



Appeal Decision

Site Visit made on 27 September 2021

by Mr S Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2021

Appeal Ref: APP/X1118/W/20/3264903

Pigginswood Stables, East Anstey, Devon EX16 9JS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Ms Julie Price against the decision of North Devon District Council.
 - The application Ref 71380, dated 15 May 2020, was refused by notice dated 4 September 2020.
 - The application sought planning permission for the change of use of land from agricultural to equine & erection of stables together with formation of manege, without complying with conditions attached to planning permission Ref 61739, dated 7 November 2016.
 - The conditions in dispute are Nos 4 and 5 which state that:
 - 4. The land, stables and manege shall be used only by Ms Julie Price as a private and domestic equestrian use in accordance with the planning statement dated the 12th September 2016, and shall not be used for any business or commercial uses.*
 - 5. The stable block and manege hereby approved shall be used for the applicant's own horses and shall not be used for any commercial livery or commercial riding stables or any other commercial activity.*
 - The reasons given for the conditions are:
 - 4. The Local Planning Authority had regard to the personal circumstances of the applicant. An unrestricted use would result in a potential unsustainable form of development and promote an unacceptable development in the countryside.*
 - 5. To restrict the character and volume of traffic attracted to the site.*
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Decision

1. The appeal is allowed and planning permission is granted for the erection of one storage building, plus the change of use of land from agricultural to equine and the erection of stables together with formation of manege, without complying with conditions attached to planning permission Ref 61739, at Pigginswood Stables, East Anstey, EX16 9JS in accordance with the terms of the application, Ref 71380, dated 15 May 2020, but otherwise subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs is made by Ms Julie Price against the decision of North Devon District Council. This costs application is set out with a separate decision.

Preliminary Matters

3. Planning permission Ref 71380 was determined with a split decision, with the proposed storage building approved. This appeal is focussed on the 'removal' or 'varying' of conditions 4 and 5 from previous planning permission 61739. This former approval related to the change of use of land from agricultural to equine land and the erection of stables together with formation of manege.
4. The effect of the proposed alterations to the conditions would effectively be to remove any tie to the appellant, Ms Julie Price, and to allow more flexibility in the use of the development. An amended condition 4 has been suggested by the appellant.

Main Issue

5. The main issue with the proposed variation/deletion of the conditions in dispute is whether (1) this would result in an inappropriate development in the countryside and (2) the effect on highway safety.

Reasons

6. Both conditions 4 and 5 refer to the 'applicant', Ms Julie Price. This ties her to the use of the development, with no other person therefore allowed under these conditions to use the land, stables and manege. Only Ms Price's horses could be kept at the site or use the facilities. In my opinion, there is no necessity for this. The conditions could still require that the development would remain a private and domestic equestrian use without tying Ms Price personally. As explained by the appellant, it would be difficult to sell the site and the equine development, even if it was for someone else to use for private purposes. I would regard this as not reasonable nor justified to include such a restriction via condition.
7. Removing the reference to the 'applicant' from the conditions may mean that, for example, a friend might be able to keep a horse at the site or use the manege, but this could not be for commercial purposes. The buildings are already approved/developed and I note that policy DM16 is permissive in some circumstances for horse-related facilities and equestrian enterprises in the countryside. It would be likely that most people would drive to the site, given its location in a relatively isolated part of the countryside, though this would likely be often the case anyway given the need for horse-boxes and existing public transport links which would likely be of limited benefit. Given the scale of the development, if it was to remain non-commercial then any increase in car-based transport would likely be minimal.
8. The removal of the reference to Ms Price/the applicant from both conditions would not result in an unacceptable development, as it is unlikely to have a discernible difference to the character of the site or to additional traffic levels generated. This would not result in the development being any more unsustainable than if the conditions remain as imposed, as the site is still in an isolated rural location. Also, such equestrian development is typically located in countryside locations.
9. As such, there is no reasonable necessity for conditions that tie the appellant to the development. This is not needed to make the development acceptable when considered against policies ST01, ST07, ST10 and/or DM16 of the North Devon and Torridge Local Plan.

10. However, whilst the principle of the development with a more flexible use (to include some commercial activity) may be generally acceptable, it is not clear how this may affect trip generation to and from the site. The trip generation could be significantly greater than the case if it were to remain non-commercial, with more people potentially coming from elsewhere and using the stables for their horses, for example. The surrounding highway network includes narrow rural roads and also the nearby Blackerton Cross Junction on the B3227. This junction, being so close to the site and connecting with one of the main highway routes through the area, would likely be used by many of those traveling to and from the site who may be customers of any commercial activity there.
11. Although this is an established junction, from the Council Highway Officer comments and also from my observations driving through this junction, it has less than ideal carriageway width and also limited visibility for vehicles emerging onto the B3227, particularly from the more minor road to the north (where the site is located). Additional traffic generated by a more flexible/commercial use could result in reduced highway safety levels to users of this junction. There is a lack of substantive evidence to demonstrate otherwise. The proposal, without restrictions on commercial use would therefore be contrary to policy DM05 of the North Devon and Torridge Local Plan, which relates to highway requirements including access.
12. The commercial use of the stables could aid the local rural economy, if only to a limited extent given the scale of the facilities on site. However, the suggested alterations to condition 4 and removal of condition 5 could result in an increase of traffic to and from the site which could then result in lesser highway safety levels at the Blackerton Cross Junction.
13. The revised condition as set out in the appellant's Planning Statement is somewhat ambiguous, as it may be construed to allow for some more minor commercial equine ventures from the site, even if this does not include "a riding school, competition or sales". Due to the highway safety issue, I regard the restriction through condition to ensure against any commercial use of the equine development (even if originally of small scale) is both necessary and reasonable. However, I agree that there is no necessity for the disputed conditions to include personal reference to the appellant.
14. I shall replace conditions 4 and 5 with a single new condition accordingly (No 3 on the schedule below). The new condition shall restrict any commercial development at the site, in the interests of highway safety. This is in accordance with both Policy DM05 of the North Devon and Torridge Local Plan and the National Planning Policy Framework, which requires that development should be refused on highways grounds if there would be an unacceptable impact on highway safety (paragraph 111).

Conclusion

15. For the reasons given above I conclude that the appeal should succeed, although be subject to an amended condition to replace Nos 4 and 5 of approval Ref 61739.
16. Furthermore, the guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to

have effect. As I have limited information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider to remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

17. Please note also that the conditions which related to the storage building with the split decision remain and are not affected by this Decision.

Mr S Rennie

INSPECTOR

Schedule - Conditions

- (1) The development hereby permitted shall be carried out in accordance with the plans submitted as part of the application, numbers NDC001, 409/001, 409/002, Design & Access Statement and recommendation of the Phase 1 Habitat Survey received on 12th September 2016, ('the approved plans').
- (2) The proposed development (stables) shall be constructed in accordance with the following schedule of materials - Walls: Timber; Roof: 'Ondulin' roofing sheeting; Doors - Timber.
- (3) The land, stables and manege hereby approved shall be used only for private and domestic equestrian uses and shall not be used for any business or commercial uses, such as commercial livery or commercial riding stables.
- (4) No more than 5 horses shall be stabled or permitted to graze on this land at any one time. The sixth stable indicated in drawing NDC001 shall only be used as a tack and storage facility.
- (5) Manure/dung heaps shall be sited in an area where it/they will not cause pollution of any watercourse or water source or any adjoining residential property by the release of contaminated run-off.
- (6) The site must be drained on a separate system of foul and surface water drainage, with all clean surface water being kept separate from foul drainage.
- (7) No external lighting shall be installed without the prior written agreement of the Local Planning Authority.
- (8) No trees shall be topped, lopped or felled, and no hedge shall be removed in whole or in part without the written consent of the Local Planning Authority.

END OF SCHEDULE



Costs Decision

Site visit made on 27 September 2021

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2021 - 3264903

Costs application in relation to Appeal Ref: APP/X1118/W/20/3264903 Pigginswood Stables, East Anstey, Devon EX16 9JS

- 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 Ms Julie Price for a full award of costs against North Devon District Council.
 - The appeal was against the refusal of the change of use of land from agricultural to equine & erection of stables together with formation of manege, without complying with conditions attached to planning permission Ref 61739, dated 7 November 2016.
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Decision

1. The application for costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG provides that Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, or by preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
3. In response to the applicant's statement, with regard to Reason 1 of the refused planning permission, I would regard the wording used by the Council as sufficiently precise and concluded against adopted planning policy.
4. With regards to reasons 3 and 4, the issue is highway safety as a result of likely increases in traffic especially through the Blackerton Cross junction near the site. Firstly, I note that the Highways Authority did not object to the original planning application (ref: 61379), but they did note that this was on the basis that the stables were not used for business/commercial use. From the Statement of Case with the appeal it is clear that there would be some element of commercial use that the applicant wants to be able to pursue at the site, if only for a modest income. If this was clear with the original planning application then this may have resulted in the Highways Authority objecting to the proposal.
5. I note the late response from the Highway Authority to application 71380, which is regrettable as it did not give much time for the applicant to respond.

However, given the comments from the Highway Authority I am not persuaded that any additional time would have resulted in a more positive conclusion for this application with regards the varying/deletion of conditions. Furthermore, I do not regard it as reasonable to request that a Local Planning Authority disregard a consultee response that comes in late, especially in situations where the comments relate to safeguarding highway safety.

6. I understand that the applicant is concerned that there was no site visit, but the Council state that an earlier site visit had been undertaken and due to the pandemic it was decided not to visit again. I would regard this as reasonable in the circumstances and even if a site visit had been undertaken I am not persuaded this would have avoided the need for the planning appeal ultimately.
7. Therefore, I find that there has not been unreasonable behaviour which has caused unnecessary expense in this instance and the application for costs is refused.

S Rennie

INSPECTOR