The Planning Inspectorate

Appeal Decisions

Hearing held on 28 March 2023

Site visit made on 28 March 2023

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 12th April 2023

Appeal A: APP/A1910/W/22/3296310
Flaunden House Stables, Flaunden, Hemel Hempstead HP3 0PW

- 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 (the Act) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Flaunden Construction Ltd against the decision of Dacorum Borough Council.
- The application Ref 21/04414/ROC, dated 22 November 2021, was refused by notice dated 27 January 2022.
- The application sought planning permission for conversion of existing agricultural barn to form a 4 bed detached dwelling; conversion of existing agricultural barn to form a 2 bed detached dwelling with manager's office; single storey rear extension to coach house; and refurbishment and improvement of existing stables, without complying with a condition attached to planning permission Ref 4/03481/15/MFA, dated 5 July 2016.
- The condition in dispute is No 9 which states that: The occupation of the two bed conversion shall be limited to a person solely or mainly working at the stables located immediately north-east of the dwelling or a widow or widower of such a person and to any resident dependants.
- The reason given for the condition is: For the avoidance of doubt and to ensure that the stables opposite will be retained and offered to local people for the stabling of their horses. The two bed conversion will help support the rural economy and maintenance of the wider countryside. To ensure compliance with CS 5.

Appeal B: APP/A1910/Q/21/3292021
Flaunden House Stables, Flaunden, Hemel Hempstead HP3 0PW

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a failure to determine that a planning obligation should be modified within the proscribed period. The appeal is made by Flaunden Construction Ltd against Dacorum Borough Council.
- The development to which the planning obligation relates is conversion of existing agricultural barn to form a 4 bed detached dwelling; conversion of existing agricultural barn to form a 2 bed detached dwelling with manager's office; single storey rear extension to coach house; and refurbishment and improvement of existing stables.
- The planning obligation, dated 28 June 2016, was made by Relic Flaunden Limited and Leadinvest Private Finance General Partners Limited.
- The application Ref 21/03561/VAR is dated 13 September 2021.
- The application sought to have the planning obligation modified by substitution of the existing text with the following:
  1.3 – "Commercial use" means any rural-based enterprise;
  16(b)(i) Not use nor permit the use of the existing stables for any use not considered appropriate in the Green Belt and countryside

16(b)(ii) Not use nor permit the use of Tie Barn 2 for purposes considered inappropriate in the Green Belt and countryside unless very special circumstances can be demonstrated
16(b)(iii) iii. Not use nor permit the use of any land other than the houses constructed pursuant to planning permission reference 4/03481/15/MFA and any other subsequent permissions, other than for uses considered appropriate in the Green Belt or where very special circumstances can be demonstrated.
16(c) Not without the prior written consent of the Council to make any material alterations or additions to the existing stables, nor change the use thereof.

Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed, and the planning obligations dated 28 June 2016, made by Relic Flaunden Limited and Leadinvest Private Finance General Partners Limited, shall continue to have effect.

Preliminary Matters

3. As set out above, this Decision concerns 2 appeals which relate to the same site, most of which supports an equestrian use. They address similar matters, albeit the subjects differ. I have considered each on its individual merits, however, in order to avoid duplication, I have dealt with the appeals together, except where otherwise indicated.

4. The application subject of Appeal A was made under the name of 'Honeysuckle Barn', and that subject of Appeal B under the name 'Flaunden Stables'. Both relate to planning permission 4/03481/15/MFA (the MFA) which was approved in relation to 'Flaunden House Stables'. Flaunden House is itself a separate property, albeit one historically associated with the stables. As Flaunden House Stables remains the means by which the site is identified within the MFA I however used it in the banner headings above.

5. The letters of notification in respect of the Hearing were sent out slightly later than required. Having raised the matter at the Hearing I am however satisfied that the interests of no party were prejudiced.

Appeal A

6. Appeal A concerns a condition restricting occupancy of what was referred to as 'Barn B' in the MFA and is currently known as Honeysuckle Barn. Amongst other things, approval of the MFA in 2016 granted planning permission for a conversion of Barn B to a '2 bed detached dwelling with manager's office' (the conversion) as part of a broader scheme. Aside from Barn B the latter covered a second agricultural building referred to as Barn A, 2 sets of stables, a property known as the Coach House, and around 16.45 acres of associated agricultural land, most in use for grazing horses (hereafter collectively referred to as 'the site'). The MFA was then the subject of a non-material amendment in 2019.

7. Following approval of the MFA, 2 separate 'drop-in' planning permissions were granted in 2017 in relation to Barn A and Barn B. The permission relating to Barn A has been implemented, apparently in conjunction with other works forming part of the MFA. In light of *Hillside Parks Ltd v Snowdonia National Park Authority [2022]* the Council has questioned whether implementation of the drop-in permission rendered the MFA, or parts of it, invalid. So too therefore whether the works that the MFA authorised, including the conversion, are consequently unlawful. This is notwithstanding modifications to the conversion that were allowed at appeal in March 2022, which occurred prior to the Supreme Court's decision in relation to the above case. The matter remains open and pending investigation. Until resolved, the lawfulness of development undertaken in relation to the MFA, including the conversion subject of Condition 9, is uncertain. Therefore, whilst I have proceeded to determine Appeal A, should the Council's further investigations establish that the conversion does not in fact benefit from a valid planning permission, or part of, my decision in relation to Appeal A will have no effect.

8. Even if the conversion is lawful, the lawful use of the conversion is disputed by the appellant. Here however I agree with the Council that the mix of accommodation and office use permitted by the MFA renders use of the conversion sui generis. The removal of Condition 9 would not therefore permit the unrestricted Class C3 use desired by the appellant, or indeed allow for provision of a 2-bed dwelling without a manager's office. Each would entail a material change to the development approved by the MFA. All that remains to be considered within this context is whether there is a necessity for the tie that Condition 9 imposes between occupancy of the conversion and employment at the stables to the northeast.

9. It emerged during the Hearing that a similar tie which had been imposed on the Coach House since 2003 has never been released. It therefore appears that the occupancy of 2 properties is currently tied to the equestrian use of the site. Having previously assumed that the Coach House tie had somehow been 'moved' to the conversion, the Council has not sought to enforce it. That being so, for the purposes of my assessment of Appeal A, I attach little weight to the continued existence of the Coach House tie.

10. Though the application subject of Appeal A was submitted with heads of terms for a Deed of Variation (DOV) of the planning obligations subject of Appeal B, no separate application has been made. This is not a matter whose resolution falls within the scope of Appeal A. The modifications proposed in relation to Appeal B otherwise differ.

11. An application for costs was made in relation to Appeal A by Flaunden Construction Ltd against Dacorum Borough Council. This application is the subject of a separate Decision.

Appeal B

12. Appeal B is made against the Council's failure to determine the application. The Council has however provided a draft report and reasons for refusal, which I have taken into account to the extent that they are relevant.

13. Appeal B concerns planning obligations contained within a Unilateral Undertaking presented in relation to the MFA. This was subsequently modified through a DOV dated 23 March 2017, which was made by the Council, Relic

Flaunden Limited, Leadinvest Private Finance General Partners Ltd, and Brian and Georgina Turner. The DOV was agreed within the context of the drop-in planning permissions noted above. It is unclear whether it was therefore presumed at the time that a combination of overlapping permissions either would or could be implemented together, or therefore what the broader implications of the Council's investigations into the matter might be.

14. Amongst other things, including a reference to the drop-in applications, the DOV inserted a clause into the UU stating, 'the obligations hereafter contained shall be planning obligations to which the provisions of Section 106 of the Act shall apply and the Council is the local planning authorities [sic] by which the provisions of this Deed shall be enforceable'. The intention was clearly to rectify a flaw in the original drafting, whose presence meant that the UU did not meet the requirements of Section 106 of the Act. This however raises some doubt as to the scope that would have been available under Section 106A of the Act to remedy the matter. It remains the case that neither partly has sought to question the validity of the UU and the DOV on the above basis. Again however, should it be the case that they are not in fact valid, my decision in relation to Appeal B neither can nor would have any effect.

15. The appellant's proposed modifications have been drafted without reference to the modifications previously made by the DOV. Aside from the above, these included the addition of a new obligation which has a direct bearing on those whose modification is sought, as well as changes to certain definitions. I have necessarily taken the DOV into account in assessing Appeal B.

Policy

16. The appellant disputes the way in which Policy CS5 of the Core Strategy 2013 (the CS) should be read. I am however satisfied that insofar as the layout of the text provides a guide, parts (i) and (ii) can be read in conjunction with any of the relevant preceding bullets, and not just bullet (e).

Main Issues

17. The main issues are:

- whether the condition in dispute is necessary, having particular regard to (a) the economy, (b) the living conditions of future occupants, (c) the character and appearance of the area, and (d) social infrastructure; and
- whether, if the obligations continue to serve a useful purpose, they would serve that purpose equally well if modified.

Reasons

Condition 9

(a) *Economy*

18. The reasons given for imposing Condition 9 included support for the rural economy, which, in relation to the grant of planning permission, helped to ensure compliance of the MFA with Policy CS5(d)(ii) of the CS. The latter permits reuse of permanent substantial buildings provided this supports the rural economy and maintenance of the wider countryside. Here maintenance of the wider countryside can be understood as a necessary component of the equestrian use of the site.

19. Based on the evidence presented the site has hosted various equestrian enterprises across several decades, save for a brief hiatus during the period 2015-2019. The latter provided the context for the MFA, in relation to which the conversion of buildings on the site was partly justified on the basis that this would occur alongside a resumption of the equestrian use. The latter both was to be, and currently is facilitated by the tied accommodation and office space secured by Condition 9. Prior to this time the equestrian use had been facilitated by the tied accommodation provided by the Coach House.

20. Condition 9 serves to ensure the availability of accommodation in a context within which the availability of affordable accommodation is severely constrained by high property values. Though I have not been provided with any up to date valuation of the conversion, the cost of tied accommodation is ordinarily less than of open market housing, making it accessible to those whom it is intended to accommodate. To illustrate the point, in the assumed absence of a tie, it was stated at the Hearing that the current asking price for the Coach House exceeds £1million.

21. The principal reason advanced by the appellant for removal of the tie is an envisaged change in the nature of the related equestrian use. In this regard it is claimed that a future focus on a small number of retired horses will remove the need for on-site accommodation. It is nonetheless accepted by the appellant that this will not remove the need for management of the use, or the requirement for an equestrian worker/manager. Thus, even if I was to accept that a 24-hour on-site presence was not required, which is itself a claim disputed by interested parties also in the equestrian business, the tie would still fulfil the function of providing necessary accommodation together with office space. The suggestion that outside contractors could alternatively be hired to do the work somewhat misses the point, and has not been fully evidenced.

22. Notably, the same business model was advanced by the appellant as justification for a proposed residential conversion of the stables to the northeast, and construction of 2 dwellings on part of the grazing land. Both schemes were dismissed at appeal. In dismissing the proposed stables conversion, the Inspector in question found the appellant had failed to demonstrate that downsizing and relocation of the equestrian use would support the rural economy. Insofar as the evidence before me is the same, I see no reason to reach a different view.

23. Clearly, loss of any of the key components which support the equestrian use, including the tied accommodation with office space, would limit scope for anything other than downsizing. I have not been presented with any evidence which demonstrates that there is any separate need to downsize the equestrian use. The submitted viability report is itself dated 2015 and was not produced in relation to the appeal proposal.

24. Though the appellant claims that the business currently contributes little to the rural economy, it would presumably contribute less if downsized as indicated. It was further confirmed at the Hearing that it could be operated differently, including more intensively. The potential therefore exists for the equestrian use at the site to both make a greater contribution to the rural economy than it does at present, and a greater contribution than is proposed.

25. It remains the case that there is no basis upon which to require the appellant to manage the equestrian use in any particular way. However, there is equally

no reason to accept that the long-term potential of the equestrian use to contribute to the rural economy should be permanently compromised on the basis of its current and/or proposed operation below potential.

26. The fact that, in the absence of a change of use, the conversion would retain office space, means that it could continue to play some role in supporting the rural economy. No such role has however been advanced by the appellant, presumably given the assumption that subsequent use would be solely as a dwelling. Given the resulting uncertainty I attach limited weight to this consideration.

27. The drop-in permission approved by the Council allowed for a different scheme of conversion of Barn B that would have provided 2 units, one of which would have been open market housing. However, the other half would have remained a similarly Sui Generis tied unit. The fact therefore that market housing has been permitted on the site, both in relation to the MFA and subsequently, therefore has limited relevance, and does not indicate that removal of the tie imposed by Condition 9 should be considered acceptable.

28. For the reasons set out above I conclude that Condition 9 continues to serve a necessary function in supporting the equestrian use at the site, and the contribution that this both makes and has the potential to make to the rural economy.

(b) *Living conditions*

29. The reasons for imposing Condition 9 make no reference to the living conditions of future occupants. In this regard Condition 9 clearly does not function to secure acceptable living conditions for future occupants, and nor is it therefore necessary within this context. The matter is nonetheless of some relevance insofar as the conversion is positioned close to and roughly opposite the stables to which its occupancy is tied.

30. In the absence of Condition 9 the property could potentially be occupied by persons not employed at the stables, or without any other direct link to the equestrian use. Incoming occupants would obviously be aware of the stables, and it would seem unlikely that anyone would choose to live in such location unless they were comfortable around horses. The long-term implications of living directly adjacent to a working stables would however only become apparent over time. In this regard I agree with the Council that factors such as noise and odours may well give rise to nuisance, diminishing the quality of life for future occupants, and giving rise to conflict with the equestrian use.

31. It is not possible to impose additional conditions that would materially alter the development permitted. As such, even if scope to mitigate the above effects had been identified, there would be little scope to secure this within the context of the Appeal A. Again, it would ordinarily be appropriate for such matters to be addressed through a planning application for a change of use. In the absence of mitigation, the potential incompatibility of the future occupation of the property with the equestrian use, could further compromise the operation of the latter.

32. As noted above, the drop-in planning permission relating to Barn B allowed for the provision of one market dwelling. This would however have been provided

within the half of Barn B furthest from the stables. The directness of the above effects would thus have been much reduced.

33. Reference has also been made to other residential properties within the site. However, the relationship between the Coach House and the stables differs given that as the buildings do not face on another, and there is better physical separation. The same is true of Barn A.

34. For the reasons outlined above I conclude that whilst Condition 9 does not function to secure acceptable living conditions for future occupants, the provision of unacceptable living conditions might nonetheless be an indirect consequence of the removal of the tie. Insofar as this could again compromise the equestrian use, this lends some, albeit limited weight to my findings in relation to the economic need for the condition.

(c) *Character and appearance*

35. The reasons given for imposing Condition 9 do not include any reference to the matter of character and appearance, although this is a consideration set out within Policy CS5(d)(i) of the CS.

36. As set out above, loss of the tied accommodation could help to create the circumstances in which downsizing of the equestrian use would be necessary. However, this would not mean that previously unacceptable schemes of development elsewhere within the site would therefore become acceptable. Any scheme of future proposed development would remain to be considered on its own merits.

37. In the absence of the tie the conversion itself would remain externally unaltered.

38. Aside from the presence of horses, the grazing land within the site appears much the same as any other grazing land. It is otherwise agricultural land, the essential characteristics and scope for the use of which would not be subject of any obvious change in the absence of the tie.

39. As such, it is not possible to say that there would be any adverse effect on the character and appearance of the area directly arising from loss of the tie imposed by Condition 9.

40. Part of the site, including the conversion, lies within Flaunden Conservation Area (the Conservation Area). It is therefore necessary to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. Here, my findings above apply equally to the Conservation Area. Indeed, in the absence of any discernible change to the character or appearance of the area the effects on the Conservation Area would be neutral in nature.

41. For the reasons set out above I conclude that Condition 9 is not necessary to safeguard the character and appearance of the area.

(d) *Social infrastructure*

42. The Council's concerns in relation to social infrastructure were raised only at appeal stage, and the reasons for imposing Condition 9 do not make any reference to Policy CS23 of the CS, which seeks to the preserve existing social

infrastructure. They do however include, 'to ensure the stables opposite will be retained and offered to local people for the stabling of their horses'.

43. Whilst I have established that the tied accommodation and office provides necessary support the equestrian use, the drafting of Condition 9 does not however secure access to the stables by local people, even if this was anticipated, and has occurred in the past. Equestrianism is popular locally, but in the absence of any control over how the equestrian use operates, there is no reason why this should necessarily support the leisure activities of people within the local community. As such, the equestrian use of the site cannot be considered to constitute a community facility or service.

44. For the reasons set out above I conclude that Condition 9 is not necessary to preserve existing social infrastructure.

Planning Obligations

45. The existing obligations set out within clause 16 of the UU as modified by the DOV, collectively serve to restrict use of the stables, the conversion, and the grazing land, in connection to the broader equestrian use of the site. In so doing there is an obvious duplication of the controls imposed by Condition 9 of the MFA in relation to occupancy, by Condition 8 of the MFA in relation to permitted development rights, and in relation to normal planning controls governing changes of use. The only restriction not subject of some form of duplication is in relation to the specific use of the grazing land. The usefulness of the obligations is therefore limited, but no less so than when they were first drafted and/or modified.

46. Even had I found otherwise, the appellant has proposed modifications to the obligations on the basis of their underlying economic purpose, rather than the purpose that they serve in promoting a specific type of economic activity. As such, in seeking to allow scope for a vaguely defined range of uses of land and buildings within the site, the proposed modifications would have no direct relevance to the equestrian use in relation to which they were originally drafted. Aside from this, neither the MFA, nor any other planning permission exists which permits alternative uses.

47. The appellant clearly aspires to pursue other development opportunities on the site, however the modification of planning obligations is not a means by which a change of use requiring planning permission can be obtained, no matter how the obligation is redrafted. Though the proposed wording indicates planning criteria against which such uses would need to be assessed, the correct context for such an assessment would be in relation to a planning application made for a change of use. Though various planning applications seeking to achieve this have been made in the past, and though others may be made in the future, this does not make the proposed modifications any more legitimate in themselves, or in relation to the existing obligations.

48. Again, even if the obligations were modified as proposed, the appellant's failure to take the DOV into account would leave the obligation that this inserted into the UU both intact, and directly in conflict.

49. I therefore conclude that whilst the usefulness of the existing obligations continues to be very limited, the proposed modifications would serve no obviously appropriate or useful purpose, and would clearly not achieve any kind

of equivalence. The planning obligations shall therefore continue to have effect without modification.

Other Matters

Green Belt

50. The site is located within the Metropolitan Green Belt, which is the overall subject of Policy CS5. However, though bullet (a) of the policy signposts national policy, the Council's 2016 assessment of the MFA made scant reference to the decision-making criteria set out within the National Planning Policy Framework (the Framework). This makes retrospective interpretation of the Council's assessment of the MFA difficult, and limited clarification was provided at the Hearing. Moreover, no specific reference to the Green Belt is made within the reasons for imposing Condition 9.

51. At the Hearing it was however claimed by the Council that both appeal proposals would result in the conversion becoming inappropriate development in the Green Belt. This was on the basis that unrestricted residential use of the conversion would conflict with the purposes of including land in the Green Belt, and therefore fail to meet the exception set out in paragraph 150(d) of the Framework, which relates to the re-use of buildings.

52. The re-use of buildings to provide market housing can potentially be considered inappropriate in the Green Belt. However, this does not appear to have been an argument advanced in the recent appeal relating to the proposed conversion of the stables. In the current case the development has already been implemented, and removal of the tie would not authorise a change of use, even if it would allow a change in occupancy. It is furthermore beyond the scope of either appeal to reassess the MFA. In this regard the matters to be addressed in relation to both were more narrowly those I defined as the main issues, and my findings as to their acceptability are otherwise unaltered.

Conclusions

53. For the reasons set out above I conclude that Appeal A and Appeal B should be dismissed.

Benjamin Webb

INSPECTOR

APPEARANCES

For the Appellant

Abel Bunu	Robinson and Hall
Tom Goldie	Flaunden Construction Ltd

For the Council

Patrick Doyle	Principal Planner
Elspeth Palmer	Lead Planning Officer

Interested parties

Jane Duncan	Local resident
Charlotte Jackson	Joint owner
Ian McAleer	Local resident
Elena Moya	Flaunden Parish Council
Joanna Weil	Local resident

Documents presented at the Hearing

Appeal Decision APP/A1910/W/21/3288470
Appeal Decision APP/A1910/D/21/3282270