



Appeal Decision

Site visit made on 27 September 2023

by S Pearce BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2023

Appeal Ref: APP/P1805/W/23/3318904

Thornborough Farm, Redhill Road, Kings Norton B38 9EH

- 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 Riverside Education against the decision of Bromsgrove District Council.
 - The application Ref 21/01836/FUL, dated 13 December 2021, was refused by notice dated 7 March 2023.
 - The development proposed is the change of use of land and buildings (units 1 and 2) from agriculture and equestrian use to mixed-use agriculture, equestrian and education, replacement roof to unit 2 (parts 3 and 4), new windows to north-east elevation of unit 2 (part 1) and associated foul drainage works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the time of my visit some elements of the proposed development had been implemented. Regardless of what has been implemented to date, I have considered the appeal based on the development applied for and shown on the accompanying plans.
3. The description of development in the original planning application form referred to the proposed change of use only. Given that there are also physical works proposed, I have used the Council's description of development as this more accurately describes the development proposed. The appellant has adopted this description in their appeal form, confirming it is the development they are seeking planning permission for.
4. Amended plans have been submitted with this appeal, which seek to reduce the red line application site boundary and provide an area for additional planting. As the Council and third parties have not had the opportunity to comment on the amended plans, I cannot be certain that their interests would not be prejudiced if I were to accept them. Therefore, I have determined the appeal based on the plans submitted with the application to the Council and upon which the views of interested parties were sought.
5. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 5 September 2023, replacing the version published on 20 July 2021. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by my taking this approach.

6. The site is located within the Green Belt. This is not a matter in dispute. The Council consider that the proposal does not amount to inappropriate development which would affect the openness of the Green Belt and I have no reason to conclude otherwise.

Main Issues

7. The main issues are:

- the effect of the proposed development on the living conditions of the occupiers of, and visitors to, Hazeldene, with particular regard to noise and disturbance,
- whether the appeal site is a suitable location for the development proposed, having regard to reliance on private motor vehicles, and
- whether the need for the proposed development outweighs any harm identified in respect of the above issues.

Reasons

Living conditions existing occupiers

8. The area surrounding the appeal site is rural in character. There is road noise associated with traffic along Redhill Road. Although there is limited information relating to the existing agricultural and equestrian uses at the appeal site, I accept there would be some noise associated with these uses. However, the evidence indicates the stables comprise 6 stalls, which are unlikely to generate high visitor numbers. Therefore, when combined with the agricultural use, it is likely these existing uses attract relatively low visitor numbers. Having regard to the existing uses, relatively low visitor numbers and the rural character of the site and its surroundings, existing noise levels in the area are relatively low.
9. Hazeldene is the neighbouring two storey detached house, located close to the boundary with the appeal site. While Hazeldene has an existing outbuilding which lies between the appeal site and its side boundary, the appeal site nevertheless adjoins the full length of its south easterly facing side boundary and the full width of its rear boundary. As a result of the character of the surrounding area, occupiers of, and visitors to, Hazeldene are likely to experience low noise levels within the property and its associated garden.
10. The students accessing the educational facility will be involved in a range of indoor and outdoor activities, including animal husbandry, cleaning and feeding animals, animal research and work experience. The educational facility would be operational 38 weeks of the year, between 09.00 and 16.00 Monday to Friday, with students on site between 09.30 and 14.00. While the appellant contends that these times are when the occupiers of Hazeldene are at work or school, the evidence indicates the occupiers of Hazeldene also work from home.
11. I understand that there would be up to a maximum of 20 students on site at any one time, with a maximum of 7 staff. The appellant has indicated they would accept a condition to restrict numbers of students to a maximum of 20. Furthermore, there would be additional visitors associated with the retained agriculture and equestrian uses, which are estimated at two or three

- volunteers, and those seeking to purchase the sale of produce from the appeal site.
12. The appellant advises that, on average, there would be 12 students and 4 members of staff at the site. I accept that there may be periods whereby the site would not be utilised to its full capacity and, as a result, there may be quieter periods. Nevertheless, I have to consider the proposed development based on the maximum numbers applied for. These would represent a significant increase in visitors to the site when compared with the existing use, which is unlikely to generate the same level of visitors.
 13. The significant increase in visitors to the site, as a result of the development proposed, would substantially increase activity within the appeal site, very close to Hazeldene and its associated garden. The proximity of the appeal site to Hazeldene is such that the occupiers of Hazeldene would experience increased noise and disturbance. The increased activity would materially increase noise levels and disturbance to a level that would be detrimental to the existing occupiers of this neighbouring property.
 14. The Council and third parties have stated that visitors to Hazeldene would also be adversely affected as a result of the proposed development. While the evidence indicates there are visitors to Hazeldene, there is limited substantive evidence relating to the duration and frequency of such visits. In the absence of such information, it is unlikely, therefore, that the increase in noise levels and disturbance would materially affect visitors to Hazeldene.
 15. I acknowledge that Worcestershire Regulatory Services have not raised an objection to the scheme in respect of noise and nuisance matters, and there has been no request for the appellant to submit a noise impact assessment. Furthermore, I note the site has not been served with a Noise Abatement Notice. While these matters are important considerations, the assessment of whether harm would occur to the living conditions of neighbouring occupiers of Hazeldene is a matter of planning judgement.
 16. The appellant has highlighted that no educational activities are concentrated on the neighbouring boundaries of Hazeldene and there are no outdoor sports or games. Furthermore, the appellant and Council concur it would not be possible to limit the number of people standing on the former tennis court. However, there is no mechanism before me which could reasonably restrict such games or adequately control the precise location of activities within the site.
 17. There is fencing and a Leylandii hedge along the boundaries of Hazeldene. Furthermore, the appellant proposes the erection of a 2m tall fence away from the rear boundary of Hazeldene and additional landscaping. However, I have limited substantive evidence before me that the existing and proposed boundary features and proposed landscaping would adequately mitigate against the noise and disturbance identified.
 18. For these reasons, I conclude the proposed development, although unlikely to materially affect visitors to Hazeldene, would affect the living conditions of the occupiers of Hazeldene, with particular regard to noise and disturbance. This is contrary to BDP1 and BDP19 of the Bromsgrove District Plan 2011-2030 Adopted January 2017 (DP) and the guidance in the High Quality Design Supplementary Planning Document Adopted June 2019. Collectively, these seek, among other things, to ensure proposals are compatible with adjoining

uses and the impact on residential amenity and maximise the distance between noise sources and noise sensitive uses. It also conflicts with the requirements of the Framework which seeks, among other things, to ensure new development is appropriate for its location taking in to account the likely effects of pollution on living.

Location

19. Policies BDP1 and BDP22 of the DP seek, among other things, to ensure schemes are located so as to be well-served by public/sustainable transport. DP Policy BDP12 seeks, among other things, to supporting the provision of new facilities for which a need is identified in locations accessible to the community served.
20. DP Policy BDP25 seeks, among other things, to support proposals which improve access to facilities, particularly by non-car modes of transport. DP Policy BDP16 states, among other things, that development which would exacerbate motor vehicle dependence should not be permitted. Paragraph 105 of the Framework acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
21. The site is located within the countryside. Notwithstanding the site is close to the built settlement, it is not accessible by public transport and there are no footpaths leading from the settlement to the site. Therefore, it is highly likely users of the site will need to rely on motor vehicles in order to access the facilities proposed.
22. Having regard to the maximum numbers of students and staff proposed in connection with the educational facility, together with the visits associated with the existing agricultural and equestrian uses and additional visitors seeking to purchase produce, the proposed development is therefore likely to increase traffic movements to and from the site.
23. The appellant confirms that a school minibus, proposed as a sustainable form of transport, would provide transport for students from the main school to the appeal site, which would wait at the appeal site to transport students back to the main school following the end of the school day. In addition to the minibus, the evidence indicates 3 students would travel in separate motor vehicles, driven by their parents, and 2 students would travel in separate taxi's. The 4 staff members would drive to site separately, although it is unclear from the evidence before me how the additional 3 members of staff would access the site if maximum staff numbers of 7 were required. I am also advised that of the 8 liveries currently in operation, 4 will cease.
24. Based on the evidence, most of the trips to and from the site would be by minibus. Moreover, I understand that the appellant has a Travel Plan in place, which requires the minibus to be the primary mode of travel. A condition requiring the submission of a Travel Plan, which outlines the modes of travel to and from the site and management of access and egress, could be imposed should the development be otherwise acceptable.
25. Therefore, I am satisfied that the proposed use would not significantly increase traffic movements to and from the site and would not materially increase the reliance on private motor vehicles as a result.

26. For these reasons, I conclude the appeal site is a suitable location for the development proposed, having regard to reliance on private motor vehicles. It would therefore accord with DP Policies BDP1, BDP12, BDP16, BDP22 and BDP25 and the requirements of the Framework, as described above.

Need for the Proposed Development

27. I recognise that the failure of this appeal could affect the educational needs of children and young people with Special Educational Needs and Disabilities (SEND). I have had due regard to the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty (PSED) under the Equality Act 2010. Disability and age are relevant protected characteristics to which the PSED applies. Where the Article 8 rights are those of children, they must be seen in the context of Article 3 of the of the United Nations Convention on the Rights of the Child, which requires a child's best interests to be a primary consideration. These rights are engaged in reaching my decision and I have kept these interests at the forefront of my mind. However, they are qualified rights and interference may be justified where in the public interest. The concept of proportionality is key.
28. I understand that Riverside Education works predominately with students who have an Education, Health and Care Plan for a range of SEND. The scheme would widen the choice of education facilities for students with SEND, give the students direct benefits of an education facility and access to and enjoyment of the countryside. The appellant advises they seek to re-engage marginalised young people and provide more than an academic education and have built the farm provision around their Work-Based Learning Programme, designed to help young people gain work and life skills.
29. I understand that there are direct benefits to the students as a result of being able to access an education facility as proposed. These include enjoyment of school, an absence of behavioural issues, access to a therapeutic environment, feeling a valued member of the community, an environment that allows students to engage with education when traditional education and learning environments are not suitable to meet the needs of the children, and an opportunity to volunteer.
30. I have afforded significant weight to the benefits of the educational setting to future student's wellbeing as required by the PSED. Nonetheless, even with additional weight applied to this effect, there is no overriding reason to allow the change of use of Thornborough Farm to address future user's personal circumstances. Therefore, while the proposed development may be in the best interests of the children and help people who share protected characteristics for the purposes of the PSED, this would not override the site specific unacceptable harm in respect of the living conditions of existing occupiers of Hazeldene. Therefore, having due regard to the circumstances of the persons affected in this appeal, the interference in this instance would be in accordance with the law and in pursuance of a well-established and legitimate aim which is to uphold the aims of the development plan. Consequently, it is a proportionate response to dismiss the appeal.

Other Matters

31. The Council have not raised any concerns with respect to the physical alterations proposed. Having regard to the modest amount of work proposed,

location of the works within the site and orientation of Hazeldene, I see no reason to disagree.

32. The absence of harm in respect of highway safety and increased traffic movements are neutral matters.

Conclusion

33. For the above reasons, I conclude that, while the appeal site is a suitable location for the development proposed, having regard to reliance on private motor vehicles, and is unlikely to materially affect visitors to Hazeldene, the harm I have identified to the living conditions of existing occupiers of Hazeldene is determinative. Therefore, the appeal proposal would conflict with the development plan as a whole. There are no material considerations, including in relation to the need for the proposed educational facility and best interests of the children, that indicate I should conclude other than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

S Pearce

INSPECTOR