
Appeal Decision

Site visit made on 31 August 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2022

Appeal Ref: APP/J2210/W/22/3299369

Foxhill Stables, Herne Bay Road, Sturry, Kent CT3 4NG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Ms S Tarrant, Foxhill Stables Ltd against Canterbury City Council.
 - The application Ref CA/22/00662/FUL, is dated 23 March 2022.
 - The development proposed is change of use from equestrian erecting 4 timber holiday lodges with ancillary on-site parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application form indicates that the development applied for was completed in December 2020, and I saw timber holiday lodges and parking in place on the site. Nevertheless and for the avoidance of doubt, I have dealt with the appeal on the basis of the development shown on the submitted plans.

Main Issues

3. The main issues are:
 - i) the effect of the proposal on the character and appearance of the area;
 - ii) the effect of the proposal on the integrity of designated habitats sites; namely the Stodmarsh Special Protection Area, Special Area of Conservation and Ramsar Site, and the Thanet Coast and Sandwich Bay Special Protection Area and Ramsar Site; and
 - iii) whether or not the development would be in a suitable location having regard to the accessibility of services and facilities.

Reasons

Character and Appearance

4. The appeal site is accessed from Herne Bay Road, and is located to the rear of Foxhill Stables where there are a collection of buildings and other structures in equestrian use, and a dwelling at Foxhill House. The site is not within or adjacent to any identified settlement listed within Policy SP4 of the Canterbury District Local Plan 2017 ('CLP'). It adjoins open fields to the north, west and south, and further open fields and blocks of woodland separate the typically dispersed loose groups of other buildings nearby resulting in a distinctly open and rural character and appearance to this part of the countryside.

5. The proposal includes 4 holiday lodges together with an area of parking on the site. The lodges would be of fairly modest scale and single storey height, and their overall form and timber external finish would not be out of keeping with existing buildings that I observed at Foxhill Stables. Nevertheless, the inclusion of glazed windows and doors and features including the attached raised decking which at the time of my visit accommodated seating gives the lodges a clearly domestic appearance. The lodges are also laid out in a linear arrangement with relatively regular spacing between them which stands out against the generally looser and more irregular pattern of buildings that I saw nearby. These factors result in a formality to the appearance of the site which contrasts with its surroundings and which I consider is urbanising. Irrespective of their appearance, the presence of the buildings also causes some loss of openness which further erodes the distinctive rural character and appearance of the area.
6. Moreover, the proposed parking and an existing riding arena which is surfaced and enclosed by low fencing but otherwise open separate the lodges from buildings at Foxhill House and Stables. The distance is not great, but serves to set the development somewhat visually apart from the neighbouring development increasing its prominence. Together with the linear layout, it also results in buildings spreading a significant distance away from Herne Bay Road.
7. Vegetation provides some screening of the site. However, I saw at my visit that the development is visible, including clear views for some distance along the A291 Herne Bay Road to the north of the site. In these views and irrespective of nearby pylons, I find that the encroachment of the development in this arrangement into the surrounding open fields results in a conspicuous and intrusive incursion into this part of the countryside. I acknowledge that the visual impact would be localised, but I nevertheless find as a consequence that the proposal detracts from the distinctive open and rural character of the area, and it would not maintain the intrinsic character and beauty of the countryside.
8. The appellant refers to potential for mobile equestrian field shelters to be positioned on the site without planning permission, and suggests that these could be larger than the lodges. Be that as it may, it is not clear from the evidence before me that such shelters would realistically be pursued in the event that the appeal were to fail. In any event, I have already identified that the development would have a domestic appearance which would be conspicuous in the countryside and which would distinguish it from field shelters which are commonly found in rural settings. Even if such shelters were larger, of un-stained timber finish, and/or closer to Herne Bay Road, I am not persuaded that they would give rise to a similar or worse urbanising effect on the character and appearance of the area as the development before me. The suggested fallback does not therefore alter my findings in respect of the appeal proposal.
9. The appellant has also drawn my attention to a proposal for holiday accommodation in Upper Hardres that was allowed on appeal. I do not have full details of that proposal, but the appeal decision indicates that it related to a single building, and that this building was largely screened to views from outside of the site by vegetation and a stable block. The circumstances therefore differ from the appeal proposal, and while that site may have been subject to greater policy restraints, I do not find that it offers meaningful support for the development.

10. The landscape may not be designated, but that does not mean that the effect of the proposal on the character and appearance of the area is of no importance. For the reasons above, I conclude on this main issue that the proposal would cause harm to the character and appearance of the area. It would accordingly conflict with Policy DBE3 of the CLP which broadly seeks to promote, protect and enhance the distinctive character, diversity and quality of the District, including through regard for the character, setting and context of a site.

Designated Habitats Sites

Stodmarsh

11. The Stodmarsh Special Protection Area ('SPA'), Special Area of Conservation ('SAC') and Ramsar site are designated habitats sites and are protected under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations'). The information before me indicates that the importance of the Stodmarsh sites relates mainly to the wetland, reedbeds, grazing marshes and alder-carr habitats which support varied plant and invertebrate species and which provide wintering and breeding habitats for wetland birds.
12. Advice provided by Natural England¹ identifies high levels of nitrogen and phosphorus input to the Stodmarsh environment, and points to evidence that these nutrients are causing eutrophication at part of the designated sites which is impacting on their integrity. Given current uncertainty over whether discharge from wastewater treatment works associated with new development will cause further deterioration, Natural England has advised that housing development across the Stodmarsh catchment has the potential to exacerbate existing impacts putting the future conservation status of the designated sites at risk. In advance of wider solutions to address nutrient loading at Stodmarsh, the Natural England advice highlights that one way to address risk to the Stodmarsh sites is for new development to achieve nutrient neutrality.
13. The Habitats Regulations impose a duty on the competent authority to consider whether a proposed development may have a significant effect on the conservation objectives of designated habitats sites either alone, or in combination with other plans and projects within the framework of an Appropriate Assessment (AA). The proposal includes overnight accommodation that would generate wastewater. Given the location of the site within the catchment area with a hydrological connection to the Stodmarsh sites, there would be a potential pathway to Stodmarsh which would increase nutrient levels, and I cannot be certain that the proposal would not lead to significant effects on the integrity of the Stodmarsh sites, either alone or in combination with other plans and projects.
14. The appellant has provided details of a cesspool that would serve the development, and indicates that waste from it would be taken by a contractor to a suitable location where neutrality is assured. They have suggested planning conditions intended to offer control over the details of the cesspool as well as the disposal of waste from it. However, I have not been provided with details identifying a suitable receptor with no connection to the Stodmarsh catchment that would be able to take waste from the site, let alone firm details

¹ Advice on Nutrient Neutrality for New Development in the Stour Catchment in Relation to Stodmarsh Designated Sites – for Local Planning Authorities November 2020

to confirm that waste from the site would be accepted, either initially or on an ongoing basis. In this context, I find that there is insufficient certainty that this approach would be able to mitigate the effects of the proposal on the Stodmarsh sites as intended, and the suggested planning condition relating to the disposal of waste from the cesspool would fail the tests of reasonableness and enforceability. Consequently, and taking a precautionary approach, I cannot be sure that nutrient levels at the Stodmarsh sites would not be increased by the proposal.

15. The appellant refers to approval given by the Council for a nearby housing estate which is closer to Stodmarsh and which they assert did not include suitable waste treatment. I do not know the full circumstances of this approval and the relationship of the development with the Stodmarsh sites, but in any event it does not alter my findings above regarding the likelihood of additional nutrients associated with the appeal development reaching the Stodmarsh sites.
16. For the reasons above, I am not sufficiently satisfied that adverse effects on the integrity of the Stodmarsh SPA, SAC and Ramsar site can be excluded. I have no firm reason to find that there are no alternative sites that could accommodate the development with lesser effects on the integrity of the designated sites, nor that there are imperative reasons of overriding public interest that would outweigh the adverse effects. In these circumstances, I conclude that the operation of the Habitats Regulations would preclude the proposal from proceeding. There would also be conflict with Policy LB5 of the CLP which, amongst other things, indicates that permission will not be granted where development would have an adverse effect on the integrity of internationally designated sites.

Thanet Coast and Sandwich Bay

17. The Thanet Coast and Sandwich Bay SPA and Ramsar site are also designated habitats sites. The information before me indicates that they are important for wetland habitats which support large numbers of bird species, and that they are vulnerable to recreational disturbance to the over-wintering bird populations. The site is within the 7.2km Zone of Influence around these sites where Policy SP6 of the CLP identifies that development may lead to an increase in recreational disturbance.
18. Given the nature of the proposal in providing visitor accommodation, it would be likely to result in additional demand for recreation locally. From the evidence before me, I cannot be certain that increased recreational activity as a result of the proposal, either alone or in combination with other plans and projects, would not lead to significant effects on the integrity of the SPA/Ramsar sites.
19. To mitigate such impacts, Policy SP6 seeks funding from development towards access management and monitoring measures, and the Council seeks contributions through a tariff according to the number of additional bedrooms proposed. As part of the appeal, the appellant submitted a signed Unilateral Undertaking dated 11 May 2022 ('the UU') which purports to secure the required Strategic Access Management and Monitoring ('SAMM') contribution. However, the UU does not specify the trigger for payment, nor formally define the application that it would be tied to. Without inclusion of these details within the UU, I share the Council's concerns that it would not secure the contribution with sufficient certainty.

20. Nevertheless, the appellant has provided a receipt dated 3 August 2022 indicating that payment of the SAMM contribution has already been made. The Council had also raised concerns that the UU did not include provision for a monitoring fee, and no such fee has been paid. However, it has not explained why this would be necessary, and given the specific nature and circumstances of the appeal proposal and that payment has been made directly, I see no reason that the effectiveness of the SAMM contribution would in this case be undermined by the absence of a monitoring fee.
21. However, even if I were to find within the framework of an AA that adverse effects on the integrity of the Thanet Coast and Sandwich Bay SPA and Ramsar site through recreational disturbance would be adequately mitigated by the contribution paid by the appellant, this would not outweigh or overcome the adverse effects of the proposal on the integrity of the Stodmarsh SPA, SAC and Ramsar designated habitats sites.

Suitability of the Location

22. Policy TV8 of the CLP sets out that development including new development in the countryside to provide tourist accommodation will be permitted subject to certain criteria including that the applicant has considered accessibility by a range of transport modes. In cases such as this where new buildings are proposed, it also sets out that development should be related to an existing settlement and not isolated in the open countryside which the policy notes should improve the proposal in sustainability terms and reduce the need for travel by car.
23. I have already identified that the site is not within an existing settlement, and the development is set slightly apart from existing buildings at Foxhill Stables and House. However, the distance from these buildings is not great, and while it provides for visual separation, the site is still within reasonable walking or cycling distance of Broad Oak where I note facilities include a village store. There are also bus stops offering connections to larger settlements with a wider range of services including Sturry where there is a railway station, and the appellant has further highlighted that the bus stops at Broad Oak are to be relocated closer to the appeal site in conjunction with planning permission granted for a large development.
24. Land levels increase generally between the appeal site and Broad Oak, and the route is poorly lit. I accept that these factors may discourage some visitors from undertaking journeys by walking or cycling. However, there are footpaths providing separation for pedestrians from traffic, and the degree of the inclines and relatively short distances involved, even to the existing bus stop locations, mean that I do not consider that such journeys would be impractical or unrealistic for most people. Accordingly, I am satisfied that there would be realistic alternatives to travel by private vehicle such that travel by car would not be inevitable. Indeed, I note comments from previous visitors to the site referring to travel by train and bus. Moreover, while some journeys by private vehicle would be likely, trips would be fairly short given the close proximity of larger settlements.
25. Given these factors, I find that the site is reasonably well related to Broad Oak in accessibility terms, and I conclude that the development would be in a suitable location having regard to the accessibility of services and facilities. In this regard, I find no conflict with Policy TV8. Nevertheless, Policy TV8 also

includes requirements that development can be implemented with no adverse effect on the character of the building or its setting, or the open character of the area; and that there is no detrimental impact on protected species and sites or features of nature conservation interest. Having regard to my conclusions on the first and second main issues, the proposal would not fully accord with the requirements of this policy.

Other Matters

26. The appellant comments that the visitor economy is a key provider of employment and income to the district. The proposal would support tourism on the site, with benefits to both the viability of the appellant's business through diversification, and to other local rural services and facilities through additional patronage by visitors to the site. In these ways, the proposal would support the local economy and rural employment. The appellant has also provided details of positive reviews by visitors to the site, and I have no reason to doubt the quality of the accommodation nor that it is in demand and desirable as a destination offering undoubtedly attractive views over the countryside and natural surroundings. I further note provision for disabled access.
27. However, the benefits of the development would be limited by the small scale of the proposal. Moreover, while the National Planning Policy Framework outlines that planning decisions should enable sustainable rural tourism and leisure developments, this is qualified by a requirement for development to respect the character of the countryside. Even in combination, I find that the modest benefits of the proposal would be outweighed by the harm that would be caused to the character and appearance of the area together with the adverse effect on designated nature conservation sites and conflict with the Habitats Regulations which is a matter of overriding concern.
28. I acknowledge representations made in support of the proposal and that no comments were submitted by interested parties objecting to the proposal. However, this is a neutral consideration in the balance and does not offset the harm that I have found. In addition, while I note the appellant's dissatisfaction regarding the Council's handling of the application, this is not a factor which alters my consideration of the planning merits of the proposal.

Conclusion

29. For the reasons given above, I find that the proposal would conflict with the development plan when it is read as a whole, and material considerations do not indicate that a decision contrary to the development plan should be reached. I therefore conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR