

**APPEAL BY MR M. S. COLE AGAINST THE DECISION OF THE COUNCIL TO REFUSE PLANNING PERMISSION FOR THE CONVERSION AND ALTERATION OF AN EXISTING DISUSED TELEPHONE EXCHANGE INTO A SINGLE DWELLING AT THE FORMER GPO EXCHANGE, BLORE ROAD, HALES**

<b><u>Application Number</u></b>	<b>16/00629/FUL</b>
<b><u>LPA's Decision</u></b>	<b>Refused by delegated authority on 16 September 2016</b>
<b><u>Appeal Decision</u></b>	<b>Appeal Dismissed</b>
<b><u>Costs Claim</u></b>	<b>The LPA made a costs claim against the appellant which was refused</b>
<b><u>Date of Appeal Decision</u></b>	<b>1<sup>st</sup> February 2017</b>

The Inspector considered the main issues in this appeal to be the impact of the proposal on highway safety; and the effect on the character and appearance of the area, with particular regard to a visually significant oak tree.

In dismissing this appeal the Inspector made the following comments:

*Highway Safety*

- The appeal scheme proposes a new point of access on to Blore Road. The Highway Authority has requested visibility splays of 45m in both directions be provided in order to ensure that safe and suitable access to and from the proposed dwelling could be achieved.
- The appellant's traffic report acknowledges that the proposed visibility splays would not fully comply with relevant design standards. Indeed, the actual visibility splays proposed would be approximately 2m x 4m to the west and 2m x 17m to the east.
- Whilst the hedgerow along the front of the site would be removed as part of the proposal, the site frontage is narrow. The hedgerow on neighbouring land is tall and extends in a linear pattern for a considerable length in both directions. Vehicles emerging from the proposed access into the road would have severely restricted views in both directions due to the length and height of the hedgerow. It would be necessary for drivers to enter on to the highway in order to get a good line of sight so as to judge whether it would be safe to pull out of the proposed access safely. This would result in part of the vehicle obstructing the road whilst the driver executed this manoeuvre.
- Although the road may be lightly trafficked and relative vehicle speeds may be lower than the 60 mph permitted, a car entering the highway unexpectedly at this point would result in a potential risk to other road users including cars, cyclists and pedestrians, as this would be an unexpected manoeuvre in a confined, narrow country road. Whilst the appellant's report states that drivers travelling along the road may be able to see a vehicle at the site access, this relies on the driver of that vehicle doing so and having to predict that the car may exit the site and to undertake necessary avoidance measures. This would clearly be an unsatisfactory and unsafe situation.
- The appellant has submitted plans at appeal stage which show the proposed building reduced in size in order to provide a larger parking and turning area. The Inspector considered that even if she were to take account of this plan, she was not satisfied that a second vehicle could enter the site and have the space to manoeuvre within it so as to exit onto the highway in a forward gear. In the event that future occupants had more than one vehicles or visitors to the dwelling arriving by car, it would therefore be necessary for vehicles to reverse out of the site into the highway. A vehicle reversing onto the highway at this point would give rise to highway safety concerns as given the restricted visibility of the site access, this manoeuvre would be likely to be particularly hazardous to both the driver of the vehicles itself and other road users.

- Accordingly, on this main issue it was concluded that the development proposed would be harmful to highway safety with particular regard to access and on-site parking provision. The proposal would therefore conflict with policy T16 of the Council's Local Plan which seeks to ensure that development should provide adequate access space.

#### *Hedgerow and visually significant trees*

- Taking account of the plans submitted, including those at appeal stage, there appears to be a difference between the visibility splays and root protection area for the oak tree. Part of the visibility splay would pass through the RPA as shown on the plans submitted. The visibility splays would need to be kept free from obstruction and it is not clear whether it is proposed to remove earth along with the hedgerow in order to maintain the visibility splays that would need to be provided to ensure a safe and suitable access.
- The visibility splays as shown would be likely to require some alteration of ground levels within the RPA for the oak tree as shown. Digging in the RPA area would risk damaging the established root system of the oak tree which would be likely to affect the health and longevity of the tree inevitably leading to its eventual loss or severely limiting its natural life span. The loss of the oak tree would be harmful to the visual amenity of the area as it is a significant structural feature that makes a highly positive contribution to the rural character of this part of the village.
- The development proposed would be harmful to the character and appearance of the area, with particular regard to the visually significant oak tree. Whilst the appeal scheme may not directly propose the removal of the oak tree, damage to its roots over time would be likely to result in its eventual loss and the curtailment of its natural life span.

#### *Other matters*

- It is acknowledged that there are elements that weigh in favour of the appeal proposal. These include that the previous Inspector concluded that the proposal would not be an isolated form of development for the purposes of paragraph 55 of the National Planning Policy Framework (Framework) and would support the social activities in the village, helping to maintain the vitality of the community. The proposal would also see the re-use of an existing building and would result in the creation of an additional dwelling. These are matters that weigh moderately in favour of the appeal scheme due to the small scale nature of the development proposed.

#### *Conclusion*

- Drawing matters together, the proposal would be harmful to highway safety, with particular regard to the provision of suitable visibility splays and on-site parking provision. Additionally, the provision of the required visibility splays would be likely to conflict with the requirement not to alter ground levels within the RPA of the visually significant oak tree and this would be likely to be harmful to the long term health and vigour of the tree. This harm does significantly and demonstrably outweigh the benefits identified.

#### **Application for the award of costs against the appellant**

In refusing the application the Inspector made the following comments;

- The Council have referred to the planning history of the appeal site which includes four planning applications for residential development, all of which were refused by the Council for reasons including highway safety and the effect on visually significant trees. One of those applications was the subject of an appeal in 2016 which was dismissed on the basis of the Inspector's concerns relating to highway safety and the effect of the proposal on a visually significant oak tree.

- Planning Practice Guidance (PPG) indicates that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal has no reasonable prospect of succeeding. It goes on to list examples of where this may occur, including where the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period.
- The appeal proposal differed from the previous scheme in that it was accompanied by this additional evidence, thereby seeking to overcome the previous Inspector's concerns. On that basis, it is concluded that circumstances had materially changed and it was reasonable of the appellant to re-submit the application and appeal against the Council's decision so as to test the evidence at appeal.
- Accordingly, unreasonable behaviour leading to wasted expense has not been demonstrated. For the reasons given above, the application for an award of costs is refused.

### **Recommendation**

**That the decisions be noted.**