

5 DMSE/092748/F - PROPOSED SINGLE TRACK VEHICULAR ACCESS. VARIATION OF CONDITION 7 OF PLANNING PERMISSION DCSE2007/3932/F AT THE PLOCK, SOLLERS HOPE, HEREFORDSHIRE, HR1 4TF.

For: Mr and Mrs Jones per Mr and Mrs C Jones, Little Ow Farm, How Caple, Hereford, HR1 4TF.

Date Received: 26 October 2009

Ward: Old Gore

Grid Ref: 360805,232097

Expiry Date: 21 December 2009

Local Member: Councillor BA Durkin

1. Site Description and Proposal

- 1.1 The site lies to the northeast of the B4224, between How Caple and the C1298 to Sollers Hope. The land is used for agricultural grazing and a building is sited upon it. Opposite the site, on the other side of the road there are residential barn conversions and The Falcon House, which is a Grade II listed building, which is partially used for bed and breakfast accommodation. The site and surrounding area fall within the Wye Valley Area of Outstanding Natural Beauty.
- 1.2 Within the site the land levels rise from the road to the northeast. A hedgerow defines the roadside boundary. There is a wide, grassed highway verge between the site and the carriageway. In the western corner of the site there is an existing gated vehicular access onto the B4224. A public right of way runs along the northwestern boundary.
- 1.3 Planning permission was granted in February 2008 to provide a new vehicular access to the southeast of the existing access. This planning permission was conditional. Of particular relevance to this application is condition 7, which states that '*Prior to the first use of the access hereby approved the existing vehicular access, in the western corner of the site, onto the B4224 shall be permanently closed in accordance with details set out in the applicant's Design and Access Statement.*' In essence this requires the removal of the existing gate and planting of a native hedgerow. The stile providing pedestrian access to the public right of way would remain. Following the grant of planning permission and the commencement of development in respect of the new access, the applicant advised the Council that it had been discovered that a private right of way exists over the land and utilises the existing access. This private right of way allows the Third Party, and successors in title, to pass and re-pass over a strip of the application site (including use of the existing access) for the purposes of hauling timber. In light of this the applicant could not meet the requirements of condition 7 and permanently close the existing access. In September 2008 an application was submitted to vary condition 7, to prevent the applicant from using the existing access. This would have resulted in the applicant using the new access and the Third Party using the existing. Planning permission was refused, because it was considered that the potential use of the two accesses this would not ensure the safe use and free flow of the B4224.
- 1.4 Planning permission is now sought to vary condition 7 of the original planning permission and the submission is supported by a Unilateral Undertaking from the applicants to the Council. This sets out requirements that the applicant will undertake to meet if planning permission is granted. In summary these are that the applicants will give the Council reasonable notice of the Third Party's commencement and cessation of the use of the existing access and that during the

period of use by the Third Party the applicants will cease use of the new access and during this time they will use the existing access.

2. Policies

2.1 Planning Policy Statement

- PPS1 - Delivering Sustainable Development
- PPS7 - Sustainable Development in Rural Areas

2.2 Herefordshire Unitary Development Plan 2007

- Policy S1 - Sustainable Development
- Policy S2 - Development Requirements
- Policy DR2 - Land Use and Activity
- Policy DR3 - Movement
- Policy E13 - Agricultural and Forestry Development

3. Planning History

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|-----|-----------------|--|------------------------------|
| 3.1 | DCSE2007/1627/S | Agricultural building for storage of fodder and machinery | - Prior Approval
12.07.07 |
| | DCSE2007/2719/F | Single track vehicular access to agricultural land | - Withdrawn
24.09.07 |
| | DCSE2007/3932/F | Proposed single track vehicular access to agricultural land (to replace existing sub standard access) | - Approved
06.02.08 |
| | DCSE2008/2243/F | Amendment to condition 7 of approved planning application DCSE2007/3932/F - the existing access shall be permanently closed prior to the first use of the new approved access. | - Refused
24.10.08 |

4. Consultation Summary

- 4.1 Traffic Manager: The application offers the best solution to a situation which is not ideal and which prevented the implementation of the previous application.
- 4.2 Public Right of Way Manager: Does not affect the Public Right of Way.

5. Representations

- 5.1 The applicant has submitted a Unilateral Undertaking and Supporting Statement, which set out the obligations that the applicants are prepared to comply with and the background to the application, respectively. Furthermore, the applicants' solicitor has provided a letter in response to the letter from the Third Party's solicitor's letter objecting to the proposal. In summary these state:
- The gate to the existing access will be kept closed at all times, except whilst in use by the Third Party, in accordance with the terms of their right of way.
 - The applicants will give reasonable notice of the start and finish times of any proposed or actual use of the existing access by the Third Party (or successors in title)
 - At all times when the existing access is in use by the private right of way holder, whether notice of such use is given by the applicants to Herefordshire Council or not, the applicants will only use the existing access to their field at The Plock and not to use the new access.

- The unilateral undertaking does not restrict the Third Party right of way over the land, the solicitor's letter is factually and legally incorrect. The right of way is completely unaffected.
 - The applicants, who live in close proximity to the site, will monitor usage of the existing access by the Third Party and convey all reasonable notice that can be given.
 - Unilateral undertaking does not require the Third Party to give notice of proposed use of the access, in compliance with the right of way.
- 5.2 Sollers Hope Parish Council: It's clear that an agreement has not been reached between the Jacksons (who have right of way through the existing access) and the Jones' (landowners). The Parish Council feels only able to support this application once the issues between the two parties have been fully resolved.
- 5.3 Three letters of objection have been received from Mr and Mrs Glover, Falcon Field, How Caple, Higgs and Sons Solicitor's on behalf of Mrs Jackson, Rock Farm, Sollers Hope and Mr Jackson, The Rock, Sollers Hope. The main points raised are:
- Two accesses opposite my property (Falcon Field and Falcon Nest) are unacceptable, whatever the restriction.
 - Lack of discussion between the parties involved.
 - Unilateral undertaking developed by the applicant/solicitors, and the Council requires investigation. Short time scale for consultation does not allow this. Time scales should be extended.
 - Concern over Council's effective communication and methods of problem solving with affected parties.
 - Mr and Mrs Jackson advised us (Mr and Mrs Glover) that they communicated their rights of way to the applicants on 22 January, prior to the planning permission.
 - The third parties right of access is unrestricted. No obligation to notify the applicants of intention to use the existing access.
 - How would the applicants know when to close the gate? As such the undertaking cannot be fulfilled.
 - Third Party approval has neither been sought nor given for this new arrangement. Third Party will not accede to the restrictions imposed by the undertaking.
 - Unable to support as will control how the existing right of way is used. Concerned that the applicants can implement a unilateral undertaking without agreement from those who have the right to use the existing access under the 1971 conveyance.
- 5.4 Fifty-three letters of support have been received, from local residents, people who state that they frequently use the B4224 and Paul Keetch MP. In summary the points raised are:
- Use of the new access is essential for the road safety of the applicants and the general public who use the B4224.
 - This proposal is a sensible approach to resolve this problem and allow simultaneous use of the existing and new access.
 - The new access is far safer than the existing, so this application should be supported, as it would allow the applicants to use the new access.
 - This greatly affects the livelihood of the applicants.
 - Proposal would ensure the safe use and free flow of traffic using the road.
 - Common sense should prevail and allow the use of the new access.
 - The old access is preserved as one of two timber extraction routes from Birchwood, and of the two routes available this is the least desirable, being steeper and having nowhere to stack timber.
 - As a neighbouring landowner, I feel that the applicants have acted decently, honestly in the best interests of the environment and the community and feel they are being unfairly discriminated against.

- I spoke in favour of the original application at Committee and whilst this proposal is not as safe I have no objection if it will allow the applicants to continue to farm in the responsible and careful manner we have come to expect from him (Mr Day, The Falcon House).
- Agreement is a sensible solution and I offer up my full support (Paul Keetch MP).

The full text of these letters can be inspected at Planning Services, Garrick House, Widemarsh Street, Hereford and prior to the Committee meeting.

6. Officer's Appraisal

- 6.1 The issue to be considered is whether the variation of condition 7 of planning permission SE2007/3932/F, in accordance with the terms of the Unilateral Undertaking, would control the use of both accesses at the site satisfactorily in the interests of highway safety.
- 6.2 The Unilateral Undertaking states that the applicants will adhere to the following, if permission is granted:
- Will give reasonable notice of the Third Party's use of the existing access to the Council.
 - Upon use of the existing access by the Third Party, the applicants will cease use of the new access (whether they have provided notice to the Council, or not).
 - While the Third Party is using the existing access, the applicants will only use the existing access.
 - When the Third Party stops using the existing access, the applicants will use the new access.

The Unilateral Undertaking places no burden or requirements on the Third Party. In practice they will be able to use the existing access in accordance with the terms of the 1971 conveyance. Use by the Third Party would be readily evident, being for timber haulage. The objections are noted, however, they appear to be based on a misunderstanding of the requirements of the Unilateral Undertaking. Being 'Unilateral' the undertaking only places requirements on one party. The gate will not be locked, but rather shut, as it is presently, and as is necessary by virtue of there being livestock in the field.

- 6.3 Although the proposal does not prevent the use of the existing access as per planning permission SE2007/3932/F, the amended proposal, would prevent the applicants using the new access at the same time as the Third Party is using the existing access. In essence this would prevent dual use of the accesses, which would not be acceptable in highway safety terms, given their proximity to one another and the dangerous position of the existing access on a bend in the road. Moreover, when the Third Party is not using the existing access the applicants can use the new access which is safer in highway terms. It is, therefore, considered to be an acceptable solution to the existing circumstances.
- 6.4 Having assessed the revised wording of condition 7 and the Undertaking, in light of Circular 11/95 – The Use of Conditions in Planning Permissions, it is considered that the proposal complies with tests of the validity of conditions. In particular the condition is necessary to control concurrent use of the two accesses, it would be relevant to planning and the development proposed and is precisely worded. The revised condition would be reasonable, as it places no burden on the Third Party or unreasonable obligation on the applicants. Turning to enforceability it is considered that the Council would be able to monitor use of the accesses effectively and take action if required, either through the notice given by the applicants of the use of the existing access or from local residents.

RECOMMENDATION

That planning permission be granted subject to the following condition:

- 1 The existing vehicular access, in the western corner of the site on to the B4224 and the new vehicular access as authorised under planning permission DCSE2007/3932/F shall be used only in accordance with the provisions of the Deed of Unilateral Undertaking given by the Applicants to the County of Herefordshire District Council, as submitted with the planning application.

Reason: To ensure the safe and free flow of traffic using the adjoining County highway.

INFORMATIVES:

- 1 N15 Reason(s) for the Grant of Planning Permission
- 2 N19 Avoidance of doubt - Approved Plans

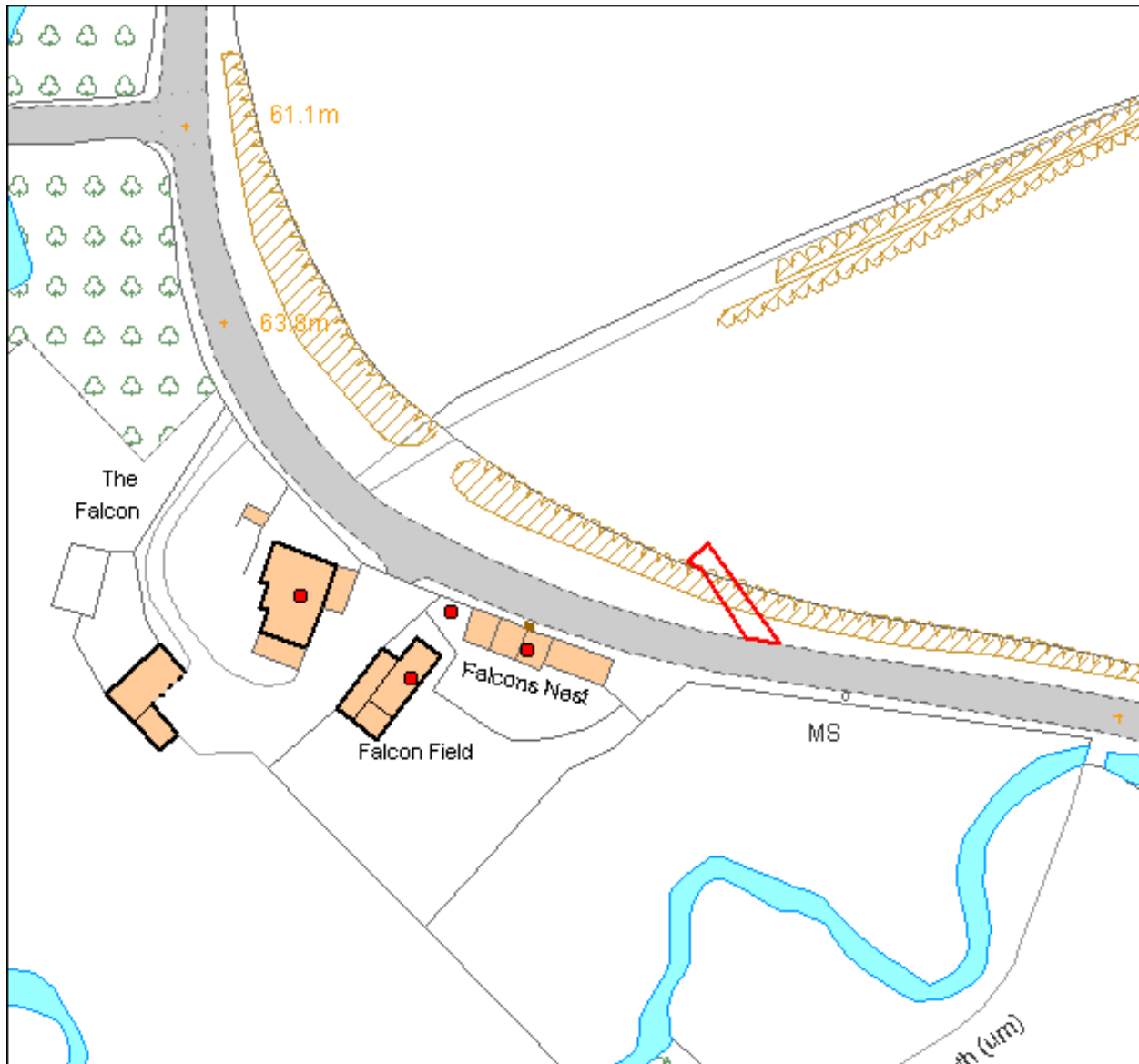
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



Scale

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APPLICATION NO: DMSE/092748/F

SITE ADDRESS : THE PLOCK, SOLLERS HOPE, HEREFORDSHIRE, HR1 4TF

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