



Appeal Decision

Site visit made on 20 July 2015

by Louise Phillips MA (Cantab) MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 31 July 2015

Appeal Ref: APP/V2255/W/15/3004997

Land to the north of Lower Road, Minster, Kent ME12 3EZ

- 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 Stephen Attwood against the decision of Swale Borough Council.
 - The application Ref 14/503827/FULL, dated 5 September 2014, was refused by notice dated 7 January 2015.
 - The development proposed is described as a "change of use from agricultural to breeding (part), keeping, accommodating horses including two stables for the breeding business and four stables for low cost DIY livery (the stables will include an attached feed storage area) for the leisure and recreational industry including some exercising and training".
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of the land from agricultural to the breeding, keeping and accommodating of horses, including two stables for the breeding business, four stables for low cost DIY livery and an attached feed storage area for the leisure and recreational industry, including some exercising and training at Land to the north of Lower Road, Minster, Kent ME12 3EZ, in accordance with the terms of the application, Ref 14/503827/FULL, dated 5 September 2014, subject to the conditions set out in Annex A.

Application for Costs

2. An application for costs was made by Mr Stephen Attwood against Swale Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. Whilst they are not cited on the decision notice, the Council's Statement refers to various policies in its emerging Local Plan, "Bearing Fruits 2031". Whilst the plan has reached the publication draft stage, I have no information about the nature of any representations which might have been made, or about how the Council intends to address them. Therefore, having regard to the advice in paragraph 216 of the National Planning Policy Framework (the Framework), I give these policies very limited weight in my decision.

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Main Issues

4. The main issues are the effect of the proposed development upon the character and appearance of the area; and upon the supply of productive agricultural land.

Reasons

Character and Appearance

5. The appeal site comprises 113 acres of agricultural land within the Central Sheppey Farmlands character area, which is noted for its steep topography and large open fields. Whilst the Council's Landscape Character Appraisal¹ indicates that the landscape is generally in poor condition and of moderate sensitivity to development, it advises that prominent forms of development should be avoided on the undeveloped south, east and west-facing slopes. The land in question slopes relatively gently, but it faces south towards the Sheppey Bridge and it is presently divided into just four large fields under cereal crops. Thus it is broadly typical of the landscape type identified.
6. The proposed development is to take the site out of agricultural use and to use it instead for the breeding, keeping and exercising of 24 horses and, at the relevant times, their foals. In respect of physical development/structures, two weather-boarded blocks, each consisting of three stables and a hay barn, would be erected on an area of hardstanding adjacent to the existing access track. Two moveable field shelters would also be provided on the outlying land. Other changes would include laying the land to grass and subdividing the two easternmost field parcels horizontally with new hedgerows. Sections of existing hedgerows elsewhere on the site would be reinforced so that six main fields would be defined. In addition, the area immediately around the stables would be planted with a new hedge. No floodlighting, ménage or jumps are proposed.
7. Overall, the land subject to appeal is expansive, but proportionately very little would be covered by buildings or structures. The site for the main stables and hardstanding is adjacent to an existing boundary hedgerow and it is also relatively low-lying. For both these reasons, it would be difficult to see this aspect of the development from the site entrance to the south-west, or from Lower Road more generally. I can accept that it might be possible to see the stables and/or moveable shelters from more distant vantage points including the bridge, but in such views they would not be prominent. Therefore the proposal would not conflict with the Council's guidance on the design and siting of stable buildings² despite their relatively central position within the site overall.
8. Moreover, while the land in productive agricultural use does have a distinctive character and appearance, the sight of horses in the countryside would not be unusual or incongruous, particularly in the absence of any significant commercial facilities. The presence of 24 adult horses on 113 acres of land would not seem to represent an unduly intensive use; and the proposed partition of the eastern fields would leave the individual parcels larger than several of those which border them. Indeed, the open grassland to the south

¹ Swale Landscape Character and Biodiversity Appraisal, 2011.

² The Erection of Stables and Keeping of Horses Supplementary Planning Guidance (paragraph 3.1 as quoted in Council's Statement, paragraph 33).

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of Lower Road contains the remnants of several hedgerows, which indicates that smaller fields did once exist in the wider area. In this context, the appellant's suggestion that the planting proposed within the site would serve the aim of "restoring and creating" the landscape of the Central Sheppey Farmlands is not without merit.

9. The appellant has prepared a Landscape and Visual Impact Appraisal³ (LVIA), which concludes that the magnitude of change to be introduced by the proposal would be "low"; and that its effect on the landscape would be "negligible". The Council does not take any particular issue with how this conclusion has been reached and, in light of the above, I agree with it. Whilst the Council's Landscape Character Appraisal suggests that horse grazing has been detrimental to the landscape elsewhere within the character area, no specific examples are provided for comparison with the proposal before me. This general point therefore carries limited weight in my decision.
10. For the reasons above, I conclude that the proposed development would not be harmful to the character and appearance of the area. I acknowledge that Policy E6 of the Local Plan⁴ states that development will only be permitted in the countryside if it would be necessary for agriculture, forestry or for mineral working. However, Policy RC9 is permissive of proposals involving the keeping and grazing of horses if their design and intensity would be acceptable in terms of landscape character etc. The proposal before me would comply with Policy RC9 in this respect. I find no conflict with the general criteria related to the protection of landscape set out in Policies E1 or E19.

Agricultural Land

11. Paragraph 112 of the National Planning Policy Framework (the Framework) states that account should be taken of the economic and other benefits of best and most versatile agricultural land (BMV land). However, the appellant has assessed the quality of the land as falling within Grade 3b of the Agricultural Land Classification, which falls outside the definition of BMV land given in the Framework⁵. The classification of the appeal site is not disputed by the Council and so I give less weight to the advice of the National Farmers' Union concerning the protection of BMV land specifically⁶.
12. I recognise that paragraph 112 of the Framework also requires that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred. In light of the above, I am satisfied that the proposal would affect an area of poorer quality land. Whilst the appellant does not seek to argue that the appeal scheme is strictly necessary, the use clearly requires a countryside location and I have found that it would be compatible with its surroundings. Given also that only limited physical development is proposed, it would be possible to return the land to agricultural use in the future. Having regard to these factors, the proposal before me is of a different nature to schemes such as the housing development considered at appeal in Cheshire⁷, and I see no reason why it should make it difficult for the Council to resist "other, less acceptable forms of development in open countryside" (Council's Statement, paragraph 29).

³ Landscape Visual Impact Appraisal, Lloyd Bore Limited, 28 January 2015.

⁴ Swale Borough Local Plan, 2008.

⁵ Annex 2 – Glossary: defines land falling within Grades 1, 2 & 3a as BMV land.

⁶ "The Future of Farming in Kent – Notes from the NFU South East Region", appended to Council's Statement.

⁷ Ref APP/R0660/A/11/2158727.

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13. Consequently, I conclude that the proposed development would represent an appropriate diversification of a wider agricultural enterprise which would not cause any significant harm in respect of the supply of productive agricultural land. In reaching this view, I give significant weight to the representation of the Council's specialist agricultural advisor that there would be "*no adverse agricultural issues that would weigh against the proposed development*".⁸ Therefore, the scheme would not conflict with the objectives of Policy E19 of the Local Plan to make efficient use of natural resources.

Other Matters

14. In reaching my decision, I have had regard to the other concerns raised by interested parties, which relate to highway safety in particular. The site would be reached via an existing track from the Lower Road, which was busy with traffic in both directions at the time of my early afternoon visit. During peak times, I can accept that congestion occurs along the road, particularly near to the traffic lights at the junction with Barton Hill Drive.

15. However, the appellant has provided an analysis of traffic movements associated with both the existing and proposed uses which indicates a negligible increase in daily visits to the site, and a significant reduction in seasonal trips by large, agricultural vehicles. The Highway Authority has accepted this data as a realistic indication of trips through the access and raises no objection to the proposal on highway-related grounds. On this basis, and having observed that the existing point of access would be wide enough for vehicles seeking to enter and leave the track simultaneously to remain clear of the carriageway, I am satisfied that proposal would not lead to congestion detrimental to highway safety.

16. Therefore, this matter neither outweighs nor alters my findings in relation to the main issues of the appeal.

Conclusion and Conditions

17. For the reasons given above, I conclude that the appeal should be allowed.

18. I have considered the conditions suggested by the Council in light of the advice in the Planning Practice Guidance. In addition to the standard time limit for the commencement of development, I have included a condition to require the development to be carried out in accordance with the approved plans. This is for the avoidance of doubt and in the interests of proper planning.

19. The conditions relating to materials, landscaping, lighting and storage are necessary to protect the character and appearance of the area; while those concerning mud on the highway and the retention of parking and turning space on the site are required to prevent risk to highway safety. I have imposed a condition to limit the number of horses which use the land to avoid the effects of over-grazing, and another to prevent the burning of materials which might cause nuisance to surrounding residential occupiers.

Louise Phillips

INSPECTOR

⁸ Comments of RJ Lloyd Hughes MRICS, dated 15 October 2014.

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Annex A – Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Plan 1, Location Map, stamped 9 & 11 September 2014; Plan 2, Location Map at scale 1:500; Proposed Stables and Haybarns, Drawing Nos Dines J March-14(1) and 14(2).
- 3) No development shall take place until samples of the materials and colours to be used in the construction and finish of the external surfaces of the stables 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 development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. The details shall include existing trees, shrubs and other landscape features to be retained; schedules of new plants, noting their species which shall be native species that contribute to local biodiversity, plant sizes and numbers; means of enclosure; hard surfacing materials, including any proposed to be used on the existing vehicular access track; and a programme/timetable for implementation. The works shall be carried out in accordance with the approved details and shall be maintained as such thereafter.
- 5) Upon the completion of the landscaping works approved under Condition No 4, any trees, shrubs or plants which, within a period of 5 years are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 6) No development shall take place until a scheme to prevent the deposit of mud and other similar substances upon the public highway has been submitted to, and approved in writing by, the local planning authority. The approved scheme shall be adhered to throughout the construction period.
- 7) No external lighting, including floodlighting or security lighting, shall be installed or operated at the site at any time other than in accordance with details which have first been submitted to and agreed in writing by the local planning authority. Should any external lighting be required, these details shall include the time and frequency of its intended use; a site plan showing the area to be lit relative to the surrounding area; the type, number, mounting height and alignment of the luminaries; the beam angles and upwards waste light ratio for each light; and an isolux diagram showing the predicted illuminance levels at critical locations on the boundary of the site and where the site abuts residential properties.
- 8) Before the use hereby permitted commences, the area shown on Plan 2 as vehicle parking and turning space shall be provided, surfaced and drained. It shall be retained for that purpose thereafter and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) shall be carried out upon it or in such a position as to interfere with its purpose.

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- 9) At no time shall the number of horses or ponies kept or otherwise permitted on the land exceed a density of one per acre of available grazing land.
- 10) At no time shall any burning of straw or manure take place anywhere on the site.
- 11) With the exception of one trailer for the storage of manure, no materials or items of any kind, including jumps, caravans, mobile homes, vehicles or trailers, shall be stored on the site.



Costs Decision

Site visit made on 20 July 2015

by Louise Phillips MA (Cantab) MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 31 July 2015

Costs application in relation to Appeal Ref: APP/V2255/W/15/3004997 Land to the north of Lower Road, Minster, Kent ME12 3EZ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Stephen Attwood for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for a development described as a "change of use from agriculture to breeding (part), keeping, accommodating horses including two stables for low cost DIY livery (the stables will include an attached feed storage area) for the leisure and recreational industry including some exercising and training.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Firstly, the appellant alleges that the Council has behaved unreasonably by changing the description of development on its decision notice from that which he gave on the application form. The Council did do this, but it is apparent from the form of words used that it had no agenda other than to make the description clearer. Indeed, I have altered the appellant's description in my own formal decision for the same reason. Moreover, while staff at the Planning Inspectorate queried the difference in wording before validating the appeal, the correspondence indicates that the matter was resolved by exchange of email within two hours. Thus it is difficult to see how this led to any meaningful delay or wasted expense in the appeal process.
4. The appellant also considers that the Council has behaved unreasonably in respect of a number of substantive issues. His concerns are linked in part to the fact that the decision to refuse planning permission was made by Committee Members against the recommendations of their professional officers and advisors. This has led to evidence being cited in the Council's appeal statement which was not at issue in the officer's report but, given the disagreement at Committee, this is understandable. It seems to me that paragraph 049 of the PPG anticipates such circumstances by requiring local

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planning authorities to be able to substantiate each reason for refusal "on appeal" rather than at some earlier stage in the process.

5. In respect of whether the Council has done this, the decision notice states that the proposal would "erode the agricultural character of the area in a manner harmful to visual amenity". Paragraphs 30-34 of its appeal statement explain this with reference to the description of the area provided in its Landscape Character and Biodiversity Appraisal, 2011. The appellant contends that a loss of agricultural character is different to a loss of landscape character, and so suggests that the Council has introduced fresh concerns. Similarly, it is suggested that the Council has sought to introduce a new reason for refusal in its statement by referring to what the Local Plan says about the effect of equestrian developments elsewhere.
6. I disagree on both counts. The appeal site lies within the Central Sheppey Farmlands character area, where agriculture is a feature of the landscape. Therefore, agricultural character and landscape character are inextricably linked and the difference between the parties would appear to be semantic. Furthermore, the matter of whether the character of an area would be altered requires judgement, and in my view, the visual effect of removing cereal crops and replacing them with grassed fields for horse grazing would be self-evident. Consequently, I do not consider that the Council has behaved unreasonably by failing to present a specific piece of evidence on this matter. Nor do I consider it unreasonable for it to have referred to the more general effects of equestrian developments in the area.
7. In addition to the issue of character, the decision notice includes that the proposal would cause harm by "reducing the supply of agricultural land". Given that the appeal site is presently under crop, this is clearly true and so it was not unreasonable for the Council to have refused permission for this reason. Moreover, it is my view that the second sentence of paragraph 112 of the National Planning Policy Framework can apply to land which is not defined as "best and most versatile" (BMV); and that it does not seek to suggest that any land falling outside this classification can be developed without question.
8. However, the Council has defended its reason for refusal on the basis that the appeal site does constitute BMV land, which is contrary to the evidence provided by the appellant¹. It neither disputes this evidence, nor appears to have taken account of the lower quality of the land in reaching its decision and I consider that this is unreasonable. Nevertheless, as the appellant's evidence on this matter was prepared more than two years ago, defending the point has not incurred him unnecessary expense in the present appeal process.
9. Therefore, for the reasons above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated.

Louise Phillips

INSPECTOR

¹ Summary of Agricultural Land Capability, dated 13 March 2013.