



Appeal Decision

Site visit made on 28 July 2020

by M Scriven BA (Hons) MSc CMgr MCIHT MCMI

an Inspector appointed by the Secretary of State

Decision date: 28 August 2020

Appeal Ref: APP/P1133/W/20/3251793

Meadow Court, Kerswell, Chudleigh TQ12 0DH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Elliot-Ogden against the decision of Teignbridge District Council.
 - The application Ref 20/00282/VAR, dated 11 February 2020, was refused by notice dated 6 April 2020.
 - The application sought planning permission for a change of use of field to equine use with stables without complying with a condition attached to planning permission Ref 19/01603/FUL, dated 9 January 2020.
 - The condition in dispute is No 6 which states that: The stables hereby permitted shall not be used, let, leased or otherwise disposed of for any commercial purpose.
 - The reason given for the condition is: To restrict the character and volume of traffic attracted to the site.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Elliot-Ogden against Teignbridge District Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the condition is reasonable and necessary in the interests of highway safety.

Reasons

4. The appeal site is located in a rural location, with a small number of properties nearby. The roads surrounding and leading to the site are typically very narrow, bound by hedge banks and stone walling, with few passing places. The proposed stables are yet to be built but would be accessed via an existing track sloping down to the field from a narrow lane understood to be public highway.
5. The Council's reasoning for condition No 6 (the condition) to not allow commercial use of the proposed stables was to restrict the character and volume of traffic attracted to the site. When the appellant subsequently sought planning permission to not comply with the condition a single reason for refusal was given. Specifically, this regarded road safety in so far as a commercial stables would likely result in increased traffic volumes entering and leaving the site and therefore, by virtue of being served by a narrow access track with no

passing places, likely result in reversing movements from the site back on to the public highway.

6. Although no traffic data for the lane has been provided my site observations were that it is of relatively low usage, albeit I did see walkers, cyclists and cars on the lanes leading to the appeal site during my visit. Forward visibility for users of the lane passing the access is poor in both directions. When approaching from the Chudleigh direction the lane is bound by high banks and boundary walls, from the other direction the approach is down a steep hill to a blind bend, on which sits an access to a farm, prior to the access of the track, which is aligned at an acute angle to the lane.
7. Little information has been provided of any intended commercial usage. Without such information, it is not possible to assess the level of traffic to and from the proposed stables. Commercial uses tend to be more intense than that of private uses. Therefore, there is an unacceptable risk that the trips to and from the site would be greater for a business than a private use.
8. As the track has no passing places, if two vehicles were to meet, one would need to reverse. Although the track is relatively short, visibility down it from the lane is such that drivers must turn on to the track itself in order to see any oncoming vehicle. If reversing back to the lane the driver would be reliant on other road users giving way. However, this would be unexpected for users of the lane, it could also not be safely relied upon given the poor visibility along the lane itself. Although the lane is quiet, such a situation would increase the likelihood of collisions and therefore the removal of the condition would harm highway safety.
9. Notwithstanding the appellants view, the lane is not a cul-de-sac, albeit unsigned and serving few properties, it is a through road. I acknowledge that the lane appears to be typical of the area, being narrow with limited passing places. However, this would not make the potential for introducing harm to the safety of highway users at the point of access acceptable.
10. The appellant explains that by virtue of a proposed area of hardstanding, drivers leaving from the proposed stables would be able to do so in forward gear, this I accept. However, this would not overcome an increase in traffic using the track. Furthermore, there is no certainty any driver would reverse back to the hardstanding area at the proposed stables to let another pass. Similarly, there is no certainty that a driver would decide not to reverse back on to the lane.
11. Various examples of other equine developments and precedent nearby have been provided by the appellant. However, I have not been provided with any detail of their acceptance or how they create similar reversing movements on to public highway from private land, such that would be likely from a commercially run stables in this location.
12. The appellant has identified that no similar condition was applied to the field itself. However, allowing a commercial use of the stables would intensify the use of the site as a whole.
13. The appellant considers that the original planning officer's report, 19/01603/FUL, refers to there being no identified highway safety issue associated with the proposal and the condition is therefore unreasonable.

However, I am of the view that this referred to the development which was approved given the harm identified above.

14. The appellant contends that the reasoning for the refusal of planning permission ref 20/00282/VAR differs to that of the original reason for the condition and is therefore inconsistent and unreasonable. However, I consider the two matters to be clearly linked. The condition was applied to restrict the character and volume of traffic attracted to the stables, if the condition was removed the volume of vehicle traffic associated with the proposed stables would likely increase and create a highway safety issue at the point of access.
15. The absence of objection from the highway authority to a proposal before the relevant planning authority does not equate to there being no harm to highway safety. The highway authority is a statutory consultee, however, it is for the planning authority to determine the application on the evidence before them.
16. The appellant is of the view that the Council has further acted unreasonably in placing the condition on the original approval without consultation. Although the PPG states early engagement can reduce the need for conditions, the condition imposed is not a pre-commencement condition which requires the prior written agreement of the applicant. The appeal relates to the subsequent planning application ref 20/00282/VAR, at which point it is understood the Council sought clarification of any intended commercial use to inform their decision making, this was not forthcoming from the appellant and neither has it been explained in any appeal evidence submitted.
17. On the basis of the evidence provided I consider that the condition is reasonable and necessary in the interest of highway safety. Therefore, removing the condition would not accord with Policy S1 of the Teignbridge Local Plan 2013-2033, adopted 2014 (Local Plan), which amongst other things, seeks to ensure development is sustainable and does not harm road safety.
18. The appellant is of the view that the condition is contrary to Policy EC5 of the Local Plan relating to the support of equine development. However, conformance with this policy would not outweigh the harm identified above.

Conclusion

19. For the reasons above the appeal is dismissed and the condition retained in its present form.

M Scriven

INSPECTOR