
Appeal Decision

Site visit made on 13 June 2022

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2022

Appeal Ref: APP/U1430/W/21/3284312

Field on Chitcombe Road, directly opposite the entrance to Goatham Lane, Broad Oak, East Sussex

- 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 Ricky Burgess of RAW FIT against the decision of Rother District Council.
 - The application Ref RR/2021/113/P, dated 14 January 2021, was refused by notice dated 27 September 2021.
 - The development is change of use from agricultural to outside fitness facility.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from agricultural to outside fitness facility at Field on Chitcombe Road, directly opposite the entrance to Goatham Lane, Broad Oak, East Sussex in accordance with the terms of the application, Ref RR/2021/113/P, dated 14 January 2021, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The applicant has applied for planning permission and consent to display an advertisement. The appeal is lodged against the refusal of planning permission.
3. The site was in use as an outdoor fitness facility at the time of my visit. I have dealt with the appeal on the basis that planning permission is being sought retrospectively for the change of use.
4. The application form states that the site is to be used for personal training, exercise classes and activity days. Personal training is on a one to one basis and takes place most days. The classes are for approximately 10 persons and these take place 3 times a week on weekday evenings (less frequently in winter) with a finish time no later than 2100 hours. Activity days are aimed at team building for small business, sports teams and children's groups.
5. The site also provides obstacle training, with small groups of 3-4 people using the facilities under the appellant's supervision. 'Open Play' sessions for up to 30 people are held once a month at weekends in winter and twice a month in summer. According to the appellant, most of this is made up from families so vehicle numbers are usually around 10.
6. In addition to the above, family fun runs are held once or twice a year and this is the biggest event held. Numbers of participants are a maximum of 100.

Main Issues

7. The main issues are:

- a) the effect of the proposal on the character and appearance of the area, having particular regard to the location of the site within the High Weald Area of Outstanding Natural Beauty (AONB);
- b) the effect on ancient woodland; and
- c) the effect on the living conditions of nearby residents, with regard to noise and light intrusion.

Reasons

Character and appearance

8. The appeal site is located on the north side of Chitcombe Road on the fringes of Broad Oak and outside of any development boundary. It comprises a rectangular field adjacent to the road with a large area of ancient woodland, Redland Wood, to the rear. There are several residential properties in the locality, including along Goatham Lane opposite the site entrance.
9. This area lies within the High Weald AONB which is characterised by a mosaic of small, irregularly-shaped fields and pockets of woodland. The site contains attributes of that character, notably the wooded elements, but the field at the front is not a particularly strong component of the area's landscape and scenic beauty. The land is enclosed, to the rear by woodland and to the west, east and south by dense trees and hedging. Its rural ambience has been eroded by an electricity pylon which is a dominant feature within the site.
10. The outdoor exercise area is mainly open, but the use has a requirement for some supporting infrastructure in the form of a Portaloo, containers for use as an office and store, and a pair of marquees. These are appropriately coloured and discreetly sited. There is also a range of obstacles, built mainly using metal poles, timber, car tyres and ropes. These structures are staked to the ground, but they are moved regularly to create variety. I have treated them as chattels and as such the obstacles do not require planning permission in their own right.
11. There is an existing vehicular access from Chitcombe Road, leading to an area in the south-west corner of the site which is cordoned off for car parking. The proposal is to formalise the parking area with a crushed stone base and wood chipping surface. The appearance would be appropriate for this rural location.
12. The site is well-contained and dense roadside vegetation provides good screening. There will be views into the site during the winter months, when the trees are not in leaf, but the evidence does not persuade me that the outdoor exercise use is materially harmful to the AONB. Any impacts on the character and appearance of the area are minor and localised. It is not uncommon to find leisure and recreation uses on the periphery of settlements, and whilst this site may be different to a formal sports pitch, its visual impact is not dissimilar.
13. The overarching strategy for the countryside, set out within Policy RA2 of the Rother Local Plan Core Strategy (2014) (Core Strategy), places a strong emphasis on the need to retain the rural character. However, criterion (iv) of the policy supports recreational and leisure facilities that cannot reasonably be located within development boundaries. Criteria (iii) and (v) also provides

support for development which meets local economic needs and provides rural employment opportunities. The Council argues that the development could be located elsewhere, but I have been presented with no compelling evidence to demonstrate that alternative sites are available within settlement boundaries for this type of facility. In my opinion, the scheme is compatible with the Council's countryside strategy.

14. The National Planning Policy Framework (the Framework) states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs which have the highest status of protection in relation to these issues. Policy EN1 of the Core Strategy and Policy DEN2 of the Development and Site Allocations Local Plan (2019) are consistent with national policy. Policy DEN2 states that development within the High Weald AONB should be small-scale, and the appeal scheme is consistent with this requirement. I conclude that the development has not resulted in material harm to the landscape and scenic beauty of the AONB and there is no conflict with policy in this regard. There is compliance with the general requirements set out within Core Strategy Policies OSS4 and RA3 that proposals should respect and not detract from the character and appearance of the locality.

Ancient woodland

15. The Council contends that an increase in footfall where no public rights of way exist would have a negative impact on the ancient woodland. However, there is no evidence to support this assertion, and no information regarding the nature of the alleged harm. It was evident from my site inspection, which included a walk through the woodland, that those persons exercising in this part of the site are using established tracks. The level of activity within the woodland is low and given the nature of the routes it is unlikely that there will be any significant damage to trees or ecology. The appellant has already commissioned some woodland management but this has been led by good arboricultural practice rather than a desire to modify the woodland to suit the outdoor fitness use.
16. Accordingly, I conclude that there is no demonstrable conflict with Policies EN1 and EN5 of the Core Strategy or Objectives W1 and W2 of the High Weald AONB Management Plan. These are consistent with paragraph 179 (c) of the Framework in seeking to protect and enhance ancient woodland and its habitats of ecological interest.

Living conditions

17. Users of the outside fitness facility are likely to spend a large proportion of their time in the field at the front of the site where the obstacle course is located. This area does not bound onto any residential properties; the garden to Northlands lies approximately 70 m away to the east, behind a band of tall trees, and the closest dwelling to the west is a similar distance. Dwellings to the south are closer, but they are separated by Chitcombe Road.
18. The Council contends that the outdoor activities generate unacceptable levels of noise nuisance. However, it presents no technical evidence to support its case. Given that the site has been operating for some considerable time, it would have been a relatively simple exercise to take acoustic measurements. I note that there is no record of noise complaints and that the Environmental Health Officer has raised no objections to the scheme.

19. As regards noise and disturbance from comings and goings, most of the day to day activities at the site will generate a modest number of vehicle movements. These will be a tiny proportion of overall traffic movements along Chitcombe Road and there is no evidence to demonstrate that they have an unacceptable impact on the living conditions of local residents. The family fun runs will be more noticeable, with the potential for minor disruption, but these events are infrequent and any adverse impacts will be temporary and of short duration.
20. External lighting on the site has the potential to have a detrimental impact on the amenities of the area, including the living conditions of nearby residents. Whilst this should not be a floodlit facility, it is reasonable to have some lighting for security and operational purposes. Such lighting would need to be kept to a minimum and sensitively designed to prevent glare and light spillage. The Environmental Health Officer takes a similar view and has suggested a condition to the effect that any external lighting should comply with the Institute of Lighting Professionals Guidance Note 01/20 for the reduction of obtrusive light. This condition would not be sufficiently precise or enforceable¹; it should be reframed to prohibit the use of external lighting, except that which has been approved in writing by the local planning authority. This would enable the details of lighting to be discussed and agreed.
21. Subject to appropriate conditions to control lighting, hours of use, weekend activity and larger events, the development would not cause unacceptable harm to the living conditions of nearby residents. There is no conflict with Policy OSS4 of the Core Strategy insofar as criterion (ii) seeks to ensure that new development does not unreasonably harm the amenities of adjoining properties.

Other Matters

22. Concerns have been raised over the safety of the access. However, the Highway Authority has not raised an objection and I have seen no accident data to indicate that the access has a poor safety record. Given the low level of use, I do not consider that a refusal on highway grounds would be justified.

Conditions

23. I have considered the Council's suggested conditions having regard to the tests set out in paragraph 56 of the Framework and the Planning Practice Guidance. I have also taken account of the appellant's comments.
24. The appellant has indicated that he would accept a condition specifying hours of use between 0900 and 2000 on weekdays and between 1000 and 1400 at weekends. It is reasonable to limit weekend usage to 30 days per calendar year, as offered by the appellant, and to restrict the number of larger events. I have amended the wording to ensure that the conditions are precise and enforceable, and the revised wording has been agreed by the main parties.
25. I have attached a condition specifying the approved plans, to provide certainty. As discussed above, a further condition is required to secure details of any external lighting prior to its installation, in the interests of the living conditions of nearby residents and the amenities of the area. Finally, a condition is necessary to restrict the use to that applied for, to enable the Council to consider any future proposal for other uses in the same Use Class.

¹ See tests for conditions set out in paragraph 56 of the National Planning Policy Framework

26. The Council has suggested a condition to prevent any activities from being undertaken within the ancient woodland. However, given my conclusions above, such a condition is unnecessary.

Planning Balance and Conclusion

27. I have concluded that, subject to the imposition of appropriate conditions, there would be no harm in respect of the effects on the High Weald AONB, ancient woodland and living conditions. The development therefore complies with the development plan taken as a whole.
28. The fitness activities support the appellant's business and they make an important contribution to the health and wellbeing of the local community. Together, these economic and social benefits attract significant weight in favour of granting permission. The development accords with national policy, set out within paragraphs 84 and 92 of the Framework, to enable and support healthy lifestyles and sustainable rural leisure developments which respect the character of the countryside.
29. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Robert Parker

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan dated 26 April 2021 and Site layout plan dated 18/03/2021.
- 2) The site shall be used for an outside fitness facility and for no other purpose (including any other purpose in Class F2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 3) Notwithstanding the details set out on the application form, there shall be no outdoor fitness activities on the site except between the following hours: 0900 to 2000 Monday to Friday and 1000 to 1400 on Saturday and Sunday.
- 4) The site shall not be used as an outside fitness facility for more than 30 weekend days (either Saturday or Sunday) in any one calendar year. Activities or organised events with 30 or more participants shall be restricted to no more than two in any one calendar year. A register of those events and weekend activities shall be maintained by the site operator and made available to the local planning authority on request.
- 5) No external lighting shall be installed on the site, except in accordance with a detailed scheme which shall provide for lighting that complies with the Institution of Lighting Professionals Guidance Note 01/20 for the reduction of obtrusive light (or later versions) and which has been submitted to and approved in writing by the local planning authority. The lighting shall be installed, maintained and operated in accordance with the approved details unless the local planning authority gives its written consent to any variation.

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