



Appeal Decision

Site visit made on 8 February 2022

by Mr S Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 May 2022

Appeal Ref: APP/A1720/W/21/3275349

Land rear of 65 Old Street, Fareham, PO14 3HQ

- 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 Ms Lily Beveridge against the decision of Fareham Borough Council.
 - The application Ref P/20/1228/VC, dated 15 October 2020, was refused by notice dated 21 January 2021.
 - The application sought planning permission for the construction of 14 Stable Barn with Horse Walker & 60 X 30m Manege, New Toilet/Store Building and Gravel/Tarmac hardsurfacing, without complying with a condition attached to planning permission Ref P/16/0301/FP, dated 26 May 2016.
 - The condition in dispute is No 3 which states that:
The use of the buildings hereby permitted shall be carried on only by Ms Lily Beveridge and/or by persons in connection with the personal private use of the land by Ms Lily Beveridge unless otherwise agreed in writing by the local planning authority.
 - The reason given for the condition is:
To retain planning control over the development hereby permitted and to ensure no intensification of the use of the land which might otherwise adversely affect the living conditions of neighbours or may be harmful to the safety and convenience of users of the adjacent public highway.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of 14 Stable Barn with Horse Walker & 60 X 30m Manege, New Toilet/Store Building and Gravel/Tarmac hardsurfacing, without complying with condition 3 attached to planning permission Ref P/16/0301/FP, dated 26 May 2016, but otherwise subject to the following conditions:
 - 1) The development shall be carried out in accordance with the following approved documents:
 - a) Location plan - drawing no. 361-102A
 - b) Proposed site plan - drawing no. 361-105C
 - c) Proposed site plan - drawing no. 361-103C
 - d) Stable block floor plans - drawing no. 361-106B
 - e) Proposed site section - drawing no. 361-104B
 - f) Stable block elevations - drawing no. 361-108A
 - g) Cabin floor plans and elevations - drawing no. 361-109A

- h) Planning Application Supporting Statement by C&L Management
 - i) Phase I Survey - ecosupport limited March 2016
 - j) Brent Geese Survey - ecosupport limited March 2016
 - k) Proposed site plan indicating positions of external lighting - drawing no. 361-110A
 - l) Planning Statement - Part Two (including details of external lighting, surfaces, finishes, fencing and surface water drainage)
- 2) The application site shall not be used as a commercial livery (other than on a full livery basis), equestrian centre or riding school. The site shall only be used for the grazing, keeping, training and exercising of horses and the ancillary breeding and sale of foals.
 - 3) No external lighting shall be installed at the site other than the lighting included within the approved documents drawing no. 361-110A and Planning Statement - Part Two.
 - 4) The development shall incorporate a 'Schwegler 1FF bat box' at high level in line with manufacturer's guidelines on either an unlit building elevation or an unlit mature tree on the site.
 - 5) No development shall take place until protective fencing has been erected in accordance with the details given in the approved Planning Application Supporting Statement by C&L Management and the approved Proposed Site Plan (drawing no. 361-103 rev C). The fencing shall remain in situ throughout the development period until such time as all equipment, machinery and surplus materials have been removed from the site. During the development period no materials or machinery shall be stored within the areas safeguarded by the protective fencing.

Applications for costs

- 2. An application for costs is made by Ms Lily Beveridge against Fareham Borough Council. This costs application is set out with a separate decision.

Preliminary Matters

- 3. The appeal relates to a proposal to effectively remove condition No 3 from the original consent, which ties the development to the appellant or those associated with her on a private basis only.

Main Issues

- 4. The main issues are the effects of removing the aforementioned condition in relation to (1) highway safety and (2) living conditions of neighbours.

Reasons

Highway Safety

- 5. There is an access driveway between dwellings leading to the equestrian site. This connects with Old Street, which is a narrow highway and effectively a cul-de-sac on the edge of the settlement. Given the restrictions of the highway and the access, and the residential properties within the area of the site, it is reasonable for there to be concerns with traffic generation from the equestrian uses at the site.

6. The appellant states that the use of the site is effectively as a full livery, where horse owners keep their horses in stables, where all their care and exercise take place by those at the yard. The circumstance of the appellant is that she is a showjumper and that there is very limited contact between owners and horses at the site. On this basis, it is apparent that there would be a commercial aspect to the equestrian use and could lead to some traffic generation. However, with the full livery use the traffic generation increase is likely to be limited to a degree that it would not be harmful to highway safety or result in unacceptable highway congestion/safety issues or damage to road surfaces. Indeed, there is no substantive evidence of there being highway safety incidents on the section of highway near the site or close to the site access. The site also appears large enough to allow for turning on site. Whilst there is a lack of trip generation data submitted, I would regard the evidence as submitted to be sufficient to make this judgement.
7. The access track is narrow, but it is relatively straight and should allow drivers or horse riders to see clearly if there is already someone on the access drive coming in the opposite direction. It is likely they would wait until the access drive is clear before continuing, thereby avoiding conflict. Such a delay would likely be short as this is not a long access drive and therefore should not result in any significant obstruction to traffic on Old Street.
8. Whilst I do not regard that the condition as imposed and now in dispute is reasonable or necessary in the interests of highway safety, a replacement condition to restrict the site use from any commercial equestrian activity other than a full livery, plus the sale of foals, should be imposed. This should be sufficient to ensure that there would not be any commercial use of a type that could increase the traffic generation to an extent where there may be highway safety implications.
9. With such a replacement condition, the proposal to delete condition 3 of the original permission would not conflict with policy CS5 of the Fareham Borough Core Strategy, which requires that development does not adversely affect the safety and operation of the strategic and local road network, amongst other things.

Living Conditions

10. There has been concern raised that without Condition 3 as written and imposed with the original permission then there could be an intensification of use of the equestrian site. I note the close proximity of some neighbouring dwellings to the site, which could be impacted by how the site is used. However, as described by the appellant it is likely that there would continue to be a relatively low number of visitors to the site. The full livery service means that owners would not have to visit their horses every day. Indeed, the appellant has stated that there is very limited contact between owners and horses except at events.
11. Furthermore, the number of horses and therefore owners is limited by the number of stables at the site. As such, the condition as imposed should make little difference to issues of light or air pollution or have any discernible difference to odour or noise from the stables. There should be no significant change in the number of people needed to look after the horses. The condition as imposed would not prevent possible views from horse riders into neighbouring gardens either. For example, there would still remain the same

number of approved stables and so the amount of hay that would need to be stored or manure taken away would not alter significantly, whether the site was in private use or with the full livery which the appellant wishes to include.

12. As with the highway safety issue, I do not regard that the condition as imposed and now in dispute is reasonable or necessary in the interests of safeguarding living conditions. However, other commercial uses such as the running of a riding school from the site could result in an intensification of use that could result in noise and disturbance issues which would then harm neighbour living conditions. A replacement condition, therefore, to restrict the site use from commercial uses, other than the full livery that the appellant seeks, would be sufficient to safeguard living conditions.
13. Such a replacement condition would ensure that the proposal and future use of the site would be in accordance with policies DSP2 and DSP3 of the Fareham Borough Local Plan Part 2. These policies require that proposals should not, individually, or cumulatively, have a significant adverse impact, either on neighbouring development, adjoining land, or the wider environment, by reason of noise or light pollution, for example.

Other Matters

14. Having considered the above main issues, it is not clear how the proposed deletion of the original condition 3 would result in a development that would be contrary to policies CS4 or CS17 of the Fareham Borough Core Strategy. I have had particular focus on the submitted Officers Report in relation to the most relevant policies with this appeal.
15. The issue of precedence has been raised, though I have considered this appeal on its own merits. If there is another proposal for a commercial use within this area or off Old Street then this also will be considered on the merits and circumstances of that particular case and at that time when submitted.
16. The matter of site drainage has been raised, but I have no substantive evidence there is an issue with the drainage or that there would be any significant change in drainage flows if the original condition was replaced with a substitute condition.
17. I acknowledge that those within the site or along the access way would be able to see into some of the neighbours' rear gardens over the fences, but this is not an issue that is addressed through the condition in dispute. Even if the condition were to remain there would still be use of the site and access track by people walking or on a horse.
18. Finally, there is no reason to suspect that the proposed use of the site with the full livery as the appellant has explained would result in a need for additional lighting or CCTV.

Conditions

19. The guidance in the Planning Practice Guidance makes 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.

20. I have included the condition to replace condition 3 of the original permission, as set out in the main issues sections above. This condition has been sent in draft form to both the appellant and Council, with no objections raised. This condition also merges with the original condition 4 as it covers the possible uses of the site and such restrictions.
21. It is not clear from the submitted evidence which of the original conditions have been discharged or are not relevant anymore. In these circumstances I have reimposed all the original conditions. If any have been discharged or are not applicable at this stage, then this is a matter that can be addressed between appellant and Council following this appeal decision.

Conclusion

22. For the reasons given I conclude that the appeal should succeed, subject to conditions, including a new condition which relates to restricting the equestrian land use.

Mr S Rennie

INSPECTOR