
Appeal Decision

Site visit made on 29 November 2016

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 13 January 2017

Appeal Ref: APP/P2114/W/16/3155274

Wellow Alpaca Stud, Main Road, Wellow, Isle of Wight PO41 0SZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr & Mrs Neil and Michelle Payne, West Wight Alpacas, against the decision of Isle of Wight Council.
 - The application Ref P/01214/15, dated 30 October 2015, was approved on 15 April 2016 and planning permission was granted subject to conditions.
 - The development permitted is the variation of conditions No 7 and 8 on P/01713/12 - TCP/30601/H to allow opening hours of 10:00 hours to 23:00 hours Monday to Sunday including Bank and Public Holidays and to allow mixed use of existing farm shop as farm shop and café.
 - The conditions in dispute are Nos 1 and 2 which state that:
 1. *The building outlined in red on drawing number KC.164/9 shall not be used for other purposes other than those falling within Classes A1 (Retail) and A3 (Cafes) of the Schedule of the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification, without the prior written consent of the Local Planning Authority. All retail goods sold within the building shall be alpaca related craft products or non processed fruit, vegetables and other agricultural or horticultural produce or milk. Other than the light refreshments to be consumed on the premises all other food products sold shall be sourced from Isle of Wight suppliers only.*
 2. *The farm shop/cafe hereby permitted shall not be open to customers outside the following times:
1000 to 2000 hours Monday to Sunday (including Bank and Public Holidays).*
 - The reasons given for the conditions are:
 1. *The land is situated within an area where general retail uses are not normally permitted and to comply with Policy DM10 (Rural Service Centres and the Wider Rural Area) of the Island Plan Core Strategy.*
 2. *To protect the amenities of nearby residential property occupiers and to comply with Policy DM2 (Design Quality for New Development) of the Island Plan Core Strategy.*
-

Decision

1. The appeal is allowed and the planning permission Ref P/01214/15, for the variation of conditions No 7 and 8 on P/01713/12 - TCP/30601/H to allow opening hours of 10:00 hours to 23:00 hours Monday to Sunday including Bank and Public Holidays and to allow mixed use of existing farm shop as farm shop and café, granted on 15 April 2016 by Isle of Wight Council, is varied, by retaining Condition 2 and deleting Condition No 1 and substituting it with the following condition:
-

- 1) The building outlined in red on drawing number KC. 164/9 shall not be used for other purposes other than those falling within Classes A1 (Retail) and A3 (Cafes) of the Schedule of the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification, without the prior written consent of the Local Planning Authority. All retail goods sold within the building shall be alpaca related craft products or non processed fruit, vegetables and other agricultural or horticultural produce or milk, with all food products sold (other than those consumed on the premises), sourced from Isle of Wight suppliers only.

Application for costs

2. An application for costs was made by Mr & Mrs Neil and Michelle Payne, West Wight Alpacas, against Isle of Wight Council. This application is the subject of a separate Decision.

Preliminary matters

3. The application was made under Section 73 of the Town and Country Planning Act 1990 to vary Conditions 7 and 8 of planning application reference P/201713/12-TCP/30601/H, which granted permission for the *"change of use of part of agricultural barn and workshop to form farm shop; parking."* This was approved on 15 April 2016 under reference P/01214/15, with the following description of development:

"Variation of conditions No 7 and 8 on P/01713/12 - TCP/30601/H to allow opening hours of 10:00 hours to 23:00 hours Monday to Sunday including Bank and Public Holidays and to allow mixed use of existing farm shop as farm shop and café. (re-advertised)"

4. A new description of development has therefore been given and four new conditions have been imposed. This has the effect of creating a new and separate planning permission for a mix use shop and café. This appeal and my decision relate to Conditions 1 and 2 of the new planning permission reference P/01214/15.

Reasons

5. Condition 1 restricts the use of the building to Classes A1 (retail) and A3 (café) of the Town and Country Planning (Use Classes) Order 1987. It also includes restrictions that *"all retail goods sold within the building shall be alpaca related craft products or non processed fruit, vegetables and other agricultural or horticultural produce or milk. Other than the light refreshments to be consumed on the premises all other food products sold shall be sourced from Isle of Wight suppliers only."*
6. As explained, the new permission granted by the Council therefore already allows a mixed use of the existing farm shop as farm shop and café. Moreover, the first part of Condition 1 does not require the mixed use to be ancillary to the operation of West Wight Alpacas and does not restrict the relative extent of floor space for each of these uses.

7. The appellant's planning statement explains that the application was made to expand the business and include the sale of hot food. The appeal therefore seeks to remove reference to 'light refreshments' from Condition 1.
8. There is a disagreement between the parties as to why the reference to 'light refreshments' came to be included within the condition. Nevertheless, the Council has acknowledged that Condition 4, requiring details of the existing cooking equipment (which has since been received and accepted) as well as restricting the installation of additional cooking facilities without the agreement of the Council, does provide a level of control over the scale of the café element of the business. Consequently, should I consider it appropriate, the Council do not object to Condition 1 being varied as follows:

"The building outlined in red on drawing number KC. 164/9 shall not be used for other purposes other than those falling within Classes A1 (Retail) and A3 (Cafes) of the Schedule of the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification, without the prior written consent of the Local Planning Authority. All retail goods sold within the building shall be alpaca related craft products or non processed fruit, vegetables and other agricultural or horticultural produce or milk, with all food products sold (other than those consumed on the premises), sourced from Isle of Wight suppliers only.

Reason: The land is situated within an area where general retail uses are not normally permitted and to comply with Policy DM10 (Rural Service Centres and the Wider Rural Area) of the Island Plan Core Strategy."

9. The revised condition suggested by the Council has removed the reference to 'light refreshments' and the appellant has confirmed it to be acceptable. In considering whether it is appropriate to vary the condition as agreed, I note that the inclusion of 'light refreshments' in the final sentence of the condition as existing serves only to remove a restriction on the 'light refreshments' being sourced from Isle of Wight suppliers. It does not restrict the café to serving light refreshments only because other food could be served, as long as the food products used to prepare the meals were sourced from the Isle of Wight. This could not be reasonably monitored and in this regard, the condition is unenforceable. There could also be some ambiguity as to what does and does not constitute 'light refreshments'. The existing condition is therefore imprecise. If it is intended to restrict the use of the café, it is also unreasonable given that planning permission has been granted for a single storey side extension for a solid fuel oven for cooking pizzas, to be eaten only in the café (planning application P/00463/16 refers). Finally, it is questionable as to whether its reference is necessary, given the controls provided by Condition 4, as acknowledged by the Council.
10. The existing wording of Condition 1 does not therefore pass the tests for conditions set out in paragraph 206 of the National Planning Policy Framework (the Framework) and I agree that it should be varied as set out above.
11. The application, which is the subject of this appeal, also sought to extend the opening hours from between 1000 and 1730 hours to between 1000 and 2300 hours. During the course of the application, this was revised to 1000 to 2200 hours, with an additional 30 minutes to allow customers to leave the premises. However, Condition 2, as imposed by the Council, restricts opening times to

between 1000 and 2000 hours Monday to Sunday. The reason for the condition is to protect the amenities of nearby residential property occupiers and to comply with Policy DM2 of the Isle of Wight Core Strategy (including Waste and Minerals) and Development Management Development Plan Document (the Island Plan).

12. The Council's Statement of Case explains that its concerns for the use of the premises beyond those hours relate to noise and disturbance caused by customers leaving the premises during the later part of the evening.
13. I also note that the application and subsequent appeal has attracted a significant amount of representation, both in objection and in support. However, the material considerations of this appeal are restricted to the relatively narrow matters relating to whether Conditions 1 and 2 are reasonable and necessary. In reaching my decision, I have though taken full account of all relevant matters raised.
14. Consequently, the main issue is whether Condition 2 is reasonable and necessary having regard to the living conditions of nearby residents with particular reference to noise and disturbance, light pollution, cooking smells and litter.

Living conditions

15. The appeal site is located in the rural hamlet of Wellow and relates to a farm shop and café building situated on an agricultural holding known as West Wight Alpacas and which also forms a local attraction. The café and shop building is located at the northern extent of the holding and backs onto Main Road.
16. Opposite the site is a row of residential dwellings, the closest of which is New Farm Barn, which presents its side elevation at a distance of approximately 10m. The next nearest properties are Lime Barn and Marshfield, which are separated by approximate distances of 30m and 28m respectively. Other residential properties to the west and east are more distant.
17. The closest property at New Barn Farm faces away from the access and would be largely unaffected by the headlights of cars leaving the site. The property most affected would be Lime Barn, which directly faces the access and as a bungalow, has ground floor bedrooms. Headlights from cars leaving the site would therefore be focused directly towards the habitable room windows of that property. I accept that because the access to the café and shop building slopes up gradually from Main Road to the car parking area that dipped headlights from cars leaving the site may initially be focused downwards. However, even dipped headlights would level out where the access meets the highway and in any case, given the dark and rural location of the premises, it is likely that cars leaving the site would be using full beam.
18. Consequently, the headlights from cars leaving the site would focus into and sweep across the front of Lime Barn and its habitable room windows, resulting in significant light disturbance to its occupants. The extended opening hours would materially increase the duration of disturbance later into the evening and because the existing condition does not allow for any respite on any day of the week or on bank holidays, the harm would be on-going. Although I accept that the scale of the operation is limited, given its very rural location, it is likely that most the customers would travel by car. Moreover, it would not be reasonable

to assume that the harm could be mitigated by the occupants of Lime Barn being forced to close their curtains.

19. The main entrance to the shop and cafe is positioned on the southern elevation of the building and faces towards the car parking area which is located further to the south. Activity such as people coming and going, talking, light and noise emanating from the cafe and the closing of car doors would therefore be focused into the site and away from the nearest residential properties. I appreciate that the ambient noise levels in the area would be low but these would not be excessively noisy activities. Given also the separation distances I do not find that the extended opening hours would result in additional material harm in terms of noise disturbance.
20. In terms of cooking smells, the café serves a range of dishes including pizza, paninis, hot wraps, main dishes such as scampi and chips as well as pizzas. The food is prepared from two kitchen areas. The pizzas are prepared in an open kitchen area with a pizza oven with extraction via a flue which rises well above the height of the café building. The other food is prepared from a separate kitchen which includes a small table top fryer, sandwich maker and microwave. The cooking facilities are not therefore extensive and Condition 4, which is to be retained, requires any additional cooking facilities to be agreed by the Council.
21. Whilst the amount of prepared food would increase over the extended evening hours, given the separation distances to the nearest residential properties, I do not envisage any material harm arising. This is consistent with the response from the Council's Environmental Health Officer who advised that the increase in cooking would not be likely to have an unacceptable effect on nearby properties in terms of odour. Moreover, I have no evidence that the smoke from the pizza oven causes adverse health issues.
22. At the time of my site visit I saw no evidence of any litter issue in or around the site and having regard to the nature of the operation, I do not envisage material harm in this respect.
23. I note that the Council's Environmental Health Officer has advised that the noise impacts of the proposed use would not be unreasonable and suggested a closing time of 2200 hours with a further 30 minutes to leave the site. However, these comments are likely to have been made on the basis of avoiding a statutory nuisance rather than applying a planning judgement on the effect on the living conditions of nearby residents.
24. I accept that in operational terms, closing at 2000 hours would allow only one evening sitting and would require a relatively early time of arrival and eating time. However, having regard to the location the premises, a closing time of 2000 hours strikes a reasonable balance between protecting the living conditions of the occupiers of Lime Barn from light disturbance and supporting economic growth in rural areas, as advocated by paragraph 28 of the Framework. Retaining the existing opening hours would also be consistent with Policy DM2 of the Island Plan which expects, amongst other matters, development proposals to optimise the potential of the site but have regard to existing constraints such as adjacent buildings.
25. I therefore conclude that the proposed change to the terms of Condition 2 is unjustified for the reasons set out above; the existing hours of use being

reasonable and the condition necessary having regard to the living conditions of nearby residents.

Conclusion

26. For the reasons given above I conclude that the appeal should succeed insofar as it relates to Condition 1. I will therefore replace Conditions 1 with that set out in the formal decision and retain Condition 2.

Richard S Jones

Inspector