
Appeal Decisions

Site visit made on 20 August 2019

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 3 October 2019

Appeal A: APP/J1915/W/18/3195491

**Great Hadham Golf & Country Club, Great Hadham Road,
Much Hadham SG10 6JE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Great Hadham Country Club Limited against the decision of East Hertfordshire District Council.
 - The application Ref 3/17/2502/FUL, dated 23 October 2017, was refused by notice dated 1 February 2018.
 - The development proposed is change of use from golf course to golf course with leisure lodges.
 - This decision supersedes that issued on 2 October 2018. That decision on the appeal was quashed by order of the High Court.
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Appeal B: APP/J1915/W/18/3203036

**Great Hadham Golf & Country Club, Great Hadham Road,
Much Hadham SG10 6JE**

- 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 Great Hadham Country Club Limited against East Hertfordshire District Council.
 - The application Ref 3/18/0329/FUL, is dated 13 February 2018.
 - The development proposed is change of use from golf course to golf course with leisure lodges.
 - This Decision supersedes that issued on 2 October 2018. That Decision on the appeal was quashed by order of the High Court.
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Decision Appeal A

1. I allow the appeal and grant planning permission for change of use from golf course to golf course with leisure lodges at Great Hadham Golf & Country Club, Great Hadham Road, Much Hadham SG10 6JE in accordance with the terms of the application, Ref 3/17/2502/FUL, dated 23 October 2017 and drawing numbers 2017/13-PL2 and PL3, subject to conditions 1) to 7) on the attached schedule.

Decision Appeal B

2. I allow the appeal and grant planning permission for change of use from golf course to golf course with leisure lodges at Great Hadham Golf & Country Club, Great Hadham Road, Much Hadham SG10 6JE in accordance with the terms of the application, Ref 3/18/0329/FUL, dated 13 February 2018 and drawing

numbers 2017/13-PL2 and PL3, subject to conditions 1) to 7) on the attached schedule.

Applications for Costs

3. Applications for costs were made by Great Hadham Country Club Limited against East Hertfordshire District Council. These applications are the subject of separate Decisions.

Preliminary Matters

4. The third Reason for Refusal in the original application that is now Appeal A concerned an alleged lack of information regarding surface water drainage. The appellant supplied a '*Flood Risk Assessment and Surface Water Strategy*' and the Council did not pursue that objection at appeal in either case.
5. The Refusal Notice cited policies of the East Herts Local Plan Second Review April 2007, as well as what was described as the Draft District Plan. The East Herts District Plan was adopted on 23 October 2018, following the lifting of a Holding Direction of 11 September, and the Council has supplied a list of the adopted policies that are considered relevant to the appeals.
6. The Officer's Report states that both the Local Plan and the Draft District Plan refer to mobile homes as being considered as though they were for a normal residential occupation and therefore the policies relating to residential development apply. Hence, it appears from this and Reasons for Refusal 1, 2, 4 and 5 that the Council dealt with the application as being for residential development, the proposal being described as contrary to the aims and objectives of the then Policies GBC2 and GBC3, the latter policy excluding residential development as a use that would be permitted in the rural area beyond the Green Belt.
7. It is appropriate that the first main issue in these appeals should be to test this assumption, and on the basis of that finding the second main issue should consider which policies are relevant and test the proposal against them.

Main Issues

8. For the reasons set out in the Preliminary Matters above, the main issues are;
 - The nature of the development.
 - Compliance with the relevant policies.

Reasons

The Nature of the Development

9. The description of development used in the bullet points to the Appeal headings above is taken from the Council's Refusal Notice in Appeal A, and adequately describes the proposal. The Application Forms stated; '*change of use from leisure land just as a golf course, to leisure land as a golf course with leisure lodges - this change and diversification of use is absolutely essential following the bankruptcy and administration of the business on 27 October 2016 because as a golf course alone it is not financially viable*'; in both cases the word 'leisure' appears.

10. The phrase referred to in the Officer's Report regarding mobile homes being residential appeared in paragraph 3.16.1 of the Local Plan and is now found in paragraph 14.5.1 of the District Plan, and reads '*applications for planning permission are sometimes received by the Council for a number of special residential uses, such as caravans, mobile homes, houseboats, and other residential institutions. All of these uses will be considered as though they were for a normal residential building and the policies relating to residential development will apply*'. That is no doubt true where an application has been made and received in those terms, and Policy HOU9 relates to one such situation, the provision for gypsies and travellers. The appellant makes clear that the proposal is for a leisure use in support of the other leisure uses at the site, and that should not be characterised as 'normal residential' occupation.
11. Generally, and in line with the case '*I'm Your Man Ltd v Secretary of State for the Environment (1998)*', even where the description of development purports to contain a 'limitation' as to use, any essential restrictions such as an occupancy condition or other limitation should, for the avoidance of doubt, be secured by condition.
12. As set out in paragraph 55 of the Framework, conditions should be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. These 6 tests are referenced in the Planning Practice Guidance with a cross reference to guidance on the use of model conditions (Paragraph: 003 Reference ID: 21a-003-20190723). The succeeding paragraph setting out how a Council would ensure the 6 tests are being met has been deleted. There is also the test resulting from the case '*Newbury District Council v Secretary of State for the Environment (1981)*' that conditions must be for a planning purpose and not for any ulterior one, be fairly and reasonably related to the development, and not be 'Wednesbury' unreasonable.
13. The requirement here is for a condition limiting the use of the site to that applied for. Such a condition would pass the tests of being necessary in order to avoid the policy objections referred to in the Reasons for Refusal and would as a result be relevant to planning and to the development to be permitted. Such a condition would be reasonable in all other respects if it had the desired effect and would pass the 'Newbury' test.
14. The Council suggested 3 conditions of relevance to the controlling the use as follows;

Condition 7 Within 3 months of the decision, a management plan shall be submitted in writing to the local planning authority detailing how the site will be managed. The management plan shall include how the golf club will manage occupancy of the leisure lodges and record keeping of the occupancy of each leisure lodge. The development shall be implemented and maintained in accordance with the details approved in writing for the life of the development. The appellant objects to this as being excessive and unnecessary. It is noted that the York, Weeley and Oswestry Appeal Decisions submitted by the appellant contain a requirement for records to be kept and be made available for inspection, but they may relate to a different arrangement of ownership and control. In the present case the appellant replied to a post-event question with regard to ownership, and whilst lodges may be 'sold' the freehold would be retained and site-fees charged to cover infrastructure and other services. The

site owner would therefore have ready access to the lodge owners so that any queries over occupation and whether it is a sole home could be followed-up. The suggested condition is not necessary in this case.

Condition 8 Occupiers of leisure lodges hereby permitted at the site shall be restricted to a maximum 14 day stay duration within any three-month timeframe. This is objected to by the appellant and does appear unnecessarily restrictive given the objective of conditions. Owners may well let for such 2 week periods, but no harm would occur if, say a 3 week period was chosen, and they may themselves wish to stay longer; the key requirement is that the lodges should not be the occupant's sole and/or main place of residence, and this condition does not add further to the next proposed condition. It therefore fails the test of being necessary.

Condition 9 The leisure lodges shall be used for holiday purposes only and shall not be used at any time as the occupant's sole and/or main place of residence. This is a standard condition for such uses, and the appellant suggested a similar but negatively worded version, and also made reference to various Appeal cases where a similar format had been utilised. The 'Peterborough' wording is the more precise, referring as it does to any replacement lodges or caravans, and it is the case that whilst the permission would run with the land, the lodges or caravans stationed on that land could be replaced as they have a finite life, unlike a 'bricks and mortar' dwelling. The condition would not be impossible to enforce, and whilst the Council have concerns that it could not be 'readily enforced' that is a different test. It can be enforced due to the retention of access to owners to collect site fees and in that light, the suggestion that an Obligation would be preferable is contrary to the advice in paragraph 54 of the Framework that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition, and that is not the case here.

15. To conclude on the nature of the development, the use would be a leisure one and not full-time main residential, and that can be secured by condition. On that basis the second main issue will determine which policies are relevant to that proposal and the degree of compliance.

Compliance with the Relevant Policies

16. The existing enterprise comprises the extensive grounds of the golf course, with an 18-hole course that appeared in excellent condition with well-kept greens and fairways, and pleasant landscaped margins. A 9-hole 'par 3' course was in poor condition and temporary greens were in use for foot-golf involving players kicking a football into large holes away from the intended greens. A small putting green and a driving range completed the outdoor sporting facilities. The car parking was adequate but not in good condition, but the clubhouse facilities appeared varied, well-used and well-maintained. These included well-equipped fitness studios, hairdressing, sauna and treatment rooms, as well as the bar and function rooms, the premises being licensed for weddings. A further building contained the grounds maintenance machines that would be expected at a golf course.
17. The submissions made clear the intended functional link between the use of the lodges and the facilities that would be available to occupiers, together with the financial link to assist in the viability of the club. There is a likely synergy between the uses, and they are certainly compatible.

18. On the adoption of the District Plan, the Council supplied details of adopted policies including some that were not referred to in the Reasons for Refusal.

Policy GBR2. It is the case that whilst general residential development is not permitted in the rural area beyond the Green Belt, uses related to outdoor recreation would be permitted, and the policy remains relevant to the appeals. The Local Plan Policy CBC3 allowed for '*essential small-scale facilities for outdoor sport and recreation*', while the adopted Policy GBR2 refers just to '*facilities for outdoor sport, outdoor recreation and equine development*', which this proposal accords with, provided they are compatible with the character and appearance of the area. The lodges are sited in an elongated group to one side of the main club buildings and would relate well to both the built form and the open fairways, with some tree cover softening the effect. Their finish and low height blends well with the surroundings and the landscaping and layout of access tracks and would be appropriate to the rural surroundings. The proposal accords with Policy GBR2.

Policies TRA1, TRA2 and TRA3. The second reason for refusal alleged an unsustainable location and that appears predicated on the mobile home being an occupier's sole home, particularly with reference to employment and services. Policy TRA1 on sustainable transport concerns all development proposals and remains relevant to the appeals, but as a leisure use that is suitable to the rural area, and having mind to the other uses being carried out on the wider site, the somewhat isolated location is acceptable. With regard to Policies TRA2 and TRA3 on highway access and parking provision, these requirements are met.

Policies HOU1, HOU2 and HOU3. The lack of provision for affordable housing as sought in Policy HOU3 was the subject of Reason for Refusal 4 but in view of the finding on the nature of the development none of these policies are relevant to these appeals.

Policies DES2, DES4, and DES5. whilst the matter of residential amenity is of less concern in a non-residential development, the requirements of these policies with regard to design and landscape remain relevant. The spacing of the lodges appears in-line with such leisure uses as are proposed, and the landscaping of the site as considered under Policy GBR2 can be secured by condition. The design of the lodges is a standard product but those seen in place and the one entered indicated a high standard of construction and fit-out. These policies are therefore met.

Policies ED2 and ED5. The expansion of existing businesses in the rural area is supported by Policy ED2, and Policy ED5 supports new tourism enterprises and extensions to existing enterprises. The appeal proposals are a tourism enterprise that is appropriately located and would provide for a need for high quality accommodation close to existing sport and recreation facilities, assisting in their viability. The proposal would result in the formation of new jobs or the safeguarding of existing rural employment and both policies are complied with.

Policy CFLR1 The provision of open space, sport and recreation in residential and commercial development together with the retention of existing provision is the subject of this policy and the appeal proposals would assist in the furthering these aims.

Policies NE3 and NE4. The appeal proposal would be well-integrated with the existing natural environment of the golf course and would not have an adverse effect on species, habitat or the green infrastructure.

Policies CC1 and CC2. The lodges are a standard product and would be heated by combination boilers fed from a central gas storage tank. Such lodges are an acceptable method of accommodation for the leisure use proposed and the layout would integrate green infrastructure with the retention of trees and further soft landscaping secured by condition. Climate change mitigation should be seen in the light of the intended use.

Policies WAT1, WAT5 and WAT6. These policies contain requirements to address flood risk, sustainable drainage and wastewater infrastructure and the contents of the 'Flood Risk Assessment and Surface Water Strategy' have been accepted as complying with these policies.

Policy EQ1. Concerns contaminated land and whilst there is reference to imported fill material having been used to re-profile the land for the golf course use, that was described as 'inert'. The site of the lodges was seen to be based in part on road-scalpings with some bricks, and did not appear to be contamination. The policy is complied with.

19. Relevant sections of the National Planning Policy Framework include;

Paragraph 8. The statement of a social objective of accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being would be met.

Paragraph 83. The proposal would be in line with the aim of supporting a prosperous rural economy by the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings; the development and diversification of agricultural and other land-based rural businesses; and sustainable rural tourism and leisure developments which respect the character of the countryside.

Paragraph 84. This states that planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport, and hence the location does not count against the proposal.

Paragraph 124. The proposals meet the statement that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.

20. Concern has been expressed over the need for a formal link between the income from the lodges and the club. The proposal has been found acceptable in its own right through compliance with Development Plan policies and should not be considered as a form of 'enabling development'. That concept, more usually applied to the funding of repairs to listed buildings, allows for development that would be contrary to policy to go ahead provided there is that link between the funds generated and the recipient building. In those cases the development should be the minimum necessary to provide the funds. No such considerations apply here although the success of the lodge scheme would rely on the facilities of the club being maintained and enhanced, such that the provision would be likely to have that beneficial effect.

21. To conclude, the proposed leisure use would satisfy the relevant Development Plan and national policies on the protection of the environment, and would further the aims of policies that seek a prosperous rural economy, and the provision of outdoor sport and leisure facilities. The appeals should be allowed and planning permissions granted, but subject to conditions that, among other things, limit the occupation of the lodges.

Conditions

22. The Council had suggested conditions, but there was limited agreement from the appellant. It is necessary in any event to consider the suggested conditions against the tests previously mentioned, and they are dealt with in number order from the Council's list and with reference to section 7 of the appellant's Appeal Statement of June 2018, as follows;

Condition 1 list of drawings. This condition allows a developer to apply for minor changes prior to commencement and is standard practice. It is however not appropriate in a retrospective application and will not be attached, although it is appropriate to list the drawings in the Formal Decision.

Condition 2 archaeological investigation. The County Council Historic Environment Unit stated that remains of Iron Age or Roman periods had been found in trial pits in various location around the golf course, but that no pits had been dug in the area of the lodges. However, the lodges do not rely on foundations, are 'temporary' structures albeit a permanent permission would be granted, and no harm would be caused to any remains likely to be buried below the level of fill seen at the site inspection. The proposal is not likely to have an impact on heritage assets, although if such are found, work would need to stop. This condition is not necessary or reasonable and is not related to the development proposed.

Condition 3 external lighting. Notwithstanding the appellant's statement of their being no intention, a condition should be attached preventing external lighting other than what has been submitted and approved, in view of the rural location.

Condition 4 landscaping scheme. Drawing PL3 is not an adequate landscaping scheme and this Decision relies on the retention of trees and softening of the effect by additional landscaping. The part-retrospective nature of the development does not alter that finding.

Condition 5 & 6 drainage. A condition requiring compliance with the 'Flood Risk Assessment and Surface Water Strategy' is necessary to regularise the situation and to ensure that works have been carried out correctly, and that the system is retained. The fact that the works have been carried out already is no reason to delete this requirement.

Conditions 7, 8 and 9 controlling occupancy and leisure use. These have been considered earlier in this Decision and only number 9 will be attached, using the 'Peterborough' format.

Condition 10 in the event of the golf club operation ceasing. This is unnecessary and would unduly restrict the management of the lodges and their sale. The lodges are acceptable and in line with Development Plan and national policies, and this restriction would place unjustifiable and disproportionate financial burdens on the appellant, and as stated in the Planning Practice

Guidance, would be unreasonable (Paragraph: 005 Reference ID: 21a-005-20190723, first bullet point).

Condition requested by County Council on hydrants. This requirement would be technically difficult and costly, and the risk to life would be small due to the dispersed nature of the lodges and the ready access to a place of safety for occupiers. The centralised gas storage further lowers the risk. The Council accept that a Fire Management Plan would be an alternative. Such a Plan would be a reasonable approach to ensure that occupiers were aware of procedures on discovering a fire and of assembly points.

23. A further condition as was attached to the 'Weeley' Appeal Decision submitted by the appellant, stating the maximum number of lodges, is required in order to control the scale of the development.
24. Following these deliberations, the conditions contained in the Schedule at the end of this Decision meet the 6 tests referenced in the Planning Practice Guidance and the 'Newbury' test, and whilst 2 permissions are granted as a result of there being 2 appeals, the conditions are identical in each case and are cited once only.

Conclusions

25. The proposal is for a leisure use that is in-line with national and local policy as set out above, and conditions can ensure that the occupation of the lodges is limited to that use and does not fall into any permanent residential use. For the reasons given above it is concluded that both appeals should be allowed.

S J Papworth

INSPECTOR

SCHEDULE OF CONDITIONS FOR BOTH APPEAL A AND APPEAL B

- 1) The lodges hereby permitted, including any replacement lodges, shall not be occupied other than as holiday accommodation. They shall not be used at any time as the sole and principal residence by any occupier.
- 2) No more than 26 lodges shall be stationed on the site at any time.
- 3) No external lighting shall be installed or used other than for which details have been previously submitted to and approved in writing by the Local Planning Authority.
- 4) Within 3 months of the date of this Decision, full details of both hard and soft landscape proposals shall be submitted for the approval of the Local Planning Authority. These details shall include, as appropriate:
 - (a) Proposed finished levels or contours
 - (b) Means of enclosure to individual plots

- (c) Car parking
- (d) Other vehicle and pedestrian access and circulation areas
- (e) Hard surfacing materials
- (f) Minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units and signs,)
- (g) Retained landscape features such as trees and hedges and proposals for protection and retention, where relevant
- (i) Planting plans
- (j) Written specifications (including cultivation and other operations associated with plant and grass establishment)
- (k) Schedules of plants, noting species, planting sizes and proposed numbers/densities where appropriate
- (l) Implementation timetables.

Thereafter the development shall proceed in accordance with the approved details and timetable and shall be retained thereafter.

- 5) The development permitted by this planning permission shall be carried out in accordance with the '*Flood Risk Assessment and Surface Water Strategy*' for the proposed development prepared by Innervision Design Ltd (project No.18821 – February 2018). The drainage scheme shall include the provision of permeable paving or similar permeable surface with sub-base to adequately manage the volume generated by all rainfall events up to and including the 1 in 100 year plus climate change event and ensure pollution control. The mitigation measures shall be fully implemented prior to the occupation of further lodges and subsequently in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the Local Planning Authority.
- 6) Upon completion of the drainage works an updated management and maintenance plan for the all the SuDS features and structures must be submitted to the Local Planning Authority and shall include arrangements to secure the operation of the scheme throughout its lifetime.
- 7) Within 3 months of the date of this Decision a Fire Management Plan detailing the information to be given to occupiers and on procedures in place to deal with a fire or other emergency, shall be submitted for the approval of the Local Planning Authority and the approved Plan shall be implemented thereafter as approved.