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## Appeal Decision

Site visit made on 31 October 2016

**by Thomas Bristow BA MSc MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 05 December 2016**

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**Appeal Ref: APP/P2114/W/16/3151599**

**Cooks Castle Farm, St. John's Road, Wroxall, Ventnor PO38 3AA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
  - The appeal is made by Ms Marian Perrott against the decision of the Isle of Wight Council.
  - The application Ref P/01435/14, dated 18 November 2014, was refused by notice dated 3 December 2015.
  - The development is described on the application form as the 'change of use and extension of industrial unit to form an indoor sand school'.
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### Decision

1. The appeal is allowed and planning permission is granted for the change of use and extension of an industrial unit to form an indoor sand school at Cooks Castle Farm, St. John's Road, Wroxall, Ventnor PO38 3AA in accordance with the terms of the application Ref P/01435/14, dated 18 November 2014, subject to the schedule of conditions in this decision.

### Application for Costs

2. An application for costs was made by Ms Marian Perrott against the Isle of Wight Council, which is the subject of a separate decision.

### Preliminary Matters

3. The building to which this appeal relates has already been constructed and I understand is used as an indoor sand school. As such permission is sought retrospectively.

### Main Issue

4. The main issue is whether or not the planning obligation proposed by the appellant is sufficient to bring the development into compliance with policy SP1 'Spatial Strategy' of the Island Plan: The Isle of Wight Core Strategy adopted in March 2012 (the 'Island Plan').

### Reasons

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5. The appeal site falls immediately to the east of a railway embankment a short distance outside of the Wroxall Rural Service Centre settlement boundary defined in the Island Plan and is occupied by a recently extended building of utilitarian form. It forms part of a wider estate comprising various rural-based commercial uses accommodated in a range of functional buildings. It appears that the establish use of the appeal site is industrial, resulting from its former use for vehicle repair and storage.
6. A livery business, Cooks Castle Farm Stables and Cattery Ltd, is located nearby within the estate which can stable up to 28 horses and includes an outdoor sand school. It appears from the information before me that at the time application Ref P/01435/14 was made the livery business was within the same ownership as the appeal site, however is now under separate ownership. Consequently at appeal a revised site ownership plan was submitted,<sup>1</sup> which I am satisfied is purely factual and as such there is no reason to discount it from my consideration.
7. The Council's sole reason for refusal given within their decision notice, dated 3 December 2015, was that the 'application has failed to satisfactorily demonstrate that there is a reasonable local need for development of such a significant scale within the Wider Rural Area for the private recreational use of the appellant.' The Council therefore cited that the development would fail to comply with policy SP1 'Spatial Strategy' of the Island Plan. Policy SP1 establishes that unless a 'specific local need' is identified in support of development which falls outside of defined locations, as is the situation of the appeal site, permission will be refused.
8. However at appeal the Council have explained that they accept that a specific local need has been identified. The Council explain that they have arrived at this position based on information submitted by the appellant at appeal, including evidence related to the benefits of the indoor sand school for the wellbeing of horses throughout the year.<sup>2</sup>
9. Nevertheless the adequacy of the mechanism by which the use of the sand school in connection with the livery business would be secured is disputed. The Council has ventured in this context, and the appellant has agreed, that a planning obligation is necessary to make the development acceptable given that a condition to this effect would fail the tests of precision and reasonableness. There is nothing to lead me to a different position regarding the appropriateness of a suitable obligation in this context having taken account of the approach in the National Planning Policy Framework (the 'Framework') and in the Planning Practice Guidance (the 'Guidance').<sup>3</sup>
10. A copy of a signed unilateral undertaking dated 2 November 2016 is before me (the 'undertaking'). Paragraph 4.1.1 thereof sets out that the owner covenants 'to make available, subject to booking, the indoor sand school for hire by owners of horses kept at Cooks Castle Farm Stables and Cattery Ltd, as

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<sup>1</sup> Plan entitled '545 02'.

<sup>2</sup> As explained in correspondence from the Council to the appellant dated 14 September, which is before me in Appendix B of the Council's appeal statement.

<sup>3</sup> In particular paragraphs 203, 204 and 206 of the Framework, and Guidance Reference ID: 21a-004-20140306.

delineated edged red on Plan B, and all those owners with horses kept within the land edged blue on the attached plan A, but not to the exclusion of hire to owners of horses kept outside of the above mentioned identified areas'. Plan A is that referred to in paragraph 6 of this decision, and plan B the extent of land presently owned by the livery business.

11. However the Council considers that this undertaking is deficient in two respects. The first relates to paragraph 5.6 of the Council's appeal statement, which indicates that in their view the undertaking should have made provision for the Council to 'reassess the need' for the facility in the event that the livery business ceases to operate or no longer requires the use of the indoor sand school. This is expressed as a proposed clause in correspondence from the Council to the appellant.<sup>4</sup>
12. The second matter relates to paragraph 5.7 of the Council's appeal statement, which indicates that in their view the undertaking should 'ensure that the sand school facility continues to be used as detailed in the submitted justification'. This is also expressed as a proposed clause in the correspondence from the Council to the appellant referred to above.
13. It is important at this juncture to refer back to paragraph 7 of this decision. The sole reason for refusal given within the Council's decision notice was that at application stage the development did not demonstrate that there is a 'reasonable local need' for development. There is no indication that material harm would arise from the sand school building or the use thereof in the immediate vicinity, notwithstanding that several nearby residents have raised concerns, particularly as the established use of the appeal site is industrial.
14. With reference to paragraph 8 of this decision, the Council acknowledge that presently there is appropriate justification for the development both in connection with the adjacent livery business and for the wellbeing of horses more generally. Equally the Council do not appear to object to the intended commercial use of the sand school which is not exclusively linked to the livery business.<sup>5</sup> The undertaking clearly makes provision for the use of the indoor sand school in connection with the adjacent livery business and indeed more widely.
15. In this context the Council's first objection to the undertaking essentially seeks to ensure that there is an opportunity to 'reassess' whether the sand school is needed if circumstances change in the future. However this is in my view unreasonable, given that it is dependent on the continued operation of the livery business which is outside of the appellant's control. Indeed the clause proposed to this effect appears unworkable given future scenarios that may arise, for example were the livery business to cease to operate temporarily rather than permanently.<sup>6</sup>

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<sup>4</sup> Dated 12 October 2016, which is before me as Appendix 2 of the appellant's final comments.

<sup>5</sup> There appears to be no objection from the Council to the element of the undertaking which enables the use of the sand school by the 'owners of horses kept outside the above mentioned identified areas', being the livery school and adjacent land, nor to the reference within paragraph 3.26 of the appellant's appeal statement to the intended hire of the sand school for 'livery yard customers and potentially to local riders'.

<sup>6</sup> With regard to paragraph 204 of the Framework.

16. It is not appropriate to require an obligation where a condition could suitably address the relevant matter,<sup>7</sup> and it appears to me that this is relevant to the second area of dispute with the undertaking. There is nothing before me to indicate that a suitably worded condition could not ensure that the sand school remains in use as such, with the Council having recourse to planning enforcement powers in the event that this condition is breached.
17. For the above reasons I therefore conclude that the planning obligation proposed by the appellant is sufficient to bring the development into compliance with the relevant provisions of policy SP1 of the Island Plan, and that it is otherwise compliant with relevant elements of the Framework and the Guidance.

### **Other Matters**

18. The appeal site is also within the Isle of Wight Area of Outstanding Natural Beauty and falls in close proximity to several Listed Buildings. However the Council do not object to the effect of the development with regard to these matters, and there is no evidence before me to arrive at a different assessment.
19. I have taken account of the concerns raised by nearby residents in respect of the potential effects of the development regarding traffic generation, noise disturbance, highway safety, the character and appearance of the area, surface water run-off and indeed regarding the complex manner in which the established uses of Cooks Farm have evolved over time and the cumulative impacts thereof. However these issues do not form part of the Council's case at appeal, and there is nothing in the information before me to indicate that unacceptable effects would arise with regard to such matters. Therefore neither the representations made by nearby residents, nor any other matter, is sufficient to outweigh my finding in respect of the main issue in this case.

### **Conclusion**

20. For the above reasons, and taking all other matters into account, I conclude that the development accords with the development plan taken as a whole and with the approach in the Framework and the Guidance. Subject to the conditions below and the associated undertaking I therefore conclude that the appeal should be allowed.

### **Conditions**

21. It is necessary to impose a condition requiring compliance with the relevant plans supporting the application and to specify that the development permitted shall only be used as a sand school for the avoidance of doubt and in the interests of proper planning. I also agree with the Council that it is necessary to control any external lighting to avoid adverse impacts to surrounding uses. I have altered the wording of certain conditions proposed by the Council without

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<sup>7</sup> As set out in paragraph 203 of the Framework.

changing their aim, and in imposing conditions have had regard to the tests within the Framework and to the Guidance.<sup>8</sup>

*Thomas Bristow*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall be carried out in accordance with the following plans supporting application P/01435/14: 545 02 and 545 03 Rev B.
- 2) The development hereby permitted shall only be used as a sand school and for no other purposes.
- 3) No external lighting shall be installed in relation to the development hereby permitted unless details thereof have been submitted to and approved in writing by the local planning authority (which shall include a layout plan with beam orientation, and a specification for the lighting including their location, height and mounting height, luminaire type and profiles, aiming angles, and baffling measures). External lighting shall only be installed, maintained and operated in accordance with the approved details.

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<sup>8</sup> Paragraph 206 of the Framework and Guidance Reference ID: 21a-004-20140306.