metre high close boarded fences shown on drawing numbers 3166/002 dated 29/04/2009 and 3166-20 dated September 2010, together with the hedges approved under the approved landscaping scheme shall be completed in accordance with the approved details, with the fences completed prior to the first occupation of the houses and the hedges in accordance with the landscaping scheme in condition 3 above.

REASON: To ensure a satisfactory setting for the development.

- 6 Before any part of the development hereby permitted is first occupied the access, turning area and 30 parking spaces shall be completed in accordance with the details shown on the approved plans, and shall thereafter be maintained for these purposes. Ten of the parking spaces shall be reserved exclusively for the approved development; the remaining 20 spaces shall be made available to the public, and use for this purpose and access thereto, shall be made available at all times.

REASON: In the interests of highway safety and the proper planning of the site, to ensure that the parking area proposed is not kept solely for the residents of the proposed houses, as this would be over provision, but is made available to provide off-street parking for the public, in the interests of road safety.

- 7 The gradient of the new access road shall not exceed 1 in 12 for the first 5 metres back from the edge of the public highway.

REASON: In the interests of highway safety and to provide a safe and usable means of access to the development.

- 8 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order, 1995 (or any Order revoking and re-enacting or amending that Order with or without modification), no windows, doors or other openings, other than those shown on the approved plans shall be inserted in the east facing elevation of the building hereby permitted.

REASON: In the interests of the privacy of the neighbouring properties

- 9 Before the first occupation of any dwelling on the site, the 2 metre wide footway shown on drawing E/3194/04 & E/3194/02 shall be completed in accordance with the details shown.

REASON: In the interests of highway safety.

- 10 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order, 1995 (or any Order revoking and re-enacting or amending that Order with or without modification), no additions to, or extensions or enlargements of, the buildings hereby approved shall be erected.

REASON: To enable the local planning authority to retain control over the enlargement of the building(s) in the interests of the proper planning and amenity area.

- 11 The treatment of the common boundary between the site and nos. 1-3 Quality Court shall be as shown on drawing nos KEN.AX.01RevB and 3166/102 RevA. The development shall not be occupied until the boundary treatment is implemented in accordance with the approved details.

REASON: In the interests of safeguarding the privacy of the occupiers of nos 1-3 Quality Court.

- 12 No dwelling shall be occupied until the sewerage treatment works have been completed in accordance with the submitted plans.

REASON: To ensure satisfactory foul water drainage.

- 13 The surface water drainage scheme shown on drawing no E/3194/03 Rev B shall be carried out in accordance with the approved details before any dwelling is first occupied.

REASON: To ensure satisfactory surface water drainage.

- 14 The site shall be decontaminated in accordance with the revised method statement for capping to landscaped areas and gardens by T&P Regeneration dated 23/09/10 before any dwelling is first occupied.

REASON: In the interests of the safety of the public and the environment.

- 15 The ground floor slab levels shall be as set out in drawing numbers E/3194/02 and 04 (and the related retaining structures shown on drawing numbers 3166-022; 023 and 024). Development shall be carried out in accordance with these approved details.

REASON: In the interests of visual amenity.

- 16 The developer shall give one month's written notice to the County Library and Museum Service, County Hall, Trowbridge, before any operations commence on site, and shall afford access at all reasonable times to any archaeologist and allow him/her to observe the excavations and record items of interest and finds.

REASON: The proposal involves building operations in an area of potential archaeological interest.

- 17 **INFORMATIVE TO APPLICANT:**

This decision relates to documents/plans submitted with the application E/09/0873/Ful, listed below. With the exception of the visibility splay that as a result of this decision is no longer required, No variation from the approved documents should be made without the prior approval of this Council. Amendments may require the submission of a further application. Failure to comply with this advice may lead to enforcement action which may require alterations and/or demolition of any unauthorised buildings or structures and may also lead to prosecution.

Plan no. 3166/002 Rev G dated 29/04/09 (received by lpa 22/10/09);

Plan no. 3166/003 Rev B dated 08/09 (received by lpa 08/09/09).

- 18 **INFORMATIVE TO APPLICANT**

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside his/her control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act

1996.

23 **INFORMATIVE TO APPLICANT:**

In relation to the access road, the applicant is advised that the Highway Authority is not required to adopt a road of this type which essentially provides access to a privately owned car park and sewerage treatment works. In any event, the access road would appear on face value to have a gradient in excess of what would be acceptable to the Highway Authority to adopt.

Appendices:

None

Background Documents Used in the Preparation of this Report:

Planning application file and previous application files