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Your Ref 14/00801/F
Our Ref RJA
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Dear Sirs

PROPOSED CHANGE OF USE OF LAND AT GRANGE FARM FROM AGRICULTURE TO MIXED USE COMPRISING EQUESTRIAN TRAINING / COMPETITIONS AND AGRICULTURE TOGETHER WITH EXTENSION OF EXISTING VEHICLE PARKING AREA (APPLICATION NO: 14/00801/F)

We have been instructed by Mr and Mrs M Vandamme, Mr and Mrs R Grimston, and Mrs Boycott to write on their behalf to object to the proposed use of the land at Grange Farm ("the Site") outlined in the above application ("the Application").

Our clients live in the three properties adjoining and looking over the Site, being Elm Farm, Partway, and Swalcliffe House. They are all affected by the current unauthorised use of the Site by the applicants, and would be affected by the development proposed by the Application.

You will have seen the written objections to this application submitted by our clients personally, together with the planning policy objection submitted on our clients' behalf by Judith Norris Limited, which we endorse fully.

The purpose of this further representation is to assist your Council in it's approach to the various legal considerations relating to this application and its determination by the Council as Local Planning Authority (the "LPA").

Importantly, there is a risk here that the LPA will fall into legal error if it proceeds to a favourable determination of the current application based on the inadequate information and evidence submitted by the Applicant.

Proposed Development

The description of the development proposed by the Application is for "mixed use comprising equestrian training / competitions and agriculture". However there is a surprising lack of clarity in the detail of the Application, making it difficult to establish what operational development the Applicant is seeking to obtain authorisation for, and the extent of the intended use of the Site.

This inevitably raises questions as to whether a full and proper assessment of the impact of the Application can be made, both in terms of planning policy considerations and in respect of a screening opinion relating to the need for an Environmental Impact Assessment.

Areas of the proposed development under debate include:

1. What operational development is included within the proposals and in what locations within the Site?
2. To what extent is retrospective approval sought for existing unlawful operational development and to what extent do the proposals include new operational development?
3. What is the meaning of a mixed agricultural and equestrian use? Does this relate to different locations within the Site or different use at different times?
4. Why has the development been artificially split to try to take some of the intended development outside the scope of the Application in favour of attempting to rely on permitted development rights?

Authorised Use of the Site

We consider the Application to misrepresent the current authorised planning use of the Site, by referring to the "long established business" and "continued equestrian use".

As the LPA is aware, the Applicant currently uses the Site for various equestrian events, including large scale competitions. Although the Applicant admits the use "does not benefit from express planning permission", it is clear that the use of the Site without the benefit of any formal planning consent, either for the use, or for the associated operational development, is unlawful.

Although the Applicant states in the Planning Statement accompanying the Application that the Site has been in use for equestrian activities since 1997, no evidence has been supplied that indicates that there is currently lawful use of the Site for any equestrian purpose, and certainly not for the purposes proposed in the Application.

The authorised use of the Site is therefore agricultural, and the Application proposes a change of use of arable agricultural land within an area of high landscape value to an intensive equestrian events use.

Need and Alternative Sites

There is little if any evidence provided with the Application that justifies the proposed use of this Site for commercial purposes. Clearly the proposed use for circa 50 horses together with the associated infrastructure related to that use is not insignificant, yet there is no evidence of the business case that supports this, which is a minimum requirement of any such application.

Even if the LPA did have sufficient information in this regard, in light of the clear objections to it raised by our clients and their planning consultant, the LPA should consider whether *this* development in *this* location is appropriate; or whether it should take place elsewhere within the much larger "Planning Unit" to avoid the identified harm to residential amenity and other conflict with development plan policies. ***Aston – v – Secretary of State for Communities and Local Government (2013) EWHC1936 (Admin)***

Our firm view is that the LPA simply has inadequate evidence and justification before it to support this proposal in this location and that any grant of permission based on the information provided will be unsafe and susceptible to legal challenge.

EIA

As indicated in the objection raised on behalf of the residents by Judith Norris Ltd, a legal opinion was obtained from Anthony Crean QC on various matters connected to the case. The Opinion was clear that the equestrian activities carried out by the Applicant fell within Paragraph 13(a) of Schedule 2 of the EIA Regulations 2011 and that the LPA is under a strict legal obligation to apply the EIA Directive.

The European Commission Guidance on EIA Screening (June 2001) provides a checklist. The list includes 27 points. It is contended that this Application should be positively screened because:

- The project will cause changes to the local land use and topography over an area in excess of 24 hectares
- It will affect an Area of High Landscape Value
- It significantly and adversely affects highways in the vicinity of the site
- The project has a considerable visual impact that is not clearly set out in the Application
- The Application is not clear as to the full impact because of the failure to set out a clear statement as to how the smaller and larger events are to be managed in terms of access, parking, noise and other ancillary requirements.

In addition, it is clear from the Applicant's own Planning Statement that this Application is part of a much larger development proposal. This raises issues of so called "salami slicing" of the application, the purpose of which is to circumvent EIA legislation. There are two issues here:

1. In circumstances where it could be seen that a smaller project under consideration, would lead to a larger development which might have significant effects on the environment, it is necessary to take the effects of the larger development into account so as to avoid a situation in which, by a series of small developments which fall under the radar, the larger development came about without an opportunity to subject it to an EIA'; See **R (on the application of SAVE BRITAIN'S HERITAGE) (Claimant) v SECRETARY OF STATE FOR COMMUNITIES & LOCAL GOVERNMENT (Defendant) & SEFTON METROPOLITAN BOROUGH COUNCIL (Interested Party) (2013);** and

2. The "cumulative impact" of other development also needs to be considered as part of any EIA Screening Assessment as required by Schedule 3 of the EIA Regulations; together, of course with those other matters referred to in Schedule 3.

Again, there is little if any information/evidence which addresses these points.

Permitted Development Rights – Temporary Change of Use

The references to permitted development rights in the Application also require careful consideration.

As stated in the Application documents, the permitted development rights have been exercised on this Site pursuant to Class B of Part 4 of the Town and Country Planning (General Permitted Development) Order 1995 which allows the Site to be ***used*** for any purpose for not more than 28 days in total in any calendar year ("the 28 Day Rule"). This does not of course include any engineering or building works which are subject to separate planning control.

Notwithstanding the above, it is evident (and is acknowledged by the Applicant in the Planning Statement accompanying the Application) that the current non-agricultural use of the Site significantly exceeds the permitted 28 days use per calendar year.

The development proposed in the Application purports to relate only to equestrian events with a maximum of 50 riders per day, with the Planning Statement accompanying the Application stating that the Application "is not seeking consent for any of the larger events where the maximum number of riders exceed 50 in any one day" (paragraph 18). It goes on to say that the applicant would be content to restrict by way of planning condition the rider numbers in any day to a maximum of fifty.

However, the Planning Statement goes on to say that the 28 Day Rule will be relied on in relation of larger events (paragraph 19).

It is evident that the Application is, therefore, disingenuous as the Applicant has not applied for the development that it proposes carry out on the Site.

The reason for this can only be that it is aware of the severe adverse impact in terms of highways, noise, residential amenity and landscape impact that its intended proposals would create, and so does not want them to be fairly assessed by the LPA in line with the LPA's planning policy.

This is a clear example of 'salami-slicing', i.e. dividing a larger project into smaller parts in order to avoid triggering the thresholds for requiring a screening opinion in relation to Environmental Impact Assessments, a strategy held to be unlawful by both the European and English Courts.

It is therefore clear that, although the Council has a duty to consider the merits of the Application before them, the cumulative impact of the development proposed by the Applicant must be considered in its entirety.

The Council must, in any case, consider development which would normally be permitted pursuant to the 28 Day Rule as potential EIA development pursuant to the Town and Country Planning (Environmental Impact Assessment) Regulations 2011.

The 'salami-slicing' concept applies equally to the Application of planning policy. The impacts of proposed development must be assessed in their entirety.

The proposal to use the 28 Day Rule to avoid compliance with a planning condition is a fundamental misinterpretation of planning law. Pursuant to Article 3(4) of the Town and Country Planning (General Permitted Development) Order 1995, the 28 Day Rule does not permit "development contrary to any condition imposed by any planning permission".

In simple terms, this means that if there is a planning condition restricting numbers of riders, this means that the 28 Day Rule cannot be used to authorise the use of the Site for an increased number of riders in breach of that planning condition.

Despite this we would expect in any event that the LPA would impose necessary Conditions or S106 Planning Obligations to ensure that the proposed use could not be escalated or intensified whether by way of PD Rights or piecemeal planning applications in any event.

This interpretation of Article 3(4) is supported by the recent High Court decision in the case of Royal London Mutual Insurance Society v Secretary of State for Communities and Local Government [2013].

Permitted Development Rights – Operational Development

It is also necessary to consider the permitted development rights for operational development in the context of the Application.

As an agricultural property, the Site benefits from permitted development rights authorising certain permanent operational development necessary in connection with the *agricultural* use. Ie not commercial or recreational uses.

The erection of moveable structures in connection with a 28 Day Rule use are also permitted for the duration of the 28 days, however no permanent changes, buildings or engineering works are authorised.

It is clear that the works carried out to date on the Site do not fall within either of these categories and so are unlawful. This includes the "two separate water complexes, an 80m x 80m grass 'arena' as well as a number of grass dressage arenas" referred to in the Planning Statement, as well as the various non-moveable jumps and fences which have not been mentioned in the Application and so presumably are intended to be removed.

It is also noteworthy that the temporary operational development anticipated by the Town and Country Planning (General Permitted Development) Order 1995 relates to "moveable structures" only, thereby limiting the scale of the types of operational development permitted. It is questionable in any event whether some of the structures associated with this type of proposed use are *moveable* or are a *permanent* feature on the Site which falls outwith PD Rights.

However where the main authorised use of the Site is similar to the intensification proposed under the 28 Day Rule (as would be the case if this application was granted), this would allow any events purported to be authorised under the 28 Day Rule to be larger in scale as they would be able to make use of any permanent infrastructure authorised by the general use of the Site, rather than the more limited permitted the "moveable structures".

In other words this application cleverly disguises the ultimate cumulative and harmful impacts of development on this Site and effectively seeks to circumvent strict planning policy and legislative controls by seeking permission on a piecemeal basis.

That is something which the LPA should be alert to and which emphatically supports any decision to refuse permission in this case.

Conclusions

The Planning Statement accompanying the Application itself states that it is desirable "to ensure there is no confusion or concern about the planning status of the whole development" (paragraph 17).

However given the position stated above where there has been both permanent operational development (in the form of horse jumps, construction of an access track, installation of drainage pipes, and also the installation of trailers, stables, and storage containers), and also change of use all in breach of planning control, the Application needs to be clear as to what development and use it seeks to obtain authorisation for and/or whether it seeks to regularise existing development or includes new operational development.

This lack of clarity is further compounded by the Applicant's misconstrued interpretation of the 28 Day Rule, and attempt to treat the larger events planned as a use outside the Application.

These considerations must be assessed by the LPA in addition to the significant implications of the traffic generation, noise impact, visual and landscape impact, impact on the nearby Conservation

Area, and affect on residential amenity of the proposed development. These are discussed in detail in the accompanying report by Judith Norris Limited.

In addition to the planning policy considerations, the nature and extent of the development the applicant is proposing within the Application must also be considered. Although the Applicant may argue that it already operates significant events using the 28 Day Rule, this is not a valid planning reason for permitting this development where the LPA has the opportunity to exercise its development control and enforcement functions.

We appreciate that it is the duty of the LPA to consider the merits of the Application in front of it. However, it is impossible to adequately discharge this duty without sufficient details as to the nature of the proposals. In addition the LPA is fully entitled to consider alternative solutions within the wider "Planning Unit" so as to avoid or mitigate highway concerns and critically adverse impacts on residential amenity.

In short, the current Application is totally mis-conceived and fundamentally flawed in a number of material respects including failure to address or comply with planning policy at a local and national level.

Crucially it also fails to adequately engage with or apply relevant legislation which makes any decision other than to refuse permission legally flawed and subject to legal challenge,

In the light of all the above, the LPA can be assured that it has ample grounds to refuse this Application should be recommended for refusal.

We look forward to hearing from you further in due course and in the meantime could you please advise us if this matter will be referred to Planning Committee and when that meeting will be held..

Yours faithfully

Shoosmiths LLP

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