



Appeal Decision

Site visit made on 14 June 2022

by G Bayliss BA (Hons) MA MA MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 14 July 2022

Appeal Ref: APP/G2245/W/22/3294163

Moorcroft Farm, Hale Oak Road, Sevenoaks Weald TN14 6NG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) 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 Miss F Hobbs against the decision of Sevenoaks District Council.
- The application Ref 21/02692/CONVAR, dated 16 August 2021, was refused by notice dated 30 December 2021.
- The application sought planning permission for the Change of Use from Agriculture to Private Equestrian Use, 30 x 60 metre Outdoor Riding Arena, 20 metre diameter Lunge Pen, and Winter Turn-Out Area 14 x 20 metres without complying with a condition attached to planning permission Ref. SE/18/00039/FUL, dated 19 March 2018.
- The condition in dispute is No.5 which states that: "The sand school hereby permitted shall not be used for any commercial purposes, including providing riding lessons, equestrian shows, gymkhana events or hunter trials/cross country events".
- The reason given for the condition is: "So that any other proposal is the subject of a separate planning application, to be determined on its merits, having regard to the impact on the Green Belt, landscape and any highway implications in accordance with Policies EN1 and LT2 of the Sevenoaks Allocations and Development Management Plan and Policies SP1 and LO8 of the Sevenoaks Core Strategy and the advice and guidance contained in the National Planning Policy Framework".

Decision

1. The appeal is dismissed.

Background and Main Issue

2. The appellant seeks to substitute an alternative condition. The amendment would read "The sand school hereby permitted shall predominantly be used for private use only and shall not be used for any commercial equestrian shows, gymkhana events or hunter trials/cross country events. The use of the facility for visiting riding shall be limited to no more than 5 riders in the arena at any given time and shall not exceed 20 visiting riders per calendar week. The owner shall keep a detailed record of all visitors and this should be readily available for inspection by the Local Planning Authority within 24 hours of a written request." The appellant would be agreeable to similar wording in order to primarily use the facility for personal use but to allow local community riding lessons.
3. The main issue is whether or not the changes to the disputed condition would fundamentally affect the description of development of the planning permission originally granted.

Reasons

4. Relevant advice is set out in the Planning Practice Guidance 'Flexible Options for Planning Permissions'. This explains¹ that there is no statutory definition of a 'minor material amendment' but it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved. The guidance makes it explicit² that section 73 cannot be used to change the description of development.
5. *Finney v Welsh Ministers & Others [2019] EWCA Civ 1868* (Finney) sets out that a Section 73 application may not be used to obtain planning permission that would require a variation to the 'operative' part of the planning permission, in other words, the description of development for which planning permission has already been granted. It follows from Finney that where amending a condition would result in a conflict between the new condition and the description of development, then that particular amendment is beyond the powers under section 73 and cannot be made.
6. Having regard to the principles of the Finney judgement, the original permission was specific in allowing only private equestrian use and, from that, Condition 5 stated that the use of the sand school should not be used for any commercial purpose. The reason for that condition clearly stated that, amongst other things, any other proposal would need to be the subject of a separate planning application and determined on its merits having regard to the impact on the Green Belt, landscape and any highway implications.
7. The proposed variation of Condition 5 seeks to predominantly retain the use of the sand school for private use but to allow riding lessons subject to limits on numbers, frequency and logging their use. Although the application does not specifically mention that this will be a commercial activity, and it is stated that the appellant has no intention to pursue their own commercial interests, the evidence before me indicates that the intention is to allow some commercial activities in the form of ancillary local community riding lessons. To this end the revised wording of the condition would allow external persons to visit the site and use the existing sand school in a capacity that would relate to a commercial equestrian use.
8. This would be a fundamental alteration of the development already approved and permit a material change of use of the existing sand school, beyond the scope of what was previously considered acceptable, and likely to result in changes to the character and nature of the use. Setting aside any merits to the changes, the proposals would result in a discrepancy with the description of development and, were I to allow them, there would be a knock-on-effect altering the terms of the original planning permission.
9. Whilst no new buildings or other physical development are proposed, the appeal scheme would represent a material change of use and therefore constitute development under section 55 of the Act. I recognise that the appellant intends to primarily use the facility for personal use but also wishes to allow local riders to benefit from it. However, even if the suggested use is carried out to the limited extent described by the appellant, the proposed

¹ Reference ID: 17a-017-20140306

² Reference ID: 17a-014-20140306

variation of condition would fundamentally conflict with the description and extent of the original planning permission.

10. The proposal therefore cannot be considered as a minor material amendment under section 73 of the Act. The effect is to dismiss the appeal, although it is open to the appellant to apply for planning permission for a revised development. To permit the variation proposed under this appeal would fail to accord with the principles set out in *Finney*. The appeal must therefore be dismissed on that ground, and without any consideration of the substantive planning matters that arise. In this case, those that relate to development in the Green Belt.

Conclusion

11. For the reasons set out above, I dismiss this appeal.

G Bayliss

INSPECTOR

