



Appeal Decision

Site visit made on 5 November 2019

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2019

Appeal Ref: APP/F2415/W/19/3233996

Sutton Hill Farm, Coventry Road, Broughton Astley LE9 6EY

- 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 Mr Stephen Walker against the decision of Harborough District Council.
 - The application Ref 19/00083/FUL, dated 10 January 2019, was refused by notice dated 10 April 2019.
 - The development proposed is change of use of land from agricultural to dog exercise area.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I have considered the proposal on the basis of the more concise description of development given on the Council's decision notice. However, I have removed the words 'retrospective application' as they are not a description of development. The description given on the appellant's application form sets out the premise of the proposal in more detail and I have taken this information into account as part of my assessment.
3. The change of use of the site has already taken place. I have therefore determined the appeal on the basis that retrospective planning permission is sought.
4. Since the planning application was determined, the Council has adopted the Harborough Local Plan (April 2019) (the LP). I therefore attach full weight to the policies referred to in the Council's decision notice as part of my assessment.
5. On my site visit I noted a summerhouse building towards the north west boundary of the site and an earth mound along the north east boundary of the site. These developments do not form part of the proposal before me and have therefore not formed part of my assessment.

Main Issues

6. The main issues are:
 - the effect of the development on the character and appearance of the area;

- the effect of the development on highway safety on the B4114; and
- whether or not the development would preserve the safe and active use of neighbouring Public Rights of Way.

Reasons

Character and appearance

7. The appeal site is located in the countryside and is situated to the rear of and next to land and buildings used in association with an auction house. Beyond the areas and buildings used by the auction house, the area retains a predominantly open and rural character with open fields and mature planting prevalent within the surrounding landscape.
8. Paragraph 83 of the National Planning Policy Framework (the Framework) states amongst other things that planning policies and decisions should enable sustainable rural tourism and leisure developments which respect the character of the countryside. Policies CS17 (Countryside, Rural Centres and Rural Villages) of the Harborough District Core Strategy (2011) (the CS) and GD3 (Development in the countryside) of the Harborough Local Plan (the LP) are generally consistent with the Framework and state amongst other things that development will be permitted for outdoor sport and recreation and associated buildings.
9. The dog exercise area is a leisure use that could comply with the Framework, the CS and the LP subject to the development respecting the character of the countryside. The nature of the proposal means that the land remains generally open and grassed and is not particularly obtrusive within the landscape having regard to the existing backdrop of the neighbouring auction use. The high meshed fencing that has been installed to the boundaries of the site is relatively minimalist in design and retains a suitable degree of transparency. Whilst the summerhouse and the earth mound that have already been provided on the site do not form part of the proposals before me, these developments and any other associated paraphernalia could be controlled by condition either requiring their removal or for alterations to be undertaken to ensure they have a harmonious relationship with the character and appearance of the countryside.
10. The Council has raised concern that the appeal site includes a red line site area which would impede the implementation of screen planting associated with the adjoining land uses, prejudicing the successful screening of the neighbouring unsightly storage uses, thereby harming the character and appearance of the countryside. The provision of the screen planting associated with the neighbouring use is a separate matter for the Council to enforce. However, were planning permission to be granted, the appellant has confirmed they would be willing to move any of the existing fencing to facilitate screen planting. It would therefore be reasonable to attach a condition requiring the perimeter fence to the dog exercise area to be set in a specified distance within a stated time period to allow for the neighbouring landscape condition to be complied with.
11. To conclude, the development is for a leisure use and subject to appropriate conditions would have an acceptable effect on the character and appearance of the area. Consequently, in those regards, the development would comply with

Policies CS11 (Promoting Design and Built Heritage) and CS17 (Countryside, Rural Centres and Rural Villages) of the CS, Policies GD3 (Development in the countryside) and GD5 (Landscape Character) of the LP and the Framework.

Highway safety

12. The appeal site is accessed via a driveway principally serving the auction house which is taken off the B4114 dual carriageway. Access into and out of the site is ostensibly left-in and left-out although there is a gap in the central reservation directly opposite the site entrance. The gap had been coned off at the time of my site visit.
13. Paragraph 108 of the Framework requires that proposals for development ensure safe and suitable access to the site for all users. Paragraph 109 states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
14. I note the concerns of the Highway Authority in respect of the potential increase in traffic turning on to or off the B4114. My attention has been drawn to traffic data provided by the Highway Authority which confirms that the road is of a high speed and heavily trafficked nature. There have been 9 recorded accidents within 500 metres of the site access in the last five years, up to 7 September 2019. This includes a serious personal injury collision which involved a vehicle attempting to turn right from the appeal site access using the gap in the central reservation. Having regard to this particular context, any intensification of use of the existing access onto the derestricted B4114 therefore has the potential to be detrimental to highway safety.
15. The appellant suggests the additional traffic as a result of the development is very small in comparison to the separate auction use and the use of the appeal site would not be at the same time as the auctions. Nevertheless, even a small increase in vehicular activity has the potential to increase risk for road users bearing in mind the site circumstances set out above. No detailed evidence has been provided on trip generation nor does the proposal provide any convincing evidence that the site access is safe and suitable in its current form for increased usage. It has therefore not been demonstrated that the proposal would not have a detrimental impact on highway safety.
16. I understand from the evidence before me that there is separate dialogue between the owners of the auction house and the Highway Authority with regards to the provision of improvements to the access. However, any such improvements have not yet been delivered. There is nothing before me to suggest these discussions have been concluded or that they have taken into account the appeal proposal. I must determine the appeal on the basis of the current situation and the information before me which does not propose any specific improvements to the access that might overcome the concerns of the Highway Authority. On this basis, I am not persuaded that there would not be increased risk to the safety of road users.
17. Third-party comments have referred to the limited number of visitors to the facility, there being good visibility on the approach to the site entrance, that there is a filter lane and that the site is not floodlit and therefore would only be used during hours of daylight further assisting visibility. Even so, I must have

regard to the detailed evidence provided by the Highway Authority which is more persuasive in this instance.

18. To conclude, and for the reasons set out, the development has the potential to increase risk related to the safety of road users on the B4114, therefore negatively impacting on highway safety. Consequently, in that regard, the proposal conflicts with Policies CS5 (Providing Sustainable Transport) and CS11 (Promoting Design and Built Heritage) of the CS and Policy GD8 (Good design in development) of the LP and the Framework. For these reasons, the proposal would also conflict with section IN5: Our access to the road network policy of the Leicestershire Highway Design Guide.

Public footpaths

19. Public Rights of Way (PROW) V60 and W47 sit parallel with two of the boundaries of the appeal site. Paragraph 98 of the Framework states amongst other things that planning decisions should protect and enhance public rights of way. Policy GI1 of the LP states that green infrastructure assets including long-distance recreational paths and bridleways will be safeguarded and, where possible, enhanced by ensuring that development does not compromise their integrity or value.
20. I note the concerns of the Highway Authority in respect of the proximity of the facility to the PROWs. I am not persuaded that the position of the dog exercise area close to the PROWs could prejudice the safety of users of the PROWs given dogs using the facility are contained within the site by the perimeter fencing and would be under the supervision of their owners. Nevertheless, given the close proximity of the dog exercise area to the PROW, there is the potential for dogs to bark at passers-by and this could be intimidating for some users of the PROWs detrimentally impacting on the use and enjoyment of the PROWs. I have nothing before me to demonstrate that this potential conflict could be effectively mitigated without the provision of substantial boundary treatments which would have the potential to have a harmful effect on the open character and appearance of the countryside.
21. In conclusion, the development has the potential to reduce the active use of the neighbouring PROWs. Consequently, in that regard, the development conflicts with Policy CS17 (Countryside, Rural Centres and Rural Villages) of the CS, Policies GD8 and GI1 (Green infrastructure networks) of the LP and Policy EH1 (Environment Heritage and Open Spaces for Protection) of the Broughton Astley Neighbourhood Plan 2013 – 2028 and the Framework.

Conclusion

22. I have concluded that the development could have an acceptable relationship with the character and appearance of the area subject to conditions controlling associated structures and boundary treatments on the site. I note there is some support for the proposal in respect of the secure environment provided by the dog exercise area and the benefits this has in addressing the specific needs of owners and their dogs. I also acknowledge the support for the business and the benefits this has for the local economy and the community.
23. However, it has not been demonstrated that the development does not increase risk for road users on the B4114 and the development therefore has the potential to have a detrimental impact on highway safety. Furthermore, the

development has the potential to adversely impact on the use and enjoyment of the neighbouring PROWs. These matters represent significant and overriding issues which are decisive in this case.

24. The development therefore conflicts with the development plan as a whole and does not amount to sustainable development. There are no other considerations, including the policies in the Framework that would outweigh this conflict. Therefore, for the reasons given above and taking account of all other matters raised, I conclude that the appeal should be dismissed.

M Russell

INSPECTOR