



Appeal Decision

Site visit made on 3 October 2023

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2023

Appeal Ref: APP/L1765/W/23/3320745

**Fillditch Farm, Forest Road, Swanmore, Southampton, Hampshire
SO32 2PL**

- 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 Mrs Susan Goodman against the decision of Winchester City Council.
 - The application Ref 21/02526/FUL, dated 22 September 2021, was refused by notice dated 16 January 2023.
 - The development proposed is described as the construction of a fully enclosed dog walking paddock for commercial use by the general public. This requires additional fencing of the area and the addition of an area of hardstanding for vehicle parking. There will be no removal of existing trees and hedgerows.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. It is noted that the appeal scheme also includes an office in connection to the proposed use, although not specified in the description of development. As this element has been considered during the application process, I have also considered it within this appeal. 2 unnamed and unnumbered location plans have also been submitted with slightly different site boundaries, only 1 of which shows the proposed office.
3. Taking account of the information before me I have considered the appeal site to reflect that shown on the location plan with the proposed office, as this best reflects the boundaries shown on the submitted detail plan of the office and hardstanding positioning and my observations during the site visit. I am also aware the site is already in use for dog walking and some if not all the works proposed may have already been completed.
4. The National Planning Policy Framework (the Framework) was updated on 5 September 2023. However, the sections pertinent to this appeal have not materially altered and so I will reference the revised version in my decision.

Main Issue

5. The main issue is whether the appeal site is a suitable location for the proposed development having regard to relevant policies relating to the countryside and noise disturbance.

Reasons

6. The appeal site constitutes a field to one side of the Fillditch Farm buildings. It is adjacent to Forest Road and opposite a row of residential properties. On all other sides it is surrounded by fields, some of which are used for equestrian purposes. From the information before me I am satisfied the appeal site would be considered in the countryside.
7. Policy MTRA4 of the Local Plan Part 1 (LP1) and Policy DM13 of the Local Plan Part 2 (LP2) seek to control development in the countryside. Amongst other things, both policies require justification for a countryside location and that unacceptable noise intrusion is not created. LP2 Policy DM17 goes further requiring new development to not cause unacceptable levels of noise for neighbours, whilst LP2 Policy DM23 also seeks to retain rural tranquillity.
8. In general dog walking requires a certain level of open space which may not be easily found within more urban areas as such it could be considered an appropriate countryside leisure use, irrelevant of whether it is run commercially. Consequently, it is necessary to consider whether the proposal would constitute an unacceptable noise intrusion to the detriment of neighbouring residents and rural tranquillity.
9. It is accepted that dog barks and human shouts or whistles would be linked to the proposed use. As ways of attracting attention, they are often louder than background noise levels and unpredictable in their occurrence. It is, therefore, anticipated that use of the site would create some level of noise disturbance, and this could occur at any point within the hours of operation. Although the appellant has submitted their observations of the current level of noise created by their personal use of the site for dog walking and produced a noise management plan (NMP), this is not supported by any technical noise assessment. Consequently, the appellant's assertion that the noise produced would not have a Significant Observed Adverse Effect Level¹ is unjustified.
10. As the proposed use, and therefore any noise disturbance be that continuous or intermittent, would be permanent, it is necessary for me to take a precautionary approach. The evidence before me, including the NMP, does not satisfactorily demonstrate that the proposal would not have a significantly detrimental impact on the rural tranquillity of the countryside or the living conditions of neighbouring residents.
11. That the site layout has been designed to draw activity away from the nearby dwellings is noted, and the professional nature of the appellant's business is not in question. It is also accepted that there is a lack of formal noise complaints, and the Council's Environmental Officer considered conditions could be used to limit noise impact. Nevertheless, a lack of complaints does not mean a lack of impact, and in this case, I am not satisfied these matters negate the need for a technical assessment.
12. The appellant has drawn my attention to 3 appeals, Ripley Lane (APP/Y3615/W/22/3293836); The Oxhey (APP/J1860/W/18/3212655); and East of Tithe Barn Lane (APP/K3415/W/20/3264866). Ripley Lane and The Oxhey were both supported by technical noise assessments and Tithe Barn

¹ as defined by the Noise Policy Statement of England and referred to in the Planning Policy Guidance on Noise

Lane centred around the impact on Green Belt. As such the circumstances of all 3 appeals are substantially different to the scheme before me.

13. Consequently, although the proposed use could be a suitable for a countryside location, it has not been satisfactorily shown that any noise from the proposal would not have a significant and detrimental impact on neighbouring residents or the rural tranquillity of the area. The proposal would therefore fail to comply with LP1 Policy MTRA4 and LP2 Policies DM13, DM17 and DM23 and the location would be inappropriate for that proposed.

Other Matters

14. The appellant has referred to the Framework's presumption in favour of sustainable development. This, however, does not change the statutory status of the development plan as the starting point for decision-making. As there is nothing before me to state the development plan is out of date, I have made my decision in accordance with it.
15. The lack of harm in relation to highway safety, character and appearance, ecology, and biodiversity, are neutral factors so cannot outweigh the harm identified above. As I am dismissing the appeal, I have not pursued matters relating to landscaping, drainage, and animal welfare further.
16. A Council is not bound to accept the recommendations of the officer report, and although other matters were discussed at committee, it has provided a consolidated reason for refusal with policy justification. The burden of evidence, in this case, would fall to the appellant to demonstrate that the scheme would not be harmful, not on the Council to provide evidence of harm.

Conclusion

17. For the reasons given above the appeal scheme would conflict with the development plan when read as a whole and there are no sufficiently weighted material considerations, including the Framework, which would indicate a decision otherwise. The appeal is, therefore, dismissed.

RJ Redford

INSPECTOR