

14 DCSE2005/0795/F - CONTINUATION OF USE AS EQUINE STUD FARM AT SITE NEAR BODENHAM FARM, MUCH MARCLE, LEDBURY, HEREFORDSHIRE**For: The Singing Stud Ltd per Mr C Goldsworthy, 85 St Owen Street, Hereford, HR1 2JW****Date Received: 11th March 2005** Ward: Old Gore

Grid Ref: 65089, 31923

Expiry Date: 6th May 2005

Local Member: Councillor J W Edwards

Introduction

This application was reported to the Southern Area Planning Sub-Committee on 11th May 2005, when determination was deferred in order to hold a site visit. The application was again considered by the Sub-Committee at their meeting on 8th June 2005.

Following their debate the Sub-Committee were minded to refuse the application contrary to the Officer recommendation. Members resolved that the reasons for refusal should be:

1. Over-intensification of buildings in the open countryside.
2. Obstructing a public right of way.
3. Traffic Issues
4. Too many horses on the site.

The Head of Planning Services has considered the proposal and refers the application on the grounds that the reasons for refusal proposed by the Sub-Committee do not provide a substantive basis for a robust defence of the decision on appeal.

Following the Sub-Committee meeting a letter has been received from the applicant's agent, and this is attached as an appendix.

The report which follows has been updated to include matters reported verbally by Officers on 8th June 2005.

1. Site Description and Proposal

- 1.1 The application site comprises two irregular shaped areas of land to the north-east and south-west of Bodenham Farm, which are on the north-west side of the A449 Ross on Wye - Ledbury Road, and opposite the entrance to Homme House. The two land parcels are bisected by the private drive to Bodenham Farm off the unclassified road (Lyne Down – Old Pike) which is also provides access to the application site. The north-east site is bounded by the A449 to the east; the south-western site is bounded by the A449 to the south west and unclassified road to west. The total area of the land is about 8.3 ha.
- 1.2 There are two small building complexes, one on each land parcel, which provide stabling and storage for the stud farm which according to the applicant's agent has been in operation for about 7 years. No permission has been granted for change of use from agriculture and the permission in 1997 for 6 loose boxes and one field shelter

was subject to a condition (no. 7) restricting use to private purposes and not used for any trade, business or equestrian enterprise whatsoever. The reason given was to preserve the amenities of the locality.

- 1.3 The current application is for planning permission to continue the use of these land and existing buildings as a stud farm. It does not include any building works. Other applications have been submitted for a stud farm worker's dwelling, a fenced training ring and a barn (nos SE2004/4039/F, SE2004/4086/O and SE2005/0325/F respectively). Further information and clarification is being sought regarding these applications. It is understood that horses are also grazed at Hillington Barn, about 4km to the south. A separate application has been submitted (SE2005/1015/F) for continuation of use as equine stud farm and erection of training area, hay barn, winter barn, stable (inc groom's flat) at Hillington.
- 1.4 The agent advises that the total number of horses is currently 116, of which there are 2 stallions, 40 mares, 16 colts and 58 foals, and that in excess of 40 ha (100 acres) is used elsewhere in addition to this site of 8 ha (20 acres).

2. Policies

2.1 Planning Policy Guidance

PPS7 - Sustainable Development in Rural Areas

2.2 Hereford and Worcester County Structure Plan

Policy CTC6 - Development and Significant Landscape Features
 Policy CTC9 - Development Criteria
 CTC13 - Buildings of Special Architectural or Historic Interest

2.3 Malvern Hills District Local Plan

Employment Policy 6 - Re-use of Rural Buildings
 Landscape Policy 1 - Development Outside Settlement Boundaries
 Landscape Policy 3 - Areas of Great Landscape Value
 Landscape Policy 4 - Agricultural Land
 Recreation Policy 14 - Commercial Equestrian Developments

2.3 Herefordshire Unitary Development Plan (Revised Deposit Draft)

Policy E11 - Employment in Open Countryside

3. Planning History

- | | | | | |
|-----|-----------------|--|---|----------------|
| 3.1 | MH97/1112 | 6 loose boxes and field shelter | - | Approved |
| | DCSE2004/4039/F | Fenced training ring at equine centre (60 x 20m) | - | Not determined |
| | DCSE2004/4086/O | Dwelling for stud farm worker at equine centre | - | Not determined |
| | DCSE2005/0325/F | Erection of barn | - | Not determined |

4. Consultation Summary

Statutory Consultations

- 4.1 Environment Agency has no objections but advises on protection of watercourse, surface water run-off issues and prevention of pollution.
- 4.2 Open Spaces Society writes that the proposals do not appear to have a physical effect on 'open spaces'.
- 4.3 Garden History Society does not wish to comment on the proposals.

Internal Council Advice

- 4.4 The Conservation Manager has no observations from an architectural point of view.
- 4.5 Traffic Manager has no objection to the continuation of the use at its current level of operation but would not be prepared to support any expansion/intensification of use which would increase vehicle movements.

With regard to public rights of way the following advice has been received:

"The path is:

- a) a cul-de-sac path as it does not end on a highway but a 'private' track, (although there appears historical evidence for it being a PROW)
- b) it's obstructed – there is a building on it already therefore we class it as a long term obstruction and has been accorded the appropriate priority for action.

However, it has been pointed out that stud horses are 'feisty' and there are a number of paths around that farm – we would like a note on any planning permission pointing out that dangerous horses should not be placed in any fields with a PROW in it and that if they are, and a member of the public is injured, then the landowner will be liable."

5. Representations

- 5.1 The applicant's agent points out that:

- (1) The land is accessed by the common private track that also serves Bodenham Farm.
- (2) Requests that the other development be determined as soon as possible after this application.

- 5.2 Much Marcle Parish Council would like to express their concerns regarding the number of applications received for the site near Bodehham Farm over the last six months. The site seems to be developing into a large commercial enterprise. Also, with regard to the application for continuation of use as an equine stud, the parish council question whether permission was ever obtained originally.

A number of parishioners attended the meeting. Mr Nicholas Pope spoke on their behalf. He informed the council that his research has shown that only one planning permission had ever been granted for the area concerned. This was in 1997 for a

stable block and had restrictions, that it could not be used for any commercial purpose. It also had a caveat that the erection of the stables could not at any future time be a reason for the erection of a dwelling on the site. Mr Pope asked the council to note that a business has been running on the site, in direct contravention of the 1997 planning permission. He then listed the development that had taken place, including barns, stables, foaling sheds and fencing, all apparently with disregard to the planning authority.

A regular visitor to the area who walks many footpaths in the parish who was at the meeting had occasion to ask why the designated footpath that runs through the main stable area was fenced at one end with no apparent way through. It was noted that the forms showed that no rights of way were affected by the application.

5.3 8 letters have been received objecting to the proposal. In summary the following concerns are raised:

- (1) It is questioned whether the right to use this land as an equine stud farm exists - it is not a continuation of use but a retrospective application as planning permission has never been granted.
- (2) The 1997 permission was subject to a condition stating that it was for private use and should "not be used for any trade, business or equine enterprise whatsoever". The reason given was to protect the amenities of the locality.
- (3) This reason is noted as the main grounds for objecting to the proposal.
- (4) A note on the 1997 permission states: "This planning permission in no way implies that the local planning authority consider favourably any future application for residential development on this area to accompany the stabling" and a hand written note questions whether another existing field shelter in the same field had planning permission.
- (5) About 8 years ago only a few old lambing sheds plus two field shelters - it has grown very significantly without permission and it is clear that a major business expansion programme is proposed - where will it end?
- (6) The breaches of planning control include:
 - condition referred to above
 - change of use from agriculture to equine use
 - large stable complex and yard established
 - foaling sheds recently established
 - no application for temporary accommodation as PPS7 Annex A, Paragraph 13
 - recent erection of 3 m high fence, 118 m long.
- (7) The issue of lawful use should be resolved before the applications for operational development are determined - 3 m fence should be removed.
- (8) This all shows no regard for planning systems, which is undermined. It is questioned whether this was a matter of ignorance as a professional agent was employed.
- (9) A second substantive ground for refusal is that the local roads are too small for horse boxes and any increase in traffic from these vehicles, trailers and lorries is unacceptable, given residential properties nearby.

- (10) Any further buildings would create further 'blots' on lovely, picturesque landscape, which would be far too close to listed Bodenham Farm.
- (11) Welfare of horses is a concern as too many on a small area of bank.
- (12) Footpath through site is blocked by confusing and obscured signage, no stile or achievable access, intimidation and perceived danger of using a way used by large stud horses – footpath is shown on OS map.
- (13) It is not small scale.
- (14) It does not re-use existing buildings.
- (15) It does not maintain the environmental quality and countryside character

The full text of these letters can be inspected at Southern Planning Services, Blueschool House, Blueschool Street, Hereford and prior to the Sub-Committee meeting.

6. Officers Appraisal

- 6.1 This application is for retrospective permission to continue to use land and buildings as a stud farm. This is necessary as permission has not been sought or granted for change of use from agriculture and the unauthorised use has not been operating for the full 10 years required for such a use to have become lawful. The application is for continuation of use and not for retention of new buildings and structures. Consequently if permission is granted it would not authorise the 3 m fence or foaling boxes referred to in representations. The two main complexes either have planning permission (6 loose boxes and field shelter) or were erected, according to the evidence available, more than 4 years ago and therefore would appear to be lawful.
- 6.2 The Note attached to the 1997 planning permission referred to in paragraph 5.3(4) leaves open the question of whether use for an equestrian enterprise would be acceptable. This must be decided in relation to current policies including Government advice and on the merits of the case. Advice on equine-related activities is included in PPS7 in particular paragraphs 32. This states that "horse riding and other equestrian activities are popular forms of recreation in the countryside that can fit in well with farming activities and help to diversify rural economies. In some parts of the country, horse training and breeding businesses play an important economic role. Local planning authorities should set out in LDDs their policies for supporting equine enterprises that maintain environmental quality and countryside character. These policies should provide for a range of suitably located recreational and leisure facilities and, where appropriate, for the needs of training and breeding businesses. They should also facilitate the re-use of farm buildings for small-scale horse enterprises that provide a useful form of farm diversification." Recreation Policy 14 of Malvern Hills District Local Plan sets out a list of criteria that have to be met before permission should be granted. Those relating to effects on surrounding countryside, re-use of existing buildings, effect on amenities of neighbours, highway safety, loss on high grade agricultural land and disposal of waste materials and effluent are most relevant to this application.
- 6.3 The enterprise includes, or is planned to include, a full range of activities: breeding, grazing, training/schooling, sale of horses. It is understood that there are about 116

horses connected with the business (see paragraph 1.4). The enterprise has been developing over a number of years and is clearly hampered by the lack of facilities at the Bodenham site. Hillington Barn has a much greater area of grazing land but no facilities. The current application is about the continued use of land and existing buildings. These may be inadequate for the scale of the business currently undertaken or projected. However if permission is granted it would not imply that the Council finds the additional facilities (barn, training ring, dwelling and any buildings planned) acceptable. Each proposal would be considered on its merits. Clearly, if permission is granted it does mean that these proposed buildings would have to be given careful consideration and could not be refused on the grounds of unnecessary development in open countryside (i.e. no stud farm no need for a worker's dwelling etc.).

- 6.4 The main issue is the effect on the amenities of the locality. The two groups of buildings are located some distance from the nearest houses (about 100m from the main house at Bodenham Farm and 250m from Orchard Cottage) and properly managed there should not be significant problems of noise and odours arising from the stud farm. Most of the land is used for grazing and should not prejudice local amenities. The limited size of the enterprise at this location may result in greater vehicular movements than would otherwise be necessary and the local road network is very narrow with limited passing places and a scattering of houses. Nevertheless, on the evidence available, it is not considered that the volume and nature of vehicular traffic would cause unacceptable noise and disturbance to local residents.
- 6.5 A second issue is highway safety. The limitations of local roads has been noted in the previous paragraph. However no objections are raised by the Traffic Manager and there is no cogent evidence that the roads would be overloaded and prejudice, to a significant degree, highway safety.
- 6.6 The land is classified as Grade 3. Policy 14 states that equestrian development should not take Grade 1, 2, and 3a agricultural land. It is not clear from the published maps whether this site is Grade 3a or 3b. Nevertheless in view of the recent advise in PPS7 it is not considered that this is sufficient grounds for refusing permission.
- 6.7 It is concluded therefore that there are insufficient grounds to refuse permission. The concerns expressed regarding flouting of planning control are appreciated but these are not legitimate reasons for not granting planning permission.

RECOMMENDATION

That planning permission be granted subject to the following conditions:

- 1 G04 (Landscaping scheme (general))**
Reason: In order to protect the visual amenities of the area.
- 2 G05 (Implementation of landscaping scheme (general))**
Reason: In order to protect the visual amenities of the area.
- 3 F32 (Details of floodlighting/external lighting)**
Reason: To safeguard local amenities.
- 4 F40 (No burning of material/substances)**

Reason: To safeguard residential amenity and prevent pollution.

- 5 Within 2 months of the date of this permission details of the means of disposing of waste materials and effluents with a timetable for implementation shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented in accordance with the agreed timetable.**

Reason: To protect the amenities of neighbours and to prevent pollution.

Informative:

- 1 N15 - Reason(s) for the Grant of Planning Permission**

Decision:

Notes:

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Background Papers

Internal departmental consultation replies

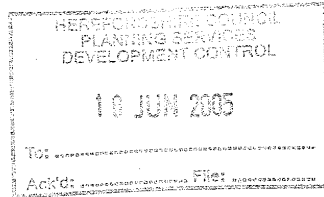
COLIN GOLDSWORTHY MBIAT MaPS

SE2005/0795/F

04/410/CG

9th June 2005

Herefordshire Council
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For the attention of Mr Jonathan Barrett

Dear Mr Barrett

BRITISH INSTITUTE OF
ARCHITECTURAL TECHNOLOGISTS

**CONTINUATION OF USE AS EQUINE STUD FARM
DCSE2005/0795/F**

At yesterday's meeting of the Southern Area Planning Sub-Committee a decision was reached by the committee against officer's advice to refuse the application.

The committee's original reasons for refusal were dismissed by your officers as being inappropriate and they then struggled to manufacture suitable response. Mr Wilmont cautioned the committee that even those suggested latterly might not be suitable and possibly difficult to defend on appeal.

The committee suggested concern over the level of potential activity of the enterprise. There was also comment relating to over intensification of the buildings and blocking of a public right of way.

My clients are not aware that any right of way is blocked and it appears that none runs through their land. If it were to be the case it would of course be unblocked.

All the buildings with the exception of the foaling boxes have been there for more than four years. Most were there when the property was purchased nearly ten years ago. The foaling boxes were built out of desperation and are demountable.

At first the committee had thought that 116 horses were being used for breeding at just the Bodenham site (some 20 acres) and if this were the case then they could rightly have had justifiable concerns and it was on this supposition that they were formulating opinions. Mr Holder rectified this by pointing out that there was an additional 100 plus acres also forming part of the enterprise 4 miles away at Hillington. This is mentioned in the report in 6.3 but makes no mention of areas or distance etc. Following this information one would have expected some movement in the responses of the committee to the application and it appears that a decision was made ignoring reason and clarification. This in my opinion makes for bad decisions.

The concern over numbers could have been allayed by virtue of the fact that the business has reached a maximum and the numbers will now decline. Many of the foals, which are included within the number, will be sold off. Also the number of breeding mares will reduce probably to less than twenty, greater numbers having proved difficult to manage. It was hoped that a training area could have been constructed which allows

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for better exercising and display and that the barn currently being considered under a separate application could be erected allowing for the animals to be kept in cleaner and more secure conditions. These facilities are essential to the success of the venture and sales so far are not reaching the levels expected because of the conditions under which the animals are being viewed.

Emotive points were promoted at the meeting not least of which were comments relating to the well being of the animals. This I believe went some way in influencing the committee's judgement. The parish council's speaker, Mr Weston, made these comments. Some time ago a complaint was made to the RSPCA regarding the animals welfare. After investigation the inspector apologised for his visit and confirmed that the animals were in excellent condition, if somewhat muddy and indicated that if required he was happy to issue a written statement, for view by others, that they were well looked after.

Finally it must be pointed out that there is a lot of very personal vitriol being expressed by parties within the parish against my clients and this more than anything was instrumental in promoting the decision from your committee. It has nothing to do with planning. In the interests of reason and fair play I trust that you will refer this application to your Planning Committee. It would of course allow us to inform your council of the inaccuracies, allow a greater degree of information to be provided and avoid a planning appeal.

I am willing to meet you to discuss any queries you may have.

Yours sincerely



Colin Goldsworthy.

c.c. Mr & Mrs Fewtrell.