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## Appeal Decision

Site visit made on 4 February 2020

**by Helen O'Connor LLB MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 06 February 2020**

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**Appeal Ref: APP/Y3940/W/19/3239988**

**Plum Tree Cottage, Kemble Wick, Cirencester GL7 6EQ**

- 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 Dominic David against the decision of Wiltshire Council.
  - The application Ref 19/07683/FUL, dated 6 August 2019, was refused by notice dated 2 October 2019.
  - The development proposed is the creation of a concrete plinth and erection of stable block.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Mr Dominic David against Wiltshire Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. In my heading above, I have used the site address given in the appeal form rather than that given in the application form as this is more succinct and accords with that noted on the decision notice.
4. At my site visit I saw that the stable building and concrete plinth were in situ and appeared to reflect the development shown in the submitted plans. I shall consider the appeal accordingly.
5. The description of development and red line on the site location plan<sup>1</sup> indicate that the scope of the development sought is restricted to the concrete plinth and stable building. Both main parties and interested parties have made reference to various other developments that have taken place on land owned by the appellant. Nevertheless, the scope of my decision does not extend beyond the application presented. On that basis, my determination does not purport to consider the lawfulness or otherwise, nor the respective merits, of the yard or gravelled area adjacent to the appeal building annotated on Existing Site Plan, drawing No. P01. I have however had regard to the points made insofar as they are relevant to providing the procedural and physical context to the development before me.

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<sup>1</sup> Site Location Plan P00

## **Main Issue**

6. The main issue is the effect of the proposal on the living conditions of the occupants of 'Woodlands' having particular regard to noise, light, vibration and odour.

## **Reasons**

### *Living conditions*

7. The stable building that is the subject of this appeal provides for two stables and a feed room and is placed on a concrete plinth. The closest residential property is known as 'Woodlands' which is approximately 13m to the south west of the appeal building on the other side of the bridleway. At my site visit I was able to observe that the domestic property has a considerable number of windows at ground and first floor in the elevation that faces towards the appeal building. This includes windows serving the main living room, the study/music room and a bedroom window. As such, its proximity and orientation mean that it is in a sensitive location relative to the appeal site.
8. There is no dispute that the Dutch barn to the north west of the proposed stables already accommodates four stables, tack room and storage and that a certificate of lawfulness exists for the use of that building and some of the wider area for non-commercial equestrian purposes<sup>2</sup>. Nor is there disagreement between the main parties that the appellant uses the building for personal equine use rather than a commercial operation and I have little basis to disagree. Nevertheless, the overall number of horses owned, and equestrian activity undertaken, as described by the appellant in his supporting statement is considerable.
9. Essentially, the Council is concerned that noise, vibration, light and odour arising from the activity associated with the stable building would have an unacceptable impact on the occupants of Woodlands.
10. From the supporting statement provided, together with the proximity and orientation of the stables towards the Dutch Barn building, it is clear that the additional two stables and feed room provided are used as part of the overall equestrian use of the land within the appellant's ownership or control as identified on the submitted site location plan<sup>3</sup>. The equestrian use of the Dutch barn and surrounding land establishes a degree of traffic and activity associated with the personal equestrian use.
11. Given the retrospective nature of the application, the appellant has been using the stable building that is the subject of the appeal in addition to the accommodation provided for horses within the Dutch barn for some time, and I observed two horses within the stable at my visit. As such, there is limited information regarding the impact of the equine use of the Dutch barn alone upon the living conditions of the nearby occupiers, against which the impact arising from the appeal proposal might be clearly compared or disaggregated.
12. However, clearly the additional stabling provides accommodation for a greater number of horses overall. It follows that such an increase either prolongs or intensifies the activity and noise associated with the movement of horses,

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<sup>2</sup> Reference 18/07417/CLE

<sup>3</sup> Drawing number P00

- grooming, preparation for events, mucking out, feeding and other related equine care activity. Furthermore, they are kept within a relatively confined physical area in close proximity to a long elevation of Woodlands
13. The information before me suggests that whilst such general activity takes place throughout the day, it is not uncommon for equine care to be required early in the morning and into the evening. Additionally, weekends<sup>4</sup> are indicated as amongst the busiest time given the scheduling of equine events. As such, this would coincide with times when residents are generally seeking to relax within their property. Therefore, disturbance from nearby activity in these circumstances would cause greater harm.
  14. I acknowledge that vehicles associated with food and collection of horse muck would be likely to occur at the same frequency irrespective of the presence of the appeal building and that the additional horses are unlikely to significantly increase traffic arising from routine farrier and veterinary visits. I further note that the Highway Authority did not identify a significant increase in vehicle movements arising from the proposal.
  15. Even so, the noise assessment<sup>5</sup> provided refers to typical movements that include the loading of horses and driving to events twice a week during winter months and three times a week in summer months, and that this does not normally take place before 7am. Nevertheless, even if the occupants of Woodlands were not sleeping at 7am, movement on or shortly after 7am, particularly at weekends, is likely to cause notable and abrupt disturbance. Additionally, by increasing the number of overall horses, it is likely to extend the time taken to load and unload animals overall and furthermore, depending on the capacity of vehicles used, may generate a proportion of additional movements.
  16. Although the predicted daytime noise levels arising from vehicular movements in the submitted acoustic report are within the desirable range of noise levels as defined within British Standard (BS) 8233:2014 and below those in World Health Organisation Guidelines for Community Noise, the measurements indicate that noise levels from vehicular movements have the potential for disturbance during the night time as they exceed guideline values<sup>6</sup>.
  17. Moreover, the submitted noise assessment focusses primarily on the level of noise arising from vehicular movements<sup>7</sup> stating that there would be negligible impact arising from other general activity. However, there is limited assessment of the character and combination of noise which is how it is experienced by nearby residents. I have concerns that the nature and location of the activity associated with the development, is likely to concentrate and exacerbate intermittent noise that ranges in character including the use of equipment and the general coming and going of animals and people that would prove particularly annoying for residential occupiers located close to, and facing towards such activity.
  18. Furthermore, this would be experienced against the otherwise low level of background activity given the generally, quiet rural character of the area.

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<sup>4</sup> Paragraph 3.3 Sharps Redmore Acoustic Consultants, Environmental Noise and Vibration Assessment, dated 24 October 2019

<sup>5</sup> Sharps Redmore Acoustic Consultants, Environmental Noise and Vibration Assessment, dated 24 October 2019

<sup>6</sup> Paragraph 6.7

<sup>7</sup> Paragraph 4.4

Consequently, the character of such noise would be more marked, and likely to cause disturbance to nearby residential occupiers.

19. This is reinforced by the comments of the residents at Woodlands who have been living at the property for a considerable period and consequently, were able to describe the relatively low level of equestrian activity that occurred prior to the appeal development taking place. Moreover, although I have had regard to the established equine lawful use, as they have experienced the cumulative actual effects of the appeal building in operation, this is of considerable weight and relevance.
20. Taking all these factors together, the activity associated with the additional horses arising from the development would exacerbate the overall extent of noise and disturbance in proximity to a residential dwelling such that it has an unacceptable impact on their living conditions.
21. The appellant highlights that there has been no objection from the Council's environmental protection team, nor has a statutory nuisance been established. Be that as it may, the absence of a statutory nuisance does not weigh in favour of the proposal. Moreover, the threshold and test to establish a statutory nuisance is different to the application of national and local planning policies. I am mindful that paragraph 180 of the National Planning Policy Framework (the Framework) states that planning decisions should ensure that new development is appropriate for its location taking into account, amongst other matters, the likely effects, including cumulative effects of pollution on living conditions.
22. In addition, paragraph 127 f) of the Framework stipulates that planning decisions should create places that, amongst other things, have a high standard of amenity for existing and future users. The proposal falls short of achieving this.
23. I acknowledge that a reasonably methodical approach is shown towards identifying predicted vibration levels arising from vehicular movements, and that it is unlikely that other activities associated with the appeal building would generate significant vibration. Based on the predicted vibration levels identified coupled with the generally limited frequency of vehicle movement overall, the impact on the living conditions to the residents of Woodlands arising from vibration is slight and therefore, unlikely to have a significant impact on the living conditions of the occupants. I have seen little other specific evidence to substantiate concerns or undermine the appellant's evidence regarding the impact from vibration.
24. The stable building is internally lit but does not propose external lighting. Notwithstanding that Woodlands has windows facing towards the stable building, the orientation of the stable openings and its separation from Woodlands prevents the impact from being intrusive. Given that the downward facing spotlights used in the overhang have been disabled, the level of external lighting on the appeal building is a matter that could be restricted by condition in order to safeguard this position. The representations received refer to lighting installed on the Dutch barn. However, this is a matter that falls outside the scope of this decision.
25. The use of headlights associated with vehicular traffic attributable to the appeal building is likely to be of a relatively limited frequency. In any event, the

alignment of vehicles proceeding along the bridleway would not generally shine headlights towards Woodlands. Based on the evidence presented, it is not shown that it would amount to light pollution resulting in unreasonable disturbance for the occupants of Woodlands.

26. The additional horses accommodated within the appeal building would generate manure and waste. At my site visit the stable building and horses appeared well kept and there was no obvious sign or smell of waste. However, it was a cold day and I accept that in the absence of suitable storage and disposal arrangements, the proximity of Woodlands to the building and some of the surrounding land, means that unpleasant smells from such waste could compromise the living conditions of the residents, especially in warmer temperatures when windows are likely to be open. Nevertheless, given the amount of land within the appellant's control, there is little basis to suppose that suitable arrangements could not be made to prevent such an impact.
27. As such, this is a matter that could appropriately be made the subject of a condition in accordance with paragraph 54 of the Framework in order to make the proposal acceptable in this regard. This is reinforced by the approach taken by the Council in other applications<sup>8</sup> for equestrian development, and in the appeal decision<sup>9</sup> to which I am referred.
28. Nevertheless overall, I find that the proposal increases the number of horses on site which exacerbates the associated level of activity and movement to such a degree that it results in an unacceptable amount of noise and disturbance harmful to the living conditions of the occupiers of Woodlands. Therefore, the proposal conflicts with Core Policy 57 of the Wiltshire Core Strategy, January 2015 which sets out criteria to ensure development achieves a high quality of design and place shaping. This includes the consideration of the compatibility of adjoining buildings and uses such that regard is had to the amenities of existing occupants.
29. In addition, as outlined already the proposal would conflict with paragraph 127 of the Framework. I note that the decision notice also refers to paragraph 130 which stipulates that permission should be refused for development of poor design. Unlike paragraph 127, it does not refer to the impact upon living conditions of users, and hence, has limited direct application to the circumstances of the appeal proposal. On this basis, I do not find a specific conflict with it.

#### *Other matters*

30. My attention is drawn to the absence of objections from the Council in relation to the visual impact on the area, highway safety and drainage. I have also had regard to the general support for equestrian development within the countryside in some representations made in relation to the planning application. However, the comments in relation to those matters do not address or outweigh the harm that I have identified.
31. The appellant raises concerns that the Council considered matters unrelated to the merits of the proposal in reaching their decision. Planning law requires that applications for planning permission be determined in accordance with the

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<sup>8</sup> Referenced 19/05725/FUL, 18/04897/FUL, W/11/03130/FUL & W/11/00167/FUL – Appendix 7 Appellant's appeal statement

<sup>9</sup> Reference APP/Y3940/A/12/2183848, Appendix 8 Appellant's appeal statement

development plan, unless material considerations indicate otherwise<sup>10</sup>.  
Accordingly, whilst I note this assertion, of itself it does not have a bearing on my assessment of the proposal on this basis.

### **Conclusion**

32. For the reasons given above, I conclude that the appeal should be dismissed.

*Helen O'Connor*

Inspector

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<sup>10</sup> Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.