



Appeal Decision

Site Visit made on 13 July 2021

by S M Holden BSc(Hons) MSc CEng MICE CTPP FCIHT MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2021.

Appeal Ref: APP/U1430/W/20/3270899

Park Pale Meadow, Mountfield Lane, Mountfield TN32 5LD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Ms Sam Swift against the decision of Rother District Council.
- The application Ref RR/2019/2525/P, dated 6 November 2019, was refused by notice dated 18 February 2020.
- The application sought planning permission for a change of use of land to part equestrian. Additional buildings to include stables, a tack room, a store shed, improved access & track, formation of new hard standing in front of stable block (retrospective) without complying with conditions attached to planning permission Ref: RR/2019/1370/P, dated 16 August 2019.
- The conditions in dispute are:
 - No 6 which states: The use hereby permitted shall be carried out only by Ms Sam Swift only.
 - No 7 which states: When the use hereby approved ceases the buildings and hard standing also hereby approved shall be removed from the land and the land restored to its condition before the development took place.
- The reasons given for the conditions are:
 - No 6: *To control further development and in the interests of the character and amenities of the area within the High Weald AONB, in accordance with Policies OSS4 (iii) Rother Local Plan Core Strategy and*
 - No 7: *In the interests of the character and amenities of the areas within the High Weald AONB, in accordance with Policies OSS4 (iii) Rother Local Plan Core Strategy.*

Decision

1. The appeal is allowed and planning permission is granted for a change of use of land to part equestrian. Additional buildings to include stables, a tack room, a store shed, improved access & track, formation of new hard standing in front of stable block subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs has been made by Ms Sam Swift against Rother District Council. This application is the subject of a separate decision.

Main Issue

3. The main issue is whether Conditions 6 and 7 are reasonable and necessary to protect the landscape and scenic beauty of the High Weald Area of Outstanding Natural Beauty (AONB).

Reasons

4. The appeal site lies within a remote part of the High Weald Area of Outstanding Natural Beauty (AONB) close to Darwell Reservoir. It is an area of flat land on a ridge which is enclosed by a belt of large, mature trees on its southern side and a robust, well-established hedge along the roadside boundary. Retrospective planning permission was granted in 2019¹ for a change of use of the land to equestrian, along with buildings including stables, a tack room and a store shed. The scheme also included an improved access and new hard standing.
5. The officer report on this retrospective application assessed the scheme against the development plan and found it to be acceptable in relation to its effects on the AONB. It recommended that the scheme should be approved subject to two conditions in addition to the standard time limit and a plans condition. These restricted the equestrian use to private use and prevented use of floodlighting. Having visited the site and seen the surrounding landscape setting, I concur with the officers' assessment of the scheme in relation to its effect on the landscape and scenic beauty of the surrounding area.
6. However, in response to local concerns about the long-term effects of the use, the buildings and hard-surfacing on the site, the Council imposed three additional conditions on the permission, the first of which limited the use of the site to 3 horses and no other animals. The other two restricted the permission to the appellant in person and imposed additional responsibilities on her to remove the development if her use of the site ceased in the future. It is these latter two conditions to which the appeal before me relates.
7. The National Planning Policy Framework (the Framework) sets out a series of tests which all planning conditions must meet. It states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
8. Planning permissions run with the land. Only in exceptional circumstances should a permission be granted to a particular person. No evidence was provided as to why the appellant should have been granted planning permission for the development when this would have been refused for another individual. Furthermore, the reason given for the condition did not relate to the appellant but appears to have been imposed to protect the character and appearance of the AONB. From what I have seen and read the effects of the buildings, hard-standing and use of the site on the AONB would be the same, irrespective of the individual who is operating the site. This leads me to the view that the condition is neither necessary nor reasonable.
9. If the Council had been concerned about the effects of the proposal on the AONB over the long term, it could have considered imposing a temporary permission. This is sometimes appropriate to give time to consider the effects of a development, such as a change of use, on a locality. However, when permanent structures are part of any proposal, it is unlikely that their removal if the use ceased at some unknown point in the future, would be reasonable. In this case, there did not appear to be any suggestion that the appellant only wished to undertake the equestrian activity on the site for a limited period. Even if that had been the case, she might wish to pass it on to another person

¹ RR/2019/1370/P

or persons. In those circumstances, provided that future users comply with the other conditions there is no reason why the effects of that continued use would differ from those which currently occur. I therefore consider that the condition is unreasonable.

10. The question of what might happen in the future if the use ceased and how the land and buildings might then be used would be subject to the planning controls which pertained at that time. The Council retains the right to consider the implications of future proposals that might come forward. However, that is a hypothetical situation which is not relevant to the consideration of conditions which should apply to the scheme for which permission had been applied and granted. If changes occur that contravene the existing permission, the Council could consider the use of its enforcement powers.
11. I therefore conclude that neither condition 6 nor condition 7 is necessary to protect the character and appearance of the High Weald AONB. Without them the scheme would still comply with Policy OSS4 (iiv) of the Rother Local Plan Core Strategy which requires development to respect the character and appearance of the locality. Neither would there be any conflict with Policies RA2, RA3, EN1 and EN3 of the Core Strategy or Policies DC02, DEN1 or DEN2 of the Rother Development and Site Allocations Local Plan, all of which seek to strictly control development within the AONB in the interests of protecting its landscape and scenic beauty.

Conditions

12. The guidance in the Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As the development has already taken place the standard time condition set out on the original permission is not relevant.
13. The condition specifying the plans is required to give certainty. I note that the officer report to the planning committee, dated 13 February 2020, which related to the application to remove the contested conditions also referred to a minor variation to the approved site plan, replacing drawing no. CL-CVS-1200, dated May 2019, with drawing no CL-CVS-1200a, dated July 2019. As this shows the correct position of the buildings on the site, I have reflected this amendment in the list of approved plans.
14. The remaining conditions restrict the use to private equestrian/recreational purposes, limit the number of horses to be kept on the site and prevent use of floodlight. These are justified in the interests of protecting the character and appearance of the AONB, both now and in the long-term.

Conclusion

15. For the reasons set out above, the contested conditions are unnecessary. I therefore conclude that the appeal should be allowed, subject to the revised conditions set out in the attached schedule.

Sheila Holden

INSPECTOR

Schedule of Conditions

1. The development is hereby permitted in accordance with the following approved plans:

Site location plan, drawing no. CL-CVS-1000B, dated May 2019

Block Plan, drawing no. CL-CVS-1100A, dated May 2019

Site plan, drawing no. CL-CVS-1200A, dated July 2019

Plans and elevations 1, drawing no. CL-CVS-2000, dated May 2019

Plans and elevations 2, drawing no. CL-CVS-2010, dated May 2019

2. The stables and storage buildings hereby permitted shall be used for private equestrian/recreational purposes only and not for any commercial riding, livery use, breeding, training or other business use.
3. No floodlighting or other external means of illumination of the stables/storage buildings hereby permitted shall be provided, installed or operated on the site.
4. No more than 3 horses shall be kept on the site as outlined in green on the approved plan, drawing no. CL-CVS-1000B, dated May 2019, and no animals other than horses shall be kept on the site.

End of Schedule