

Appeal Decision

Hearing held on 4 October 2016

Site visit made on 4 October 2016

by Joanna Reid BA(Hons) BArch(Hons) RIBA

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

Decision date: 04 November 2016

Appeal Ref: APP/Q1153/W/16/3149586

Holly Berry, Thorndon Cross, Okehampton EX20 4NE

- 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 Ms D Winther against the decision of West Devon Borough Council.
 - The application Ref 00583/2015, dated 20 May 2015, was refused by notice dated 1 April 2016.
 - The development proposed is erection of charity kennel building and cattery buildings.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made before the hearing by Ms D Winther against West Devon Borough Council. This application is the subject of a separate Decision.

Main issues

3. From my inspection of the site and its surroundings, from the representations made and from what I heard at the hearing, the main issues are the effect that the proposed development would have on:
 - The living conditions of the occupiers of Asgard with regard to noise and disturbance, and
 - The character of the surrounding rural area.

Reasons

Living conditions

4. The irregularly-shaped appeal site includes an area of land near the dwelling at Holly Berry. It is reached by the existing access to Holly Berry from the A3079. The site is outside any settlement limits defined in the *West Devon Borough Council Local Plan Review* (LP) so, it is, in policy terms, in open countryside. However, the site is fairly close to a number of loosely scattered dwellings at Thorndon Cross, and other than Holly Berry, the nearest dwelling is Asgard, which is set in grounds on the opposite side of the A3079. The proposal includes a kennel building for no more than 9 dogs with 2 isolation kennels and staff facilities, a cattery for about 11 cats, and a cattery or 'cat hotel' for about 9 cats. The Council's concerns relate mainly to barking from the dogs.

5. The kennel building, at its closest point, would be sited roughly 120 m from the dwelling at Asgard. The dogs would mainly be exercised on adjoining land controlled by the appellant. The kennel building would be constructed to mitigate sound break-out from the building, and its layout and proposed management aims to provide a relatively stress-free environment for the dogs to reduce the likelihood of their barking.
6. Paragraph 123 of the *National Planning Policy Framework* (Framework) explains that planning decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development, and mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions. Relevant LP policy is broadly in line with these aims.
7. The appellant's acoustic consultant's noise impact assessment was carried out generally in accordance with British Standard BS 4142:1997 *Method for Rating industrial noise affecting mixed residential and industrial areas* (the previous BS), which was current when it was made. It recommends the implementation of a noise management plan to mitigate and reduce the sound of barking in line with the second bullet of Framework paragraph 123, and concludes that it is unlikely that noise from the kennels would be of high enough significance to give the occupiers of the nearest affected dwelling, at Asgard, cause for complaint. The appellant's acoustic consultant confirmed at the hearing that his more recent computer modelling supported that view.
8. The review by the local residents' acoustic consultant (LRAC) takes account of British Standard BS 4142:2014 *Methods for rating and assessing industrial and commercial sound* (the current BS), which has superseded the previous BS. The current BS includes commercial as well as industrial sound, and it puts more emphasis on the character and impulsiveness of sound, recognising that some sounds may have a higher potential for noise impact than that identified using the previous BS. It also allows the context to be taken into account.
9. These British Standards were not drafted with the same aims as planning policy and they are not intended to have the same role and formal effect as Development Plan policies. They are also not directly applicable to kennel design, which has been recognised by the appellant's and the local residents' acoustic consultants, who have had regard to other publications and guidance.
10. The grounds of appeal say that barking dogs would not cause a nuisance, but statutory nuisance is subject to other legislation and it is not dependent on assessment on the basis of the British Standard. Taking into account matters including the appellant's management practices, the environmental health officer did not object to the proposal. However, amongst other things, the appellant's management strategy suggests that trees and hedges would provide an acoustic screen. Due to the air spaces around the leaves, branches and trunks, they would offer fairly little attenuation for barking sounds. So, the appellant's management strategy would be unlikely to achieve all of its aims.
11. Whilst the current BS excludes 'domestic animals', such as in noisy neighbour dog barking disputes, the proposal would be more akin to a commercial kennel, so the current BS has some relevance. The LRAC's review found that, amongst other things, when using other supporting techniques and methodology, that there is a potential for annoyance as a result of dog barking which may be considered to be out of context with the area. There are no commercial or

other kennel enterprises nearby, and, having regard to the nearby public right of way and dwellings, some transient barking would be expected in various places at times in the relatively peaceful locality. By contrast, barking from one or more dogs, for short or long periods, repeated time after time, in roughly the same place, would be out of context with the area.

12. The dogs would be unlikely to bark all of the time. However, barking has a character that distinguishes it from other sounds in the environment. It is an expected response from dogs, and it is unlikely that they would not bark at all. Whilst the appellant's acoustic consultant's noise impact assessment considers dogs barking for part of an hour averaged over the hour, the LRAC considers the period of barking itself. The LRAC's approach is preferred as the quieter periods between barking would be unlikely to make up for the barking events.
13. All 9 dogs would be unlikely to bark at the same time, and this was taken into account in the LRAC's evidence to the hearing. Moreover, the management strategy identifies rest times for the dogs. As the barking would be likely to occur intermittently, it would be more disruptive than, say, the sound from the generally consistent hum of traffic along the A3079. So, it would be intrusive.
14. The appellant's acoustic consultant's noise impact assessment considers the 9 dogs in their kennels, with the doors and windows shut at night, and one or 2 dogs at a time being exercised on the appellant's land about 220 m from the dwelling at Asgard during the day only between 0800 hours and 1800 hours. It does not consider dogs kennelled in the day, because if all of the doors and windows in the kennel building were to be shut, and if the double-glazing were to be the weakest link in the building envelope for sound, the building envelope would be sufficient to mitigate the sound of barking. Thus, barking from the kennelled dogs would not have an adverse noise impact on the occupiers of Asgard during the day or at night.
15. However, as well as other openings in the building, each kennel would include a sliding external door that could be opened in lockable increments to provide free flow of air. The LRAC explained that, using the appellant's acoustic consultant's measured background noise data, if the sliding doors to the kennel building were to be partly opened for cooling or ventilation during the day, and about 60% of the 9 dogs were to bark, an adverse noise impact would occur at Asgard. If about 60% of the 9 dogs were to bark, and the doors were to be partly opened at night, or fully opened during the day, there would be a significant adverse noise impact at Asgard. The kennel building could have some screening effect, and there could be times when not all of the sliding doors would be fully or partly opened at the same time, which would reduce the sound level. Even so, little supporting data was put to me to show what those effects would be.
16. The sliding doors would not need to be opened if acoustically attenuated mechanical ventilation or acoustically attenuated air conditioning systems were to be installed. The appellant also offered to accept a condition for the sliding doors to the kennels to be fixed shut or to be treated as windows, which could also be fixed shut. However, the need for such measures for a kennel building suggests that the development would not be in a suitable location.
17. Moreover, the appellant's acoustic consultant's noise impact assessment does not consider dogs barking when being walked between the appellant's field and the kennel building, which, at its furthest point, would be roughly 150 m from

Asgard. Exercise sessions for dogs, singly or in pairs, would occur one after another over fairly long periods during the day, when nearby occupiers would be likely to spend time in their gardens. During hot weather it would not be reasonable to expect nearby occupiers to keep the doors and windows in their homes closed to mitigate sound from barking dogs. The LRAC's evidence given at the hearing was that there would be an adverse to significant adverse noise impact at Asgard due to barking during exercise from pairs of dogs anywhere in the exercise field. The dogs would not be likely to bark for all of the time, and some may barely bark at all. Even so, due to the likelihood of fairly frequent intermittent barking, and the number and overall length of the daily exercise sessions, the occupiers' quiet enjoyment of their home and garden at Asgard would be unacceptably eroded.

18. Whilst the appellant says that every dog would be subject to assessment, including its propensity to bark, and that the management strategy would be implemented, a future occupier may wish to run the enterprise in a different way. The number of dogs could reasonably be controlled by condition. However, conditions seeking compliance with the appellant's management strategy and for the sliding doors to be fixed shut or replaced by fixed shut windows could place an unreasonable burden on a future occupier, so it would not be reasonable to impose them.
19. Therefore, I consider that the proposal would harm the living conditions of the occupiers of Asgard with regard to noise and disturbance. It would be contrary to LP Policy BE17 which aims for the amenity of users of surrounding land to not be put at risk from noise, the thrust of LP Policy ED16 which seeks to permit employment generating enterprises where there would be no significant adverse impact on the amenities of nearby residents, and the Framework, which seeks a good standard of amenity for all existing and future occupants of land and buildings.

Rural character

20. The site is not within a nationally designated landscape. The surrounding area has a generally peaceful rural character, despite traffic noise from the A3079. However, having regard to farming activity in the local area, which contributes positively to the intrinsic character of the countryside, there was little to show that it is highly prized for its tranquillity.
21. The long roughly north boundary of the land under the appellant's control, where the dogs would be mainly exercised, adjoins a public right of way. Users of this public right of way would include walkers, cyclists and horse-riders, some of whom would be accompanied by dogs. Whilst their comings and goings may cause one or 2 dogs being exercised on the appellant's land to bark, this would be little different to their passing the grounds of rural dwellings where dogs there may also bark. The periods of barking may be a little longer, due to the length of the boundary, and more frequent, due to the number of exercise sessions, and thus, undesirable. However, such sounds and activity would not be unexpected in the wider rural area, and its impact on the right of way users' travels would be transitory.
22. The kennelled dogs would also bark from time to time. However, whatever the position of the sliding doors, due to the length of the building and its distance from the public right of way, and because some kennels would not be

unacceptably out of place in the wider countryside, it would have little harmful effect on most users' generally quiet enjoyment of the public right of way.

23. Some of the Ashbury golf course facilities are set on rising land some distance from, and in clear line of sight of, the appellant's exercise field. Due to the distance and the intervening topography, barking associated with the proposal would probably be audible from parts of the golf courses for some of the time. There would be a change. However, little evidence has been put to me to show that the barking sound would be so loud or so intrusive that it would unacceptably detract from the users' enjoyment of the golf course facilities and their surroundings. Although its nature and pattern may not reflect that of farming activity, or of traffic on the A3079, some sounds and activity from rural enterprises would reasonably be expected in the surrounding countryside.
24. Thus, I consider that the proposal would not harm the character of the surrounding rural area. It would satisfy LP Policy BE17 which aims for the quality and enjoyment of the environment to not be damaged or put at risk from noise, the thrust of LP Policy ED16 which seeks to permit employment generating development where there would be no significant adverse impact on the rural character of the surrounding countryside, and LP Policy NE10 which aims for development within the countryside to not cause unacceptable harm to the distinctive landscape character of the area, and the Framework which aims to recognise the intrinsic character of the countryside.

Other matters

25. The proposal would create some employment, but as there are no shops and few local services nearby, Thorndon Cross would not amount to a rural settlement in terms of LP Policy ED16. The enterprise could support local services, including for feed, maintenance and veterinary services, and the 'cat hotel' would provide income for the appellant and help to support the other facilities, but, together, the economic benefits would be modest. There could be training places for roughly 3 animal care or similar trainees each day. However, as there was little evidence that most or all of these would be taken up by students or local employees in a pattern that would allow the enterprise to be run effectively, the community benefit attracts little weight. Thus, the proposal would not provide the overriding economic or community benefit sought by LP Policy NE10. The other matters raised by the appellant have also been taken into account, including the charitable aims of part of the scheme, but they would not outweigh the harm identified in the first main issue.

Conclusions

26. Whilst the proposal would not harm the character of the surrounding rural area, the harm that it would cause to the living conditions of the occupiers of Asgard is a compelling objection to the scheme. For the reasons given above and having regard to all other matters raised, the appeal fails.

Joanna Reid

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Debbie Winther	Appellant
Ian Little	Appellant's agent, Exbourne Planning Services
Sean Bruce BEng CEng MIMechE MIOA	S B Consulting Engineering & Acoustics Limited

FOR THE LOCAL PLANNING AUTHORITY:

Tom French	Specialist (Development Management), West Devon Borough Council
Cllr Caroline Mott	Ward Councillor, West Devon Borough Council

INTERESTED PERSONS:

Cllr John Hockridge	Ward Councillor, West Devon Borough Council, and Sourton Parish Council chairman
Richard Leonard	Local resident
Rob Shaddick MSc MIOA	Local residents' acoustic consultant, Soundguard Acoustics Ltd
Jack Malcolm	Local resident
Chris Harrisson-Daniels	Local resident
Will Harrison	Local resident
Derek Payne	Local resident
Jenny Watkinson	Local resident
Mary Malcolm	Local resident
Judy Waterer	Local resident
Gill Payne	Local resident

DOCUMENTS PUT IN AT THE HEARING

- 1 Mr Leonard's statement and appeal decision ref APP/Q1153/A/12/2188992
- 2 Mr Malcolm's statement and road plan

DOCUMENT PUT IN AFTER THE HEARING¹

- 3 Mr Shaddick's updated notes for the hearing

¹ There were no copying facilities at the hearing venue