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Your Ref 14/01762/F
Our Ref RJA.M340232
Date 5 December 2014

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Dear Sirs

OBJECTION TO PROPOSED USE OF LAND AT GRANGE FARM FOR MIXED USE COMPRISING PART AGRICULTURAL AND PART EQUESTRIAN TRAINING AND COMPETITIONS (USE CLASS D2), FORMATION OF NEW ACCESS, EXTENSION TO EXISTING CAR PARK AND ASSOCIATED WORK (APPLICATION NO: 14/01762/F)

We have been instructed by Mr and Mrs M Vandamme, 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 two properties adjoining and looking over the Site, being Partway House and Swalcliffe House. They are both affected by the current unauthorised use of the Site by the applicants, which severely impacts on their residential amenity and quiet enjoyment of their homes, in addition to the numerous adverse impacts on the area, including the nearby Conservation Area, and designated area of High Landscape Value.

Our clients therefore **strongly object** to Swalcliffe Equestrian Limited's ("the Applicant") proposals to not only continue but to expand this unauthorised use as proposed in the Application.

As you will be aware, this is the third planning application submitted by the Applicant for the development of the Site (or parts thereof) for equestrian use in the last twelve months. Our clients have significant concerns, both about the nature of the development and scale proposed, and the fact that Cherwell District Council as Local Planning Authority ("the LPA") continues to allow the current unauthorised use of the Site to continue, despite the clear and obvious evidence in support of enforcement action.

In this respect we would refer to the numerous previous requests to the LPA to take enforcement action, and the representations submitted by ourselves, our clients' planning consultant, Judith Norris, highways consultant Allen Rollings, and those submitted by our clients directly in relation to the previous two applications.

This letter is limited to comments on the use of the Site as proposed in the Application, the lawfulness of the Screening Opinion, and comments regarding the documents submitted by the Applicant in relation to the Application. However for the avoidance of doubt, our clients remain strongly of the view that the continued failure of the LPA to take enforcement action in relation to the current use of the Site is unlawful.

This letter should also be read with the planning policy objection to the Application submitted on our clients' behalf by Judith Norris of The Rural Planning Practice, and highways objection submitted on our clients' behalf by Allen Rollings, both of which we endorse fully.

The purpose of this separate representation is to assist the LPA in its approach to the various legal considerations relating to this application and its determination.

Importantly, there is, once again, 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

As with the two previous planning applications submitted by the Applicant for the development of the Site, there is a severe lack of clarity as to the nature and extent of the development being proposed in the Application.

The description of the development proposed by the Application is for "**a mixed use comprising part agricultural, part equestrian training and competitions (use class D2), formation of new access, extension to existing car park and associated work**". However there is a surprising lack of detail in 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.

As with the previous applications, 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.

In contrast from the previous planning applications, it appears the Application seeks to include an equestrian events use in addition to the day-to-day training use of part of the Site. At paragraph 19 of the Planning Statement, it is proposed that the development is operated subject to conditions which provide:

- (i) ***Unrestricted*** equestrian activities up to a maximum of 50 (fifty) riders per day [emphasis added];
- (ii) All rider numbers to be logged and records of events kept for inspection at any time by the local planning authority;
- (iii) Events up to a maximum of 28 days per annum with up to a maximum of 250 (two hundred and fifty) riders per day.

However point (iii) above is contradicted by the first part of paragraph 19 of the Planning Statement which states "the planning application does not seek ... consent for any of the larger events where the maximum number of riders exceed 50 in any one day". The development proposed in the Application is therefore not adequately clear.

In relation to the first condition (i), the proposed "unrestricted equestrian use" also lacks clarity. The Planning Statement mentions an intention to use the Site for training and schooling and smaller events, however these activities could include the use of public address systems, and could include ancillary development such as catering vans which can and have in the past had an adverse impact on the residential amenity of our clients. It could also include pony clubs, which have previously involved the erection of 30 temporary stables and could include additional hardstandings for car parks and access.

There is also an implication in the Application that limiting the day to day use of all / parts of the Site to 50 *riders* per day would mean that the Site was only used by 50 *horses*. In fact, riders may often bring several horses to train or participate in events, and so the restriction to 50 riders does not present an accurate reflection of the traffic impact caused by the large vehicles required to bring this number of horses to the Site and away again each day.

Permitting this Application would therefore permit an enormous range of activities which create a significant amount of traffic and noise and it would permit these to take place on 365 days of the year. This is a *significant* increase from the current use.

Proposed condition (iii) is also extremely unclear. It is not clear whether the 28 days of event use would include time to set up and clear away events, or just the days of the events themselves. If the 28 days of events use does include time to set up and clear away events (which is usually at least three days to set up, and a further three days to clear away for large events), then the 11 large events mentioned in the application documents as being already planned for 2015 will exceed this significantly. If twenty-eight days of events were allowed (with set up and clearing away time in addition to this), this would, again, be a *significant* increase from the current unauthorised use of the Site.

Paragraph 21 of the Planning Statement says "This level of usage, as proposed ... is reduced from the present [usage]". This statement is not substantiated, and as stated above, this is simply not true.

The Application must be assessed on the basis that it will be used for the full permitted use, and the use proposed to be permitted is substantially more intensive than the current unauthorised use. The current use of the Site is discussed in further detail below.

It is also implied, by the drawing submitted with the Application entitled 'Application Site Boundary' (being drawing reference 13_002_01 Revision B), that the proposal is for the unrestricted equestrian activities is restricted to the hatched area of the Site only with the other parts of the Site intending to be used only for a maximum of 28 days per annum for the larger events.

This must be clarified, and it should also be clarified whether the use of the wider Site for larger events is intended to allow permanent operational development to facilitate this use. This is something which should be strongly opposed, particularly given the Site's landscape designation as an area of high landscape value.

Hours of operation also do not appear to have been considered in the Application, which this aspect of the application form left incomplete. Hours of operation would also have an impact on residential amenity with more disruption being caused by traffic and other noise in the early morning or evenings.

It is also not clear what operational development is included within the proposals and in what locations within the Site. It is also unclear to what extent this is retrospective approval sought for existing unlawful operational development and to what extent do the proposals include new operational development.

Additionally, parts of the Flood Risk Assessment, the Ecological Survey, and the Screening Opinion have been redacted instead of disclosed in full on the LPA's website. It is not clear what the reason for this redaction is, however it is clear that it prevents the application being adequately assessed by those affected by the proposals, and so is unlawful.

We are aware that some, but not all, of these points have been acknowledged by Bob Neville in his email to the Applicant's planning consultant dated 3rd December, which was published on the LPA's website today.

However we note that the same email suggests to the Applicant that valid consultation responses have already been received, which patently cannot be the case.

The lack of adequate or correct information in the Planning Statement or other application documents to date means that any consultation responses received by the LPA in relation to the Application, for example the Highways comments received from Geoffery Arnold of Oxfordshire County Council, **cannot** have taken into account the full impact of the proposals, due to the inadequate information supplied. The LPA **must** re-consult all relevant parties when adequate details as to the nature of the proposals are provided. The Screening Opinion clearly must also be reassessed, as is discussed further below.

In summary, the Application lacks sufficient detail to enable it to be properly assessed by consultees or lawfully determined by the LPA, and so any determination will be susceptible to legal challenge by judicial review.

Authorised Use of the Site

We consider the Application to misrepresent the authorised planning use of the Site, by referring to the "long established business" and "continued equestrian use". The authorised use of the Site is agricultural and any other use is unauthorised.

As the LPA is aware, the Applicant currently uses the Site for various equestrian events, including large scale competitions. Although the Applicant admits in their Planning Statement that 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 including use of the car park by large vehicles in an area of high landscape value, 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. Indeed we understand that the Applicant was invited by the LPA to make a Certificate of Lawful Use application earlier this year but failed to do so, which suggests that evidence of long user does not exist.

The Application therefore proposes a change of use of arable agricultural land within an area of high landscape value to an intensive equestrian events use.

Justified Local Need and Evidence that no Alternative Sites are available

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 riders on a day to day basis, combined

with the large-scale event use and associated infrastructure related to that use, is significant. However 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. ***Astons – 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 and Screening Opinion

As the LPA will be aware from our clients' objection to the previous planning application reference 14/00081/F, a legal Opinion was obtained from Anthony Crean QC on various matters connected to the Applicant's use of the Site. A further copy of that Opinion is enclosed herewith.

As you will see, the Opinion is clear that the equestrian activities carried out by the Applicant fall 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.

This Application is for a significantly more intensive use than the previous application, and so it is contended that this Application should have also been positively screened in accordance with the European Commission Guidance on EIA Screening (June 2001) 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.

Again, there is little if any information / evidence submitted with the Application which addresses these points, and the Screening Opinion based on the insufficient evidence submitted with the Application makes the Screening Opinion susceptible to legal challenge by judicial review.

Consultation with Neighbours

We would also like to emphasise that paragraph 44 of the Planning Statement is factually incorrect. The Applicants have not sought to discuss the Application with our clients or the other near neighbours, Mr and Mrs Grimston, despite repeated efforts on behalf of the neighbours to engage with the Applicants. The LPA will be aware from the various correspondence and requests to the LPA to enforce against this clear breach of planning control over a number of years, that this use does, in fact, have a considerable negative impact on the lives of residents contrary to the Applicant's claims at

paragraph 44 of the Planning Statement. The statements set out in the Planning Statement are simply not true, and this must call into question the accuracy of some of the other evidence provided by the Applicants.

The location of the training and schooling facilities immediately adjacent to Swalcliffe House is just one illustration the lack of consideration the Applicants have given to their neighbours.

Conclusions

This Application lacks sufficient detail to be adequately assessed by the statutory consultees or lawfully determined by the LPA.

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.

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.

These are discussed in detail in the report by Judith Norris of the Rural Planning Practice.

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, as with previous applications, 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.

The Application has been validated by the LPA without sufficient information to allow it to be adequately assessed. This appears to us to be no coincidence given the current judicial review claim against the LPA relating to its continuing failure to take enforcement action against the unlawful use of the Site.

In short, the current Application is totally misconceived 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. As such any decision other than to refuse permission will be legally flawed and subject to legal challenge.

The defects in the Application cannot be overcome by the imposition of planning conditions, and in the light of all the above, the LPA can be assured that it has ample grounds to refuse this Application. We would urge officers to recommend the Application 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