

14/20/0016

MR PHILLIPS

Variation of Condition No. 03 (allow the commercial sale of birds of prey) of application 14/19/0022 on land opposite Broomhay, White Street, Ham

Location: LAND OPPOSITE, BROOMHAY, WHITE STREET, HAM, NR
TAUNTON, TA3 5NZ

Grid Reference: 328793.125116

Removal or Variation of Condition(s)

Recommendation

Recommended decision: Conditional Approval

Recommended Conditions (if applicable)

1. Notwithstanding the time limits given to implement planning permission as prescribed by Sections 91 and 92 of the Town and Country Planning Act 1990 (as amended), this permission (being granted under section 73A of the Act in respect of development already carried out) shall have effect from 2017.
Reason: To comply with Section 73A of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out in accordance with the following approved plans permitted under planning approval 14/19/0022:

(A4) DrNo. Location Plan
(A4) DrNo. Site Plan (Proposed)
(A4) DrNo. 001 Tool Shed (Proposed Eelevations)
(A4) DrNo. 002 Flight Pen (Proposed)
(A4) DrNo. 003 Elevations (Proposed)
(A4) DrNo. 004 Elevations (Proposed)
(A4) DrNo. Floor Plans (Proposed - Tool Shed and Flight Pen)

Reason: For the avoidance of doubt and in the interests of proper planning.

3. The development hereby permitted shall be used as a private aviary for the keeping, breeding, and sale of raptors bred on the site only. There shall be no other commercial and/or retail activity or ancillary retail activity of any kind.

Reason: In the interests of residential amenity, highway safety and flood risk in accordance with Policies CP8, DM1 & DM2 of the Taunton Deane Core Strategy.

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 or any order revoking and re-enacting the 2015 Order with or without modification), no fencing other than that expressly authorised by permission 14/19/0022 shall be carried out without the further grant of planning permission.

Reason: To prevent development that would harm the character and appearance of the area in accordance with Policies DM1 and CP8 of the Taunton Deane Core Strategy.

5. No lighting shall be installed on the site without the further grant of planning permission.

Reason: To prevent development that would harm the character and appearance of the rural area in accordance with Policies DM1 and CP8 of the Taunton Deane Core Strategy

Notes to Applicant

1. In accordance with paragraph 38 of the National Planning Policy Framework the Council has worked in a positive and pro-active way with the applicant and has negotiated amendments to the application to enable the grant of planning permission.

Proposal

The applicant wishes to amend condition 03 of permission reference 14/19/0022. There is an associated concurrent application relating to the adjacent aviary building under reference 14/20/0017.

Condition 03 states:

“The development hereby permitted shall be used as a private aviary for the keeping and breeding of raptors only. It shall at no other time be used in connection with any commercial and/or retail activity of any kind.

Reason: In the interests of residential amenity, highway safety and flood risk in accordance with Policies CP8, DM1 and DM2 of the Taunton Deane Core Strategy”.

The applicant has requested that the condition is amended to the following:

The development hereby permitted shall be used as a private aviary for the keeping, breeding, and commercial selling of raptors only. It shall at no other time be used in connection with any other commercial and/or retail activity of any kind.

The application in 2019 for the ‘flight pen’ stated that the use of the building is not for additional birds on the site but provides an exercise area for young birds. The agent has confirmed verbally under this application that the building would be used for activities ancillary to the breeding activities, such as housing young but also adult

birds that are not currently actively breeding.

The applicant states the following in support of the proposal:

- There is no intention for the public to visit the site. The sale of raptors is primarily undertaken online. Occasional visits may typically be once a year by an agent.
- Delivery of the raptors would happen around twice a year to Heathrow Airport with the majority of sales overseas.
- A small percentage would be retained for falconry/private use.
- There is no intention for any other sales from the site other than birds of prey.
- If required, numbers of visitations by the public could be controlled via condition.
- The aviary building could be used to accommodate 4 additional breeding pairs as a result of the condition being removed and this will not increase existing vehicular movements.
- There are no deliveries to the site now, and this will not change if permission is granted.
- There are no proposed opening hours as the site will not be open to the public. Anyone visiting the site would be by appointment only.
- There is an existing access into the site and there is sufficient space to accommodate a vehicle to park off road if there was a visitor or courier collection. There is also sufficient space to turn within the site.
- An area for parking within the site has never been requested or formed part of a planning application. Due to the future infrequent visits to the site a designated area for parking is not considered necessary.

Site Description

The application site concerns a parcel of land to the south of the main linear cluster of houses that run through Ham; a small hamlet situated adjacent to White Street. Ham itself lies approximately 0.5 miles south-east of the village of Creech St Michael.

The application site itself is triangular in shape and relatively flat. Drainage ditches surround the boundary of the site and there are numerous trees and other vegetation situated on the banks of the boundary. The land itself has been largely cleared of overgrown vegetation over recent months but two areas of tree planting have been maintained centrally within the site.

The site is accessible via White Street to the north and there is a vehicular access gate adjacent to the road.

The area is predominantly rural, with the majority of land surrounding the site used for agricultural purposes. The closest residential properties are situated to the north of the site on the opposite side of the road; the river Tone lies to the rear of these properties. The site itself is within a designated flood risk area and is situated within flood zones 2 & 3.

Relevant Planning History

14/16/0022- Erection of an aviary building on land opposite Broomhay, White Street, Ham, Creech St Michael- Permitted with conditions.

14/19/0022- Erection of 1 No. tool shed and 1 No. flight pen for birds on land opposite Broomhay, White Street, Ham- Permitted with conditions.

Consultation Responses

CREECH ST MICHAEL PARISH COUNCIL - I would advise that this application has been considered by the CSM PC and a decision was taken NOT TO SUPPORT for the following reasons;

The original planning application 14/16/0022 was granted, but only considered to be "acceptable" for approval by the Case Officer as the aviary was to enable the applicant to expand his birds of prey "hobby" therefore specifying the number of 8 pens, (2 for housing young birds, 2 pens for retired birds, 3 pens could potentially house breeding birds with 1 pen remaining as spare), all the pens were designed to a specification suitable specifically for the breeding of peregrine falcons. The Case Officer's Report stated "Peregrine falcons are particularly secretive birds which would not generally generate significant levels of noise within an aviary type of environment. To ensure potential noise nuisance is not exacerbated beyond unacceptable levels, it is deemed reasonable to restrict the number of breeding birds housed within the aviary. It is therefore considered that a condition should be attached to restrict the number of birds to maximum of 8 breeding pairs."

The Agent's proposed wording of a Condition on the 27th April 2020 of "The development hereby shall be used as a private aviary for the breeding, and sale of birds of prey only. There shall be no other commercial and/or retail activity of any kind. The majority of all sales will take place on line for overseas sales. It is expected that from within the UK sales would not exceed that of 6 birds". This would not be acceptable as the keeping, specifically breeding to sell/selling would constitute a "commercial" operation, as the applicant would be selling in the open world market, and it not therefore be "private possession" use.

Removing the restriction on peregrine falcons and permitting any types of birds of prey, together with removing the restriction of a maximum of 8 breeding pairs could result in residential amenity of noise nuisance occurring and would be in breach of policy DM2 of the Core Strategy.

There is insufficient information given in the application regarding the proposed numbers/types of breed/housing/signage/visitor parking/opening hours. For the aforementioned reason the Case Officer was very careful to include restrictive conditions as this "private" aviary is situated outside the defined settlement limits of the area, where new forms of development are generally resisted. It is the CSM's PCllrs considered opinion that had this planning application been submitted as "commercial" in 2016 it would have been refused, and the PCllrs cannot see any justification to now remove Conditions 05 and 06.

SCC - TRANSPORT DEVELOPMENT GROUP - Standing Advice applies.
Environmental Health - all Areas including Housing Standards - I'm afraid it's very hard to comment on the potential noise impact of something like this.

There is no information about noise from the birds and so no way to make an objective assessment of whether or not the noise would disturb any neighbours. (and I'm afraid I have no experience of noise from falcons, nor does anyone else in Env Health)

Environmental Health have not had any complaints about the premises and so have had no reason to visit or make any assessment of the noise.

It is likely that more birds would mean more noise, but as there are 8 pair there already it's hard to say if another 4 pairs would make a notable difference. The issue is with this sort of noise is that it's very intermittent and the impact is subjective.

Comments under the original application (14/16/0022):

Following verbal discussions with the EH Officer, it was agreed that the number and species of birds proposed was highly unlikely to cause any significant noise nuisance. It was also confirmed that no noise complaints have ever been received from the applicants' neighbours, where birds of prey are currently kept at home (in excess of 10 years). EH have since confirmed in writing that they have no objection to the proposal.

ENVIRONMENT AGENCY - No comments received.

LANDSCAPE - No comments received.

Representations Received

Following consultation representations have been received from 10 nearby dwellings objecting to the proposal. The following objections are raised:

- Lack of detail within the applications on various matters such as highways, vehicular movements, hours of operation, predicted bird numbers, alterations to buildings etc.
- Existing number of vehicular movements and birds create a significant amount of noise
- Increase in vehicle movements
- No certainty on the upper limit for bird numbers.
- Natural England Licensing does not require consideration of neighbour amenity or whether a proposal is acceptable in planning terms.
- Lack of detail on parking arrangements for customers, including whether any hardstanding is proposed. Under the original application, the EA required that the ground remains permeable.
- Concerns over highway safety- Site is accessed via a busy road used by pedestrians and cyclists. The road is a national cycle route.
- Site is visible from the road. This is contrary to the original committee recommendation.
- Automatic bird feeders would increase the noise impact
- Possibility of lighting being proposed
- This would be a new business venture/no detail of existing business.
- Concerns over the principle of development against planning policy DM2- the

proposed use is not agricultural. The proposed use is a Class B business use.

- There are building materials and a digger stored on the site.
- The original application required evidence that the proposed use would be agricultural to comply with the NPPF and Policy DM2 of the Local Plan. The application does not address the requirements of DM2 in relation to business uses in the countryside.
- The application does not indicate details on the business such as whether the eggs are incubated on site, how many breed per year.
- Conditions should limit the number of vehicular movements to 4 per year and should limit the number of breeding pairs to 12.
- Conditions from the original consents including landscaping, fencing and lighting should be restated should permission be granted.
- A condition should exclude parking, serving or deliveries within the redline boundary of the site.

Planning Policy Context

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise.

The development plan for Taunton Deane comprises the Taunton Deane Core Strategy (2012), the Taunton Site Allocations and Development Management Plan (2016), the Taunton Town Centre Area Action Plan (2008), Somerset Minerals Local Plan (2015), and Somerset Waste Core Strategy (2013).

The Creech St Michael Neighbourhood Plan 2018-2028 is a material consideration.

The National Planning Policy Framework 2018 (the NPPF) is a material consideration

Relevant policies of the development plan are listed below.

CP8 - Environment,
DM1 - General requirements,
DM2 - Development in the countryside,
ENV1 - Protection of trees, woodland, orchards and hedgerows,
ENV2 - Tree planting within new developments,

Local finance considerations

Community Infrastructure Levy

The development is not CIL liable.

Determining issues and considerations

Principle of development

The application site is situated outside the defined settlement limits of the area,

where there are greater restrictions over development compared to within defined settlement limits. The use of the site will not change significantly, however the condition imposed on the original permission would prevent the applicant from selling birds of prey bred on the site. Policy DM2 of the Taunton Deane Core Strategy relates to development within the open countryside. Under the original permission, although the aviary building did not fit into the list in DM2 of development categories that will be supported in the countryside, it was considered to be acceptable as it would be similar in nature and character to agricultural development and was a use for which a countryside location is appropriate.

On the basis of the information provided by the applicant, this proposal would not fundamentally alter the character of the site and the nature of the use, although the applicant would be able to sell their birds. It is understood that sales would take place online and by similar communication. The site would not be open to members of the public and there would be no retail sales from the site. Potential purchasers or agents would visit by appointment only.

Concerns have been raised by neighbours in relation to the lack of compliance with Policy DM2. As mentioned above, the use is considered to be similar in character to many agricultural uses. Although there is not explicit support within Policy DM2 for the proposal, this policy does not state that uses not included within the list should be refused.

The nature and scale of the use is considered to be acceptable in this rural location.

The NPPF refers to 'land-based rural businesses in the countryside and states:

"Planning Policies and decisions should enable:

- a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings;
- b) the development and diversification of agricultural and other land-based rural businesses;

(para 83 a and b)

There is no definition of a land based enterprise, however it considered a broad category that would include other enterprises outside agriculture, forestry and horticulture such as this proposal.

Having regard to the above considerations it is considered that the proposal is acceptable in principle subject to assessment against the policy requirements of Policy CP8. These considerations are set out in the relevant sections of the report below.

Landscape/Visual amenity

The building is set away from the road and were previously considered to be acceptable under the original application. This proposal would not result in any direct alterations to the physical characteristics of the site and is therefore considered to be acceptable in this regard. The proposal would therefore comply with Policies DM1

and CP8 of the Taunton Deane Core Strategy.

Residential amenity

The 'flight pen' building is located to the south of the aviary building and the closest neighbouring properties are situated on the opposite side of White Street, with the closest front garden boundary being situated approximately 55m from the building and the closest front elevation approximately 75 metres away.

Comments have been raised in relation to noise. The Environmental Health Department have commented that noise from falcons is difficult to assess as there are no known guidelines. Information from the Hawk Conservancy Trust (HCT) under the original application confirmed that peregrine falcons are particularly secretive birds, which would not generally generate significant levels of noise within an aviary type environment. Under the original application, the Environmental Health department also commented that the applicant had kept birds of prey in their garden in excess of 10 years with no recorded complaints from neighbours about noise.

This application, in tandem with the concurrent application under reference 14/20/0017 will allow the applicant to sell birds that are raised on the site, other than this, there are no other changes proposed to the way the site is currently operated. The applicant has stated that birds are kept within the flight pen building which are ancillary to the breeding pairs within the aviary, for example, young birds or mature birds that are currently not breeding. Notwithstanding this, it is noted that there were no restrictions on the flight pen building under the original consent in terms of either numbers or type of bird. Given the lack of current restrictions, it is not considered reasonable to introduce additional restrictions via planning conditions on this building to be able to justify the sale of birds raised on the site. Planning permission will be required should the applicant wish to develop the site further such as with new buildings and this will enable further scrutiny on the issue of residential amenity.

The Environmental Health Department have commented that there have been no noise complaints relating to this site. In terms of the impact of the proposal, they further comment that it is very difficult to measure and assess impacts from potential intermittent noise. No objections are raised by Environmental Health. It is further noted that the Environmental Health Department have enforcement powers themselves to investigate and enforce against uses that generate undue noise and harm residential amenity. It is therefore in an operators interests to operate a site in an appropriate way.

Overall, the amendment to condition 05 to allow commercial sales is considered to be acceptable subject to the following wording which allows the sale of birds bred on the site only and excludes ancillary retail activity from the site:

The development hereby permitted shall be used as a private aviary for the keeping, breeding, and sale of raptors bred on the site only. There shall be no other commercial and/or retail activity or ancillary retail activity of any kind.

Reason: In the interests of residential amenity, highway safety and flood risk in accordance with Policies CP8, DM1 & DM2 of the Taunton Deane Core Strategy.

Subject to the above condition the proposal is considered to have an acceptable

impact on residential amenity.

Highways

There is an existing access available to the site via White Street to the north but no changes are proposed to this access point itself. The original application was approved without any formal hard surfacing to facilitate parking and turning as it was considered that the use would be very low key and therefore these facilities would not be necessary.

On the basis of the information provided, these considerations equally apply to this application. The sale of birds from the site would not give rise to an appreciable increase in vehicular movements. There are no retail activities that can be carried out on the site and visits are considered to be infrequent and by appointment only. On the basis of these considerations there would be a minimal impact on highway safety and therefore the application is considered to be acceptable in this regard.

Ecology

The County Ecologist has commented that they have no comments to make on the application. Overall it is considered that there would be no impacts on ecology and protected species as a result of the proposal. Accordingly it is considered that the proposal would comply with Policy CP8 of the Taunton Deane Core Strategy.

Flood risk

The application site is situated within flood zones 2 & 3, which is identified as an area at risk of flooding. The proposal would not have any implications in terms of flood risk. Accordingly it is considered that the proposal would comply with Policy CP8 of the Taunton Deane Core Strategy.

In preparing this report the planning officer has considered fully the implications and requirements of the Human Rights Act 1998.