



Appeal Decision

Site visit made on 17 December 2019

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 15 January 2020

Appeal Ref: APP/Z3825/W/19/3236648

Southlands Farm, Southlands Lane, West Chiltington RH20 2JU

- 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 B F Armstrong and Son against the decision of Horsham District Council.
 - The application Ref DC/19/0121, dated 11 December 2018, was approved on 15 August 2019 and planning permission was granted subject to conditions.
 - The development permitted is change of use of existing barns to form a wedding venue with ancillary facilities (kitchen and toilets), erection of a bar, and the replacement of a lean-to structure.
 - The conditions in dispute and the reasons are;
 - 2) Within 2 months of the date of this decision, a plan showing the layout of the proposed development and the provision of at least 40 car parking spaces for vehicles shall be submitted to the Local Planning Authority. Within 1 month of the details being agreed the parking spaces associated with the approved use shall have been provided in accordance with the approved details. The areas of land so provided shall thereafter be retained for the parking of vehicles. Reason: To ensure that adequate and satisfactory provision is made for the parking of vehicles clear of all highways in accordance with Policy 40 of the Horsham District Planning Framework (2015).
 - 3) Within 2 months of the date of this decision, details of the bound material to be laid along the access track serving Southlands Farm to a minimum distance of 20m back from the surfaced carriageway of the public road shall be submitted to the Local Planning Authority. Within 1 month of the details being agreed the track shall have been laid with bound material in accordance with the approved details. The finished track shall thereafter be retained as such. Reason: To ensure that safe and adequate conditions for all road users in accordance with Policy 40 of the Horsham District Planning Framework (2015).
 - 6) The use hereby permitted shall only be carried out between April and October each year, unless otherwise agreed by way of a formal application. Reason: In the interests of amenity, to enable the Local Planning Authority to regulate and control the development and in accordance with Policy 33 of the Horsham District Planning Framework (2015).
 - 7) No more than one weekend (Saturday/Sunday) event in association with the use hereby permitted shall take place per calendar month. Reason: To safeguard the amenities of neighbouring properties in accordance with Policy 33 of the Horsham District Planning Framework (2015).
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Decision

1. I allow the appeal and vary the planning permission Ref DC/19/0121 for change of use of existing barns to form a wedding venue with ancillary facilities (kitchen and toilets), erection of a bar, and the replacement of a lean-to structure at Southlands Farm, Southlands Lane, West Chiltington RH20 2JU granted on 15 August 2019 by Horsham District Council, by deleting conditions

2), 3), 6) and 7) and substituting for them conditions 2), 3) and 6) on the attached schedule.

Application for Costs

2. An application for costs was made by B F Armstrong and Son against Horsham District Council. This application is the subject of a separate Decision.

Main Issue

3. This is whether the disputed conditions satisfy the tests in paragraph 55 of the National Planning Policy Framework, and in the web-based Planning Practice Guidance, that they should be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

Reasons

General

4. In addition to the Framework reference above, paragraph 55 states that consideration should be given to whether otherwise unacceptable development could be made acceptable through the use of conditions. The Planning Practice Guidance explains that those conditions attached to a planning permission should be used and discharged effectively (Paragraph: 001 Reference ID: 21a-001-20140306 and subsequent paragraphs).
5. The appeal is against the grant or permission subject to disputed conditions under section 78 of the 1990 Act. That permission may be reversed or any part of it varied, whether the appeal relates to that part of it or not as stated in section 79.(1)(b) of the Act.

Condition 2)

6. It is reasonable to seek to ensure that the venue can provide sufficient parking for the expected users to avoid parking off-site to the detriment of highway safety and the living conditions of residential occupiers, and also to control the location of that parking in order to safeguard the character and appearance of the area and the setting of the Grade II Listed barn. Policy 10 of the Horsham District Planning Framework requires development to demonstrate that car parking requirements can be accommodated satisfactorily within the immediate surrounds of the buildings. Policy 40 requires, among other things, development to provide safe and suitable access for all vehicles, pedestrians, cyclists, horses riders, public transport and the delivery of goods.
7. At the appeal site inspection, areas of hardstanding were indicated although being outside the wedding season, a part of the hardstanding was in use for the storage of agricultural bales. The appellant is on record as saying that most visitors would be expected to arrive by taxi or minibus.
8. However, the drawings supplied to the appeal do not clearly show all of those areas, for instance the 'Promap' coloured plan does not make clear the colour coding and appears to differentiate between a grey colour for hardstanding and access, and a light green which was seen at the site inspection to encompass both hardstanding and earth banks. The line drawing CEA18/WC/002 does not show greater detail. A sketch was attached to an e-mail of 12 February 2019 entitled '*parking_plan.pdf*' which shows a layout of spaces and a further e-mail

of 13 June queries whether this was sufficient to avoid the need for the condition. The Council did consider the plan and found it unclear.

9. The appellant also argues that because of the agricultural use outside the wedding season, it would not be reasonable to expect spaces to be marked out, but that is not a requirement of the disputed condition, it merely seeks a layout plan to confirm that 40 vehicles can be accommodated and whereabouts on the site. Once that fact has been agreed, the requirement is to provide them and retain them, but the wording does not preclude making them available for agricultural storage at times.
10. What is lacking in the condition as written therefore is a mechanism for ensuring that they are available at the times when weddings take place, and in view of the limitation on those times, the condition should be amended to make that clear. It is immaterial what use the areas are put to at other times. However, in view of the fact that the layout on '*parking_plan.pdf*' does not appear to coincide with the hard areas seen at the site inspection, the condition should still seek a definitive layout plan to clarify the intention.

Condition 3)

11. This condition sought to ensure that the access driveway was always in a condition to suit the use, and that loose material did not migrate onto the highway. That is a reasonable requirement, and Policy 40 was cited in the Reason. If the access driveway became un-useable to ordinary as opposed to agricultural vehicles, there would also be a risk of visitors parking on the highway.
12. The condition as worded implies that the access track was not considered to be in good condition, as it required details of the bound material '*to be laid*'. The appellant states that '*the access road was re-surfaced a few years ago and is in good condition*' and at the time of the site inspection a newer, darker material was visible over at least the required 20m back from the highway. The condition further required that once in a good condition the access would be retained as such, and that is a reasonable and necessary requirement.
13. In fact, it is that retention clause that provides the Council with the essential ongoing control, so that any deterioration in the surface could be brought to the attention of the operators of the venue and making-good could be required. Based on what was seen at the site inspection, it is reasonable to reword the condition to ensure that the first 20m remains in good condition for so long as the use continues.

Condition 6)

14. There is a difference of interpretation as to whether the existing wording precludes use during April and during October. Be that as it may, the Council have made it clear that the intention was that use during those months was to be permitted. Both parties have supplied revised wording and either would satisfy the aims of Policy 33 of the Horsham District Planning Framework which seeks to avoid 'unacceptable harm' to the amenity of occupiers/users of nearby property and land, for example through overlooking or noise, whilst having regard to the sensitivities of surrounding development.
15. The condition is to be reworded using the appellant's suggestion.

Condition 7)

16. Policy 33 and the protection of residential amenity from 'unacceptable harm' is again relevant to the need for this condition. The appellant states that contrary to the guidance in paragraph 55 of the Framework about agreeing conditions early and this being beneficial to all parties, the intended use of the condition was not raised before wedding bookings had been taken.
17. In particular the appellant considers its use unnecessary as there are 10 other conditions that protect the amenities of residents;

Condition 4) seeks a Noise Management Plan, and whilst listing some subjects to be included, makes clear that the requirement may not be limited to those subjects. There would therefore have been considerable scope for the Council to seek details and be satisfied as to the effectiveness of the Plan. This condition is not objected to by the appellant.

Condition 5) restricts the use to a wedding venue which would provide a level of control that prevents more disruptive events.

Condition 6) as now agreed to be clarified, limits the months over which the operation is carried out, which provides a level of 'respite' referred to by the Council.

Condition 8) limits the times of use to between 0800hrs and 2330hrs, which are reasonable hours.

Condition 9) limits the attendees to 100 at any time, which controls the scale of the use.

Condition 10) sets the same end time for amplified music or public address and a device is in use that cuts power to the amplifier at the agreed time; any 'planned' encore must take place beforehand.

Condition 11) controls external lighting.

Condition 12) requires a record of events to be kept and made available for inspection.

Condition 13) seeks details of sound insulation.

18. The Council quotes from the Planning Practice Guidance on the 4 broad types of noise mitigation (Paragraph: 010 Reference ID: 30-010-20190722). Conditions 4) and 13) address the first; engineering and reducing the noise generated at source. With regard to the second type, the layout is fixed but condition 13) also allows design to reduce the transmission through attenuation at the building envelope, and that would also address the fourth type of mitigation through insulation.
19. The remaining type of mitigation concerns conditions and the Guidance advises on *'using planning conditions/obligations to restrict activities allowed on the site at certain times and/or specifying permissible noise levels differentiating as appropriate between different times of day, such as evenings and late at night'*. Condition 8) does restrict the times of use of amplified sound and the Noise Management Plan should address noise levels. The Guidance does not specifically state that mitigation may be by restricting the numbers of events

although an earlier paragraph refers to the number of noise events being a factor (Paragraph: 006 Reference ID: 30-006-20190722).

20. Details have been provided of other similar operations that do not have any control equivalent to Condition 7) and some appear not to have the level of control that other conditions allow. The appellant claims that this puts the operation at a commercial disadvantage. The Guidance states that conditions which place unjustifiable and disproportionate financial burdens on an applicant will fail the test of reasonableness (Paragraph: 005 Reference ID: 21a-005-20190723).
21. Having read the background to the imposition of this condition, it is somewhat unclear why this restrictive stance was taken, particularly in view of the other controls suggested and accepted by the operator before condition 7) was attached. In addition, there are controls under other legislation should a statutory nuisance occur, and the agricultural use of the farm could result in activity and movement that is not similarly controlled. The circumstances of the complaints after what is described as a 'silent disco' are unexplained, and the appellant's view is that other events were contributing to the noise environment at that time.
22. The Council consider the area to be sensitive to noise, and as a rural locality that may be true in places, but there are rural industries nearby and the barn itself, in addition to being insulated as controlled by the Council, and having much of the activity taking place within an area enclosed on 3 sides by buildings, is some distance from the nearest dwelling.
23. Provided the other conditions listed above are properly enforced by the Council, the restriction placed on the operation by Condition 7) fails the test of being necessary when considered against the Development Plan aim of avoiding '*unacceptable harm*' to the living conditions of residential occupiers. This condition should be removed in its entirety and not replaced.
24. The right to the peaceful enjoyment of their possessions, in this case their home, is a qualified right under Article 1 of the First Protocol to the Human Rights Act 1998, however for the reasons set out in the preceding paragraphs, the removal of the condition would not result in a violation of those rights, when considered alongside the remaining conditions.

Conclusions

25. A successful appeal against the grant of permission still results in only a single permission being in place, and this Appeal Decision should be read alongside the Council's Decision Notice dated 15 August 2019. Those conditions not affected by this Appeal Decision remain in force. For the reasons given above it is concluded that the appeal should succeed; the planning permission is varied by deleting the disputed conditions and substituting others.

S J Papworth

INSPECTOR

SCHEDULE OF REVISED CONDITIONS

- 2) Within 2 months of the date of this decision, a plan showing the layout of the proposed development and the provision of at least 40 car parking spaces for vehicles shall be submitted to the Local Planning Authority. Within 1 month of the details being agreed the parking spaces associated with the approved use shall have been provided in accordance with the approved details. The areas of land so provided shall be made available for the parking of vehicles in association with the use of the wedding venue and for no other purpose between 31 March and 1 November in any calendar year.
- 3) A minimum distance of 20m of the access track serving Southlands Farm, back from the nearest edge of the highway shall be laid as bound material and this shall be maintained and retained as such thereafter.
- 6) The use hereby permitted shall be carried out only between 31 March and 1 November in any calendar year, unless otherwise agreed by way of a formal application.

All other conditions of Horsham District Council planning permission Reference DC/19/0121, dated 11 December 2018 remain in place with the exception of Condition 7) which is removed entirely and not replaced.