
Appeal Decision

Site visit made on 6 June 2017

by Grahame Gould BA MPhil MRTPI

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

Decision date: 27th June 2017

Appeal Ref: APP/L2250/W/16/3160774

Ashley Farm, Woodland Road, Lyminge, Folkestone, Kent CT18 8DP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Peter Vale against Shepway District Council.
 - The application Ref Y16/0387/SH, is dated 10 June 2016.
 - The development proposed is described as '1) to construct a menage, 2) conversion of existing stables to keep horses and 3) retrospective planning to keep horses in end barn S on drawing'.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land from agricultural to the keeping of horses, conversion of an existing barn to stables and erection of a menage at Ashley Farm, Woodland Road, Lyminge, Folkestone, Kent CT18 8DP in accordance with the terms of the application, Ref Y16/0387/SH, dated 10 June 2016, subject to the following conditions in the Schedule to this decision.

Application for costs

2. An application for costs was made by Mr Peter Vale against Shepway District Council. That application is the subject of a separate Decision.

Procedural Matters

3. The appeal was lodged against the failure of the Council to give written notice within the prescribed period of its decision on the application. The development subject to the appealed application is for the change of use of land from agriculture to the keeping of horses, with the conversion of an existing barn to stables and the formation of a menage. The development has been partly commenced in that the land is being used for the keeping of horses and the descriptions of development used on the application form and by the Council refer to the partly retrospective nature of the development.
 4. In processing the application the Council has altered the description of the development and the appellant has not objected to that change. The description of the development that I have used in the formal decision above is based on the Council's description, albeit I have not included the reference to retrospective as that is unnecessary.
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5. In the course of determining the appeal I have sought the appellant's and the Council's comments about the wording of various conditions that would need to be imposed in the event of the appeal being allowed.

Main Issue

6. The Council has submitted that it would have granted planning permission for the development, with an officer's delegated report having been prepared in advance of the appeal being submitted. However, following the appeal's submission the Council was precluded from making its decision. The Council's officer report and appeal case identify the principal issue as one relating to the development's effect on the character and appearance of the area.
7. The main issue is the effect of the development on the character and appearance of the Kent Downs Area of Outstanding Natural Beauty (AONB) and Special Landscape Area (SLA).

Reasons

8. The appeal site has an area of approximately one hectare and forms part of Ashely Farm. The site for the most part consists of grassland that horses are being kept on and there is a timber clad barn situated close to the site's north western boundary. The farm appears to have ceased operating and the land associated with it comprises the appeal site, a building that appears to be a bungalow and some storage associated with a construction business.
9. It is intended that the barn would be converted into three stables. In addition a menage, measuring 41 by 21 metres would be created in the site's northern corner. Four pole mounted flood lights would be installed, with one floodlight being sited close to each of the menage's corners. The menage would be enclosed by timber ranch style fencing.
10. The site is situated within an area of gently rolling farmland and it is discretely located, being set back from Woodland Road, behind two frontage dwellings. The site's boundaries are in part marked by hedgerow planting. Very minor external alterations would be made to the barn to convert it into a stable block. The menage's formation will require minimal engineering works being undertaken and it will have a sand covering. The floodlighting columns will have a slender profile and the application documentation suggests they will be between three and four metres in height.
11. I consider that the keeping of up to four horses/ponies on the land has had no detrimental effect on the area's appearance and that this use is in keeping with the farmland character and the general tranquillity of this part of the AONB. Subject to the menage's lighting arrangements being kept to a minimum, something that can be controlled by the imposition of a planning condition, I am of the opinion that the menage's formation will not be harmful to the character and appearance of the AONB and SLA.
12. I therefore conclude that the keeping of horses has not harmed the character and appearance of the AONB and the SLA and that the conversion of the barn and the formation of the menage will similarly not cause harm to the character and appearance of the area. I therefore consider that the development accords with saved Policies SD1, BE1, CO1 and CO22 of the Shepway District Local Plan Review of 2006, Policy CSD4 of the Shepway Core Strategy of 2013 and paragraph 115 of the National Planning Policy

Framework (the Framework). That is because the scale of the equestrian use, and the built and engineered development associated with it, has or will conserve the character and appearance of the AONB's and SLA's natural beauty.

Other Matters

13. This development is of a modest scale and the keeping of horses is compatible with a rural location. I therefore share the Council's view that the development has not or will not, subject to the imposition of conditions (which I return to below), harm the living conditions of the nearby residents or the operation of the public highway.

Conditions

14. The Council has suggested various conditions and I have considered the need for their imposition, having regard to the provisions of the Framework and the Planning Practice Guidance. As the development has been commenced it is unnecessary to impose a three year implementation condition.
15. To safeguard the living conditions of the occupiers of neighbouring properties and the area's biodiversity it is necessary that details of the storage arrangements for manure (condition 2) and biodiversity improvements (condition 3) be submitted to the Council for approval. The purpose of conditions 2 and 3 is to require the appellant to comply with a strict timetable for the submission and implementation of the schemes for the storage of manure and the on-site biodiversity improvements, which need to be submitted and implemented in order to make the development acceptable. Conditions 2 and 3 have been drafted in their form because, unlike an application for planning permission for development yet to be commenced, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matters because the development has already taken place. The purpose and effect of conditions 2 and 3 is therefore to ensure that the use of the site authorised by the grant of planning permission may only continue if the appellant complies with each one of a series of requirements.
16. To safeguard the character and appearance of the area it is necessary that the stable conversion and the formation of the menage should accord with the submitted plans. Given the imposition of the plans condition, a condition requiring the external finishes for the development to be as stated in the application is unnecessary. To safeguard the appearance of the area it is necessary that conditions be imposed controlling the installation and/or the use of external lighting, jumps and other structures.
17. To ensure that the scale and intensity of the development is compatible with its surroundings and does not cause harm to the living conditions of the occupiers of nearby dwellings conditions precluding the site's use for commercial purposes, as a riding school or for livery purposes and the burning of manure or stable waste are necessary.
18. A condition precluding the permanent sub-division of the land and requiring the details of the fencing associated with the temporary sub-division of the land has been suggested, with the purpose of safeguarding the appearance of

the area. Given the limited extent and visibility of the site in the wider landscape I consider the principle of sub-dividing the land into smaller paddocks of itself is unobjectionable and this to a degree has already arisen with the installation of some one metre or so high ranch style fencing. I therefore consider that controlling where any future ranch style fencing might be sited is unnecessary. However, the installation of solid timber fencing or walls to facilitate any sub-division or enclosure of the land would be harmful to the area's character and appearance. It is therefore necessary to preclude the installation of walls and fencing, other than ranch style fencing, and I have therefore imposed a condition to that effect.

19. A condition requiring the submission of details for the disposal of surface water has been suggested by the Council with the purpose of preventing pollution of the water environment. However, the hardstandings and stable washing areas etc associated with this use are very limited in extent and the Council has not identified what surface or ground water resources might be affected or that the scale of the use would pose an unacceptable risk to the local water environment. I therefore consider it unnecessary to impose a condition requiring the submission and approval of details for the disposal of surface water.

Conclusion

20. For the reasons given above the appeal is allowed and planning permission is granted.

Grahame Gould

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The conversion of the barn to stables and the formation of the menage shall be implemented in accordance with the following approved unnumbered plans: the Ordnance Survey based site location plan with a red outline identifying the extent of the application site, with notations showing the location of the 'horse grazing land', 'proposed menage' and the barn to be converted into stables; the proposed drainage, construction and lighting for the menage; the proposed menage and entrance gate and fencing details; the proposed front and rear elevations for the stables; and the proposed barn conversion floorplans.
- 2) Unless within three months of the date of this decision a scheme for the storage of manure has been submitted in writing to the Local Planning Authority for approval; and unless the approved manure storage scheme is implemented within two months of the Local Planning Authority's approval, the use of the site for the keeping of horses or ponies shall cease and all of the horses and ponies and the equipment associated with the use shall be removed from the land until such a time as the scheme for the storage of manure has been approved and implemented.

If no scheme for the storage of manure submitted in accordance with this condition is approved within five months of the date of this decision, the use

of the site for the keeping of horses and ponies shall cease and all of the horses and ponies and the equipment brought onto the land for the purposes of such use shall be removed from the land. Thereafter the keeping of horses and ponies on the land shall not be recommenced until such time as a scheme for manure storage is approved in writing by the Local Planning Authority and implemented.

Upon implementation of the approved manure storage scheme specified in this condition, that scheme shall be adhered to for the duration of the keeping of horses and ponies on the land.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) Details of a scheme of on-site biodiversity improvements shall be submitted in writing to the Local Planning Authority for approval within three months of the date of this decision. The details to be submitted in compliance with this condition shall include: the siting of bird and bat boxes; native species hedgerow planting for the boundaries of the site; and an implementation programme and maintenance schedule for the biodiversity improvements. Thereafter the approved scheme of on-site biodiversity improvements shall be implemented in accordance with the approved implementation programme and maintenance schedule.

If no scheme of on-site biodiversity improvements is submitted to the Local Planning Authority within three months of the date of this decision, the use of the site for the keeping of horses and ponies shall cease and all of the horses and ponies and the equipment brought onto the land for the purposes of such use shall be removed. Thereafter the keeping of horses and ponies on the land shall not be recommenced until such time as a scheme of on-site biodiversity improvements has been approved and implemented in accordance with the approved details.

If the scheme of on-site biodiversity improvements submitted in accordance with this condition is not approved in writing by the Local Planning Authority within five months of the date of this decision, the use of the site for the keeping of horses and ponies shall cease and all of the horses and ponies and the equipment brought onto the land for the purposes of such use shall be removed. Thereafter the keeping of horses and ponies on the land shall not be recommenced until such time as a scheme of on-site biodiversity improvements has been approved and implemented in accordance with the approved details.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 4) The use hereby permitted shall not be for any commercial purposes or for hire or reward including use as a riding school or for livery purposes or use as an animal sanctuary. No more than four horses/ponies shall be kept on the land at any one time.

- 5) No burning of manure or other stable waste shall take place on the site.
- 6) No external lighting other than that shown on the approved plans shall be installed. The approved lighting shall not be used between the hours of 21:00 and 08:00.
- 7) No jumps or other structures shall be used until details of them and their siting have been submitted to and approved in writing by the Local Planning Authority. Any such jumps or other structures as approved shall be removed from the land when not in use and shall be stored in accordance with details to be submitted to and approved in writing by the Local Planning Authority.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no walls, fences or other means of enclosure other than the ranch style fencing shown in the photographs included on the approved plans, shall be erected on the land subject the planning permission hereby granted.