
Appeal Decision

Site visit made on 14 June 2021

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 23 June 2021

Appeal Ref: APP/J1860/C/21/3270810

Land known as Baughton Stud, Pershore Road, Earls Croome, Worcester WR8 9DH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Alex Teasdale against an enforcement notice issued by Malvern Hills District Council.
- The enforcement notice, was issued on 26 February 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the unauthorised material change of use of land from private equestrian to a mixed use of private and commercial equestrian including operational development of a manege, the siting of containers for use as an equestrian shop and store, and the siting of a mobile home for residential use.
- The requirements of the notice are: 5.1 Permanently cease the use of the land for the siting of a mobile home for residential use; 5.2 Permanently remove the mobile home (approximately outlined in green for identification purposes on the attached plan) and any associated domestic paraphernalia from the land; 5.3 Permanently cease the use of the land for equestrian commercial purposes; 5.4 Permanently remove the containers (approximately outlined in blue for identification purposes on the attached plan) from the land; Permanently remove the manege (approximately outlined in purple for identification purposes on the attached plan) and restore the land to its original condition before the breach took place.
- The period for compliance with the requirements is: In respect of 5.1 and 5.2 – 9 months; In respect of 5.3, 5.4 and 5.5 – 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

The Appeal on Ground (a) and the deemed planning application (DPA)

Main Issues

1. The main issues are:

- Whether the appeal site is a suitable location for residential use;
- Whether the site is appropriately located for commercial equestrian use, bearing in mind impacts related to highway safety;
- Whether the development complies with local and national planning policy which seeks to steer new development away from areas at the highest risk of flooding;
- The effect on the character and appearance of the area;

- Whether the development makes appropriate provision for foul and surface water drainage; and
- The impact on natural habitats.

Reasons

Suitability of location – residential use

2. The appeal site lies in the open countryside and outside of any development boundary. Pursuant to Policy SWDP 2 of the South Worcestershire Development Plan, February 2016 (SWDP), development is therefore strictly controlled in this location. Policy SWDP 2C sets out an exception to this restriction as regards dwellings for rural workers.
3. Policy SWDP 19 then sets out detail relevant to this exception and provides that a temporary permission can be granted for a rural workers' dwelling to enable the economic viability of the business to be established. Evidence must then be submitted to demonstrate a functional need for the dwelling, and also to show that the business has been planned on a sound financial basis in accordance with Annex G to the SWDP.
4. Turning then to these tests, the appellant has submitted no detailed evidence with this appeal to demonstrate how these tests would be met. However, according to the appellant's planning statement submitted with their 2020 planning application¹, the appellant's business on site is two-fold: an equestrian supplies business, and a horse schooling and breaking business. There is some reference also though to operation as a stud.
5. The appellant refers in evidence to the presence of stallions and mares on site and states that this necessitates 24 hour presence on site for the safety and security of the horses, including protecting mares from the stallions.
6. As regards security, no justification has been given as to why modern technology such as CCTV and mobile phone connectivity, with appropriate listening devices could not be used in this case to provide adequate security against theft of high value equines and to allow intervention in any issues between mares and stallions.
7. As regards brood mares, I acknowledge that the presence of broodmares and their foals could potentially lead to welfare risks if unattended overnight. However, very little detail is given as to the stud element of the business in terms of how brood mares would be accommodated. Further, as the Council outlines, there is no evidence that any functional need relates to a full time worker as required by Annex G to the SWDP.
8. As regards to the economic planning of the business, the Council has stated that the business plan submitted by the appellant with the 2020 planning application relates only to the equestrian supplies business. As such, there is no evidence before me to indicate that the horse schooling/breaking/stud business has been planned on a sound financial basis.
9. Thus, I conclude on the first main issue that the appeal site is not a suitable location for residential use. There is conflict then with Policies SWDP 2 and 19 of the SWDP as outlined above.

¹ Ref 20/01827/FUL

Suitability of location – commercial equestrian use

10. The appellant's equestrian supplies business is apparently primarily an online enterprise but a storage container has also been provided on site to enable local customers to browse. The other aspect of the commercial use is then the horse training/breaking/stud business.
11. Policy SWDP 10 sets out the Council's retail hierarchy for the area and provides that, outside of the centres listed, planning permission will be granted for new village or neighbourhood shops provided that it can be demonstrated that they are of an appropriate scale and will not have a significant adverse impact on the vitality or viability of any local centre. The appellant has not provided any detailed evidence to demonstrate that there would be no such impact in this case. Further specific exemptions apply to farm shops and garden centres but the equestrian supplies business does not fall into either of these categories.
12. I acknowledge that paragraph 88 of the National Planning Policy Framework (the Framework) indicates that the sequential approach should not be applied to small scale rural development. However, the Council draws my attention to Policy SWDP 4, which seeks to ensure that new development minimises the demand for travel. In view of the appeal site's location relative to the nearest settlements and the specialist nature of the business, it seems likely that there would be a good deal of reliance on the private car by customers.
13. Further, the commercial use is highly likely to increase the number of vehicle movements into and out of the site as compared to a solely private equestrian use, in view of comings and goings of both customers and deliveries. The access track to the site is single width with no passing places in the stretch leading to the appeal site. The access leads to the A4104 road which appears to see relatively high levels of fairly fast moving traffic.
14. The appellant provides no detailed evidence to demonstrate that the commercial use of the site would not result in any harm to highway safety including in terms of the size of vehicles likely to access the site and impacts of additional turning movements onto the main road. The potential for larger vehicles to park in the lay-by opposite the access could not be guaranteed and would potentially also result in further safety issues in terms of delivery persons crossing the main road with deliveries.
15. As such, in the round, I find that the site is not appropriately located for commercial equestrian use, bearing in mind impacts related to highway safety. There is conflict with Policies SWDP 2, 4 and 10 of the SWDP and with paragraph 109 of the Framework.

Flooding

16. Paragraph 158 of the Framework seeks to steer development away from areas at highest risk of flooding and refers to the sequential test designed to fulfil this purpose. Policy SWDP 28 also sets out the sequential test as the first hurdle to be passed in assessing development from a flood risk perspective.
17. The majority of the appeal site falls within Flood Zone 3, which is the designation for areas at greatest risk of flooding. The siting of a mobile home for residential use is classed as 'highly vulnerable' to flood risk².

² Per Planning Practice Guidance (Guidance) Paragraph: 066 Reference ID: 7-066-20140306

18. The appellant submitted a flood risk assessment with an earlier application for stables at the appeal site³ (FRA). However, no evidence is submitted to demonstrate that the sequential test has been passed in this case and the Council further comments that, since the date of the appellant's FRA, updated surface water mapping and Environment Agency flood maps have been published, so the FRA would also need to be updated in these regards.
19. I therefore conclude on the evidence before me that the development does not comply with local and national planning policy which seeks to steer new development away from areas at the highest risk of flooding. It is contrary to the provisions of Policy SWDP 28 and section 14 of the Framework.

Character and appearance

20. The appeal site is in an obviously rural location being surrounded by fields, although close to the A4104. The storage containers and caravan sited in connection with the change of use in view of their utilitarian design and⁴ light coloured finish have an urban appearance, out of character with the softer rural surroundings. The change of use to commercial equestrian use would also be likely to result in additional car parking on site, which would further urbanise the countryside setting.
21. Whilst these harmful effects would not be apparent from the main road, they are clearly visible from the track leading to the appeal site and to the dwelling further down the track. The appellant has not produced any evidence to indicate that members of the public are not permitted to use this track, and indeed, it is likely that the change of use alleged results in such use.
22. In contrast, the manege is of a relatively subtle design of low natural coloured fencing and is of fairly modest size relative to the appeal site. It does not therefore result in harm to the character and appearance of the area.
23. I conclude then on the third main issue that the change of use to a mixed commercial equestrian and private equestrian use and siting of containers for use as an equestrian shop and store, along with the siting of a mobile home for residential use result in harm to the character and appearance of the area. There is conflict thus with Policies SWDP 21 and 25 which seek to ensure that development integrates effectively with its surroundings and the character of the landscape setting.

Drainage

24. A watercourse lies to the eastern boundary of the appeal site and the Council has commented that indications from a soils map are that the appeal site is described as 'clayey floodplain soils with naturally high groundwater'. The appellant has not submitted with this appeal details of foul and surface water arrangements. However, some limited details were submitted with the 2020 planning application including references to a soakaway, water butts at downpipe positions, permeable surfacing, and to a cess pit. The appellant submits no detailed evidence though as to whether the drainage hierarchy set out in the National Planning Practice Guidance has been satisfied in this case.

³ Ref: 11/00605/FUL

⁴ As regards the mobile home and storage container shop

25. However, whilst some of these matters related to surface water drainage might in theory be able to be dealt with by condition, in view of the very limited information provided by the appellant and soil type identified, I cannot be satisfied that these matters can be adequately dealt with by condition.
26. On the evidence before me, I therefore conclude that the development does not make appropriate provision for foul and surface water drainage. It runs counter therefore to Policies 29, 30 and 31 of the SWDP and paragraph 163 of the Framework which seek to ensure that new development demonstrates that it can sustainably manage surface water run-off, prevent unacceptable risk to water quality and pollution of the water environment.

Habitats

27. The appeal site is some 180m to the north of Smithmoor Common and Meadows Local Wildlife site and the Council has identified that the appeal development has the potential to impact on habitats including through loss of grassland and pollution of watercourses.
28. The appellant has submitted no ecological survey as an initial assessment of likely impacts and I cannot therefore be satisfied that there would not be adverse impacts on natural habitats, nor that any such impacts could be mitigated by condition. As such, there is conflict with Policy SWDP 22 of the SWDP and with section 15 of the Framework which seek to ensure that development conserves the natural environment.

Conclusion on Ground (a) and the DPA

29. Drawing all of these matters together, I find that the appeal site is not a suitable location for residential and commercial equestrian use, bearing in mind impacts on highway safety, and the development also does not comply with local and national policy related to flood risk. It has, with the exception of the manege, a harmful effect on the character and appearance of the area. On the evidence before me, I cannot be satisfied that there would be appropriate provision for drainage, and that there would not be unacceptable impacts in terms of local natural habitats.
30. I therefore find that the development does not accord with the development plan read as a whole and there are no material considerations to indicate a decision other than in accordance with the development plan. Whilst the manege does not result in visual harm, on the evidence before me, I am not content that it does not cause harm in terms of making appropriate drainage provision and as regards habitats in the vicinity of the site. I do not therefore issue a split decision in respect of the manege.

The Appeal on Ground (g)

31. The appeal on ground (g) is that the period for compliance specified in the notice falls short of what is reasonable.
32. The notice specifies a period of nine months as regards removal of the mobile home and ceasing the use of the land for the siting of a mobile home for residential purposes. The notice then specifies a period of three months in respect of ceasing the use of the land for equestrian commercial purposes and removing the containers and manege, along with restoring the land to its original condition. The appellant does not specify what time period he

considers would be reasonable. However, he refers to his mental health issues and to the impacts of the pandemic on his business and therefore requests additional time on this basis.

33. The appeal site is apparently home to the appellant and it has been stated that he also has full-time care of his young child. The effect of the notice is that the family will lose their home. The enforcement notice, which will be upheld, will interfere with rights under Article 8 of the Human Rights Act 1998, which states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, subject to proportionality. In enforcement appeals, human rights considerations come into play under ground (g) as the decision maker has some discretion.
34. The Council's decision to enforce was legitimate and in the public interest, given the harm caused by the development. However, in view of the circumstances outlined above, the notice does not afford the appellant reasonable time to look for alternative accommodation.
35. It would be inappropriate to extend the period to more than one year, which would be akin to a grant of unconditional temporary planning permission for the unauthorised use. I find then that a period of 12 months should be allowed in respect of requirements 5.1 and 5.2; this would be proportionate and necessary to avoid a violation of the rights under Article 8. A period of 9 months in respect of requirements 5.3, 5.4 and 5.4 would be reasonable in the circumstances bearing in mind the impacts of the pandemic and the appellant's mental health issues.
36. To this extent, the appeal on ground (g) succeeds.

Overall Conclusion

37. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

Formal Decision on Appeal A

38. It is directed that the enforcement notice is varied by:
- In paragraph 6, deleting the wording '9 months' and substituting '12 months'; and
 - In paragraph 6, deleting the wording '3 months' and substituting '9 months'.
39. Subject to the variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

V Bond
INSPECTOR