



Appeal Decision

Site visit made on 17 January 2022

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2022

Appeal Ref: APP/K3605/W/21/3279782

Chasemore Farm, Bookham Road, Downside, Cobham KT11 3JT

- 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 A Black (Chasemore Farm) against the decision of Elmbridge Borough Council.
 - The application Ref 2021/0062, dated 4 January 2021, was refused by notice dated 7 May 2021.
 - The development proposed is the erection of a lunge ring, an oval horse walker, a loading ramp, two all weather paddocks and associated access to these facilities from the existing pre-foaling yard.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a lunge ring, an oval horse walker, a loading ramp, 2 all-weather paddocks and associated access to these facilities from the existing pre-foaling yard at Chasemore Farm, Bookham Road, Downside, Cobham, KT11 3JT in accordance with the terms of the application, Ref 2021/0062, dated 4 January 2021, subject to the conditions in the attached schedule.

Main Issue

2. The main issue is whether the proposal would be inappropriate development in the Green Belt.

Reasons

3. The National Planning Policy Framework (the Framework) establishes that the construction of new buildings within the Green Belt is inappropriate. There is a closed list of exceptions to this in paragraph 149 of the Framework. One of which relates to the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it (paragraph 149 b)).
4. This principle is reflected in Policy DM17 of the Elmbridge Local Plan (adopted 2015) (Local Plan) which provides that, amongst other things, in order to uphold the fundamental aims of the Green Belt to prevent urban sprawl and to keep land within its designation permanently open, inappropriate development will not be approved unless the applicant can demonstrate very special circumstances that will clearly outweigh the harm.

5. Part b. of Policy DM17 provides that built development for outdoor sport, recreation and cemeteries will need to demonstrate that the building's function is ancillary and appropriate to the use and that it would not be practical to re-use or adapt any existing buildings on the site and that proposals should be sited and designed to minimise the impact on the openness of the Green Belt and should include a high quality landscape scheme. Although the Framework does not mention these further requirements, this does not mean that Policy DM17 is inconsistent with it, as both Policy DM17 and the Framework presume against new buildings in the Green Belt subject to exceptions, with Policy DM17 merely providing an additional criteria.
6. It is common ground between the main parties that the proposal would comprise the provision of appropriate facilities for outdoor sport and outdoor recreation, and that the proposed facilities would not conflict with the purposes of including land within the Green Belt. I have no reason to disagree, based on the evidence before me, and what I saw on site.
7. The Framework denotes openness as an essential characteristic of the Green Belt. Taking account of *Turner*¹, the openness of the Green Belt has a spatial aspect as well as a visual aspect. 'Open' can mean the absence of development in spatial terms, and it follows that openness can be harmed even when development is not readily visible from the public realm.
8. The proposed 2 all-weather paddocks and associated fencing would be low-lying and fairly insubstantial in nature, meaning that they would have a limited impact on the openness of the Green Belt. The proposed lunge ring, oval horse walker and loading ramp would be set well-back from Bookham Road and would be located near a large existing pre-foaling unit and a bank of woodland. Hence, their impact on the openness of the Green Belt would be limited in visual terms.
9. When considered as a group the proposed lunge ring, oval horse walker and loading ramp would increase the spread of built form around the pre-foaling unit and the hay barn. The mass created by their height and overall scale would have a limited reducing effect on the openness of the Green Belt in spatial terms. Nevertheless, taking account of the various case law referred to by the appellant², it must be emphasised that it is implicit within paragraph 149 b) of the Framework that some form of impact to the openness of the Green Belt, arising from the construction of new buildings for the provision of appropriate facilities for outdoor sport and recreation, may be allowed for under that paragraph.
10. Furthermore, the word 'openness' is open-textured and a number of factors are capable of being relevant when it comes to applying it. In this regard, I accept the principle demonstrated in appeal decision Ref APP/N5090/W/16/3151579 that relevant factors may include whether the proposed structures are intrinsic or inherently ancillary to the outdoor sporting or recreational activities. Indeed, a requirement for a building's function to be ancillary and appropriate to the use is given in Policy DM17.

¹ *Turner v SSCLG & East DC* [2016] EWCA Civ 466

² Including *R (oao Amanda Boot) v Elmbridge BC* [2017] EWHC 12 (Admin); *Lee Valley Regional Park Authority, R (oao) v Epping Forest DC & Anor (Rev 1)* [2016] EWCA Civ 404; *Europa Oil and Gas Limited v SSCLG* [2013] EWHC 2643 (Admin); *R (oao Samuel Smith Old Brewery (Tadcaster) & Ors) v North Yorkshire CC* [2020] UKSC 3

11. In this regard, Chasemore Farm is run as a professional stud farming business. As such, to maintain and grow the business the well-being of the horses and their successful breeding is important. The Council has stated that the site has been in operation for over 10 years, and this has not been disputed by the appellant. Hence, I have no reason to doubt the appellant's assertions that best practice with respect to managing the welfare of horses, including biosecurity, has evolved over the last 10 years.
12. The appellant has provided detailed commentary as to why the existing facilities could not be used to meet modern welfare standards. In summary, taking account of the submitted academic journal³, due to the distance of these facilities from the pre-foaling yard, handling the horses from the pre-foaling yard to those facilities would be unsafe in terms of risks of injury to the horse and handler and risks of a horse escaping from the handler. Additionally, a biosecurity risk would present itself, due to the sharing of facilities. Thus, a requirement for the modernisation of the facilities exists.
13. Taking all of the above into account, including the requirement for modernisation, the proposed structures would be inherently ancillary to the outdoor sporting and recreational activities currently undertaken at Chasemore Farm. Considering the scale of the commercial operation at Chasemore Farm, it is reasonable to conclude that the proposed facilities would be proportionate in size to meet these requirements. As such, the proposed facilities would preserve the openness of the Green Belt.
14. I therefore find that, taking into account the ancillary nature of the structures proposed in the context of the specific operations presently undertaken at Chasemore Farm, and the surrounding context, the proposal would not constitute inappropriate development in the Green Belt for the purposes of the Framework and Policy DM17 of the Local Plan. The aims of which I have set out above.

Conditions

15. I have had regard to the conditions suggested by the Council. I have considered them against the advice on conditions set out in the Framework and the Planning Practice Guidance. A condition is necessary, in the interests of clarity and enforceability, setting out the approved plans.
16. To safeguard the character and appearance of the area, I have imposed a condition requiring that the development permitted is constructed in the materials as set out in the application form and on a relevant plan. I have not referred to other materials, as if other materials are required this should be considered through a separate application.
17. Conditions are necessary requiring a Reptile Mitigation Strategy Report and written details and plans of the location and design of the Biodiversity Management and Maintenance Scheme to be approved in writing by the Local Planning Authority, and requiring the development to be carried out in accordance with the Recommendations of the Preliminary Ecological Appraisal and the Reptile Survey Report, to ensure that the development does not result in any adverse impact upon protected species or biodiversity. The Council's suggested text for condition No 6 in this appeal decision referred to matters of

³ Filby, M., Jackson, C., and Turner, M. (2012) Only falls and horses: accidents and injuries in racehorse training. *Occupational Medicine* [online]. 62 (5), pp.343-349. [Accessed 14 June 2021].

detail which are not required considering the comprehensive scope of the Preliminary Ecological Appraisal, and therefore those details have been omitted.

18. A condition is necessary to ensure that the potential for any unforeseen ground contamination is appropriately dealt with.
19. Conditions Nos 4 and 5 must be pre-commencement conditions, to ensure that any potential adverse impacts upon protected species or biodiversity, are assessed by the Council before development takes place.
20. The appellant has suggested a condition relating to a landscaping scheme but as the proposal would have a limited visual impact on the openness of the Green Belt such a condition would not be necessary.

Conclusion

21. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be allowed.

Alexander O'Doherty

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan (drawing no. 01), Site Plan (drawing no. 02 Rev. D), Plans & Elevations (drawing no. 03), New Lunge Ring, Exerciser and Loading Ramp Proposed Landscaping (drawing no. CF016 Rev. R2).
- 3) The external surfaces of the development hereby permitted shall be constructed in the materials set out in Part 6 of the Application Form (dated 4 January 2021) and as shown on the approved plan: Plans & Elevations (drawing no. 03).
- 4) Prior to the commencement of the development hereby permitted, a detailed Reptile Mitigation Strategy Report shall be submitted to and approved in writing by the Local Planning Authority. The report shall demonstrate that the development would not result in loss of reptile habitat or killing and injuring of reptiles. The development shall be carried out and thereafter maintained and managed in accordance with the approved Reptile Mitigation Strategy Report.
- 5) Prior to the commencement of the development hereby permitted, written details and plans of the location and design of the Biodiversity Management and Maintenance Scheme (as referenced in section 7 of the Preliminary Ecological Appraisal by aLyne Ecology (Version 001 dated 16 July 2020)) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and thereafter managed in accordance with the approved details.

- 6) Development shall be carried out in accordance with the Recommendations within the Preliminary Ecological Appraisal by aLyne Ecology (Version 001 dated 16 July 2020) and the Reptile Survey Report by aLyne Ecology (Version 001 dated 15 September 2020). The development shall thereafter be managed and maintained in accordance with the recommendations as set out in those documents.
- 7) If, during development, ground contamination is found to be present at the site it must be reported immediately to the Local Planning Authority. Development must be halted and an investigation shall be agreed, in writing, with the Local Planning Authority. The investigation shall be carried out by a competent person, to assess the condition of the land with respect to contamination. In the event that remediation is required, a written method statement detailing how the identified contamination shall be dealt with and risks mitigated shall be submitted to the Local Planning Authority for written approval. The agreed remediation method statement shall be implemented prior to the development being brought into use. Upon completion of the remediation, and prior to the development being brought into use, a written report providing verification that the required works with regards to remediation of contamination have been carried out in line with the agreed method statement shall be submitted to the Local Planning Authority for written approval. The verification shall be carried out and reported by an independent, competent person, stating that remediation was carried out in accordance with the approved remediation scheme and that the site is suitable for the permitted end use.