



Appeal Decision

Site visit made on 21 November 2023

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th January 2024

Appeal Ref: APP/Y9507/W/23/3317523

Land to the west of Farnham Road, Liss, Hampshire

Grid ref: 477103/129045

- 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 Mr Robert Brown of Paw Paddock Ltd against the decision of South Downs National Park Authority.
 - The application Ref SDNP/22/04205/FUL, dated 26 August 2022, was refused by notice dated 31 October 2022.
 - The development proposed is the change of use of agricultural land to use for exercising of dogs including perimeter fence, pathway, shelter and associated parking.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of agricultural land to use for exercising of dogs including perimeter fence, pathway, shelter and associated parking at Land to the west of Farnham Road, Liss, Hampshire, Grid Ref: 477103/129045 in accordance with the terms of the application, Ref SDNP/22/04205/FUL, dated 26 August 2022, subject to the attached schedule of conditions.

Preliminary Matters

2. No site address was entered on the application form, therefore I have used the address listed on the decision notice, including the grid reference.
3. During the appeal, a new version of the National Planning Policy Framework (the Framework) came into effect. However, as the Framework's policy content insofar as it relates to the main issues has not been significantly changed there is no requirement for me to seek further submissions on this latest version. I am satisfied no party would be prejudiced by determining the appeal accordingly.
4. The site is located within the buffer zone of the Wealden Heaths Phase II Special Protection Area (the SPA). Although not an issue raised by the Authority, it is incumbent upon me as the competent authority to consider whether the proposed development would be likely to have a significant effect on the integrity of the SPA.

Main Issues

5. The main issues are:
 - the effect of the proposed development on the character and appearance of the area, with particular regard to the South Downs National Park (the SDNP);

- whether the appeal site would be suitable for the proposed development, having regard to local planning policies on the location of development; and
- whether the proposed development would be likely to have a significant effect on the integrity of the SPA.

Reasons

Character and appearance

6. As the site is located within the SDNP, I have had regard to Section 15 of the Framework which requires that great weight should be given to conserving and enhancing the landscape and scenic beauty of the area. Further, the SDNP has the highest status of protection concerning these issues. The first statutory purpose of a National Park is to conserve and enhance the natural beauty, wildlife and cultural heritage of the area.
7. The appeal site comprises part of an agricultural field located within an area characterised by predominantly low-lying farmland interspersed with scattered areas of woodland, the River Rother corridor and the settlement of Liss and West Liss. Although the A3 Liphook to Petersfield Bypass forms part of the site boundary, it is screened from view by a densely wooded strip. The remaining sides of the agricultural field are clearly defined by existing landscape features including the mature hedgerow alongside Farnham Road. Whilst open, generally flat and with no significant landscape features within it, the existing boundaries create a sense of enclosure and intimacy to the field, a key characteristic of the site's wider landscape setting.
8. To facilitate the change of use of the site for the exercising of dogs, the erection of fencing, a field shelter and the construction of a parking area for two vehicles adjacent to the existing field access from Fareham Road is proposed. No lighting or new planting is proposed, and no landscape features are to be removed as part of the appeal scheme. This would ensure the openness of the site is retained whilst maintaining the enclosure and intimacy of its setting created by the retained existing boundary features, demonstrating a landscape-led approach to the appeal scheme.
9. Regardless of the permissibility of the fencing and field shelter via other planning mechanisms, the type and scale of these features are similar to those commonly found within the countryside. People walking their dogs is also a common occurrence within comparable settings. Whilst signage and dog bins would be provided, these would be limited in scale and, subject to a suitably worded condition, require approval by the Authority. The proposed development, therefore, would not be intrusive in this countryside location. This would be the case even if the grass on the site was mown.
10. I conclude that the proposed development would not harm the character and appearance of the area, with particular regard to the SDNP, and complies with policies SD4 and SD5 of the South Downs National Park Local Plan (the Local Plan). These policies, amongst other provisions, only permit development that adopts a landscape-led approach which conserves the landscape character of its surroundings.
11. It also complies with policies Liss 2, Liss 4 and Liss 9 of the Liss Village Neighbourhood Development Plan 2011-2028 (the Neighbourhood Plan). In support of Objectives 1 and 4 of the Neighbourhood Plan, these policies seek to

protect the open and undeveloped nature of the countryside and respect the high-quality landscape setting of Liss and its surroundings.

12. I find no conflict with Sections 12 and 15 of the Framework seek to ensure development is sympathetic to its landscape setting and protect the landscape and scenic beauty of National Parks.

Location

13. As the appeal site is located outside the Settlement Policy Boundary of Liss, for the purposes of the Local Plan it is in the countryside where development will be permitted in exceptional circumstances only. These circumstances are set out in Policy SD25 of the Local Plan together with the requirement to comply with other relevant policies and in response to the context of the area. Concerning the proposed development, the following exceptional circumstance is relevant: there is an essential need for a countryside location. Policy Liss 1 of the Neighbourhood Plan amplifies this requirement.
14. The site is also located within a protected settlement gap, as defined by Policy Liss 2 of the Neighbourhood Plan, to prevent settlement coalescence, retain settlement identity and protect its landscape setting. Further, Policy Liss 2 permits development within a protected gap provided the physical or visual separation of the settlements is not undermined, the integrity of the gap is not compromised, and it meets an essential need which cannot be located elsewhere.
15. Whilst dog walking can be undertaken within an urban setting, opportunities to exercise a dog off lead safely whilst avoiding conflict with other uses or users are limited. This is particularly relevant for customers with dogs that have behavioural or social challenges. Similarly, the ability to safely use public rights of way for off-lead dog walking, including those in the countryside, can vary due to their location, proximity to other uses including animal grazing and wildlife habitats, weather conditions and other users. A countryside location, therefore, is essential for the proposed development, meeting an exceptional circumstance set out in Policy SD25 of the Local Plan and amplified within policies Liss 1 and Liss 2 of the Neighbourhood Plan.
16. As already identified, the type and scale of the proposed features, and associated activity, are commonly found within the countryside. It would not harm the character and appearance of the area and would respond to its local context. Furthermore, the openness of the site is retained whilst maintaining the character of the larger field. Therefore, whilst located in a protected gap, the proposed development would not undermine its role in preventing the coalescence of settlements or compromise the integrity of the gap.
17. I conclude that the appeal site would be a suitable location for the proposed development, having regard to local planning policies on the location of development, following policies SD4 and SD25 of the Local Plan which seek to conserve the landscape character of the area.
18. It also complies with policies Liss 1 and Liss 2 of the Neighbourhood Plan which seek to protect the countryside and important gaps between settlements, in support of Objective 4 of the Neighbourhood Plan.

Integrity of the SPA

19. The special interest of the SPA results from areas of wet and dry heathland, woodland, grassland and open water habitats that support the bird breeding population. Consequently, an overarching conservation objective for the SPA is the protection and management of these habitats. Policy SD10 of the Local Plan sets specific requirements for development within five kilometres of the SPA. These relate to development that would lead to a net increase in residential units which puts pressure on the ability of the conservation objective for the SPA to be met.
20. As the proposed development would not lead to a net increase in residential units, I conclude that the development would not be likely to have a significant effect on the integrity of the SPA, in accordance with the Habitat Regulations.

Other Matters

21. Although the Authority has raised concerns regarding other features such as jumps, equipment and a mechanised dog wash to be requested in the future as these are present on other dog fields operated by the appellant, they do not form part of the scheme before me. However, as the installation of jumps and equipment, including a mechanised dog wash, could have a detrimental effect on the character and appearance of the site, a suitably worded condition requiring the Authority's approval of these features is necessary.
22. As the proposed development would be acceptable, I see no reason to conclude that it would lead to harmful developments elsewhere. The fact that the proposed development would not be publicly accessible is a neutral factor in my decision.

Conditions

23. I have considered the Authority's suggested conditions in light of advice contained within the Framework and the National Planning Practice Guidance. I have undertaken some minor editing, rationalisation and reordering, in the interests of precision and clarity. As detailed lists of matters to be approved are not necessary to make the conditions precise or enforceable, they have been removed, enabling the main parties to agree on the most suitable method of compliance based on best practices at the time of discharging the conditions.
24. In addition to the standard time condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans, for the avoidance of doubt and the interests of the character and appearance of the SDNP.
25. To safeguard the character and appearance of the area, it is necessary to impose a condition requiring the proposed external materials to be approved by the Authority. As this also covers the materials to be used in the approved parking area, it is not necessary for me to impose a separate condition for this. I have imposed a condition to safeguard the existing trees on and close to the site, including their long-term viability, and to preserve the character and appearance of the area. This requires protective fencing to be erected before the commencement of development and following an approved Tree Protection Plan.

26. I have imposed two pre-use conditions including the construction of the parking area, in the interests of highway safety, and the installation of bird boxes to protect and enhance ecosystem services following policies SD2 and SD9 of the Local Plan and Section 15 of the Framework.
27. To protect biodiversity in accordance with policies SD2 and SD9 of the Local Plan, Section 15 of the Framework, and the Conservation Regulations 2017, Wildlife & Countryside Act 1981 and the Natural Environment and Rural Communities Act 2006. I have attached a condition requiring the ecological mitigation measures within the Ecological Impact Assessment¹ to be implemented.
28. To protect the designated International Dark Night Reserve, the character and special quality of the SDNP and following the Framework, a condition requiring the Authority's approval for any future external lighting to be installed on the site has been attached. I have also imposed a condition requiring the Authority's approval for any jumps or equipment to be installed on the site in the interests of protecting the character and appearance of the area and maintaining the settlement gap.
29. I have amended the Authority's suggested condition restricting permitted development rights to cover the construction of any further pathways or hardstanding and the installation of additional structures, fencing and gates. This has been imposed in the interests of highway safety, the character and appearance of the area and the protected settlement gap. To protect the living conditions of occupiers of nearby properties, a condition has been imposed limiting the development's hours of use.
30. I have not imposed a condition limiting the number of dogs to be walked on the site at any one time. This is not a restriction commonplace in the countryside and will be reasonably restricted by the maximum number of private vehicles allowed in the parking area in any event.
31. A representation from an interested party suggested the imposition of a condition requiring the land to be returned to the original condition and use of the site in the event of the business ceasing. As planning permission runs with the land and does not relate to a specific business, imposing a condition which would be triggered by that business ceasing would not be appropriate. As the proposed development is acceptable permanently, attaching a requirement for the site to be returned to its agricultural use and condition should the business cease is not necessary. Furthermore, any proposed changes of use, should the site no longer provide a dog exercise facility would require further approval.

Conclusion

32. For the reasons given above, and taking into account all relevant matters raised, I conclude that the appeal should be allowed.

Juliet Rogers

INSPECTOR

¹ Ref: LLD2709-ECO-REP-001-00-EcIA, prepared by Lizard and dated 25 August 2022.

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Existing Location Plan – ref 10278 DPA-01
 - Proposed Location Plan - ref 10278 DPA-02
 - Proposed Site Plan - ref 10278 DPA-03
 - Proposed Deer Stock Fence and Field Shelter - ref 10278 DPA-04
 - Proposed Parking Arrangement – ref 10278 DPA-05
 - Proposed Sign – ref 10278 DPA-06
- 3) No development shall commence until details of the materials to be used for any fencing and gates, shelter, hardstanding and pathways hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.
- 5) Prior to the first use of the development hereby permitted, the approved parking area shall be constructed in accordance with the approved details and thereafter retained for the purpose of parking a maximum of two private motor vehicles in connection with the approved use.
- 6) Prior to the first use of the development hereby permitted, one swift box and one nest box suitable for blue or coal tits shall be installed as per the manufacturer's instructions. The boxes shall be retained and maintained in a condition suitable for their intended use or replaced as required for the lifetime of the development.
- 7) The ecological mitigation measures set out within the Ecological Impact Assessment ref LLD2709-ECO-REP-001-00-EcIA and prepared by Lizard, dated 25 August 2022 shall be implemented in accordance with the approved details unless otherwise agreed in writing with the local planning authority. All work shall be completed in full and in accordance with any specified timetable. Thereafter, the measures implemented shall be retained and maintained for the lifetime of the development.
- 8) No external lighting or floodlighting shall be installed on the site until details of any lighting scheme have been submitted to and approved in writing by the local planning authority. Any approved scheme shall be installed, operated and maintained in accordance with the approved details.

- 9) Notwithstanding the approved details no further jumps or other equipment shall be installed on the site until details of such have been submitted and approved in writing by the local planning authority. Any further approved jumps or other equipment shall be installed and maintained in accordance with the approved details.
- 10) 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 pathways or hardstanding shall be constructed, and no structures, fences or gates shall be erected other than those expressly authorised by this permission.
- 11) The use hereby permitted shall only take place between the following hours:
 - 07:00 – 20:00 Mondays – Saturdays
 - 08:00 – 20:00 Sundays and Public Holidays.