

Planning Committee: 20 March 2012

Item Number: 7

Application No: W 10 / 0035

Town/Parish Council: Rowington
Case Officer: Penny Butler

Registration Date: 02/03/10
Expiry Date: 27/04/10

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Sandall House Farm, Narrow Lane, Lowsonford, Solihull, B95 5HN

Variation and deletion of conditions imposed on planning permission W98/1384 (construction of exercise track). Condition 2 to read "The use of the exercise track shall be carried on only by the owners of Sandall House Farm and shall be restricted to horses permanently stabled at the premises". Condition 3 to be deleted (The use of the track shall be for private purposes only and not related to any commercial activity). Condition 4 to read "The use of the exercise track for the purposes hereby permitted shall be restricted to the hours of 0800 to 1900 Monday to Saturday and at no time on Sundays" FOR Ms Saber

This application and W10/0034 (also on this agenda) were withdrawn from the agenda in April 2010 by the Chairman, in order that a planning enforcement investigation into whether an alleged material change of use of the site has occurred. The Council instructed a consultant to carry out this investigation and their report is summarised below under the assessment, and a meeting has been held with the Parish Council and Lowsonford Conservation Society to discuss the findings of the investigation.

This application is being presented to Committee due to the number of objections and an objection from the Parish Council having been received.

SUMMARY OF REPRESENTATIONS

Rowington Parish Council: (Original comments) Object. "Detailed reasons for rejection have already been submitted on behalf of residents by Lowsonford Conservation Society and this letter must be read in conjunction with their comments.

The over development of Sandall House Farm has been raised on a number of previous occasions due to its obtrusive nature and rather ugly development adjacent to surrounding housing, particularly when located in Warwickshire Green Belt and the designated 'Arden Special Landscape Area'. RPC feel that the proposal is totally unsympathetic in nature and design.

The latest applications are an attempt to develop further unsympathetic uses of the land and to over rule previous specific conditions of use imposed when the gallop horse exercise track, in particular, was first requested. The previous conditions of use which the current owners of Sandall House Farm are seeking to overturn were specifically imposed in order to limit use of the gallop track to its very specific and specialist use for racehorse training.

The current development is already obtrusive and the further developments requested simply make this even more unsatisfactory and are furthermore potentially damaging to the entire character and vista of the village.

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Rowington Parish Council share the concerns of residents and other local small businesses whose own established homes and land will become threatened by the proposed requested changes of condition.

Sandall House Farm was purchased by the current owners with very specific conditions of use attached. Like any other business venture, it is up to the owners of Sandall House Farm to ensure that their purchase meets their proposed business objectives and longer term requirements. However, it now appears that they wish to totally flaunt the conditions attached to the land that were imposed by the Planning Department when granting permission in 1998 and reinforced by the Planning Inspectorate in 2000, at the cost of the, very local, residents and homeowners. The Parish Council considers this to be unreasonable and totally unacceptable.

If the conditions do not now meet their business requirements then like any other business they need to seek premises and land which do meet their needs.

The requested lifting of conditions particularly the times of use and specific conditions of use of the exercise track is totally unacceptable to local residents who will certainly not benefit from the constant noise and pollution created by horses. Consideration should also be given to the fact that the well used footpath crosses the gallop which will again be a hazard to children, adults, dogs and horse riders themselves as detailed by the Conservation Society. This should be taken into particular consideration re any requests for changes of conditions requesting their extension of use to weekends and evenings which should be rejected for this reason.

Rowington Parish Council representatives would like to suggest that a joint meeting takes place on site with the owners of Sandall House Farm and representatives of WDC Planning Department in order to view and discuss the proposals re Application No W/ 10/ 0034 and Application No W/ 10/ 0035 in conjunction with the points being made by the Parish Council on behalf of owners and residents of the local area. RPC does understand that WDC have already made a site visit but would request that another is made which does involve RPC, as we feel it would be beneficial to talk through the proposal on mutual ground and potentially allow all parties to understand the situation more fully.

We strongly urge you for all of the reasons given to date, to refuse both of these application numbers No W/ 10/ 0034 and Application No W/ 10/ 0035."

Rowington Parish Council and Lawsonford Conservation Society have submitted a further joint objection (dated 18 January 2012): Please take this objection as a formal response to consultation on behalf of Rowington Parish Council (RPC) and Lawsonford Conservation Society (LCS) for the above application. This objection is submitted in the context of the previous Officer's report presented to your Committee on 27 April 2010 and is additional to previous objections submitted.

The details of these objections relate to the application site as shown edged in red on the location plan, that is, the south-western extension of the gallops. Detailed objections regarding the eastern part of the gallops have not been included, as it is assumed that they are intended to be used in accordance with the conditions imposed. RPC and LCS reserve the right to object further should these be the subject of similar applications.

Existing Condition 2:

'The use of the exercise track shall be carried on only by owners of Sandall House Farm'

Application for Condition 2 to be varied to:

'The use of the exercise track shall be carried on only by owners of Sandall House Farm and shall be restricted to horses permanently stabled at the premises.'

Application for Condition 3 to be deleted:

'The use of the exercise track shall be for private purposes only and not related to any commercial activity'

Existing Condition 4:

'The use of the track for the purposes hereby permitted shall be restricted to the hours of 6 am and 12 noon Monday to Friday'

Application for condition 4 to be varied to:

'The use of the track for the purposes hereby permitted shall be restricted to the hours of 0800 to 1900 Monday to Saturday and at no time on Sundays'

A: Condition 2 relating to users of the exercise track: Objections

The original condition varies little from that which is proposed, if anything tightening it. Both versions prevent use of the track by anyone other than the owner. No objection is raised to this proposed variation as applied for.

However, it is clear from the original report to your Planning Committee on 27 April 2010 that officers were proposing that the application be changed through the variation and weakening of Condition 2, as follows in an extract from that report:

I have given consideration to the imposition of an alternative condition, to restrict use of the track:

- 1 To the owners of Sandall House Farm, their employees and the independent owners of horses at livery on the site, and*
- 2 To horses permanently stabled on site.*

The reasons for the altered application were given in that report:

This is in an attempt to prevent large-scale events being held on site, to limit the associated increase in traffic which could occur and therefore to prevent commercialisation of the site.

This is unacceptable on two grounds:

- **Procedural objection:** On a procedural note, the proposed weakened condition fundamentally changes that which has been applied for. It has not been the subject of statutory consultation procedures and as such the

application cannot be amended without the normal full consultation required for amendments to applications. The Council is opening itself up to a risk of maladministration if they proceed with such a fundamental change.

- **Planning objection:** The three reasons for the proposed weakened condition need challenging:
 - *In an attempt to prevent large-scale events being held on site:* Permission exists for 44 horses on site, with the distinct possibility of 44 or more owners being able to attend site at the same time, as it is not uncommon for horses to be in shared ownership in order to spread the cost and commitment. The applicant's agent declares that a further 7 full-time staff and an unspecified quantity of other part-time apprentices and undergraduates work on site, plus the owners. This could result in over 50 people being on site at a given time. It is clear that an event could easily be held, whether formal or informal, including those allowed within the 28 day permitted development rule for use of land as defined by the GPDO 1995.
 - *To limit the associated increase in traffic which could occur:* In the context above, additional traffic would be impossible to regulate. This would increase, not limit, traffic flow and commercial activity on the site, contrary to that suggested in the Ctte report of 27 April 2010. It would appear that the County Highway Authority have not been consulted in this context. Access to the site, as indicated by the property address as well as the surrounding roads providing access, is narrow and often single track.
 - *To prevent commercialisation of the site* In view of the fact that it would be impossible both to prevent events being held on site for the benefit of owners and their guests, whether on an organised or spontaneous basis, and to limit the increase in traffic which could occur, commercialisation of the site could readily occur. This is in direct conflict with the conclusions of the Inspector's decision on appeal APP/T3725/A/00/1039571 (Retention of Exercise Track) dated 15th August 2000, with your Committee decision in 2004, and with national and local policies, which seek to protect the character and appearance of Warwickshire's Green Belt and the Arden Special Landscape Area.

Whilst the following comment is premature due to the lack of full consultation on any amendment to the application, it is appropriate to address one aspect of the proposed condition itself:

- *Permanence*
The definition of permanence is difficult to quantify and enforce in the context of stabling of animals owned independently and therefore outside of the control of the owner of Sandall House Farm. I therefore consider that this is unenforceable within the terms of planning law.

B: Condition 3 proposed for deletion, thereby lifting the restriction for use for private purposes only: Objections

The Ctte report dated 27 April 2010 has already given reasons for refusing to accept this proposed deletion of Condition 3 by default, through aiming to prevent increased commercialisation of the site as detailed above. The case for resisting it is reinforced in Point A above.

The applicant's agent considers that the site has previously been in commercial use, rendering the condition 'anomalous'. This is contested. It is the subject of an enforcement case which I understand is also to be presented to this Ctte. The outcome of considerations and consultations by officers and Rowington Parish Council are incomplete at this point in time, and as such cannot be fully addressed as part of this objection.

In a statement from the applicant's agent, the reason for this part of the application is to allow "the owner, her trainers and paying guests to use the track". I am advised that a significant demand exists for the use of exercise tracks by horse riders, as evidenced by the previous owner, who denied such access to all enquirers, and by the owner of a nearby livery yard. As such I consider that, should the condition be lifted, restriction of this operation solely to those horses in livery at the site would be extremely difficult to regulate. The applicant's agent is openly declaring the desire for it to be open to 'paying guests', which could include one-off visitors. This could result in further additional vehicular traffic visiting the site.

Furthermore, the applicant's agent declares a ratio of horses owned by the applicant versus livery use at the point in time when the application was submitted. However, I do not consider that this ratio can be effectively or reasonably controlled in its' own right by planning law. In addition, the applicant is clearly open to changing the ratio, as evidenced on a dedicated website for the farm, www.clubequus.co.uk, which promotes the site to potential livery customers.

C: Condition 4 relating to extended hours of use: Objections

1 Loss of amenity

Objection is raised to the loss of amenity for six adjoining residential properties with land directly abutting that land at Sandall House Farm which contains the south-western extension of the gallops, that part of the gallops which are the subject of this application.

- The boundary of three of the properties is between 10-11 metres from the gallops themselves.
- The boundary of two of the properties is between 20-24 metres from the gallops themselves.
- The final boundary is 55 metres from the gallops.

Three of the dwellings have paddocks adjoining the gallops, the rest are gardens. In addition, two other dwellings on Narrow Lane, overlooking the gallops but without adjoining boundaries, have suffered loss of amenity from use of that part of the gallops the subject of this application.

Point 3.3 of the applicant's agent's statement identifies the brook, trees and long gardens as separation zones between adjoining dwellings and the gallops, therefore protecting amenity. All of the brook, long gardens and paddocks against the application site, plus many of the trees, are an integral part of the ownership and therefore the amenity of each adjoining dwelling. They are not within the curtilage or ownership of the applicant. These areas are not 'separation zones' where access is not possible for neighbours; they are part of

each residential curtilage. Neighbours have the right to enjoy their own residential curtilage without detriment to amenity; any loss of amenity is a material planning consideration. For clarification, three of the properties have no trees against their boundary between themselves and Sandall House Farm.

The Town and Country Planning Act 1990 does not define amenity. However, these definitions are relevant:

- The Minister of Town and Country Planning in 1951 stated that loss of amenity included anything '...noisy or uncomfortable'.
- The CPRE define amenity as 'The pleasant or normally satisfactory aspects of a location which contribute to its overall character and the enjoyment of residents or visitors'.
- The law defines a nuisance as 'an unlawful interference with a person's use or enjoyment of land or of some right over, or in connection, with it.'

Furthermore, amenity is infringed regularly by workers mending the track, with cars and vehicles driving up and down it with their lights on, including many times at night and in the early hours of the morning; any significant increase in the use of the track would necessitate an increase in its maintenance, which would further impact on privacy, further increase noise and disturbance, and generate more and more traffic from cars, people, tractors, diggers, etc.

The applicant's agent states that the additional use of the track is 'only a noise nuisance issue', implying that this is acceptable. It is not acceptable to adjoining residents.

2 Loss of character

Point 3.2 in the applicant's agent's statement suggests that additional use of the track does not harm the character of the Arden Special Landscape Area. This is in conflict with Warwickshire County Council's 'Arden Landscape Guidelines', published to seek to protect the Special Landscape Area. It states for Lowsonford, which falls into the 'Ancient Arden' designation within those guidelines:

"Although close to Birmingham and Coventry, Ancient Arden retains a rural character throughout much of its area. This is being steadily eroded however, by the gradual change of agricultural land to other uses, such as sport and leisure facilities. Such changes are imprinting a suburban character on the landscape. In these ancient landscapes, conservation of rural character should be given a high priority and all new development should be tightly restrained."

The applicant's agent considers that the proposed extension of hours will not erode the openness of the Green Belt, but they do not address the character. Whilst the built development on this application site has already resulted in the erosion of character, the extension of hours being requested would in itself further erode that character, rather than seek to conserve it, in conflict with adopted policy, including the Govt's Planning Policy Statement 1: Delivering Sustainable Development, which states:

"Planning policies should seek to protect and enhance the quality, character and amenity value of the countryside as a whole. A high level of protection should be given to most valued landscapes."

This policy permeates through every level of national and local government policy, including the 'Arden Landscape Guidelines'. The proposal will result in an unacceptable impact within the terms of adopted policy.

3 Appropriate development in the Green Belt

An appropriate development is one which is an essential facility for outdoor sport or recreation, as defined by PPG2: Green Belts. Development includes a material change in the use of the land, applicable in this case because of the request for an extension of use of the land over and above that which is currently time-limited. I do not consider that the proposed development is appropriate because it is not essential. This conclusion is reached following a daily record of the use of the gallops by adjoining residents. A sample is as follows:

General

Some months: No use at all

Other months: Used half a dozen times

Specific

November 2011: 6 times – 9th twice, 13th twice, 23rd once, 30th once

December 2011: No use

January 2012: Twice – 7th and 12th once each

At all times the track has been used in walk or trot. Cantering has occurred less than half a dozen times since the property was sold to the current owner.

This use has occurred at any time of day, irrespective of the time condition imposed. This indicates that the need to use the track for extended hours is not essential as it is not at capacity during permitted hours. Whilst this could be considered to counter the arguments given for loss of amenity by neighbours because of the low intensity of use to date, unrestricted hours of operation by the current or future owners remains unacceptable in principle as stated under the 'Loss of Amenity' header above.

It is pertinent to point out at this stage that it is open to the owner to use more conventional and acknowledged methods of exercise, both of these examples below being quoted on their own website (shown in italics):

- General hacking across the land within their own curtilage:
"...66 acres of fenced grass walkways/rideways around the farm..."
- Use of the extensive range of bridleways which exist in South Warwickshire, as part of a comprehensive UK-wide network, including W32 opposite their own drive, W44 which is a 5 minute walk on foot, accessed from Narrow Lane itself, and W25 alongside Bushwood, well known locally for long canters:
"...superb door step hacking..."

As such, the need for this extended use is not appropriate development in the Green Belt.

Conclusion

It is clear that the proposal to vary or delete each of the conditions the subject of this application is unacceptable for the reasons given above, in conflict with adopted policy. Rowington Parish Council and Lowsonford Conservation Society therefore object to the application.

Lowsonford Conservation Society: (Original comments) Object. "The application is in complete conflict with the Inspectors 2000 appeal decision giving consent for the track. In paragraph 11 he raised concerns about pressure for future development, and on this basis considered it reasonable to restrict use to owners of the farm. This current application is the 'further development' referred to. Later in paragraph 11 the Inspector found the proposal not unacceptable, subject to the amended condition, 'and the retention of other conditions imposed on W981384'. Any deletion, variation or addition to any of these conditions would be in direct conflict with the Inspectors decision and be contrary to the principle to 'retain, protect and enhance the rural character of the Green Belt. Over the past two years residents have become increasingly concerned about the gradual build up of 'operational development' and infrastructure at the Farm, all purporting to be part of the established livestock farm use and equestrian use in connection with the residents owners' profession. Recent financial investment, the planning statement submitted with this application, their website and other information, reinforces residents fears that the owner of the site is attempting to achieve an incremental change of use to a large scale commercial equestrian centre by building up 'operational' development consents under the existing non-commercial use, and attempting to 'unpick' the conditions of this established and equitable planning permission.

The deletion of condition 3 would create a precedent of lawful commercial use for an exercise track sited on land where there is no commercial use at all. The deletion of condition 3 would make it almost impossible to defend a subsequent application for a commercial equestrian change of use of the whole site. This application is believed to be a strategic attempt to destabilise the existing non-commercial use of the whole site and should be refused on these grounds alone. Residents dispute any previous commercial equestrian use at the Farm, and the absence of an application for a certificate of existing lawful use illustrates this. If there had been evidence of a commercial use then this would have been investigated by the Council and any necessary enforcement action taken.

Over the past 12 years the exercise track has been used, apart from the recent persistent contravention, within the permitted lawful hours, and since the use of the Farm has not changed in this time, there should be no need to alter the conditions 2, 3 and 4. The conditions were imposed by the Council and Inspector to protect the Green Belt and amenity (privacy, noise, disturbance) of residents bordering the site, while providing the owners opportunity to exercise their horses until 12 noon daily. This situation strikes a good balance and is in the absolute spirit of the Green Belt.

The deletion of condition 3 would conflict with existing condition 2, imposed by the Inspector, as the applicant has stated the track will be used by people other than the owners, and this matter would be reported to the enforcement team for investigation.

The proposed change to condition 4, to allow 11 hours daily use is outrageous and does not consider the amenity or privacy of neighbouring residents.

The applicants should be encouraged to apply for a change of use of the site so residents can have a democratic input. Since the site has not changed since the imposition of these conditions the application should be refused."

Preston Bagot Parish Council: "The proposal will affect the Parish as there are two potential access routes to the site, which if used by large vehicles, could severely impact on them. There is a history of such establishments in their Parish. Consent for a sizable horse training and riding establishment at Holly Bank Farm, Preston Road, was refused on the grounds of-

- 1) Commercial development in a sensitive Green Belt where there was no good reason to make an exception,
- 2) Highways issues where narrow roads were likely to be used by large vehicles for which they were totally unsuited,
- 3) Setting a precedent for further unacceptable application.

They believe the same issues apply to Sandall House Farm and object on the grounds of-

- 1) Access and vehicular movements. The narrowness of the roads and their bends makes it impossible for large vehicles involved to safely gain access. Increased traffic would cause problems in their village.
- 2) This private operation which was used by a very specific high profile equestrian competitor to a full and open commercial operation, which is detrimental to the Arden Special Landscape Area. The location and proposed operating hours will intrude on the sensitive Green Belt setting where otherwise it will not be permitted. A more suitable location would be within easy access of (at least) a B road.
- 3) A precedent would be set by the removal of the conditions which would effectively produce a change of use. Other applications could legitimately follow as there are other "yards" along this narrow stretch of road, and such a change would be inordinately damaging. The Conservation Society may seek a judicial review of the decision as it would change the character not just of the village but of the whole area.

A more appropriate way to deal with the proposed changes of condition might be to require a full planning application for the changes so the whole issue can be fully aired and those who wish to contribute in support and opposition could be given opportunity."

Public response: One comment of support received from the Fleur De Lys public house in Lawsonford.

26 objections received. There is already noise and disturbance from the current use of the track, allowing longer hours would increase this. Allowing until 1900 would necessitate lighting in winter months which would ruin the rural landscape and character of the area. Privacy is already infringed regularly by workers mending the track, with vehicles driving along it with their lights on, many times at night and in the early hours of the morning. Any commercial use would lead to a significant increase in frequency of use, and necessitate an increase in maintenance, further reducing privacy, increasing noise and disturbance and more traffic from cars, people and maintenance vehicles. Most of the surrounding road network is single track which would lead to unacceptable congestion.

The application should not be considered prior to an application being lodged for a change of use of the site from agriculture to commercial equestrian use, and determining this application prior to a complete investigation into the use would be prejudicial to the view of objectors, since it would add to an applicants case for such a change of use. If this application is approved it will set a precedent for the commercial use of the entire site with complete loss of control over the size

and scope of the operation which has already created a large and ugly blot upon the Arden Special Landscape Area. There is no need to change the existing conditions until such time as a material change of use for the whole site is applied for and approved with appropriate conditions applied. Recent developments and the current applications form part of an incremental and piecemeal approach to turning the site into a major commercial equestrian enterprise with attendant disruption to local residents. The deletion of condition 3 would conflict with condition 2 imposed by the Inspector. The site makes the route into Shrewley look like an industrial estate.

Mr Skelton ran Sandall House Farm as a farm, not an equestrian property as the Cottage was built for farm workers. Mr Raymond Tooth ran Raymond Tooth Racing as a private concern not a public one. When Ms Saber bought the property there was a restriction of no commercial use, which as far as we know has not been removed. The details of the sale also stated it was a farm and as such, the Single Payment Scheme will still be in existence. There are restrictions on the cantering track.

The neighbour at The Paddocks is extremely concerned about the impact on his horses in his adjacent field as they have a clear view up and down the track and this would cause them to bolt when the track is used. Hours the track is in use are hours he cannot graze or ride his horses on his land for safety reasons. Requests Members carry out a site visit to view the site from his property.

Ramblers: No objection since the removal of the conditions should have no material impact on the use of the public footpaths by walkers.

WCC Countryside Access: The exercise track crosses public footpath W31. No objection, however the commercial activity warrants a condition that notices are erected either side of the path to make riders aware of the presence of pedestrians e.g Beware footpath crossing. Similarly the footpath needs signs e.g Horses crossing.

RELEVANT POLICIES

- Planning Policy Guidance 2 : Green Belts
- DP9 - Pollution Control (Warwick District Local Plan 1996 - 2011)
- RAP13 - Directing New Outdoor Leisure and Recreation Development (Warwick District Local Plan 1996 - 2011)
- DP2 - Amenity (Warwick District Local Plan 1996 - 2011)
- DP1 - Layout and Design (Warwick District Local Plan 1996 - 2011)
- DP7 - Traffic Generation (Warwick District Local Plan 1996 - 2011)
- Warwickshire Landscape Guidelines SPG

PLANNING HISTORY

Sandall House Farm has a long planning history, historically it was typically agricultural but at some time in the mid 80's the land became a mixed agricultural/equestrian use.

Between 1985 to 2007 the land and buildings were used as a show jumping training facility along with the training of race horses, and the keeping of livestock. Several applications were submitted during this time to improve the equestrian facilities on site. The land stabled around 34 horses; however by virtue of planning permission for an additional stable block in 2005, the capacity

of the yard for stabling of horses grew to 48. In 2007 the land was sold to Denise Saber, current owner and occupier who runs the farm for the schooling, training and starting yard for sport horses. No livestock have been kept on the land since 2007 and possibly since 2005.

Currently there are 27 horses stabled at the farm, with a lawful capacity to stable up to 44 horses, reduced from 48 following the planning permission in April 2009 (W08/1679 – referred to below)

For the purposes of this report the key relevant planning decisions between 1985 to 2010 are cited below with specific reference made in each planning decision of agricultural and or equestrian use and relevant conditions relating to those uses.

15th October 1985 – W85/0908

Planning permission refused for an agricultural building for reasons detrimental to the visual amenities of this rural locality

28th January 1986 – W85/1229

Planning permission granted for an agricultural building for storage of hay, straw, farm implements and the housing of cows and calves

29th April 1986 – W86/0234

Time limited permission for the siting of a residential caravan for on-site worker. Planning condition restricted the occupation to persons employed in association with equestrian/and or agricultural activities at the farm. It should be noted that this is the first mention of equestrian use in a planning decision at Sandal House Farm.

The renewal of permission for the caravan was granted in December 1988, January 1992 and March 1997. The limited permission expired in March 1998, and the caravan removed.

12th December 1990 – W90/1390

Planning permission granted without conditions for the retention of an agricultural building for storage and housing of cows and calves

7th April 1993 – W93/0189

Planning permission granted for the conversion of a barn to provide staff accommodation. This was conditional upon occupation solely by persons employed in equestrian/agricultural use.

19th December 1996 – W96/1267

Unconditional retrospective permission granted for cantering track.

19th January 1999 – W98/1384

Planning permission granted for a wood fibre exercise track. This was subject to conditions limiting its use to:

- Personal use by occupants of Sandall House Farm only (Condition 2)
- The use of the track for private purposes only and not related to any commercial activity (Condition 3)
- Restricted hours (Condition 4)

Condition 2 was appealed and allowed (15th August 2000) taking away the personal use restriction only.

14th December 1999 – W99/1405

Planning permission granted for outdoor ménage and 1.2m perimeter fence conditional upon the ménage not to be used for commercial purposes.

10th February 2000 – W99/1562

Planning permission granted for change of use of outbuildings to form grooms accommodation, to be used in association with existing equestrian yard.

This was conditional, restricted to occupation only by persons working at the equestrian enterprise.

2nd March 2004 – W04/0098

Permission granted for the construction of a 270m x 3m extension to an existing gallop. This was conditional upon usage only for private equestrian use and not for commercial purposes, use by owners of SHF, and restricted hours.

24th June 2005 – W05/0831

Planning permission granted for 10 stables. By virtue of the granting of this permission for an additional stable block the capacity of the yard grew to the stabling of 48 horses. There were no restrictions on the use of the stables. This permission was not implemented.

2nd April 2009 – W08/1679

Planning permission granted for a new stable block, new access, farm drive and bridge (retrospective), construction of external staircase to grooms accommodation and enlargement of domestic curtilage. This permission allowed for the reduction of the lawful capacity of horses stabled at the farm to 44. There were no conditions on usage of the stables; however conditions were placed on the old access being closed within 1 month of new access being brought into use. This decision is currently being implemented.

14th July 2011 - W08/1678

Certificate of Lawfulness refused for the existing part use of the stable for groom's accommodation.

The reason for refusal was based on insufficient detail being submitted, and unclear as to the precise development the certificate was being sought. In particular it was unclear as to whether the lawful development certificate application was for a separate dwelling or for groom's accommodation ancillary to the wider use of the land as an equestrian centre.

KEY ISSUES

The Site and its Location

Sandall House Farm (SHF) is sited midway along a narrow country lane, between Santan Farm and Sanbrook Farm, within the Green Belt and Arden Ancient Landscape Area. It is a substantial equestrian establishment with a range of buildings of various ages and designs. The complex lies adjacent to the lane, with paddocks lying behind on rising land.

The exercise track is P-shaped with the loop at the eastern end behind the farm complex, and the long linear track running south-west to north-east just inside the site boundary, which runs along the northern side of the stream behind dwellings fronting Narrow Lane. These dwellings range in distance from the track from 70m to 210m. Land rises from the dwellings to the track slightly, with the land beyond the gallop rising gradually to form a backdrop against which the gallop is viewed from the south. Two public footpaths cross the site, with one running across the exercise track itself (on which there are already warning signs). From Narrow Lane there are glimpsed views of the track across adjoining fields and properties.

Details of the Development

It is proposed to alter the conditions attached to the exercise track to read as follows:

- 2): "The use of the exercise track shall be carried on only by the owners of Sandall House Farm and shall be restricted to horses permanently stabled at the premises". (Previously "... by the owners of Sandall House Farm.")
- 3) to be deleted. (Previously "The use of the track shall be for private purposes only and not related to any commercial activity.")
- 4) "The use of the exercise track for the purposes hereby permitted shall be restricted to the hours of 0800 to 1900 Monday to Saturday and at no time on Sundays". (Previously "...the hours of 0600 and 1200 Monday to Saturday and at no time on Sundays.")

Under current consents, up to 44 horses can be stabled at Sandall House Farm, although there are currently 27 horses on site, 23 of which are owned by SHF. It is intended to use the track to exercise 6 horses a day, in 2 groups of 3, as they do at the moment. About 70% of exercising is undertaken by trainers and 30% by paying guests. On Saturdays, the ratio may rise to 50/50.

Assessment

Investigation into whether an alleged material change of use of the site has occurred

The assessment of the lawful use of the site and whether there has been a material change of use has been the subject of extensive investigations.

Whether there has been a material change of use of land at Sandall House Farm is dependant on whether there has been as a matter of fact and degree a change in the character of the use such that a "material change of use" of the land has occurred and secondly whether the effects of the change are significant upon neighbouring uses and the locality.

The planning history and representations from the applicant, Parish Council and Conservation Society set out above, clearly demonstrates that the use of this land has been as a mixed agricultural and equestrian use (at least since 1986). In terms of the agricultural use of the land, evidence submitted to the Council confirms that prior to 2007 at least 100 sheep were kept on the land in addition to the equestrian use. Since 2007, no livestock have been kept on the land, however the applicants argue that despite this, over 50% of the land is used for the production of hay and that this is an agricultural use. Having taken legal advice on this argument, there is doubt whether the production of hay on the land for consumption of horses stabled on the land does fall within the definition of 'agriculture' as defined by the Town and Country Planning Act 1990. Furthermore it is solely supportive of the equestrian activity on site therefore the agricultural use of the land has arguably ceased, resulting in a sole equestrian use of the land.

Whether there has been a material change of use of the land from mixed agriculture and equestrian use, to a sole equestrian use is a matter of debate. Moreover, the Council must consider whether or not the change in use of the land is so harmful to the amenity of the area, nearby residents, etc. that it would be regarded as contrary to policies of the Local Plan and were an application to be made it would not be granted unconditional planning permission.

Currently the character of the equestrian use remains unchanged from that prior to the occupation of the current owners since 2007. Traffic movements are slight with 27 horses stabled on the land, 23 of which are owned by Sandall House Farm, and 4 as full livery. It is understood that prior to 2007 approx 34 horses were stabled on the land, and that all these horses were owned by the farm. The current equestrian activity in terms of appearance, activity and traffic movements is not significantly different to that equestrian activity that preceded it. The equestrian use of the land therefore remains unchanged and is not considered by officers to be so harmful as to warrant enforcement action. An equestrian use is an appropriate use of land within the rural area and the Green Belt, and the scale of the impacts associated with the current use of the land, i.e. in terms of vehicle movements and associated disturbance is not considered so harmful as to be contrary to policy DP2 of the Local Plan and thereby warrant enforcement action. Furthermore, it needs to be acknowledged that the Council has previously granted planning permission for the stabling of 44 horses (17 more than exist on site at present) with no conditions controlling the use of the land, and therefore has accepted that the use of the land for this number of horses is appropriate and in accordance with the Local Plan.

Concerns have been expressed as to the potential for the use to intensify in the future through a change from where horses currently stabled are owned solely by the owners of the land and/or where the owners offer a full Livery service, to an equestrian yard offering a DIY (Do-it-Yourself) service, i.e. where owners

offer a place for stabling only, and provide no other service i.e. feeding, turning out, hacking, exercising etc, which remains the full responsibility of the horse owner. A DIY yard would inherently generate a notably higher volume of traffic and activity than a yard where all horses stabled were owned by the yard, or even a livery yard, due to the regular daily visits by horse owners. However enforcement action cannot be taken against the potential for a future use of the land, as for the reasons set out above no planning breach has actually occurred on the land. Notwithstanding this, officers will monitor the use of the land for any significant changes in the character of the land and the general locality associated with any intensification of its use.

Since the alleged change of use has now been extensively investigated, there is no justification to delay the determination of this application.

Appeal history

It is important in this case to refer back to the Inspectors decision on the 2000 appeal, where he allowed the personal condition to named individuals to be changed to the "Owners of Sandall House Farm". Paragraph 11 of his decision reads as follows:

"In summary, I have found that there are no sound and clear cut reasons for retaining condition 2 of planning permission W981384. However, the exercise track was intended to be ancillary to the existing use of Sandall House Farm and its use unassociated with the farm could give rise to pressure for further development, with a subsequent impact upon the Green Belt and Arden Special Landscape Area. I therefore consider it is reasonable to restrict its use to the owners of the farm. Subject to this, and the retention of other conditions imposed on W981384, I am satisfied that the proposal would not have an unacceptable impact upon the character and appearance of the Green Belt and Arden Special Landscape Area. It would accord with the relevant policies of the development plan as well as national guidance."

Looking at the Inspectors decision, it is considered that a key point is his emphasis on the track being intended to be ancillary to the existing use of Sandall House Farm and its use unassociated with the Farm could give rise to pressure for further development. He also noted that other conditions existed and would also help to minimise unacceptable impacts on the Green Belt and Special Landscape Area.

The key issue now is whether the varied conditions requested by the applicant still enable an overall degree of regulation over the use of the track which minimises unacceptable impacts on the Green Belt, Special Landscape Area and neighbouring properties.

Condition 2

The proposed amended wording to include reference to use only by horses stabled at the premises further restricts the use of the track, as there is currently no restriction on the owners of SHF bringing horses on to the site to use the track. It is entirely appropriate and reasonable to limit use of the track in this way in order to limit horse vehicle movements to the site and to ensure that the use of the track remains ancillary to the site as a whole, and not a separate use. I have no objection to this additional wording as I consider that it tightens restrictions on the use of the track.

It is recognised that the current wording of the condition allows for more than just the owners use of the track, since it is arguable that use by the owners can be for any purpose related to their business, and this is the way that the use currently operates. If it was considered necessary to prevent people other than the owners from riding horses on the track then it would be necessary to further amend the wording of the condition to reflect this, although this is not the amendment being requested. It would have to be considered whether it would be reasonable to amend the condition in this way, given that the current use is not restricted and has been operating like this for some time. There is no evidence of harm arising from the current use of the track (during its lawful hours) and since the number of horses which can use the track within the permitted hours is limited, control will be maintained.

Condition 3

Following on from my conclusion on condition 2 above, providing that the track is only used by horses stabled at SHF, I do not consider that there is any further need for this condition. Condition 2 ensures that the track is used as a facility that is ancillary to the equestrian activity being carried out on the site, by preventing use by horses from off site, therefore the validity of condition 3 must be considered against this. It is acknowledged that there is a concern that riders may come to the site and pay to ride horses stabled at the Farm on the track, which would lead to increased traffic movements. The impact of this potential risk is considered fairly limited given the existing limited hours of use and numbers of horses which can be exercised. It is noted that this Council originally imposed this condition, and that the Inspector re-applied it, but the enforcement investigation into the current use has identified that the site has been used on a commercial basis since at least 2007, and I am not convinced that the terms private and commercial are sufficiently clear or precise enough to enforce. In addition, other approved facilities on the site have no similar condition imposed. This results in an anomalous situation where horses could conceivably be kept within the stables on a commercial basis, but not permitted to use the track, and this would not be something that could be effectively enforced. One of the key tests under Circular 10/95 is that planning conditions must be enforceable for them to be imposed, therefore I recommend that this condition should be removed as requested by the applicant.

Condition 4

The hours of use of the track were originally limited to mornings, between 0600 and 1200. It is now proposed to extend this to between 0800 and 1900. These hours were volunteered by the original applicant and imposed by the planning officer, and then were referred to again by the Inspector who allowed the personal condition to be altered. This Inspector did not examine this condition but referred to it as having been already covered on the original consent so it would remain unaffected. The original recommendation made to Planning Committee has now been reconsidered following consultation and investigation. The limit on hours of use can only have been imposed in the interests of residential amenity, since the visual impact of the track arises from the permanent fencing and surfacing whilst the horses only have a fleeting visual presence on the track, and I agree that this is the key purpose of the condition. It is not possible to restrict the number of times the track can be used on a daily basis as this would be onerous to enforce, so the imposition of permitted hours gives all parties clear boundaries. Three of the affected dwellings have paddocks

adjoining the track and it is important that the hours of use are restricted to a specific part of the day for these neighbours so their animals or horses can use their own paddocks unhindered outside of these times. Splitting the day in the current manner strikes a balance between residents and applicants interests, and it is also worth noting that the applicant purchased the site with full knowledge of the extant condition and the impact this would have on their business operation. The extension of time for this use would be contrary to policy DP2 of the Local Plan.

RECOMMENDATION

GRANT, subject to the conditions listed below.

CONDITIONS

- 1 The development hereby permitted must be begun not later than the expiration of three years from the date of this permission. **REASON** : To comply with Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 The use of the exercise track shall be carried on only by the owners of Sandall House Farm and shall be restricted to horses permanently stabled at the premises. **REASON**: To ensure there is no increase in vehicle movements to the site in this rural location, in accordance with Policy DP7 of the Warwick District Local Plan 1996-2011.
- 3 The use of the exercise track for the purposes hereby permitted shall be restricted to the hours of 0600 to 1200 Monday to Saturday and at no time on Sundays. **REASON**: To protect the amenity of nearby residents, in accordance with Policies DP2 and DP9 of the Warwick District Local Plan 1996-2011.

INFORMATIVES

For the purposes of Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010, the following reason(s) for the Council's decision are summarised below:

In the opinion of the District Planning Authority, the development does not prejudice the openness and rural character of this Green Belt and Arden Special Landscape Area, would not cause serious harm to the amenity of nearby residents, or lead to an unacceptable increase in traffic and is considered to comply with the policies listed.
