



Appeal Decision

Site visit made on 24 September 2024

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2024

Appeal Ref: APP/J1535/W/23/3333738

Land at Church Lane, Sheering

- 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 Ms Sophie Hawkes against the decision of Epping Forest District Council.
 - The application Ref is EPF/2408/22.
 - The development proposed is change of use of open pasture land to a secure dog walking field with associated access, fencing and parking area.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of open pasture land to a secure dog walking field with associated access, fencing and parking area at land at Church Lane, Sheering, in accordance with the terms of the application, Ref EPF/2408/22, subject to the conditions in the attached schedule.

Preliminary Matters

2. Following the issuing of the decision, the Government published a revised National Planning Policy Framework (the Framework). For the avoidance of doubt, where reference is made in this decision to paragraph numbers they are taken from the latest version of the Framework.

Main Issues

3. The main issues are the effect of the proposed development on:
 - highway safety;
 - biodiversity, with particular regard to badgers;
 - the living conditions of neighbouring occupiers, with particular regard to noise and disturbance; and
 - the integrity of the Epping Forest Special Area of Conservation.

Reasons

Highway safety

4. The proposed access would be between two sharp bends, on Church Lane, a low trafficked narrow rural road. Although the lane is subject to a de-restricted national speed limit, the road conditions naturally calm the speed of vehicles approaching the site from either direction. This is demonstrated by the

appellant's traffic survey which shows the 85th percentile speed, in both directions, is 19 miles per hour.

5. There will be vehicles on Church Lane that will be travelling faster than the 85th percentile speed. Nonetheless, in the absence of any substantive evidence to the contrary, there is no basis upon which to dispute the findings of the submitted Highways and Transport Technical Note, or the conclusions of the Highway Authority. I therefore find that the proposed visibility splays are appropriate and that the proposed access would be safe.
6. Any gate to the proposed parking area could be set back from the road. Furthermore, sufficient space is proposed for two vehicles to pass at the access point and for four vehicles to park and manoeuvre within the site. As such, a vehicle would be able to quickly pull clear of the carriageway and safely park. In addition, the use of a booking system and restrictions on the number of vehicles and dogs at each session, which could be secured through planning conditions, limit the amount of traffic that would be generated by the proposed use, which would be staggered across the day.
7. Accordingly, I find that the proposed development would not have a harmful effect on highway safety. In this regard it would not be contrary to Policy T1 of the Local Plan (LP) which, amongst other things, seek to ensure that development does not compromise highway safety. The proposal would also accord with the provisions of the Framework relevant to transport.

Biodiversity

8. A Preliminary Ecological Appraisal (PEA) was submitted in support of the planning application, which was updated and supplemented in response to concerns. It identifies that the site contains habitat features that support, and is suitable for, protected species.
9. The appeal proposal has been amended through the incorporation of a buffer zone for a badger sett, near to the western boundary of the site, some of the entrances to which I observed from adjoining land on my site visit. The buffer zone, which would be separated from the site by a fence and willow hedge, in combination with the supervision of the dogs that would occur, would ensure that the risk of conflict between dogs and badgers is suitably mitigated.
10. Whilst I have considered the concerns of the Council and interested parties, in the absence of any compelling evidence to the contrary, I am satisfied that the PEA is suitably robust, supported by all necessary surveys, and contains recommendations that are adequate and appropriate.
11. Accordingly, I find that subject to securing, through planning conditions, the implementation of the buffer zone as shown on the appeal plan and the mitigation measures set out in the amended PEA, the habitats of protected and priority species will be preserved. In this regard I note that the Council's Ecological Consultant has raised no objections to the proposal.
12. In conclusion, the proposed development will not adversely affect biodiversity, including badgers. As such there will be no conflict with the habitat protection and biodiversity improvement requirements of LP Policy DM1, the Framework, the Conservation of Habitats and Species Regulations 2017, the Wildlife and Countryside Act 1981, and the Natural Environment and Rural Communities Act 2006.

Living conditions

13. The appeal site is located directly to the south of a ribbon of predominantly residential properties within the settlement of Sheering. The boundary of the garden of the dwelling, Pondfield, partially adjoins the west side of the appeal site. On the opposite side of Church Lane, to the north and east of the site, is land within the curtilage of another dwelling, the Old Rectory. Open fields adjoin the remainder of the site.
14. I noted on my visit, which I acknowledge was only a snapshot in time, that due to the rural surrounds and low volume of traffic on Church Lane, the area around the site is relatively quiet with low levels of ambient noise.
15. The proposal would generate noise over and above that arising from its current use as pasture, from barking dogs, owners talking and calling their animals, and from vehicle movements. Nevertheless, all dogs at the facility would be under close supervision and, whilst occasional barking is inevitable and could not be avoided, the presence of owners or handlers would serve to ensure that this would be limited and brought under control.
16. The use of suitably worded planning conditions would restrict the operating hours of the facility, limit the number of customers, dogs and vehicles, and require that the use of the field is booked in advance. This would ensure that the use would not operate in the late evening when neighbouring occupiers reasonably expect a degree of peace and quiet, particularly when they would wish to sleep. In addition, the owner of the facilities would be able to identify any dogs that regularly bark excessively and for prolonged periods and act to manage the situation. With such controls in place, I consider that it would be reasonable to conclude that the proposed use could take place without causing unacceptable harm to neighbours living conditions due to noise and disturbance.
17. Concern has also been expressed regarding overlooking of the adjoining garden. However, any views would be filtered through the intervening hedge which would limit intervisibility between the site and garden and ensure that an unacceptable loss of privacy would not arise.
18. Consequently, I find that the proposed development would not harm the living conditions of neighbouring occupiers through noise and disturbance. Therefore, it is not contrary to LP Policy DM9 or paragraph 135(f) of the Framework which seek to ensure that development does not cause significant harm to the amenity of existing occupants.

Epping Forest Special Area of Conservation

19. The appeal site lies close to the Epping Forest Special Area of Conservation (SAC). I am aware from previous appeals that the SAC is designated for the Atlantic acidophilous beech forest, Northern Atlantic wet heaths, and European dry heaths habitats within it. It is also designated due to the presence of Stag Beetles. The conservation objectives of the SAC are to ensure that the integrity of the site is maintained or restored as appropriate, and to ensure that the site contributes to achieving the Favourable Conservation Status of its qualifying features.
20. The SAC has been identified as being vulnerable to harm arising from recreational activities and due to atmospheric pollution. Such disturbance

would be exacerbated by an increase in the local population, and an associated increase in traffic travelling through it.

21. The appeal proposal would not result in an increase in residents living within the identified recreational pressure Zone of Influence. Furthermore, whilst the proposal would increase the number of vehicular movements to and from the site, there is nothing before me to support a conclusion that such movements would be within, or close to, the SAC, and that it would result in an increase in atmospheric pollution.
22. Having regard to the views of Natural England (NE), which were received during the appeal, I am satisfied that there would be no likely significant effects on the SAC arising from the appeal proposal. In reaching this conclusion I note that NE consider that the proposal may positively help recreational pressure on the SAC as it will provide an alternative location for dog walking, one of the key pressures affecting it.
23. Therefore, the proposed development would not harm the integrity of the SAC and as such there would be no conflict with paragraph 186 of the Framework which states that planning permission should be refused where significant harm to biodiversity resulting from a development cannot be avoided or adequately mitigated.

Other Matters

24. Representations have been received suggesting that there is no need for the proposed secure dog walking field and that suitable alternative sites exist locally for such an activity. However, my attention has not been drawn to any development plan policies that indicate that a need for the proposed use must be demonstrated for it to be judged to be acceptable. I have considered the planning merits of the appeal proposal which, for the reasons set out above, I find to be acceptable. As such, the absence of a demonstrable need for the proposal does not weigh against it.
25. The main parties have agreed that the proposal would not represent inappropriate development in the Green Belt. Based on the evidence before me, I concur with that position.

Conditions

26. The Council has suggested several conditions, which the appellant has agreed to, which I have considered against the Framework and Planning Practice Guidance. As a result, I have made some amendments to the wording for clarity and consistency.
27. I have imposed the standard time limit condition, and, in the interests of certainty, a condition that specifies that the development is carried out in accordance with approved plans.
28. To conserve, protect and enhance protected species and habitats, conditions requiring the submission and implementation of an environmental management plan and biodiversity enhancement strategy are necessary. For the same reasons a condition is included requiring compliance with the mitigation and enhancement measures set out in the Amended Preliminary Ecological Survey. The condition requiring an environmental management plan

is a pre-commencement condition to ensure that appropriate measures are identified and put in place before development commences.

29. To ensure the satisfactory appearance of the proposed development, I have considered it necessary to attach conditions relating to landscaping and requiring that the permitted fencing, gate and parking areas are constructed in the proposed materials. To limit the impact of the development on the Green Belt, I have also imposed a condition requiring the restoration of the site when the use ceases.
30. In the interest of highway safety, I have included conditions requiring the formation of the parking and turning areas, and the provision and maintenance of visibility splays and a 2-metre-wide strip to be kept free from obstruction on the opposite side of the highway to the access point. For the same reasons I have imposed conditions requiring that the access is surfaced in a bound material within 6 metres of the highway boundary and that the gates open inwards.
31. I have also imposed conditions restricting the hours of use, requiring a management and monitoring plan and preventing external lighting to protect the living conditions of local residents.
32. The Council has also set out, within the list of recommended conditions, several informatives. These would have no legal effect, and I have not, therefore, included them in the decision. Nonetheless, the appellant has had sight of the Council's statement of case and should be aware of the contents of them.

Conclusion

33. For the reasons given above, having regard to the development plan as a whole and all relevant material considerations, I conclude that the appeal should be allowed.

Elaine Moulton

INSPECTOR

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: Site Location Plan; Detailed Site Plan v5; Proposed fencing and gate; 210680-001 Revision A General Arrangement & Vehicle Tracking Sheet 1 of 5; 210680-001 Revision A Vehicle Tracking Assessment Sheet 2 of 5; 210680-001 Revision A Estate Vehicle Tracking Assessment Sheet 3 of 5; 210680-001 Forward Visibility Splays Sheet 4 of 5; 210680-001 Forward Visibility Splay Sheet 5 of 5; 210680-02a Revision A New Hedgerow and Visibility Splays Sheet 1 of 2; and 210680-02a Revision A New Hedgerow Annotations Sheet 2 of 2.

- 3) Prior to commencement of the development hereby approved, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the local planning authority. The CEMP shall include the following:
- a) Risk assessment of potentially damaging construction activities.
 - b) Details relating to a non-licensed Great Crested Newt Method Statement,
 - c) Details relating to safeguarding of badgers and their sett/s.
 - d) Identification of 'biodiversity protection zones'.
 - e) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (which may be provided as a set of method statements).
 - f) The location and timing of sensitive works to avoid harm to biodiversity features.
 - g) The times during construction when specialist ecologists need to be present on site to oversee works.
 - h) Responsible persons and lines of communication.
 - i) The role and responsibilities of an Ecological Clerk of Works or similarly competent person.
 - j) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be strictly adhered to and implemented throughout the construction period.

- 4) Prior to any above ground works, a Biodiversity Enhancement Strategy (BES) for protected and Priority species prepared by a suitably qualified ecologist shall be submitted to and approved in writing by the local planning authority. The content of the BES shall include the following:
- a) purpose and conservation objectives for the proposed enhancement measures;
 - b) detailed designs or product descriptions to achieve the stated objectives;
 - c) locations, orientations and heights of the proposed enhancement measures using maps and plans, where relevant;
 - d) persons responsible for implementing the enhancement measures; and
 - e) details of initial aftercare and long-term maintenance, where relevant.

The BES shall be implemented in accordance with the approved details prior to the first use of the development hereby permitted and shall be retained in that manner thereafter.

- 5) Prior to any above ground works, a scheme of soft landscaping and a statement of the methods, including a timetable, for its implementation (linked to the development schedule), shall be submitted to and approved in writing by the local planning authority. The landscape scheme shall be carried out in accordance with the approved details and the agreed timetable. If any plant dies, becomes diseased or fails to thrive within a period of 5 years from the date of planting, or is removed, uprooted or destroyed, it must be replaced by another plant of the same kind and size and at the same place.
- 6) All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Amended Preliminary Ecological Appraisal (Arbtech, May 2023). This may include the appointment of an appropriate competent person, such as an ecological clerk of works to provide on-site ecological expertise during construction. The works shall be carried out, and the appointed person shall undertake all activities, in accordance with the approved details.

- 7) Prior to first use of the development hereby permitted, the visibility splays to the east and west of the access, as shown on drawing no. 210680-001 Revision A, shall be fully implemented, and retained clear to ground level, for the lifetime of the development.
- 8) Prior to first use of the development hereby permitted, a 2-metre-wide parallel band, from the edge of the carriageway, as shown on drawing no. 210680-02a Revision A shall be provided and maintained clear to ground for the lifetime of the development.
- 9) Prior to first use of the development hereby permitted, the vehicle parking and turning areas, as indicated on the approved plans, shall be fully implemented and retained for the lifetime of the development.
- 10) No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the back edge of the carriageway.
- 11) Gates provided at the vehicular access shall be inward opening only and shall be set back a minimum of 6 metres from the back edge of the carriageway.
- 12) The use hereby permitted shall only be open to customers between the hours of 0800 and 2000 daily.
- 13) Prior to first use of the development hereby permitted, a management and monitoring plan shall be submitted to and approved in writing by the local planning authority. The management and monitoring plan shall include the following:
 - a) All customers must have booked in advance of any exercise visit.
 - b) A booking slot shall last 50 minutes, and a 10-minute gap must be left between booking slots.
 - c) No more than 2 customer vehicles and 6 dogs shall be on the site at any time.
 - d) The site shall not be used for the boarding of animals at any time.

The development shall be operated in accordance with the approved management and monitoring plan for its lifetime. Upon request by the local planning authority, a booking log shall be provided for review within 28 days of the request.
- 14) No external lighting shall be installed on the site at any time.
- 15) The materials to be used in the construction of the fencing, gate and parking areas of the development hereby permitted shall match those specified on the approved plans and the submitted application form.
- 16) Upon cessation of the use hereby permitted all materials, structures and equipment brought onto the site in connection with that use shall be removed and the land shall be restored to its condition before the development took place.