

Date of Meeting	5 June 2014
Application Number	13/06712/VAR
Site Address	Land off Melksham Road, Westbrook Park Farm, Westbrook, Bromham,
Proposal	Variation of conditions 3 and 4 of planning permission E/09/1558/FUL - to retain the existing reduced height roadside kerbs and resurface the first 2 metres of the access from the carrieway in a well bound consolidated material
Applicant	Mr David Johnson
Town/Parish Council	BROMHAM
Division	Bromham, Rowde and Potterne
Grid Ref	395592 165442
Type of application	Full Planning
Case Officer	Morgan Jones

Reason for the application being considered by Committee

This application is brought to committee at the request of the division member, Councillor Liz Bryant, on the following grounds:

- The extent of the work required by the original conditions is unnecessary;
- Other similar entrances exist in the area;
- There will be no adverse highway or environmental impacts if the conditions are varied.

1. Purpose of Report

To consider the recommendation that the application be refused planning permission.

2. Report Summary

The key issue for consideration is whether the proposed development would have an adverse impact on highway safety.

3. Site Description

The application relates to a vehicular access on the northern flank of the A3102 road at Westbrook near Bromham, which serves the private stable complex belonging to the applicant. When travelling from Devizes on the A342 turn left onto the A3102 (signposted towards Melksham) at the Collins Farm Shop. The site lies on the right hand side after

approximately 200 metres. The conditions in question were imposed when planning permission was granted by the committee for a stable block, ménage and parking area on the site. This permission has been implemented and the stables and ménage are present on the site.



Site Location Plan

4. Planning History

E/09/0992/FUL – ‘Change of use of land from agriculture to equestrian. Erection of stables and a ménage together with parking area for horse box and vehicles’. Planning permission refused on 15th September 2009 as the proposal would be harmful to the character and appearance of the area.

E/09/1558/FUL – ‘Change of use of land from agriculture to equestrian. Erection of stables and a ménage together with parking area for horse box and vehicles (resubmission of E/09/0992/FUL)’. The application was presented to the East Area Planning Committee on the 14th January 2010 with a recommendation to refuse planning permission for the following reasons:

“The proposed stable block, manège and parking area would, by virtue of their siting and resulting prominence in the landscape, the size of the stable block and the need for regrading to construct the manège, be harmful to the character and appearance of the area. Furthermore, the hardcore entrance apron is visually intrusive due to its excessive size and the nature of the materials used in its construction. As such, the proposals are contrary to Policies PD1 & NR7 of the Kennet Local Plan 2011 and Supplementary Planning Guidance contained in the Kennet Landscape Conservation Strategy.”

The Planning Committee resolved that planning permission be granted, subject to eight conditions, for the following reasons:

“The decision to grant planning permission has been taken on the grounds that the proposed development would not have any adverse impact on the character and

appearance of the area, and would be in accordance with policies NR7 & PD1 of the Kennet Local Plan.”

Planning permission was therefore issued on the 14th January 2010 and it has subsequently been implemented, although in breach of conditions 3 and 4 imposed on the planning permission by the committee.

Prior to the submission of application E/09/1558/FUL, a sizeable hardcore entrance apron was created without planning permission using crushed building materials. During the assessment of application E/09/1558/FUL the Council's Highway Officers indicated that the access was unnecessarily large and the use of loose demolition material was considered unsatisfactory. As such, conditions 3 and 4 of planning permission E/09/1558/FUL, as outlined below, were imposed by the committee to ensure the vehicular access was brought up to the required standard to ensure no detriment to highway safety on this 'A' Class road.

- 3 No part of the development hereby permitted shall be first brought into use until the existing roadside kerbs across the entire access position have been replaced with lowered bull nose kerbs at 20mm upstand.*
- 4 No part of the development hereby approved shall be first brought into use until at least the first 7.5 metres of the access from the carriageway have been surfaced in a well bound consolidated material (not loose stone and gravel).*

Despite numerous requests and discussions with the Planning Enforcement team the conditions have not been complied with and the Council therefore served a Breach of Condition Notice. The notice has not been complied with and further legal action is being considered.

5. The Proposal

The applicant's Planning Supporting Statement recognises that conditions 3 and 4 of planning permission E/09/1558/FUL have not been complied with and outlines that the purpose of this application is to address this matter by applying to vary the wording of these two conditions. The following wording is proposed:

- 3 The existing reduced height roadside kerbs across the entire access mouth shall be retained in perpetuity.
- 4 Within two months of this permission the first two metres of the access from the carriageway edge shall be resurfaced in a well bound consolidated material (not loose stone or gravel).

6. Planning Policy

The National Planning Policy Framework with particular regard to Chapters 4 'Promoting Sustainable Transport' and 7: 'Requiring Good Design'.

The Kennet Local Plan 2011 (saved policies) with particular regard to policies PD1 'Development & Design' and NR7 'Protection of the Landscape'.

The Wiltshire Core Strategy submission document does not yet carry significant weight however its policies are a material consideration, in particular Core Policy 60 'Sustainable Transport' and Core Policy 62 'Development Impacts on the Transport Network'.

7. Consultations

Bromham Parish Council – Support the proposal.

Wiltshire Council Highways – Object and recommend that planning permission be refused. Detailed considerations raised by them are examined in section 9 below as this is the key issue in this application.

8. Publicity

The application has been advertised by way of a site notice and consultations with the neighbours. No observations have been received as a result of the publicity.

9. Planning Considerations

The key issue for consideration is whether the proposed development would have an adverse impact on highway safety.

The Council's Highway Officers outlined that if an access is made without lowering the roadside kerb vehicles have to slow down unnecessarily to enter a site which causes a delay and unsafe manoeuvring for traffic on the road. As members will be aware, any person requiring a crossing onto a highway (eg to access a newly created drive) require consent from the Council and have to put in properly constructed drop-kerbs.

In this case, no drop-kerbs have been installed. Instead, the creation of the access under consideration has involved the illegal grinding down of the existing full-height roadside kerbs, which belong to the Highway Authority, without consent to do so (It is illegal under Section 131 of the Highways Act to damage a highway). This work has both weakened and damaged their structure and has made them unsafe. There is a British Standard for road side kerbs BS7263. By grinding down the kerbs, there are now kerbs in use on the public highway that do not meet the British Standard, It is not possible to forecast every possible accident situation that could possibly arise, but it remains the case that if an accident does occur and it is found that non British Standard materials are in use on the highway and that their use has been accepted by the Highway Authority the Council could be found to be liable.

The Council's Legal Officer has further advised that action should be taken as soon as possible to mitigate any liability to the Council. If the Council approve this application, the kerbs that are in a dangerous condition will still require replacement, but the costs will then fall onto the Council as it is not acceptable to leave the kerbs in a dangerous condition and so the Council will have to carry out the work. In planning terms, this is unacceptable as the cost of doing necessary works to enable a development to safely take place should fall on the developer.

Officers have attempted to negotiate with the applicant, initially through his agent, and then following the resignation of his agent, directly with him, with a view to seeking his agreement to replace the kerbs as required by the condition and amend the application to relate solely to the extent of the tarmac access, but he has refused and wishes the application to be determined as put forward.

The lack of a well-bound consolidated surface to the access has exacerbated the situation by allowing water to form puddles on the access which overflow causing water to be

channelled to what remains of the kerbing causing further deterioration and not benefiting from proper drainage.

Furthermore, the area up to the hedgeline, which is set back approximately 3m from the roadside kerbs, forms part of the highway. The kerbs have been damaged and are now structurally unsound and unsafe and an accident at this location could lead to the Highway Authority being held liable for damages e.g. if a motorcyclist struck the ground off kerb edge it would cause greater injury than a rounded bull nosed edge. The ground off kerbs not being a standard rounded bull nose designed for roadside use could also damage car tyres leading to a dangerous tyre blow-out.

The applicant is of the opinion that although the reduced height kerb stones are not of the standard bullnose design they provide the required functions and are considered adequate for the limited use the access receives. In addition, the agent is also of the opinion that the 7.5m of consolidated access required by condition 4 is excessive and believes that two metres of hard-surfacing is of sufficient length to ensure no material will be brought onto the public highway. It is proposed that the remainder of the access would be compacted soil.

The required 7.5m of consolidated access is the normal highway requirement for accesses of a commercial nature including agriculture accesses due to the greater likelihood of mud and gravel within the site and the heavier vehicles using the access, all of which if there is not an adequate 7.5m distance will lead to mud and gravel being carried onto the carriageway to the severe detriment of highway safety. The access under considerations is used to access agricultural land and the private stable complex belonging to the applicant and therefore a 2m strip of consolidated material is not considered acceptable. The road is an 'A' class road subject to a 60mph limit, and next to the access vehicles are braking for the junction, which means that if the full 7.5m consolidation is not achieved there is a strong likelihood of dangerous conditions which the Council as highway authority would be held liable for.

The applicant believes that the rewording of the two conditions balances the need for the access to be safe but without rigidly applying standard conditions where the specific circumstances do not require such an approach to be adopted. However, for the reasons outlined above, the Council's Transportation department does not agree with the applicant's assertion that the rewording of conditions 3 and 4 will not give rise to any adverse impact in respect of highway safety.

It is considered that until the conditions have been complied with the access poses a danger to highway safety. The purpose of the conditions is to ensure the new access is properly laid out without compromising the stability of the existing highway, and to ensure vehicles can emerge to and from the highway in a safe and efficient manner.

Complying with the current conditions is therefore important to ensure no detriment to highway safety, but also rectify the works which have been carried out to date, which have weakened and damaged the highway.

10. Conclusion

The application relates specifically to the vehicular access which serves the private stable complex belonging to the applicant. The access benefits from planning permission E/09/1558/FUL. However it has not been laid out and constructed in accordance with conditions 3 and 4 of the permission. The access at present does not comply with highway

standards and the works carried out have damaged and weakened the highway. In order to ensure no detriment to highways safety, the Councils Highway Officers are of the opinion that conditions 3 and 4 of planning permission E/09/1558/FUL should be fully complied with and should not be varied.

Until the access is laid out in accordance with the conditions the Council as highway authority will be liable for any damages which result from the dangerous conditions posed by the current access. As such, should planning permission be granted to vary the conditions the Council may have to pay for the necessary works to be carried out to rectify the illegal damage done to the highway.

In light of the above, it is considered that the proposed development is in conflict with both national and local planning policy and if approved would pose a danger to highway safety. It is therefore recommended that planning permission be refused.

RECOMMENDATION

That planning permission be **REFUSED** for the following reasons

1. The proposed variation of conditions 3 and 4 of planning permission E/09/1558/FUL would result in an adverse impact on highway safety. The conditions as originally worded are necessary to ensure no detriment to structure of the existing highway, and to ensure vehicles can safely enter and exit the application site without detriment to the free flow of traffic and highway safety along the A3102 road. The proposed development would therefore be contrary to saved policy PD1 of the Kennet Local Plan 2011 and Core Policies 60 and 62 of the emerging Wiltshire Core Strategy.