
Appeal Decision

Hearing (Virtual) held on 26 January 2022

Site visit made on 27 January 2022

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd March 2022

Appeal Ref: APP/X3540/W/21/3267880

Land and barn known as Buttons Meadow, Charsfield, IP13 7QE

- 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 Ms. Irma Peters-Neggers against the decision of East Suffolk Council.
 - The application Ref DC/20/3314/FUL, dated 25 August 2020, was refused by notice dated 3 December 2020.
 - The development proposed is Provision of a dwelling (temporary), and the change of use of land, alteration/improvement of existing barn to stabling, ménage and equine working school, erection of additional stables, siting of ancillary equipment and associated hard and soft landscaping.
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Decision

1. The appeal is dismissed insofar as it related to provision of a dwelling (temporary).
2. The appeal is allowed insofar as it related to change of use of land, alteration/improvement of existing barn to stabling, ménage and equine working school, erection of additional stables, siting of ancillary equipment and associated hard and soft landscaping and planning permission is granted for change of use of land, alteration/improvement of existing barn to stabling, ménage and equine working school, erection of additional stables, siting of ancillary equipment and associated hard and soft landscaping at Land and barn known as Buttons Meadow, Charsfield, IP13 7QE in accordance with the terms of the application, Ref DC/20/3314/FUL, dated 25 August 2020, and the plans submitted with it, so far as relevant to that part of the development hereby permitted and subject to the conditions in Annex A.

Preliminary Matters

3. During the hearing the appellant provided a letter from Parker Planning Services, dated 1 October 2020 which had been submitted to the Council during the consideration of the application. The information contained within the letter was referred to by the Council within its officer report. I requested a copy of this letter as it was not within the appeal documents submitted. During the hearing the Parish Council were provided with a copy and time to consider its contents.
4. The proposal is retrospective in nature as the mobile home has been sited on the site since March 2021, although it is not currently occupied. The parties confirmed that permission is being sought for a temporary period of 3 years.

5. Following the Council's decision, the National Planning Policy Framework (the Framework) was revised on 20 July 2021. The Council and appellant have had an opportunity to comment on the implications of these changes through their submissions.
6. In this case the Council issued a split decision, refusing planning permission for the provision of a dwelling (temporary). The Planning Practice Guidance sets out that express powers to issue split decisions are given to the Secretary of State and Inspectors in section 79 of the Town and Country Planning Act 1990.
7. In cases where the local planning authority considers part of the development to be unacceptable, in exceptional circumstances it may be appropriate to use a condition to grant permission for only part of the development. Such conditions will only be appropriate where the acceptable and unacceptable parts of the proposal are clearly distinguishable.
8. In such cases the whole proposal is before me, and I am not restricted to dealing with only the elements which have concerned the Local Planning Authority. This is because section 79(1)(b) allows that, on appeal under section 78, the Secretary of State may deal with the application as if it had been made to him in the first instance.
9. The proposal also includes a change of use of land, alteration/improvement of existing barn to stabling, ménage and equine working school, erection of additional stables, siting of ancillary equipment and associated hard and soft landscaping. The equestrian use of the site is compatible with its rural location and the site already contains a number of buildings which will be repurposed or replaced to provide the necessary accommodation for the horses. I therefore find no harm in respect of this element of the proposal, and I note the Council raised no objection in this regard either. As the two parts of the development are both physically and functionally severable, I consider a split decision would be a logical outcome.

Main Issue

10. The main issue in this appeal is whether there is an essential need for a dwelling to accommodate a rural worker.

Reasons

Policy Context

11. Policy SCLP3.3 of the Suffolk Coastal Local Plan 2020 (LP) sets out that proposals for new development outside of the settlement boundary will be carefully managed in accordance with national planning policy guidance and the strategy for the Countryside. Policy SCLP5.3 sets out the strategy for the Countryside and permits rural workers dwellings where there is an essential need for a rural worker to live permanently at or near their place of work and is linked to policy SCLP5.6.
12. Paragraph 80 of the National Planning Policy Framework (the Framework) states planning decisions should avoid the development of isolated homes in the countryside unless there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.

13. I have considered the points raised by the appellant with regard to the use of the word permanently and therefore whether the policy would be applicable to the proposed development of a temporary dwelling. However, I have also taken into account the use of the same wording in the Framework, and I am of the view that permanently refers to a need to be present on the site at all times, rather than for example seasonally, or at times of livestock giving birth. Therefore, I am content that both of these policies are relevant to my consideration of the appeal.
14. Policy SCLP5.6 sets out the Councils approach to rural workers dwellings. The parties agreed at the hearing that it provides a framework for the consideration of both temporary and permanent dwellings and is useful guidance. However, it has been put to me that it should not be regarded as a relevant policy as it refers solely to permanent dwellings.
15. Whilst the LP policy refers to permanent dwellings and sets out a number of additional criteria beyond that required by the Framework, it is consistent with the considerations provided within the Planning Practice Guidance (PPG)¹. The PPG advises that considerations that may be relevant include evidence of the necessity for a rural worker to live at, or in close proximity to, their place of work to ensure the effective operation of a land based rural enterprise.
16. Therefore, I am satisfied that the policy provides an appropriate basis for establishing whether or not there is an essential need for a rural worker to live permanently on the site. Therefore, I consider the policy to be relevant and afford it considerable weight.

Essential Need

17. The site comprises a rectangular site, with access from Monewden Road. Nearest to the road is an existing pole barn, previously used for hay/storage. The rear portion of the site is used for grazing. Adjacent to the site is a public right of way which runs along the boundary of the site.
18. The proposal includes the provision of a stable block, parallel with the frontage of the site, a covered menage/riding arena and the siting of a mobile home towards the middle of the site. The grazing to the rear would remain.
19. The use of the site would be for Equine Assisted Psychotherapy (EAP), where clients would visit the site to receive therapy and would interact with the appellants two horses during the session. The appellant has not started her business and the horses have not yet been used for therapy as the appellant considers it is not possible to do this safely until she is able to reside at the site.
20. The horses are not stabled (as in not behind closed stable doors) but are free to come and go into the paddock as they wish. This is known as free range stabling and gives the horses greater choice, and the will of the owner is not imposed upon them. They are not ridden as part of the therapy and are not tethered. My understanding is also that they do not wear a harness or bridle when taking part in the sessions.

¹ Paragraph: 010 Reference ID: 67-010-20190722

21. The horses currently live on the site and have done for the past two years. During this time the appellant has visited them daily in order to meet their needs and confirmed that she currently lives approximately 25 minutes from the site. At the hearing it was confirmed that during this time there had been no incidents of colic and the horse's welfare had been adequately met.
22. The appellant has indicated that they wish to expand the herd in future, and it may increase to 5 horses. However, given that the business is not yet established I am not persuaded that this is something that is likely to happen in the immediate future and in any event, even if 5 horses were to reside on the site this does not lead me to conclude that there would be a need for someone to reside on the site. In addition, I am satisfied that there is sufficient space within the site to provide a level of sitting up accommodation during any periods of foaling where closer supervision may be required.
23. It is evident that the horses are currently able to reside on the site and that this has not led to any significant problems. Although horses require daily attention, usually at least twice a day. It is not uncommon for horses to be stabled and grazed in locations which do not have a residential occupant within sound and site. Therefore, the existence of the horses alone is not sufficient justification for someone to live permanently on the site.
24. It has been put to me that the business enterprise would place special demands on the horses, and it is this which justifies the need for a dwelling on the site. The appellant has outlined that in order for the therapy to work, the horses must see her as part of the herd, and it is not possible for this bond to develop if the appellant does not live on site.
25. Whilst I accept that the horses would be aware that the appellant was not on the site when she departs at the end of the day, I am not persuaded that this would limit the bond which she has with the animals, as their primary care giver and the person who was with them during the working day. Even if the appellant were to reside at the site, there would be times when she was not present as she would need to leave the site in order to access, for example, shopping, healthcare and leisure activities. Furthermore, the horses would not be able to see her at times when she was within the mobile home. In this regard, there is insufficient evidence before me to demonstrate how the behaviour of the horses would differ (in terms of accepting her as part of the herd), if the appellant were to reside on the site than if she was to be there during her working day.
26. Other examples of the special demands arising from the EAP were that the horses must be under the minimum amount of stress in order to take part in the therapy session. The appellant set out that if an incident happened overnight, such as a horse being spooked by fireworks or aeroplane noise, she would know that the horse was stressed when she arrived at the site but not the reason why. This stress would be exhibited for a couple of hours and therefore it would not be possible for a therapy session to take place and it would be very traumatic for the clients coming to the session for a cancellation to occur at short notice.

27. However, I have nothing before me to demonstrate how living on site would minimise the stress associated with incidents such as fireworks, whilst I accept that the appellant would know why the horse had become stressed. It would not prevent the situation occurring and the outcome may still be the same. If a therapy session was due to take place at 1000 and a horse became stressed, due to perhaps a loose dog from the nearby footpath or a low flying aircraft at 0900, then the outcome would be the same if the appellant was living on site or not.
28. The appellant set out through her oral evidence that she would need to observe the horses, perhaps from when she first fed them in the morning at 0600, and whilst she was preparing for her first client throughout the day. She also indicated that the horses can not be made to take part in the sessions, that they must be willing participants and that if they decided not to come up to the gate that morning then that might indicate that they weren't willing to do so.
29. A risk to the success of the enterprise would arise if EAP sessions had to be regularly cancelled due to a horse's unwillingness to participate, either through stress or other factors. However, it has not been adequately demonstrated that this risk can only be mitigated by living on site.
30. The business statement sets out that there is likely to be in excess of 100 hours a week where therapy sessions would not be taking place. This indicates that it would be possible to schedule appointments to ensure that the appellant had sufficient time to be present on the site to observe and monitor the horses from when she arrived in the morning to ensure that they were willing to take part in the EAP.
31. Other options for monitoring the horses, to check for any incidents, would be possible through the use of CCTV or other equine technology alluded to by the Council at the hearing. The evidence before me does not demonstrate that all of these have been fully explored and discounted by the appellant.
32. For example, the use of CCTV would enable the appellant to review any situations that had arisen that may lead to a horse being stressed. As I have set out, I am not persuaded that the examples put to me would be avoided by living on site albeit that the appellant would be able to react to them sooner. However, the risks to the business through cancellation of appointments is unlikely to be avoided if a horse has become spooked or become unwell overnight.
33. Therefore, I am not persuaded that the special demands placed on the horses as a result of the therapy can not be adequately mitigated through careful management of the horses during the day and ensuring the appropriate scheduling of appointments to enable sufficient time to monitor and observe the horses before each session.
34. It has been put to me that it is only luck that nothing has happened to the horses during the previous 2 years and the impact on the business would be significant if a horse was injured or died. It would not be easy to replace a horse as it takes time to establish if a horse is able to take part in EAP. However, the appellants business would mean that they would be on site for a large part of the day and this would enable the horses to be monitored closely.

35. The appellant has cited a number of examples of accidents that can happen if a horse gallops into a fence or become injured if kicked but notes that these can happen at any time during the day or night. There is nothing in the evidence to suggest that these accidents could be prevented even if the appellant was residing in the mobile home and therefore the risks to the business of a horse becoming injured can not be fully mitigated by an onsite presence.
36. The appellant's agent has referred to the need to take a leap of faith in considering whether to grant a temporary permission, as if the business is not successful after three years, then the appellant would not be able to justify a permanent dwelling. However, it is not a leap of faith but a planning judgement that must be made as to whether the proposal before me accords with planning policy and taking a view based on the evidence presented.
37. Whilst a temporary permission can be appropriate for new enterprises, this is so that confidence can be gained as to whether a viable business can be built, before allowing for a permanent dwelling. This does not remove the need to demonstrate a functional need for someone to live on the site in connection with the proposed rural enterprise.
38. In conclusion there is insufficient evidence to demonstrate that there is an essential need for a rural worker to live at the appeal site for a period of three years. Therefore, in this regard the development conflicts with policies SCLP3.3, SCLP5.3 and SCLP5.6 of the LP.

Other Matters

39. The appeal site falls within the 'Zone of influence' for a designated habitats site. As the competent decision making authority, if I had been minded to allow the residential element of this appeal it would have been necessary for me to complete an Appropriate Assessment for this scheme. However, as I am dismissing that part of the appeal for other reasons, I have not taken the matter further.
40. In addition to concerns raised about the essential need for a dwelling on the site, interested parties have also made representations on other issues. In particular during the hearing matters relating to landscape impact and impact on the living conditions of the occupiers of Buttons Barn, with particular regard to overlooking were raised. As I am dismissing the appeal for other reasons, it is not necessary for me to reach a conclusion on these matters.
41. The appellant submitted two appeal decisions for my consideration. The first one² was presented as evidence of the interpretation of policies relating to temporary workers dwellings and included an award of costs against the Council. The appeal was within the former Suffolk Coastal District Council jurisdiction; however, this decision was made 20 years ago and the policies under consideration are not the same as those before me. In any event I have set out in my decision the weight I have given to the policies and my reasoning for this.

² APP/J3530/A/01/10732729

42. The second appeal decision³ was for a mobile home for residential purposes, which was in connection with a commercial stud farm that bred horses. The farm was also associated with another establishment which trained National Hunt horses. In this appeal the Inspector took into account the number of horses (33) and their value as thoroughbreds destined for racing when reaching his decision and that the dangers arising from a lack of onsite supervision was augmented as a result of this. The circumstances in this appeal are not the same as that before me. Therefore, I have given both of these examples limited weight.

Conditions

43. In respect of the change of use of land, alteration/improvement of existing barn to stabling, ménage and equine working school, erection of additional stables, siting of ancillary equipment and associated hard and soft landscaping I have attached the standard time limit condition and a plans condition as this provides certainty.
44. I have also added a condition concerning the mitigation for ecology, the timing of hedgerow removal and controlling the installation of external lighting in order to ensure the adequate protection of protected species.
45. A condition is necessary to ensure the submission of a waste management plan to ensure the appropriate management of waste arising from the keeping of horses on the land to prevent nuisance arising from inappropriate storage. The horses are already on the site and therefore I have imposed timescales to ensure that this is agreed in a timely manner.
46. Having regard to the proximity of the site to other residential properties, I have imposed a condition restricting the hours when the business can operate. These are the hours that have been suggested and agreed by the Council.
47. I have not imposed a condition regarding the submission of a foul drainage treatment plant as it has been confirmed that the site has access to main drainage and therefore this condition is no longer necessary.
48. I have not found it necessary to impose a condition requiring the existing access to be widened and improved due to its existing standard which would be sufficient to serve the development.

Conclusion

49. For the reasons given above I conclude that the appeal should succeed in relation to the change of use of land, alteration/improvement of existing barn to stabling, ménage and equine working school, erection of additional stables, siting of ancillary equipment and associated hard and soft landscaping.
50. However, in relation to the dwelling (temporary) the proposal would conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict and the appeal should be dismissed.

G Pannell

INSPECTOR

³ APP/W1850/C/06/2018325

APPEARANCES

FOR THE APPELLANT:

Steven Bainbridge BSc MSc MRTPI, Chapman Lily Planning
Irma Peters-Neggers BA (Hons) Integrative Counselling/Psychotherapy

FOR THE LOCAL PLANNING AUTHORITY:

Ben Woolnough MRTPI, Planning Manager
Michelle Stimpson, Environmental Health Officer

INTERESTED PARTIES

Philip Kernohan Interested Party
Gay Lister Interested Party
Antony Wilson Interested Party
Janice Pedgrift Parish Councillor
Frances Moor Parish Councillor
Pamela Hembra Parish Clerk

DOCUMENTS SUBMITTED AT THE HEARING

1. Letter from Parker Planning Services, dated 1st October 2020, Business Information in support of Full Planning Permission for temporary permission for dwelling at Land South of Monewden Road, Charsfield

ANNEX A - SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from 3 December 2020.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1809 SP1; A02-05 D; A02-04 C; A02-03 D; A02-02C; A02-01 E except in respect of the temporary dwelling shown on the plans.
- 3) Development must be undertaken in accordance with the ecological avoidance, mitigation, compensation and enhancement measures identified within the Preliminary Ecological Appraisal (PEA) report (Parking Planning Services, August 2020).
- 4) No removal of hedgerows, trees or shrubs or works to or demolition of buildings or structures that may be used by breeding birds shall take place between 1 March and 31 August inclusive.
- 5) Details of any lighting to be installed within the site shall be submitted to and approved in writing by the local planning authority. Details shall include areas/features on site that are particularly sensitive for biodiversity and show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications). Development shall be carried out in accordance with the approved details.
- 6) Unless within 3 months of the date of this decision a scheme for the management of waste (WMP) arising from the use of the site for equine purposes, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site for the keeping of horses shall cease until such time as a scheme is approved and implemented.

Upon implementation of the approved WMP specified in this condition, that scheme shall thereafter remain in use.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 7) The business shall only be open for visiting clients between the following hours:
0800 - 2000 Mondays - Sundays.

-END-