



## Appeal Decision

Hearing held on 21 May 2008  
Site visit made on 21 May 2008

by **Ruth V MacKenzie BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State  
for Communities and Local Government

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Decision date:  
18 June 2008

**Appeal Ref: APP/H0738/A/08/2061587**

**The Stables, Sandy Leas Lane, Elton, Stockton-on-Tees, Cleveland TS21 1BT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr T Murphy against the decision of Stockton-on-Tees Borough Council.
- The application Ref No 07/2201/FUL, dated 20 July 2007, was refused by notice dated 29 November 2007.
- The development proposed is a hay barn, an all-weather exercise area and the retention of an access track.

### Application for costs

1. At the Hearing an application for costs was made by the appellant against Stockton-on-Tees Borough Council. This application is the subject of a separate decision.

### Decision

2. I allow the appeal, and grant planning permission for a hay barn, an all-weather exercise track and the retention of an access track at The Stables, Sandy Leas Lane, Elton, Stockton-on-Tees, Cleveland TS21 1BT in accordance with the terms of the application, Ref No 07/2201/FUL dated 20 July 2007 and the plans submitted with it (Drwg Nos SN/07/008/002, 11 & 12), subject to the conditions in the Schedule at the end of this decision.

### Main issues

3. I consider that the main issues in this appeal are:
  - the effect of the proposed development on the character and appearance of the surrounding rural area; and
  - the impact on the living conditions at Sandy Leas House.

### Reasons

4. The appeal site is in the countryside, separated from Elton village by the A66 Trunk road. The land is principally used for grazing, and about 4 years ago the Council granted planning permission for 2 stables. These have been built. Mr Murphy keeps between 3 and 6 horses on the land. He breeds, trains and sells trotting horses, and has done so for many years. It is part of his Gypsy

tradition and culture. It is not a profitable enterprise; it is a form of sport and recreation. Policy EN 13 of the adopted Stockton-on-Tees Local Plan (LP) seeks to prevent development outside development limits. But development for sport or recreation is listed in the policy as one of the exceptions to the rule, provided that it does not harm the character or appearance of the countryside. I shall now therefore turn to the first issue, and consider the effect that the 3 elements of the appeal proposal would have on the character and appearance of the countryside.

*The first issue – character and appearance*

5. **The proposed hay barn** would be on low-lying ground at the bottom of a small valley. It would be about 20m from the stable block, and even closer to the stable yard. To my mind, it would be seen as part of the cluster of rural buildings on this site. It would have a dark brown roof and timber-clad walls, and a modest footprint of 54m<sup>2</sup>. A public footpath crosses the site and would pass within about 10m of the barn. The footpath is the only publicly-accessible place from where the barn could be seen; it would not be visible from Sandy Leas Lane. To my mind, walkers on the footpath would not see the barn as an incongruous feature.
6. Moreover, if the barn were to be erected, Mr Murphy would no longer need the storage capacity of 2 horse boxes, a demountable horse box and a small touring caravan. He has offered to remove these from the site. A planning condition could ensure that it happened. Six trotting carts, currently stored in the open, could also be stored under cover, thereby reducing clutter even further. I see the removal of clutter as another point in favour of the barn. This, together with the barn's modest appearance and secluded position lead me to the view that it would not be harmful to the character and appearance of the surrounding rural area.
7. **The proposed exercise area** would be on an existing hardstanding which Mr Murphy intends to cover in wood chips. In my view, the wood chip surface and any activities upon it would not be seen from Sandy Leas Lane and would be difficult to see from the public footpath. There would therefore be no material change to the character and appearance of this rural area. Planning conditions could ensure that the fences and walls around the area are improved, a portable toilet is removed, and no external lighting is installed.
8. **The track** has been there for a long time. It is about 50m long, and it links the stable yard to the hardstanding where the proposed exercise area would be. Differences in levels, together with the intervening fences and trees, mean that the track cannot be seen from Sandy Leas Lane, and it is scarcely visible from the public footpath. Its compacted surface would remain unchanged. In my view, field tracks of this sort are typical in the countryside, and it makes a minimal impact on the character or appearance of this rural area.
9. In the light of the above, I have decided that all 3 elements of the appeal proposal would leave the character and appearance of the surrounding rural area unharmed. It therefore follows that these proposed developments, which I have already decided are for sport and recreation, are permissible under LP policy EN 13.

*The second issue – living conditions at Sandy Leas House*

10. In accordance with LP policy GP 1, I have assessed the effect of the proposed exercise area on the living conditions at Sandy Leas House, the nearest dwelling to the appeal site. The northern end of the garden adjoins the part of the appeal site where the proposed exercise area would be. A garage, a fence, and a line of evergreen trees provide screening. The owner of Sandy Leas House is concerned that the use of the exercise area would cause noise, disturbance and odours in his property.
11. Mr Murphy intends to use the exercise area for cooling down his trotting horses after they have been exercised on the roads. Mr Murphy's daughter might also use it from time to time to exercise her pony. In my view, it would be highly unlikely that these activities would worsen living conditions within Sandy Leas House itself, because it is 60m away. In the garden and garage near to the exercise area it is conceivable that horses or voices might be audible, and the smell of horses might be detectable. However, to my mind, sounds and smells would be rare and, if they did occur, they would be insufficiently loud or strong to make the garden and garage less pleasant places to be. Furthermore, planning conditions could prevent the use of external lighting, and ensure that the exercise area is used solely for private, not commercial, equestrian activities. This would prevent any intensification of its use.
12. I have therefore decided that the proposed exercise area would cause no material worsening of the living conditions at Sandy Leas House.

*Other matters*

13. I am aware that the track and the hardstanding have been the subject of enforcement actions. Appeal decisions in 2003 and 2005 required their removal. However, when these decisions were made the land was part of a horticultural holding (in 2003) and a residential gypsy site (in 2005). I do not feel unduly constrained by these earlier decisions because the use of the land has now changed and different considerations apply. I have looked at the situation afresh.
14. The Council takes the view that the proposed exercise area and the retention of the track are not strictly necessary. However, in my opinion, there is nowhere else on this steeply sloping site where Mr Murphy's horses could be cooled down after their lengthy training sessions on the rural lanes. They need to be able to walk around for about 45 minutes on a soft and enclosed surface, and prevented from eating or drinking; otherwise muscle strain or colic could result. It would be difficult for the horses to be led to the exercise area without using the 50m track. I am therefore of the opinion that the proposed exercise area and the retention of the track are necessary adjuncts to this specialised form of equine sport and recreation. Furthermore, I am also mindful of the fact that breeding and training trotting horses is an important part of Mr Murphy's Gypsy tradition and culture.
15. Whilst not critical to my decision, I have considered the appellant's claim that the activities at The Stables contribute to the diversification of the rural economy. Mr Murphy lives about 18 miles away, but he visits his horses every day at the appeal site, and uses the services of the local vet, the local shops,

the pub, and the local supplier of animal feed and bedding. This would undoubtedly be beneficial to these local businesses but, because Mr Murphy's horse training and horse dealing is not a commercial business, I take the view that it does not contribute to the diversification of the rural economy. The encouragement given to development of that sort, in LP policy EN 13, and Planning Policy Statement 7, is not therefore relevant in this particular case.

*Conclusion*

16. In the light of the above, I have reached the view that the proposed hay-barn and exercise area, and the retention of the access track, are acceptable and I have granted planning permission for them. In the interests of rural character, I have imposed conditions relating to the barn's external appearance, the boundary treatment of the exercise area, and the removal of various temporary structures. To protect living conditions at Sandy Leas House, I have prevented the installation of external lighting and any commercial equestrian use of the site. There are no trees in the vicinity of the proposed hay barn, so I have not imposed the tree protection condition suggested by the Council.
17. There is nothing else to outweigh the considerations that have led me to my decision that the appeal should be allowed, and planning permission granted subject to the conditions set out in the schedule below.

*Ruth V MacKenzie*

INSPECTOR

**Schedule of Planning Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) No development shall take place until details of the materials to be used in the construction of the external surfaces of the hay barn hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 3) No development shall take place until details of the boundary treatment around the exercise area have been submitted to and approved in writing by the local planning authority. The exercise area shall not be used until the boundary treatment has been carried out as approved.
- 4) Within 3 months of the completion of the hay barn hereby permitted the following items shall be removed from the site: the demountable horse box and small touring caravan in the stable yard, the 2 horse boxes in the field, and the portable toilet in the exercise area.
- 5) No external lighting shall be installed unless full details have first been submitted to the local planning authority, and written approval has been given. Any lighting shall be installed in accordance with the approved details.
- 6) The site shall be used for personal and private leisure use only, and shall not be used for any commercial equestrian activities such as livery or riding stables, or any other commercial equestrian enterprise.



## Costs Decision

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### Costs application in relation to Appeal Ref: APP/H0738/A/08/2061587 The Stables, Sandy Leas Lane, Elton, Stockton-on Tees, Cleveland TS21 1BT

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr T Murphy for a full award of costs against Stockton-on-Tees Borough Council.
- The Hearing was in connection with an appeal against the refusal of the Council of planning permission for a hay barn, an all-weather exercise area and the retention of an access track.

**Decision: The application fails and no award of costs is made.**

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#### The Submissions for the appellant

1. No credible explanation has been given as to why the equestrian use of the site is unacceptable in principle, or why the proposed development would be out of character with its surroundings, or why the neighbours' amenities at Sandy Leas House would be adversely affected. The Council has therefore failed to substantiate its reason for refusal.
2. The appellant offered to discuss the proposal with the Council's Planning Officer, but the offer was ignored. The Council has put undue weight on previous enforcement appeal decisions which were made at a time when the use of the land was entirely different. The Council has recently granted planning permission for a barn and stables on another site in the rural area. This is inconsistent. Taking everything into account, the Council has behaved unreasonably. The unreasonable behaviour has caused the appellant the unnecessary expense of instructing a planning consultant and bringing the matter to appeal.

#### The Response on behalf of the Council

3. Because of the decisions on the 2003 and 2005 enforcement appeals, it should not have come as a surprise to the appellant when his recent planning application was refused. It is accepted that the site is now used for equestrian purposes, but this does not justify the need for any further developments. Every site is different, and the fact that the Council has granted planning permission for a barn and stables elsewhere does not automatically mean that it should have granted planning permission for the proposed development at the appeal site. The Council has not been inconsistent. In all respects it has behaved reasonably, and an award of costs is not justified.
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**Conclusions**

4. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
5. In my view, the Council's written and verbal evidence to substantiate its reason for refusal was adequate. It has therefore complied with the provisions of paragraph 8 of Annex 3 to Circular 8/93. The visual effect of the proposed development, and its impact on neighbours' amenities, are largely matters of subjective opinion. The fact that I have taken a view contrary to that of the Council does not automatically mean that the Council has acted unreasonably. Nor do I consider that the Council should be criticised for being inconsistent. Every site is different, and the weight to be given to the material considerations will always vary from case to case.
6. Whether or not the refusal of planning permission should have come as a surprise to the appellant is not, to my mind, a determining factor. Paragraph 6 of Annex 1 to Circular 8/93 makes it clear that a pre-condition for an award of costs is unreasonable behaviour. I have already decided that the Council's behaviour has not been unreasonable. It therefore follows that the application for costs must fail.

*Ruth V MacKenzie*

INSPECTOR