



Appeal Decision

Site visit made on 20 March 2023

by S Harley BSc(Hons) M.Phil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 5 June 2023

Appeal Ref: APP/Y9507/W/22/3292828

Land West of The Drove BN6 8TR Easting: 532333, Northing: 115192

- 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 Mr Conrad Howard against South Downs National Park Authority.
 - The application Ref SDNP/21/00894/FUL is dated 15 February 2021.
 - The development proposed is described on the planning application form as "'Sui Generis' - use of land for the keeping of 5 or more horses. The 'Sui Generis' Change of use started some time prior to 2007."
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Decision

1. The appeal is allowed and planning permission is granted for equestrian use, Land West of The Drove, Keymer Road, Ditchling, East Sussex; Easting:532333, Northing:115192, in accordance with the terms of the application Ref SDNP/21/00894/FUL, dated 15 February 2021, and the plans submitted with it, and subject to the conditions set out in the attached Schedule.

Application for Costs

2. An application for costs was made by the appellant, Mr Conrad Howard, against South Downs National Park Authority (the LPA). Subsequently an application for costs was made by the LPA against the appellant. Those applications are the subject of a separate decision.

Preliminary Matters

3. The site location in the banner heading is taken from the application form. Other documents describe the location differently. I have added information from the appeal form to describe the location in the Decision above.
4. The description of development in the banner heading is that set out on the planning application form. However, the wording seems to me to inappropriately imply that 5 horses would *have* to be kept on the land. The LPA, in its Appeal Statement, describes the proposal as "Section 73A retrospective application for change of use of the land from agriculture to equestrian use" and this is how the proposal is described on the appeal form. The LPA explains it considers that the planning permission is required but the use was commenced before the grant of planning permission¹.
5. The LPA refused an application for a Certificate of Lawful Use or Development (CLEUD) for horsiculture/equine Ref SDNP/20/03478/LDE. The evidence

¹ Town and Country Planning Act 1990 as amended

indicates that use beyond grazing may have taken place in recent years, at least intermittently, even if not to the extent that would justify granting an CLEUD². "Section 73A retrospective application" are not a description of development in terms of the legislation. Taking the above into account I will consider the appeal as seeking permission for equestrian use of the land.

6. Access to the site is via The Drove from the B2116. In response to concerns expressed about the planning application the appellant has submitted plans including The Drove within the red line. This in itself does not alter the nature of the appeal proposal but, in the interests of fairness, the opportunity to comment on this has been given to the LPA and interested Parties. Although there appears to be an ownership dispute this would fall to be resolved separately from this appeal. I see no compelling reason to suppose that the appellant does not have the right to use The Drove to access the appeal site. It is clear from the extent of objections that the local community is aware of the proposal. For these reasons I do not consider that the interests of others would be materially prejudiced by my accepting these plans as part of the appeal.
7. Another appeal³ for use as a camp site with tents and supporting infrastructure with an area retained for horse keeping, relates to the land. This will be the subject of a separate Decision.

Background and Main Issues

8. The appeal relates to the failure of the LPA to issue a decision on the planning application in the prescribed time. The LPA, in its Appeal Statement identified that, if it had now been in a position to issue a decision on the planning application, it would be refused. The reasons cited are that the number of horses proposed would exceed the capacity of the land so would not be compatible with the landscape; the site is susceptible to flooding; the site is not near a public bridleway; the open character of the settlement gap between Ditchling and Keymer would be eroded; and there is insufficient visibility at the junction between the Drove and Keymer Road.
9. Taking the above into account the main issues for the purposes of this appeal are the effect of the use on the character and appearance of the area; whether the appeal site is a suitable location for the keeping of horses taking into account drainage and the availability of public bridleways; and whether the access arrangements are satisfactory.

Reasons

Character and appearance

10. The appeal site is a broadly triangular piece of land between Ditchling and Keymer close to the Ditchling Conservation Area (the CA). It is enclosed in the main by hedges and trees. At the junction of The Drove and the Keymer Road there is a substation.
11. The site is in the South Downs National Park (the National Park) outside the Ditchling settlement boundary established by Policy SD25 of the South Downs Local Plan 2019 (the LP). The immediate character is that of a rural countryside

² The reference to the Secretary of State and Another v Thurrock Council appears to relate to the LDC application and is of little relevance to this appeal

³ Ref APP/ Y9507/W/22/3312458, in respect of planning application SDNP/22/05658/FUL

largely comprising agricultural land with narrow lanes edged by dense hedgerows and woodland, occasional wetlands, scattered buildings and the edge of Ditchling.

12. The two statutory purposes of the National Park designation are to conserve and enhance their natural beauty, wildlife and cultural heritage; and to promote opportunities for the public understanding and enjoyment of the special qualities of their areas. Recreational activity and opportunities for improvement of physical and mental health, are appropriate in a countryside setting outside a settlement boundary. As described in Chapter 6 of the LP equestrian activities are strongly linked with the understanding and enjoyment of the National Park as a whole. Equestrian uses that meet the criteria set out in Policy SD24 of the LP are acceptable in principle. Policy SD24 does not require evidence of unfulfilled demand.
13. Grazing of a field in the countryside and the National Park for the purposes of agriculture, whether horses or other animals, is to be expected and it is part of its character and appearance. The grazing of horses in itself does not require planning permission. However, case law⁴ has held that the “keeping” of up to four horses requiring bucket feed and rugging or other shelter constituted a change of use.
14. The British Horse Society recommends a ratio of one horse per 0.4-0.6 hectares on permanent grazing which would indicate between 2.8 and 4.25 horses. This is guidance only and a number of factors need to be taken into account. These include whether the horses are provided with feed and rugging; the size and type of horses; the length of time horses are kept on the land; how well the pasture is managed; and the need to comply with animal welfare requirements. It seems to me that number of horses will be more or less self-limiting and, in this case as more than mere grazing is proposed, I give relatively little weight to the cited ratio.
15. No permanent structures are proposed and the appellant indicates that only small moveable hay and tool stores will be required. The plan Ref 2103 – SK10 Rev A shows that moveable structures could be stored where they would be well screened from public highways and footpaths and views from the Downs. The appellant indicates a willingness to accept a condition that limits the storage of the structures to that position when not in use. I note the concerns about standing water from time to time and the position opposite residential properties. However, with proper management of the water course and, as the footpath and hedge separate the dwellings from the site, I do not consider these matters would necessarily preclude such storage in the location indicated.
16. Providing an unobtrusive location for the storage of movable structures when not in use; controlling the numbers and types of structure and the permanent sub-division of the land would be sufficient to protect the appearance of the countryside, the National Park, views across the land by passers-by, and the important physical gap separating Ditchling from Keymer. Additional tree and hedge planting would also improve the character and appearance of the area.

⁴ Fox v First Secretary of State (2003) and Sykes v Secretary of State for the Environment and Another [1981] 42 P & CR)

17. The special character of the CA derives from the varied buildings which have a rich mix of domestic architectural styles and local building materials dating from the medieval period onwards, many of which are Listed, and the historic cross-shaped street pattern all within a countryside setting. Equestrian use is appropriate in a countryside setting and the substation separates the site from the CA boundary. For these reasons I consider the proposal would have a neutral effect on the setting in which the CA is appreciated.
18. For the reasons set out above I conclude that equestrian use of the land does not have a harmful effect on the character and appearance of the countryside, the National Park, the important settlement gap or the CA. Accordingly, I find no conflict with those parts of Policies SD4 and SD24 of the LP and Policy CONS7 of the Ditchling, Streat and Westmeston Neighbourhood Plan (the NP) that seek to protect the character and appearance of the countryside and the National Park and to preserve the openness of the important settlement gap.

Whether a suitable location

19. The site slopes with the southern part adjacent to a watercourse. There is sometimes standing water on the land which has meant that the whole of the site may not be suitable for continuous use. In terms of grazing this would not be critical as the proposal is for keeping of horses beyond grazing.
20. I understand drainage works have taken place on adjacent land; the appellant has been managing the water course to minimise water logging; and that from time-to-time horses could be kept elsewhere. Moreover, it may be that an appropriate conservation-based land management approach, as envisaged by Policy SD24 of the LP could further alleviate any flooding; improve the useability of the land; and manage any effects of manure storage. Taking this into account I consider equestrian use of the appeal site would not be inappropriate in drainage terms.
21. The appeal site is near the highway and other infrastructure such as the car park opposite. There are no bridleways in the immediate vicinity so there would be some conflict with Policy SD24. However, there are a number of bridleways in the wider National Park and countryside and equestrian use has been accepted on a site across the Keymer Road⁵. Accordingly, I consider the harm arising from this conflict to be slight.
22. I conclude that the location is not so unsuitable in terms of drainage and the availability of public bridleways so as to justify refusal of permission. Accordingly, I find little conflict with those parts of Policy SD24 of the LP which seek to ensure equestrian uses are suitably located.

Access

23. The Drove is a rough unmade track and public footpath which gives access to three dwellings, sports field and the substation. It also has served as access for any camping that benefits from permitted development rights.
24. Although the carriageway curves in both directions The Drove meets the carriageway inside the village speed limit of 30mph. There is a boundary wall to one side and a fence/hedgerow but these are set back behind a verge. I have seen no convincing evidence of visibility or highway safety problems at

⁵ Planning Ref LW/11/0917/NP (the 2011 permission)

the junction. I have not been supplied with any objection from the Highway Authority in relation to this particular proposal although it appears objections have been raised to other proposals.

25. The appellant indicates that there would be likely to be two vehicle trips per day to attend to the needs of the horses. I acknowledge this is not a certainty and could change. However, it seems to me there would be vehicle movements associated with any agricultural use on the site including for grazing animals. I have seen no compelling evidence to lead me to conclude that vehicle movements likely to be associated with equestrian use would be so unsafe as to justify withholding permission whether or not the appellant is able to make physical alterations to The Drove.
26. For the reasons set out above I conclude that the access is not be so unsatisfactory as to justify withholding permission. Accordingly, I find no material conflict with those parts of Policies SD5, SD19 and SD24 of the LP or those principles of the Framework that seek safe and accessible access for all.

Other Matters

27. There have been a number of applications relating to the land in recent years and some confusion on all sides about which matters are relevant to the different applications/proposals. This appeal Decision relates solely to the proposal as described above. It is not for this appeal to consider the merits or otherwise of any application for a CLEUD; other uses that may or may not benefit from permitted development rights; or proposals for camping. It is a matter for the LPA to consider whether any enforcement action would be justified and expedient in respect of uses or structures on the land. The ownership and rights of access across The Drove, including any physical damage, are for the landowners to resolve.
28. Representations have been made that insufficient time has been given for third Parties to address the grounds of appeal because the Authority delayed making available information. However, additional time was granted to comment during the appeal process and the extent and content of objections received leads me to consider this was sufficient in the context of this appeal.
29. The 2011 permission for equestrian use appears to have pre-dated the adoption of a National Park Plan and is on land well away from the stream that bounds the appeal site so is less likely to be constrained by standing water. Due to these different circumstances I do not consider it sets a precedent for the appeal before me.
30. None of the above matters lead me to any different conclusions on the main issues.

Conditions

31. I have considered whether conditions are necessary, relevant to planning, reasonable in all other respects and would meet the tests set out in the Planning Policy Guidance.
32. In the specific case circumstances it is not necessary to impose the usual time period for the commencement of development but compliance with the approved plans is necessary in the interests of certainty. There has been some debate about the number of horses that should be kept. However, for the

reasons set out above I consider this likely to be self-limiting and other legislation applies to ensure appropriate animal welfare. Moreover, in this case the numbers may change and it seems to me it would be impractical and unreasonable to require the LPA to enforce a specific number.

33. Schemes for an appropriate conservation-based land management approach to alleviate potential flooding/water logging of the land and for managing the storage of manure are necessary to improve the useability of the land and in the interests of public health and safety and water quality.
34. Control over the numbers and positions of moveable structures and to prevent permanent sub-division of the land, other than temporary fencing that may be required to restrict the movement of horses from time to time, and tree and hedge planting, are necessary in the interests of the character and appearance of the area.
35. It would not be practicable or reasonable to impose a condition about the number of vehicle trips or sizes of vehicles as proposed by the LPA as these are likely to vary according to circumstance.

Planning Balance and Conclusion

36. Equestrian uses are part of the character of the National Park and are acceptable in principle subject to satisfying planning policy requirements and material considerations. I have found that the equestrian use does not have a harmful effect on the character and appearance of the countryside, the National Park, the important settlement gap and the CA and that access would not be so unsafe as to justify withholding permission. The proposal would provide opportunities for recreation leading to public understanding and enjoyment of the area and improvement of physical and mental health.
37. There are no bridleways in the immediate vicinity but the proposal is relatively small scale. The slight harm arising from this would not be sufficient to outweigh the benefits described above. Drainage could be improved by appropriate management.
38. I have found no material conflict with planning policies and there are insufficient material considerations to justify a decision other than in accordance with the development plan. The appeal should be allowed.

S Harley

INSPECTOR

Schedule of Conditions

- 1) The use hereby permitted shall be carried out in accordance with the following approved plans: 2103-SK00 Rev A; 2103-SK01 Rev A; 2103-SK10 Rev A.
- 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no equestrian related structures other than those referred to below shall be erected and no permanent physical sub-division of the land shall take place.
- 3) Within six months of the date of this permission the following shall be submitted in writing for the approval of the LPA:
 - i) a scheme for numbers, sizes and types of equestrian related moveable structures including jumps and a detailed plan showing the location to which they would be confined when not in use such location to be as near as practicable to the location depicted on Plan ref 2103-SK10 Rev A;
 - ii) a scheme for managing the storage of manure;
 - iii) a scheme for an appropriate conservation-based land management approach to alleviate potential flooding/water logging of the land;
 - iv) a scheme for tree and hedge planting including the quantity, size, species, and positions and density of all trees and hedges to be planted, how they will be protected and the proposed time of planting.

Within six months of the LPA giving written approval of each of the above schemes each approved scheme shall be implemented in accordance with the approved details and retained thereafter.

- 4) If, within a period of five years from the date of planting, any tree or hedges (or any tree or hedge planted in replacement for it) is removed, uprooted, destroyed or dies or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or hedge of the same size and species as that originally planted shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original tree or hedge unless the local planning authority gives its written consent to any variation.

End of Schedule