The Planning Inspectorate

Appeal Decision

Site visit made on 28 March 2024

by R Lawrence MRTPI, BSc (Hons), PGDip (TP)

an Inspector appointed by the Secretary of State

Decision date: 7th June 2024

Appeal Ref: APP/P3610/W/23/3329486
Hobbledown, Horton Lane, Epsom KT19 8PT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Hobbledown Limited against the decision of Epsom and Ewell Borough Council.
- The application Ref is 22/00010/FUL.
- The development proposed is the erection of perimeter boundary timber fencing, relocation of entrance gates and installation of gas tank holder (retrospective).

Decision

1. The appeal is allowed and planning permission is granted for the erection of perimeter boundary timber fencing, relocation of entrance gates and installation of gas tank holder (retrospective) at Hobbledown, Horton Lane, Epsom KT19 8PT in accordance with the terms of the application, Ref 22/00010/FUL, subject to the following condition:

   1) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: 188/0.011 Rev 03 – Location Plan, 188/3.011 Rev 02 – Proposed Fence/Gas Holder Site Plan, 004 Rev B – Service Yard, Dwg No 008 – sight lines, LPG Storage Tank Details document and Boundary Fence document.

Applications for costs

2. An application for costs was made by Hobbledown Ltd against Epsom and Ewell Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appellant has drawn my attention to the granting of planning permission[1] on land which includes the appeal site, for the Variation of Condition 20 (Field Restrictions) of Planning Permission 11/00511/FUL, as amended by Planning Permission ref: 22/00011/REM. This permission was retrospective in nature and sought authorisation for the use of the service yard area, for purposes other than solely for the keeping of animals.

4. This decision was issued after the start date for this appeal, on the 08 March 2024. The Local Authority has been provided with the opportunity to comment on the relevance of this decision to this appeal, but I have not been provided with any response. The relevance of this decision to the current appeal scheme is explored later within this decision.

[1] 24/00024/REM

5. The original appeal notification letter sent by the Council was sent after the deadline provided by the Planning Inspectorate. In light of this, the deadline for representations was extended and a revised notification letter was sent out.

6. A revised National Planning Policy Framework (the Framework) was published on 19 December and updated on 20 December 2023. The main parties have had the opportunity to comment on the relevance of the revised Framework within any final comments. I have determined the appeal in light of the revised Framework.

7. The appeal proposal has been partially constructed. The works undertaken include the erection of perimeter fencing and the installation of the LPG tank on a concrete plinth. I was able to observe these works on my site visit. For the avoidance of doubt, I have assessed the appeal scheme on the basis of the submitted plans.

8. A plan[2] showing the sight lines from the service yard onto the highway has been submitted in support of the appeal. This was not submitted with the original planning application; however, the appeal procedure has allowed opportunity for the Council to comment on it and as such would not be prejudiced by my considering the plan.

Main Issue

9. The main issue is whether the proposal would enable the safe manoeuvring of vehicles within the site and, whether it would result in a detrimental effect upon highway safety.

Reasons

10. The appeal site comprises of a service yard located within Hobbledown Children's Farm (the Farm) and a gated access onto McKensie Way. The site is enclosed by close boarded fencing and includes a gas tank, electricity cabinet and waste storage facilities.

11. The proposal does not relate to the intensification of the use of the Farm, nor does it propose any alterations to visitor attractions, parking arrangements (aside from serving) or any other activity that would result in any notable change to vehicle movements to/from the site. The distance between the highway and the entrance gates off McKensie Way would be slightly increased, thereby reducing any need for service vehicles to wait on the highway.

12. The plans submitted with the appeal show vehicle tracking movements which show that a large refuse lorry could manoeuvre within the site, such to enable it to exit in a forward gear. The Council and interested parties have queried the practicality and safety of such manoeuvres. An interested party has submitted a document overlaying the plans with aerial imagery, indicating possible obstructions to the tracking movements shown. However, unlike the submitted plans, this does not appear to be to scale casting doubt over its accuracy. In the event of my allowing the appeal, a condition would be imposed to require development to be undertaken in accordance with the approved plans, these do not propose or show any such obstructions.

[2] Drawing 008 at 1:1250

13. Even if there was a continued practice of large vehicles having to reverse onto the highway, this is an existing situation. There is no substantive evidence before me to indicate that the likelihood of such activity occurring would increase.

14. The adequacy of the visibility splays onto McKensie Way has been questioned. The proposals would not alter the visibility splays from the existing position. The concerns raised appear to relate to visibility for vehicles reserving onto the highway, however, I have found that vehicles would be able to enter and exit the site in a forward gear. From my own observations, I note that visibility for vehicles exiting the site in a forward gear would be good.

15. It is noted that the County Highway Authority (CHA) has raised no objection to the submitted proposal, concluding that "the application would not have a material impact on the safety and operation of the adjoining public highway". Whilst it is open for the Council to reach a different conclusion to the CHA, there is no substantive evidence before me to justify such.

16. Based on the evidence before me, I am satisfied that the proposal would enable the safe manoeuvring of vehicles within the site, and that the proposal would not result in a detrimental effect upon highway safety. The proposal would therefore accord with Policy CS16 of the Core Strategy 2007 (CS) and DM10 of the Development Management Policies Document 2015 (DMP). These policies, insofar as relevant, require the provision of appropriate servicing arrangements, and that developments provide an appropriate layout and access arrangements.

17. Whilst DM36 of the DMP is also referenced, this relates to a requirement for a travel plan for major developments together with the need to prioritise pedestrians and cyclists. These requirements do not have any relevance to the proposal before me.

18. The development would not have an unacceptable impact on highway safety and there is no evidence before me that the residual cumulative impacts on the road network would be severe. As such, the proposal would accord with the requirements of the Framework.

Other Matters

19. In addition to the main issue considered above, several other matters have been raised by interested parties.

20. The safety of the railings around the LPG tank is queried, and whether this protects the tank from vehicles manoeuvring within the site. Although its siting could affect the movement of vehicles, I have found that the proposed development would not have a detrimental effect in this regard. As such, there is nothing to indicate that the railings would cause an issue with vehicles manoeuvring within the site. Furthermore, its siting is well separated from neighbouring residential properties. In any event, the safety of the LPG tank is a matter which is controlled by separate legislation.

21. Some of the alleged harm from a visual perspective relates to development which is existing and falls outside of the scope of this appeal. In terms of the appeal proposal, the extent of operational development is limited in scale. The works include fencing which, together with existing perimeter fencing and natural screening, would screen the LPG tank. The fencing is set back from the

highway behind a grass verge. The appearance of the fencing is in keeping with the materials used elsewhere on the farm. Given these factors, the proposal would not result in an adverse visual impact.

22. Reference has been made to an adjacent Conservation Area (CA) which lies on the opposite side of McKensie Way, comprising an attractive, low-density area of housing. No statutory protection for the setting of a CA exists, however paragraph 206 of the Framework requires consideration of any harm to a designated heritage asset, including from development within its setting. Both the CA and the Farm have clearly defined boundaries and are well separated from each other by soft landscaping including boundary treatments, as well as McKensie Way. Given this, and the limited extent of operational development proposed, I am satisfied there would be no harm to the setting of the CA. No substantive evidence to the contrary is before me.

23. The use of the appeal site as a service yard has been queried, in terms of whether it constitutes an authorised form of development. My attention has also been drawn to the recent permission relating to the use of the service yard area, for purposes other than solely for the keeping of animals. Notwithstanding these submissions, the extent of evidence before me on the matter is limited. Whether or not the use of the service yard is authorised, is not a matter which is before me for determination.

24. The site lies within the Green Belt. There is agreement between the Council and the appellant, that the works do not constitute inappropriate development in the Green Belt. This is based on the works forming facilities for outdoor recreation and sport, an exception to inappropriate development set out at paragraph 154 of the Framework. It is clear to me both from the submitted evidence and my observations on site, that the service yard plays a functional role in the operations of the wider Farm, which is a form of outdoor recreation. On this basis, I have no reason to disagree with the Council's findings.

25. The appeal site is located within Flood Zone 1, at low risk of flooding, and sits outside of any critical drainage areas. A Flood Risk Assessment was submitted in support of the appeal, which further concludes that the site is at low risk of flooding. There is no substantive evidence before me to indicate otherwise.

26. The presence of a Site of Nature Conservation Interest within the appeal site is noted. The appeal site is previously developed and the extent of further works within the SNCI area are minimal. No substantive evidence is before me to indicate any harm to ecology or protected species. Given this, there is no reason for me to find differently to the Council which found the proposal acceptable on biodiversity grounds.

27. Interested parties have also raised various concerns relating both to other planning applications relating to the wider Farm site, as well as other works that have taken place within the appeal site, which do not form part of the scheme before me. These are matters between the Council and the appellant and are not determinative to the appeal before me.

28. Reference has been made to several alleged procedural errors within the decision-making process at the application stage and wider criticisms have been made in relation to the Local Planning Authority. This includes errors in the voting process at one of the planning committee meetings that the planning application was reported to, and this resulted in the scheme having to

be reported back to a later meeting. Again, these matters are not determinative to this appeal.

Conditions

29. The Council has suggested a number of conditions in the event of my allowing the appeal, I have considered these in accordance with the Planning Practice Guidance and the Framework. I have edited some of the suggested conditions for clarity and enforceability.

30. An approved plans condition is required in the interest of certainty. A materials condition has been suggested requiring compliance with the details listed on the submitted planning application form. As the perimeter fence has already been constructed, and the external appearance of the fence is clearly shown on the boundary fence document which are controlled via the plan numbers condition, there is no justification in this case for a further condition.

31. Conditions to secure a delivery management plan, to include restrictions on size of vehicles, a requirement for vehicles to enter and leave in a forward gear and a time restriction on deliveries has been recommended. As the proposal does not relate to an intensification of the use of the site, and the nature of the proposal would not result in any likely change to vehicle movements or deliveries, such a condition would be unreasonable and unnecessary.

Conclusion

32. For the reasons given above the appeal should be allowed.

R Lawrence

INSPECTOR