



Appeal Decision

Site visit made on 14 November 2024

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

an Inspector appointed by the Secretary of State

Decision date: 16 January 2025

Appeal Ref: APP/Z3825/W/24/3344002

Holmbush Farm, Crawley Road, Faygate, West Sussex RH12 4SE

- 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 Mr Piers Calvert against the decision of Horsham District Council.
 - The application Ref is DC/23/0980.
 - The development proposed is the change of use from tea rooms (Class E) to restaurant/cafe with ancillary hot food takeaway (Sui Generis).
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Piers Calvert against Horsham District Council. That application is the subject of a separate decision.

Preliminary Matters

3. A Transport and Highways evidence document produced by the Transportation Consultancy Ltd has been submitted in support of the appeal. This includes further information including trip generation data, farm admissions data, and A264 traffic data. This information does not result in any changes to the scheme and the timeframes for the appeal have provided an opportunity for the Council, together with interested parties to comment on it. I am therefore satisfied that accepting this information would not give rise to any procedural unfairness and I have had regard to this in my consideration of this appeal.
4. The National Planning Policy Framework (the Framework) was revised in December 2024. The main parties have had the opportunity to comment on the revised Framework in respect of the appeal, and I have determined the appeal in light of the updated Framework.

Background and Main Issue

5. The Council's decision notice contains a single reason for refusal, this relates to the effect of the development on amenity which forms the Main Issue. It also refers to sustainable development, I consider this element within my planning balance and conclusion.
6. Permission was granted in 2005 for the erection of a tea room¹ (the 2005 permission). Whilst not subject to a restriction on its opening hours, it was required

¹ DC/05/1394

to operate ancillary to the open educational farm, which closed in 2013. As such, to exercise this permission again would require the primary use to resume on site.

7. It is established within case law² that there should be a “real prospect” of a fallback development being implemented. The case refers to the basic principle that for a fallback to be a “real prospect” it does not have to be probable or likely; instead, a possibility will suffice. However, the weight to attach to fallback development, is a matter for the decision maker.
8. The period of time since the educational farm was last in operation is significant. There is no information before me to indicate any intention to re-open the educational farm, or as to what works might be necessary to achieve such. It is also noted, that the former tea room closed for viability reasons, and in order to provide a viable source of income it is necessary to lease the premises as a restaurant/bar and ancillary hot food takeaway. As such, I am not persuaded that there is a real possibility of that earlier permission being exercised.
9. Even if the 2005 permission were to be exercised, the activities covered by it were by necessity primarily day-time operations. Accordingly, the current proposal is for a markedly different form of development with its peak periods expected to be evenings and weekends and no functional link to existing activities on site. The weight to be attached to the 2005 permission as a material consideration is therefore limited.
10. A recent S73 permission³ has been granted which removes the operational tie (DC/22/1976) between the tea room and the educational farm. That permission is subject to a restrictive opening hours condition, which would prevent opening after 1800 on weekdays, 1400 on Saturdays, or at anytime on Sundays or bank holidays. The appellants submissions indicate that this condition renders the development unviable. Whilst this casts some doubt over the prospect of the permission being exercised, it remains extant and it is possible that other operators may find differently in respect of its viability. This permission, therefore, attracts considerable weight.
11. The S73 permission is highly relevant, in terms of establishing the principle of a restaurant/café operating on site, independently of any other on-site activities. There are material differences in operation between the S73 permission and the appeal scheme, namely the extended opening hours and the inclusion of a take away element.
12. In light of the above, the main issue is the effect of the proposal, with particular regard to the proposed opening hours and takeaway, on the amenity of neighbouring occupiers.

Reasons

13. The appeal site comprises an unoccupied, single storey building located within the wider Holmbush Farm site. The wider site includes a cluster of former farm buildings, the majority of which are no longer in agricultural use and are occupied by a range of businesses, as well as a number of residential properties. The farm is positioned in close proximity to the A264, a busy dual carriageway.

² Mansell v Tonbridge and Malling BC & others [2017] EWCA Civ 1314

³ DC/22/1976

14. There are multiple vehicular accesses to the site from both sides of the A264, including via an underpass. There is a large area of hardstanding providing car parking for the wider farm as well as the appeal site. This is positioned a short walk from the appeal building on the other side of one of the access tracks.
15. The proposal would introduce an independent restaurant/café use together with ancillary hot food takeaway. The proposed opening hours are 0900 to 2300 daily. The existing car park would remain available, with a portion of it allocated for the appeal building and its users/visitors. An external seating area is proposed, food and alcohol would be served in this area as late as 2200 each day.
16. The nearest of the residential properties to the proposed café are Nos 1 and 2 Holmbush Farm Cottages, Nos 1 and 2 Holm Farm and the Barn. The Farm Cottages and their gardens, lie adjacent to the A264 and one of the vehicular accesses which joins it. Whilst there are a number of intervening buildings, the access between the car park and the entrance of the building are in close proximity to these dwellings. Nos 1 and 2 Holm Farm and the Barn are slightly further away, separated from the appeal site by a number of intervening buildings.
17. The proposed use would be likely to generate noise and activity both inside and outside the appeal building for a considerable portion of the day, with the busiest periods expected to be evenings and weekends. Noise from outside the building is of particular concern due to its increased potential to travel. Potential external noise sources include pedestrian and vehicular activity, including the opening and closing of vehicle doors, and the general hubbub arising from the gathering of customers both within the external seating area as well as elsewhere on site.
18. The ancillary takeaway element of the proposal would also be likely to add to the noise impacts, through additional vehicle and pedestrian movements including from vehicles associated with delivery and collection. There is potential for further noise after the proposed closing hours both from customers and staff leaving the premises.
19. Whilst the information submitted with the appeal does not enable me to ascertain the precise background noise levels in the area, due to the nature of the other businesses on the site, evenings and weekends are likely to be quieter periods on the estate, particularly in terms of vehicular and pedestrian movements around the site. The adjacent busy A264 generates background traffic noise which is audible within the site. Whilst this noise would likely also be audible during the evening, it is likely to be at a much lower level, the submitted traffic flow information supports this.
20. Given the above factors, neighbouring occupiers will have expectations for a reasonable degree of peace and quiet during the evening and weekends. During warmer weather, this is likely to include sitting out within gardens. Closing time would be at an hour when neighbouring occupiers are likely to be trying to sleep. As such, the noise generated by the proposal is likely to coincide with the periods of the day when neighbouring occupiers would be particularly sensitive to it.
21. I accept that the appeal building is positioned behind several large former farm buildings. These other buildings are positioned between the neighbouring dwellings, and the appeal site including the external seating area, and would provide a noise barrier. These buildings could reduce some of the noise impact from this location. However, there is no substantive and documented evidence to

clearly demonstrate to what extent this would mitigate against the noise generated. Furthermore, these barriers would be unlikely to be effective against noise generated from vehicular and pedestrian activity in the car park and on the access roads. These areas lie in reasonable proximity to the neighbouring residential properties, and as such the potential for noise and disturbance from them is significant.

22. The suggested conditions before me include restrictions on external lighting, the use of any external sound amplification systems and adherence to the traffic management plan. Whilst these measures may limit additional sources of noise, they would not address the impacts I have concerns with and are outlined above.
23. In particular, the traffic management plan seeks to require customer traffic to use the underpass on the northern side of the A264 dual carriageway. This would avoid use of the two westbound access points which run close to neighbouring properties. The management plan proposes signage and the use of a traffic marshal at peak periods to help to achieve this.
24. Dependent on a customer's destination, the alternative routes could provide a more logical and faster journey, especially for those travelling west bound. As such there is likely to be a temptation for customers to deviate from the recommended route. The traffic marshals may only be in place for a very limited period of the day and given the size of the site and number of access points available, it is unclear how effective they would be. The appellant has also indicated that amendments to navigation tools and apps could be applied for, although this does not form part of the management plan. The other accesses would remain open and available for use regardless of the traffic management plan. In light of the above, I have significant doubts as to whether the measures would discourage customers from using alternative routes and therefore there is a likelihood that some vehicles travelling to/from the appeal site would use the accesses close to the residential properties and affect the amenity of residents in the way that I have explained.
25. The protocols within the noise management are aspirational and I have concerns that they lack precision or enforceability. In summary, there is no adequate mitigation before me that is likely to avoid an adverse effect on neighbouring occupiers from noise and disturbance, or adequate and detailed technical evidence that demonstrates otherwise.
26. Given the above factors, and in the absence of acoustic evidence to demonstrate otherwise, I consider that a precautionary approach is necessary, and I cannot be satisfied that the proposal would avoid harm to the amenities of neighbouring occupiers from the times when the additional hours are sought and from the impacts from the supply of take-aways. The proposal would conflict with Policy 33 of the HDP. This requires, amongst other matters, that development avoids unacceptable harm to the amenity of occupiers of nearby property, including from noise.

Other Matters

27. I note the significant level of support for the proposal from interested parties, including from a number of neighbouring occupiers. The reasons expressed in support of the scheme include providing a facility for local residents to meet, economic benefits including job creation, attracting additional footfall to the benefit

of other existing businesses within the estate, as well as the benefits associated with bringing a disused building back into use. These benefits are considered further within the Planning Balance.

28. I have been referred to two planning applications⁴ granted close to the appeal site, although outside of the wider farm estate. The first related to the change of use of a public house to a restaurant/café and hot food takeaway and was not subject to any restrictions on opening hours. The existing use in that case was a public house, which has fundamentally different characteristics to the existing use in this appeal. Similarly, the second appeal relates to a petrol filling station, again a very different type of use to that before me. Living conditions require assessment on a site-by-site basis having regard to the specific relationship with neighbouring buildings. As such, I am not persuaded that these examples are directly comparable and merit only limited weight. I have consequently assessed the appeal scheme on its own individual merits.
29. The appeal site lies within the Sussex North Water Supply Zone wherein Natural England has advised that it includes supplies from a groundwater abstraction which cannot, with certainty, conclude no adverse effect on the integrity of the Arun Valley site. As it cannot be concluded that the existing abstraction within Sussex North Water Supply Zone is not having an impact on the Arun Valley site, developments within this zone must not add to this impact. One way of achieving this is to demonstrate water neutrality.
30. The proposal includes a number of mitigation measures, to seek to demonstrate water neutrality. As the competent decision-making authority, I am responsible for undertaking an Appropriate Assessment (AA) of the implications of the appeal scheme on the designated sites in view of their conservation objectives, including the effectiveness of any proposed mitigation. Had I been minded to allow the appeal, it would have been necessary to examine this further. However, this is not necessary as the main issue provides a reason for dismissing the appeal and the outcome of the AA would have no bearing on my decision.

Planning Balance and Conclusion

31. Policy 26 is a strategic policy in relation to protecting the rural character of the countryside. Criteria relevant to the current appeal includes enabling the sustainable development of rural areas and avoiding a significant increase in the overall level of activity in the countryside. The policy is in general accordance with the three objectives of sustainability set out within the Framework.
32. There is support within the Framework for the sustainable growth and expansion of all types of businesses in rural areas, including through the conversion of existing buildings. The development would provide a service which is likely to attract visitors both from the local community and beyond.
33. In this regard, the proposal would generate economic benefits. It would support the expansion of an existing business within a rural area, there could, in turn, be associated benefits to other existing businesses within the Holmbush Farm estate, through increased footfall. The proposal would generate employment opportunities both on a temporary basis during construction, and on a longer-term basis once operational. Whilst these weigh in favour of the appeal scheme, they are likely to be

⁴ DC/19/1913 and DC/19/0095

very similar to the benefits which would arise from the S73 permission, should it be implemented.

34. On the basis of the information before me, I consider that there is likely to be harm to the amenities of neighbouring occupiers, arising from an increased level of activity during evenings and weekends. This would conflict with the Framework requirement that development should create places with a high standard of amenity for existing users. Consequently, I find that the social objective of sustainable development would not be met.
35. Turning to the environmental impact, the primary mode of travel to the site is likely to be by private vehicle and opportunities to utilise sustainable modes of travel are very limited. Whilst paragraph 89 of the Framework recognises that it may be necessary to develop in such locations to meet local business needs, there is a requirement to exploit opportunities to make the location more sustainable, a similar requirement is set out within Policy 40 of the HDP. In this case there is no substantive evidence that any opportunities have been exploited. However, the principle of an independent café operating on site, without any measures to make the location more sustainable has been established. As such, although the proposal would not contribute positively to the environmental objective, this carries limited weight.
36. In light of the above, the proposal would not constitute sustainable development, as defined within the Framework, or as required by Strategic Policy 26 of the HDP.
37. To conclude, there are benefits that would arise from the opening of the restaurant/café with the extended hours from those permitted. However, overall, I attribute these benefits modest weight. I am concerned with the potential for disturbance to local occupants and this is a significant issue. It is such that I consider that this harm and related policy conflict would outweigh the benefits of the scheme, as proposed. I have found that the scheme would not constitute sustainable development. The harm is such that the proposal would conflict with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it.
38. Therefore, for the reasons given above, the appeal is dismissed.

R Lawrence

INSPECTOR