

Hamish Evans

From: [REDACTED]
Sent: 19 October 2023 08:09
To: Hamish Evans
Subject: Comments on application DM/23/2493

[REDACTED]
Dear Mr. Evans,

I would like to comment on the above application. In the first instance, I wish to only comment on the question of visibility splays. I may comment further in due course on other aspects of the application.

I am the immediate neighbour to the West of Acacia Grove. It has long been established that in order to create acceptable visibility splays at Acacia, part of my land must be included in those splays. It is a matter of fact that no such agreement exists between me and the landowner/applicant for the use of these displays.

On 26th September 2023 Newsteer Real Estate Advisers in support of the application summarised the progress of a prior application 14/00571/FUL as having been refused on reconsideration after quashing by Judicial Review. They stated *'The application was then refused as officers considered that the visibility splays (sic) at the entrance to the site were not sufficient for the 'slow moving' vehicles that would be exiting the site'*. This statement is both an oversimplification and is also disingenuous as it tries to imply that cars will not present similar visibility splay issues as they will not be slow moving.

The requirements for visibility splays are laid out in the Design Manual for Roads and Bridges, which does not make reference to the types and speeds of vehicles on the minor road, but simply defines the requirements in terms of the speed limit in force on the major road and a distance along that road where visibility splays should be maintained. In the case of a 50mph road, these distances are 160m in both directions regardless of vehicle types.

I believe that this application, like any similar application, will need to include acceptable visibility splays within the 'red line'. Further, the applicant will be required to demonstrate that he has control of any land used in the visibility splay so as to be able to ensure that the visibility splay can be maintained.

As those visibility splays will include land that I own, a legally binding agreement between myself and the applicant will need to be in place.

Application 14/00571/FUL failed because the applicant failed to make a visibility agreement splay with me, and I stated that if such a visibility splay agreement was not in place before a planning consent was granted that I would not take part in any further negotiations while that permission was extant. This made any possible contingent Condition within a Permission unlawful as it would not have been enforceable. Had the LPA proceeded to issue the Permission, I would have taken action for JR on that basis.

The current applicant is not the same applicant as in 14/00571/FUL. It may well be the case that this applicant will wish to negotiate a visibility splay agreement before a Permission is granted. But for clarity, I will state again that if no visibility splay agreement is in place at the time of a Planning Permission being granted, I will refuse to negotiate any further while that Permission is extant. Should a Permission be granted with a Condition that requires the future provision of visibility splays then I will seek Judicial Review to quash the permission on the grounds that such a Condition is unenforceable and therefore unlawful.

For information and background, I enclose an email submitted during the consideration of 14/00571/FUL which further references West Sussex Highways correspondence.

Best Regards,

[REDACTED]
Heathy Ridge

Copthorne Road

Copthorne

RH10 3PD

Enc. Email relating to 14/00571/FUL:

[REDACTED]
Sent: 06 January 2015 16:28

To: Steven King (Steven.King@midsussex.gov.uk)

[REDACTED]
Subject: Application 14/00571/FUL - comments on recently posted documents

Dear Steven,

I would like to submit comment on some of the recently posted documents relating to the above application.

In his email to you on the 22nd December 2014, [REDACTED] suggested that as the proposed entrance would be closer to my land that "this will help with the visibility". I would challenge this, and suggest that as the entrance is moved closer to the west the tangent line to the curve in the road will pass deeper into my land.

Highways comments in [REDACTED] memo of 24th December 2014 confirm the fact that that visibility splays cannot be achieved within highway land or that under the control of the applicant, and obviously I welcome that input. However, I cannot agree with his conclusions in paragraph 3 that it would be "difficult to resist the continued use of this access". [REDACTED] appears not to have taken into account that the applicant is already in breach of condition 2. placed in permission 09/01915/FUL 10th February 2010:

"within 6 months of the date of this permission the existing access shall be reconstructed in accordance with plans and details to be submitted to and approved by the Local Planning Authority. These plans and details shall include the recommendations of the Stage One Safety Audit as appropriate".

Therefore, at the very least, I think Highways would have to acknowledge that the baseline for assessing whether the currently proposed development would represent an intensification would have to be set at the legal level of usage prior to the illegal intensification of usage that occurred with the illegal development that took place on the site! Put more plainly, the access has never been improved since the time the site had relatively light car traffic visiting Browns accident repair centre. To allow the applicant to argue that intensification of usage first carried out illegally and then in breach of condition should form the baseline for assessing further intensification of usage now would reward the applicants failures to comply with the planning process. Of course the statement that it would be "difficult to resist continued use of this access" is also factually incorrect. The council is at liberty to enforce condition 2. of permission 09/01915/FUL 10th February 2010 and has a full range of powers under Section VII of the Town and Country Planning Act 1990.

I would also point out that the *actual* visibility splay currently used by vehicles leaving Acacia *does* cross my land and this is self-evident to anyone using the access. I currently keep that area of my land cleared *voluntarily* and if I so wished could make it impossible for vehicles to leaving Acacia to see more than about 12m west by planting a new

hedge. So at best the applicant could only argue that there is no intensification and therefore deterioration in safety if he could also demonstrate that he has continued and guaranteed usage of the visibility splay. And of course he cannot without reaching an agreement with me.

I would also like to point out that an argument cannot be put forward by the applicant that there is a *de facto* requirement for me to keep the visibility splay area clear for my own usage and that he can rely on this to maintain the existing visibility. It is feasible for me to seek to use the entrance onto Copthorne Road currently shared by Deep Acre and Dash Wood, and therefore I could plant a screening hedge onto the land currently in question. This would render the current entrance from Acacia unusable from a road safety point of view.

Of relevance in this context is the fact I improved the visibility for Acacia *voluntarily* by removing the existing hedge that had been damaged severely during an accident on the morning of 14th December 2007 when a car travelling East swerved onto my land to avoid a vehicle leaving Acacia. The car damaged the hedge, and demolished a brick built entrance post. The police attended and so this incident is a matter of public record. I have attached a photograph taken that morning.

I also would like to take this opportunity to make clear again that I am happy to sit down with the applicant or his agent and negotiate a comprehensive agreement regarding the boundary that would include the land required for the visibility splay. This has been my position all along. However, I am not prepared to leave the offer open indefinitely. **I have now decided that I will not cooperate any further with the applicant should a planning consent be granted with a 'condition 13' or similar. If the application is granted permission without a negotiated agreement being in place with me then there never will be an agreement. And I would ensure any successors in Title to me would maintain that position by the use of a restrictive covenant in the conveyance of Heathy Ridge.** Hopefully this will clarify for the council that the use of a condition would not be legitimate in this case as there is no possibility of that condition ever being met.

For information, I also attach a copy of a plan from the Title to Heathy Ridge. It is completely in agreement with the Highways drawing submitted by the applicant in that it shows my ownership following the road edge. That we own up to the metal is perhaps unusual, but was I understand a consequence of road widening some years ago. It can be seen that the drawing shows the road very much more narrow than it is now.

Best Regards,


Heathy Ridge
RH10 3PD