



Appeal Decision

Site visit made on 3 January 2024

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th January 2024

Appeal Ref: APP/Z3825/W/23/3315893

Capons Hill Farm, Unit 3, Station Road, Cowfold RH13 8DE

- 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 under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Dean Weston against the decision of Horsham District Council.
 - The application Ref DC/22/0366 is dated 17 February 2022
 - The application sought planning permission for change of use of existing vacant building to a club for teaching of various martial arts without complying with a condition attached to planning permission Ref DC/19/1283, dated 22 November 2019.
 - The condition in dispute is No 6 which states that: At no time shall the number of participants exceed more than 10 individuals and 1 instructor.
 - The reason given for the condition is: To safeguard the amenities of neighbouring properties in accordance with Policy 33 of the Horsham District Planning Framework (2015).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal relates to a unit within a rural industrial estate which operates as a club for the teaching of martial arts. The Decision Notice which granted planning permission for the original development states the purpose of the disputed condition is to safeguard the amenities of neighbouring properties.
3. In addition to conflict with the stated purpose of the condition, the Council's reasons for refusal also reflect its concerns relating to the integrity of European sites and highway safety. I am satisfied that all parties have had opportunity to have regard to such issues and would not be prejudiced by my consideration of these matters.
4. During the course of the appeal, the National Planning Policy Framework (the Framework) was revised by government. Its content in respect of the main issues has not been materially altered. Therefore, in this instance it has not been necessary to consult the parties on the revisions to the Framework.

Main Issues

5. Having regard to the above, the main issues in this appeal are the effects of removing the disputed condition on:

- The integrity of the Arun Valley Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar sites;
- The living conditions of occupants of Capons Hill Farmhouse; and
- Highway safety.

Reasons

Integrity of European sites

6. Condition no 6 limits the number of participants using the martial arts academy to a maximum of 10 individuals at any one time. The proposal seeks to vary the condition by increasing the stated maximum number of participants to 25.
7. The appeal site lies within the Sussex North Water Supply Zone (WSZ), and is therefore functionally related to the Arun Valley SAC, SPA and Ramsar sites. These Arun Valley European Sites consist of low-lying grazing marsh, largely on alluvial soils with an area of peat derived from a relict raised bog. The conservation objectives for the Arun Valley SAC & SPA are to ensure that the integrity of the site is maintained or restored as appropriate; and ensure that the site contributes to achieving the aims of the Wild Birds Directive.
8. The qualifying features of the Arun Valley SAC & SPA include its assemblage of waterfowl, in particular shoveler, teal, widgeon, and Bewick's swan, and its populations of little whirlpool ramshorn snail. The Arun Valley Ramsar's features include seven threatened wetland invertebrate species, four nationally rare, and four nationally scarce plant species, with diverse and rich flora including species of duckweed, watercress, milfoils, dropworts, and pondweeds.
9. Natural England's 'Position Statement for Applications within the North Sussex WSZ Interim Approach September 2021' indicates that it cannot be concluded that existing abstraction within Sussex North WSZ is not having an impact on the Arun Valley European Sites and advises development within this zone must not add to this impact.
10. Through increasing participant numbers, the proposal would increase water use, such as use of drinking water, toilets, and washing facilities. This increased demand for water would, without mitigation, result in likely significant adverse effects on the Arun Valley European sites either alone or in combination with other developments.
11. To avoid impacts upon the Arun Valley European Sites, the Position Statement advises development within the Sussex North WSZ demonstrate water neutrality; that the use of water in the supply area before the development is the same or lower after the development is in place.
12. The unit includes two changing rooms each with a shower cubicle, toilet, and hand basin. Drinking water is available from a mains-fed water cooler or staff kitchen tap. The Water Neutrality Strategy (WNS) indicates that use of the shower facilities is generally infrequent and identifies the water cooler as the source of greatest water demand. However, the WNS identifies that water use would increase as a result of the proposal at a rate commensurate with the number of participants.
13. The WNS proposes a number of mitigation measures which seek to offset the additional demand associated with the proposal, including flow restrictors on all

taps, installation of a bottled water cooler, flush bags installed in toilet cisterns, and installation of a rainwater harvesting butt. To achieve water neutrality, the WNS indicates that a reduction of water demand equivalent to 210 litres per class is required.

14. The WNS indicates the total volume of the rainwater harvesting butt would be 470 litres, which the appellant indicates could be further increased to 2,000 litres storage capacity. However, it is unclear to what extent greywater would reduce water demand from mains sources, particularly during periods of drought. In addition, no volume reduction figure has been provided for the tap flow restrictors. Overall, the information presented in the WNS does not adequately demonstrate that water neutrality would be achieved.
15. The appellant also indicates that the existing showers could be removed to reduce water usage. However, this has not been accounted for in the WNS, and therefore is not presented as part of a strategy for water neutrality.
16. The appellant's statement suggests actual water consumption, as indicated by usage of the unit's septic tank, is significantly below the estimate provided by the WNS. In addition, some academy members have provided details of how they minimise water usage, through showering at home and bringing drinking water to classes. Whilst existing usage may be low, the requirement of water neutrality is for future water usage to be the same or lower.
17. The appellant asserts the proposal should be considered to be permitted development due to its scale, water usage, and absence of structural alterations. However, the proposed increase in participants is explicitly controlled by Condition 6.
18. Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations) states that a competent authority may agree to a plan or project only after having ascertained that it will not adversely affect the integrity of the European site.
19. Whilst the unit's existing water usage appears to be low, increasing participant numbers would nonetheless increase demand for water and the submitted evidence fails to adequately demonstrate that water neutrality would be achieved. Natural England objected to the scheme on this basis, and I do not consider the additional evidence is sufficient to overcome this objection. Therefore, adverse effects on the integrity of the Arun Valley European Sites cannot be ruled out.
20. I must also consider whether there are any imperative reasons of overriding public interest. The martial arts academy serves members of the community of differing ages and abilities, providing classes for pre-schoolers, children, teenagers, women, veterans, and emergency workers. Its classes support physical fitness and mental health, as evidenced by written support from academy members, and further promotes wellbeing through its affiliation with a mental health charity. Through raising the maximum number of participants, the proposal would improve the local community's access to the martial arts academy's classes.
21. However, I do not consider the scale of public interest associated with the proposal would justify the potential harm to the integrity of the Arun Valley European Sites.

22. The proposed development would result in unjustified harm to the integrity of the Arun Valley European Sites and would therefore be contrary to Policy 31 of the Horsham District Planning Framework 2015 (HDPF), which indicates that proposals anticipated to have a direct or indirect adverse impact on sites or features for biodiversity should be refused.
23. In addition, the proposal would not satisfy paragraphs 185 and 186 of the Framework which promote the conservation, restoration and enhancement of priority habitats, and requires that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
24. Section 40 of the Natural Environment and Rural Communities Act 2006 (as amended) requires that every public body must, in exercising its functions, have regard to the purpose of conserving and enhancing biodiversity. Consequently, having regard to the Habitat Regulations, permission must not be granted.

Living conditions

25. The appeal site is within an existing industrial estate which comprises a group of former agricultural units and areas of hardstanding, accessed via a long track from the A272 road, and situated to the rear of Capons Hill Farmhouse. The industrial estate is outside of the built-up area of the nearby village of Cowfold and is surrounded by open fields and countryside. The surrounding area is therefore rural in character.
26. The unit is located around 95 metres from Capons Hill Farmhouse. A vehicle workshop, agricultural land, stables, and paddocks lie between the martial arts academy unit and Capons Hill Farmhouse. The unit is therefore physically separate from the dwelling. Due to this separation distance, increased activity within the unit from the proposed number of participants would not affect the living conditions of occupants of Capons Hill Farmhouse.
27. Due to the site's rural location, the proposal would increase vehicular traffic accessing the site. I note academy members operate a lift-sharing scheme, and some members indicate they access the site using public transport or cycles. Therefore, the uplift in traffic generated by the scheme would be below the council's 'worst case scenario' estimates.
28. Vehicle parking is located close to the martial arts academy unit and therefore the dwelling's occupants would not experience noise and disturbance from increased use of the parking area.
29. The industrial estate's access track runs parallel with the side boundary of Capons Hill Farmhouse, passing the dwelling and rear garden. The occupants have raised concerns regarding increased noise and disturbance from passing vehicles, in particular at weekday evenings and weekend mornings when traffic noise from the A272 road and activity at the industrial estate may have reduced. It is my understanding that the site's landlord intends to surface the access track with tarmac which, if implemented, would reduce noise and dust from vehicles using the access.
30. A tall, close boarded fence and occasional trees and vegetation run between the access track and the side boundary of Capons Hill Farmhouse. The dwelling is set in from the side boundary with a gravel driveway adjacent to the

dwelling's flank wall and rear garden. Therefore, there would be adequate screening and separation between the dwelling and additional passing vehicles.

31. From my site visit, I noted traffic noise from the A272 road was relatively high in the vicinity of the dwelling. Other uses on the industrial estate include a motorcycle paint workshop, swimming pool showroom and depot, car bodyshop, and materials storage. At time of my site visit, there were a large number of parked vehicles, and I observed frequent vehicle movements associated with other commercial uses at the industrial estate.
32. Within this context and taking into account the separation and screening from vehicles, I do not consider the uplift in traffic would adversely affect the living conditions of the dwelling's occupants. In addition, the scale of traffic associated with the proposal would not alter the rural character of the area.
33. For the reasons set out above, the proposal would not harm the living conditions of occupants of Capons Hill Farmhouse. For the same reasons, the proposal would not infringe upon the occupant's human rights.
34. The proposal would therefore comply with Policy 33 of the HDPF which requires that development is designed to avoid unacceptable harm to the amenity of occupiers of nearby property and land.

Highway safety

35. Representations from the Local Highway Authority (LHA) confirm the site access is of sufficient width to allow vehicles to pass clear of the highway, with sufficient length for waiting vehicles and adequate parking. Therefore, the volume of additional traffic associated with the proposal would be accommodated without adverse effects on highway safety.
36. The applicant has submitted the Stage 1 Road Safety Audit March 2022. The audit notes that visibility splays on both sides of the access were below standard due to the presence of verge foliage. This would limit views of approaching vehicles and is thus a highway safety concern. However, the LHA confirmed the verge forms part of the public highway, and its maintenance is the responsibility of the LHA.
37. Condition no 3 of the original planning permission required the appellant to provide maximum visibility splays from the site access. Evidence submitted by the appellant confirms the existing Parish Council signage was relocated by a certified contractor. Even if the sign were not relocated, the LHA indicates it would not consider this sufficient reason to refuse the scheme.
38. The access track connects to the A272 via a wide bell-mouth junction with grass verges on either side. A belt of trees and hedges runs behind the grass verges and is set back from the junction. At time of my site visit, visibility from the junction appeared adequate.
39. The surface of the access track is uneven and potholed. The appellant's road safety audit identifies the quality of the surface increases the risk of two-wheeled vehicles becoming destabilised. However, the access track does not serve only the martial arts academy but provides access to other uses at the industrial estate. Therefore, issues regarding the quality of the surface are not isolated to the proposal but is an existing issue affecting other users of the access. As set out above, I understand the site owner has agreed to re-surface

the road and therefore there is a reasonable prospect that this existing issue would be resolved. Signage at the access advises vehicles travel at 5mph. Due to the low traffic speeds along the access track, I consider the condition of the surface would not adversely affect the safety of users.

40. I note that highway safety of the scheme is a concern of the parish council and some residents. Whilst it was suggested there have been four accidents from use of the junction, I have not been provided with accident data. I note that the LHA were engaged throughout the planning process and did not object to the proposal.
41. For these reasons, I am satisfied the access track serving the development can operate safely with the proposed level of intensification without harm to highway safety. The proposal would therefore comply with HDPF Policy 40 which requires development to provide safe and suitable access for all users.

Other Matters

42. The appellant suggests that if the appeal were to fail, the academy could serve a larger membership through increasing the number of classes held throughout the day, since the condition in dispute does not restrict the number of classes. However, if I were to allow the appeal, there would be no certainty that the number of classes held would not also increase in the future through growth in the academy's membership. I have therefore assessed the proposal on the basis that it would provide an overall uplift in the number of participants using the academy's facilities.
43. The appellant refers to comments which they consider to be defamatory and misrepresent the activities of the martial arts academy. The evidence before me demonstrates the unit is in use for the teaching and practise of martial arts and I have determined the appeal on this basis.
44. The appellant has provided details of alleged criminal harassment and/or civil harassment which the academy and its members have experienced and has provided details of a crime reference number. This is a policing matter, and in my decision, I have considered only the planning merits of the proposal.

Conclusion

45. I have found that proposed variation of condition no 6 would not harm the living conditions of occupants of Capons Hill Farmhouse and would not harm highway safety.
46. However, through increasing the number of participants, the associated increased demand on water resources would have likely significant effects on the Arun Valley European sites and would thus conflict with the development plan. In this circumstance, the Habitats Regulations prevent the grant of planning permission. For this reason, the appeal is dismissed.

E Dade

INSPECTOR