

BUDLEIGH SALTERTON                      33/00510  
(Enforcement)

Applicant:                                      Mr P Fleming

Location:                                        Clyst Haven, Knowle Road

Planning Breach:                              Construction of unauthorised access

### **Consultations**

#### **Local Highway Authority**

21.04.05 - I confirm that Knowle Road is shown on our records as an unclassified County Road. I also confirm that being sited on a bend the newly constructed access is not visible to vehicles approaching from the west and has restricted visibility for drivers of emerging vehicles. I have recommended this access be re-sited adjacent to and in combination with the existing access at the eastern end of the frontage and visibility improved.

#### **Town Council**

To be reported orally at Committee.

#### **Ward Members**

To be reported orally at Committee.

### **Background**

The owner of Clyst Haven is endeavouring to obtain planning consent for an additional dwelling in his curtilage and two applications for the same have been refused under delegated powers, and are now the subject of appeal. As part of the process of securing at two properties with two separate entrances, an access has been constructed by the site owner by removing part of the hedge on the road boundary – see attached photos.

Planning consent is granted for certain classes of development by The Town and Country Planning (General Permitted Development) Order 1995 provided specified conditions are met. If these conditions are breached, then planning permission is required.

The formation, laying out and construction of a means of access to a non-classified road is not required, provided that the development is associated with other permitted development (for instance a drive) but is not permitted if the development “creates an obstruction to the view of the persons using any highway used by vehicular traffic, so as to be likely to cause danger to such persons.”

The new access has been created on the point of a bend and local residents have claimed that several near accidents have been caused as vehicles travelling around the bend are unexpectedly confronted with vehicles exiting from the access, slowing to turn in, and on occasion the owner’s pets walking from the site into the path of oncoming traffic. The Highway Authority’s view is set out above. A Planning Inspector dealt with a recent appeal against the Council’s grant of planning permission with conditions for a new garage at this site. The site owner appealed against condition 1 – see attached Inspector Decision Notice. The Inspector highlights in his paragraph 4 that the new access “due to being adjacent a bend in the road it affords limited visibility for emerging drivers and this is further compounded by it being sited on the brow of a hill”. Further that... “that in the interest of preserving the rural character of the area and the natural beauty of the AONB, and in the interests

of highway safety, that new access should be formed to serve the proposed garage and that the existing access should be used for this purpose”.

The owner’s legal advisers are of the view that as no physical works have taken place which obstruct the view of oncoming traffic, then planning permission is not required. The Head of Legal & Member Services’ advice is that the impact of the use of the access can properly be taken into account in assessing whether it ‘creates an obstruction to the view of persons using any highway... so as to be likely to cause danger to such persons’. Since it is the Local Planning Authority view, having taken into account the Highways Authority observations, that danger is likely to be caused, then in her view the access requires planning permission. She disagrees with the owner’s legal advisor’s interpretation. To interpret the Order as the owner argues would mean unsafe accesses could be constructed and used without the need for planning permission, which is not the intention of the provision.

The owners have been requested to submit a planning application or an application for a Certificate of Lawful Use but have declined to do either, confident that their legal interpretation is correct and that they will secure costs from the Council at appeal.

Given that the access is poorly positioned and is causing problems to the traffic flow, it is believed that an Enforcement Notice should be served to seek the closure of the access. It is possible that the legal argument of the Council could be overturned, but given that the access is dangerous and the owners refuse to submit either a planning application or a Certificate of Lawful Use Development which would resolve this matter, there are no other means of resolving this legal issue.

### **Recommendation**

That the Head of Legal Services be authorised to serve an Enforcement Notice requiring the closure of the access at Clyst Haven.

**Time for Compliance:**                      **3 months**