



Appeal Decision

Site visit made on 19 July 2023

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 August 2023

Appeal Ref: APP/P1560/W/22/3301864

Martins Grove, Frowick Lane, St Osyth CO16 8HJ

- 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 outline planning permission.
 - The appeal is made by Mr and Mrs E Greig against Tendring District Council.
 - The application Ref 21/00635/OUT, is dated 18 March 2021.
 - The development proposed is described as 'Outline planning application to construct boarding kennels with ancillary storage and cleaning space (considering access - all other matters reserved).'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An amended description of the proposal had been agreed between the main parties prior to submission of this appeal. The amended description is provided on the appeal form, although the previous wording appears elsewhere in the appellant's evidence. Both parties have confirmed they are agreeable to the appeal proceeding on the basis of the amended wording, which does not specify the proposed number of kennels. I have therefore considered the appeal on that basis, and I have used the agreed amended description in the banner heading above.
3. The application was in outline with details of the means of access only. Scale, layout, appearance and landscaping were reserved matters. I have therefore treated the layout and footprint of the kennels as shown on drawings numbered EX00 Revision B and PL00 Revision B, as being indicative.

Background and Main Issues

4. The Council did not issue a decision within the prescribed period or within an agreed extension of time period. The appellants exercised their right to appeal against the failure of the Council, as the local planning authority, to determine the application.
5. The Council's statement of case states that, had they reached a decision, planning permission would have been refused for two reasons, encompassing issues arising from the site's location outside any defined settlement boundary and the absence of required ecological evidence. Against that background, the main issues are:
 - whether the location is suitable in principle for the proposed use, having regard to its effect on the surrounding environment, and

- the effect of the proposed development on biodiversity, with particular regard to its relationship with ancient woodland.

Reasons

Location and surrounding environment

6. The appeal site is located in open countryside off a narrow rural lane. It is part of an existing clearing enclosed within a block of woodland which is in turn surrounded by open fields.
7. The land edged in red includes a dwelling, recently converted from a former agricultural store, together with a fenced-off area which includes some small livestock enclosures and a larger area used for open storage. The plans indicate that the proposed kennels would be located in the fenced-off area, although their scale and layout is a reserved matter. The land edged in blue includes horse paddocks, a garden, parking area and various outbuildings, all of which are surrounded by the woodland.
8. The Council's evidence states that the site is approximately 2km outside the settlement development boundary (SDB) of St Osyth and I have been presented with no evidence to the contrary. Outside SDBs, Policy SPL2 of the Section 2 Local Plan¹ states that the Council will consider any planning application in relation to the pattern and scales of growth promoted through the defined settlement hierarchy and any other relevant policies in the development plan.
9. While the proposed use as boarding kennels implies that a service for the use of third parties is intended, the appellant's evidence indicates that use of the kennels would for the most part be led by a personal interest in dogs. The intended economic benefit is described by the appellant as very negligible. The site already includes a dwelling and outbuildings, together with a variety of livestock kept on a modest, apparently domestic, scale. Relevant utilities are in place. Introduction of dog kennels within the relatively limited area indicated on the plans would not fundamentally change the characteristics of the existing holding or otherwise interfere with the wider pattern or scale of growth promoted through the settlement hierarchy.
10. While this outline application provides no information about the scale, appearance or layout of the proposed kennels, the appeal site is clearly defined. The kennels would be close to the dwelling, entirely enclosed by the surrounding woodland and would use the existing access. On that basis, the proposal would have no material effect on the character of the surrounding rural landscape. Notwithstanding the narrow rural lanes, the Council has not raised any clear concerns regarding traffic movements or other activity beyond the boundaries of the site. The effect on biodiversity within the holding is a separate consideration, to which I return below.
11. Has I been minded to allow the appeal, conditions could have been imposed to require approval of the number of dogs to be kept at the site on a domestic or commercial basis. This would be sufficient to regulate the level of activity within the surrounding area, including the associated need to travel from nearby settlements. Conditions could also have been imposed requiring

¹ Tendring District Local Plan 2013-2033 and Beyond, Section 2, adopted January 2022

approval of noise mitigation measures, as recommended by the Council's Environmental Protection team, to safeguard the wider rural environment.

12. For the reasons given above, subject to the imposition of suitable conditions, I conclude that the location is suitable in principle for the proposed use, having regard to its effect on the surrounding environment. Setting aside the effect on biodiversity, which is considered below, it does not conflict with other relevant requirements in Policy SP7 of the Section 1 Local Plan², Policies SPL2 and SPL3 of the Section 2 Local Plan or relevant paragraphs in the National Planning Policy Framework (the Framework). These policies, amongst other things, allow in principle for development outside settlement development boundaries where it is consistent with the pattern and scale of growth promoted through the settlement hierarchy and where the local environment and character are protected, practical requirements met, and adverse environmental impacts avoided.
13. My attention has also been drawn to Policy PP13 of the Section 2 Local Plan and paragraph 85 of the Framework, which focus on the rural economy. On the basis of the appellant's evidence about the limited scale of intended commercial activity, there is no substantive evidence that the proposal would deliver any economic benefits. On that basis, while I have had regard to the contents of Policy PP13 and paragraph 85, I have given them limited weight.

Biodiversity

14. Evidence from the Council and technical consultees confirms that Martins Grove is identified as ancient woodland on Natural England's Ancient Woodland Inventory. It is also designated as a Local Wildlife Site and described by the Council as priority woodland habitat. The appellant disputes the value of the woodland, highlighting extensive tree loss during the 1987 gales and earlier descriptions of the woodland as 'semi-ancient'. However, the appellant's evidence does acknowledge that Martins Grove is currently identified as ancient woodland and I have considered the appeal on that basis.
15. Parts of the woodland are less dense than others and in some areas the majority of the trees appear to be relatively immature. Areas have also been cleared around the dwelling, as described above. Nevertheless, the appeal site is entirely enclosed within the area identified as ancient woodland. There is no substantive evidence that the ecological value of the woodland as a whole, which encompasses the whole habitat and not just mature trees, has been materially compromised.
16. The proposed kennels would be on an area which is largely clear of vegetation and is already used for outdoor storage and keeping livestock. However, it adjoins wooded areas on two sides and there would be minimal separation between the kennels and this adjacent woodland.
17. In their response to the application, Natural England directed the Council to consider any effects on ancient woodland, with reference to published standing advice on this matter. They also highlighted that Natural England does not provide bespoke advice on all applications affecting ancient woodland. On that basis, absence of a technical objection to the proposal does not imply that they had concluded it was acceptable.

² North Essex Authorities' Shared Strategic Section 1 Plan, adopted January 2021

18. Natural England's standing advice was also referenced in the Woodland Trust consultation response. This went on to highlight specific ecological risks arising from the proposal, including disturbance of sensitive wildlife, light and dust pollution and pressure for removal of trees on the woodland edge. Although the Woodland Trust is not involved in management of Martins Grove, the technical advice in their response is consistent with the Natural England standing advice and raises site-specific considerations relevant to the proposed development.
19. While a plan has been submitted purporting to indicate a 30 metre buffer zone around the proposed kennels, this would extend significantly into the edge of the woodland on two sides. It would not therefore provide any meaningful separation between the kennels and the woodland or allow for effective ecological mitigation measures to be introduced. Therefore, there is no evidence that the likely adverse effects on the ancient woodland habitat can be effectively avoided or mitigated.
20. Ancient woodland is defined in the Framework as an 'irreplaceable habitat', reflecting that it takes hundreds of years to become established and has a complex and significant biodiversity value which cannot readily be restored or replaced if harmed. For that reason, paragraph 180 of the Framework states that development which would result in deterioration of irreplaceable habitats such as ancient woodland should be refused unless there are wholly exceptional reasons justifying the development and a suitable compensation strategy exists. No such exceptional reasons have been proposed and no suitable compensation strategy is before me.
21. Since the application was not accompanied by any site-specific ecological evidence, there is also no substantive evidence about the presence or otherwise of protected species within the woodland. While I appreciate that there is a cost involved in undertaking the required ecological survey, this reflects the technical expertise involved. The limited desk-based information provided with the appellant's final comments is not an adequate substitute for up-to-date site-specific survey data. In the absence of appropriate ecological evidence, I cannot be confident that adverse impacts on any protected species making use of the woodland habitat can be avoided or mitigated.
22. Circular 06/2005³ makes clear that it is essential that the presence or otherwise of a protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. Since an outline planning permission would establish whether the development can go ahead in principle, the required evidence cannot be deferred to a later date. The Circular also makes clear that planning conditions should only be used to secure ecological survey evidence in exceptional circumstances.
23. For the above reasons, based on the evidence before me, I conclude that the proposal would be unacceptably harmful to biodiversity, with particular regard to the relationship with ancient woodland. It would conflict with relevant requirements of Policies SPL3 and PPL4 of the Section 2 Local Plan which, amongst other things, require that development maintains or enhances important existing site features of ecological value, that proposals are supported by appropriate ecological evidence and that designated sites

³ Office of the Deputy Prime Minister Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System, 16 August 2005

including Local Wildlife Sites and ancient woodland are protected from adverse impacts.

Other Matters

24. I have noted concerns raised by an interested party regarding the effect of vehicle movements on the privacy and quiet enjoyment of a nearby dwelling. Given the distance between that dwelling and the appeal site, the extent of intervening vegetation, and the scope for conditions to regulate the use, such vehicle movements would not be unacceptably harmful to living conditions for neighbouring occupiers. I am likewise satisfied that the proposed conditions recommended by the Council's Environment Protection team would have adequately safeguarded their living conditions, had I been minded to allow the appeal.
25. Although the Council's statement of case briefly mentions highway safety, I have been provided with no substantive evidence that the access, which already exists, is unsafe or otherwise inadequate for the proposed use subject to appropriate conditions.

Conclusion

26. I have concluded that that the location is suitable in principle for the proposed use, having regard to its effect on the surrounding environment, subject to the imposition of suitable conditions. However, there would be an unacceptable risk of harm to irreplaceable habitat as a result of the relationship between the proposed boarding kennels and the surrounding ancient woodland.
27. For the reasons given above, having had regard to the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be dismissed.

Jane Smith

INSPECTOR