



Appeal Decisions

Hearing Held on 27 June 2017

Site visit made on 27 June 2017

by Andrew R Hammond MSc MA CEng MIET MRTPI

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

Decision date: 04 August 2017

Appeal A Ref: APP/D3315/C/16/3149290

Fairfield Stables, Moor Lane, Churchinford, Taunton, Somerset TA3 7RW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms S Lock against an enforcement notice issued by Taunton Deane Borough Council.
 - The enforcement notice, numbered E/0196/10/15 was issued on 17 March 2016.
 - The breach of planning control as alleged in the notice is without planning permission the change of use of the site from agricultural use to domestic use by the stationing of a mobile home that is being used together with a stable building as a single residential unit on the site.
 - The requirements of the notice are:-
 - (i) Cease using the mobile home for residential use;
 - (ii) Remove the mobile home from the site;
 - (iii) Cease using the stable building for residential use; and
 - (iv) Remove from the stable building all residential and domestic equipment and materials associated with the domestic use.
 - The period for compliance with the requirements is 3 months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) & (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/D3315/W/3172566

Fairfield Stables, Moor Lane, Churchinford, Taunton, Somerset TA3 7RW

- 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 S Lock against the decision of Taunton Deane Borough Council.
 - The application Ref 10/16/0028, dated 22 November 2016, was refused by notice dated 3 February 2017.
 - The development proposed is change of use of the land and buildings from equine to commercial dog breeding business and retention of mobile home for use as a temporary workers dwelling.
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Procedural Matters

1. The lawful use of the land at the appeal site is equestrian and it is not proposed that use would cease entirely. Both the enforcement notice (Appeal A) and the description of the development proposed (Appeal B) should refer to a change of use to a mixed use including equestrian use.
2. No prejudice would be caused to any party by the correction of the allegation in the appeal A enforcement notice to read 'without planning permission the

material change of use of the site from equestrian to a mixed use of equestrian and residential use by the stationing of a caravan that is being used together with a stable building as a single residential unit on the site.

3. The description of the development in Appeal B includes the 'retention of mobile home'. Retention is not development. I have determined the appeal as being against refusal of planning permission for development already carried out in accordance with s73A of the Town and Country Planning Act. Furthermore, 'mobile home' is not defined for planning purposes but the structure in question is a caravan. I have therefore adopted the description of the proposed development in Appeal B as 'change of use from equestrian use to a mixed use of equestrian, a commercial dog breeding business and the stationing of a caravan for residential purposes.' The matter of the temporary nature of the stationing of the caravan is appropriately controlled by condition.

Decision Appeal B

4. The appeal is allowed and planning permission is granted for change of use from equestrian use to a mixed use of equestrian, a commercial dog breeding business and the stationing of a caravan for residential purposes at Fairfield Stables, Moor Lane, Churchinford, Taunton, Somerset TA3 7RW in accordance with the terms of the application, Ref 10/16/0028, dated 22 November 2016, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans;
 - i) Drawing number 200.03 Rev C Site location and block plan
 - ii) Drawing number 200.04 Rev B Site plan as proposed
 - iii) Drawing number 200.05 Rev A Plans and elevations as proposed
 - iv) Drawing number 200.09 Proposed plans and elevations
 - v) Drawing number 200.10 Indicative floor plans and elevations.
 - 3) The use of the site for the stationing of a caravan for residential purposes, hereby permitted, shall be for a limited period being the period of three years from the date of this decision. The use hereby permitted shall be discontinued and the land restored to its former condition on or before three years from the date of this decision in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.
 - 4) The occupation of the caravan shall be limited to a person solely or mainly working, or last working, in the commercial dog breeding business at Fairfield Stables, Moor Lane, Churchinford, Taunton, Somerset TA3 7RW, or a widow or widower or surviving civil partner of such a person, and to any resident dependants.
 - 5) No dogs other than those kept for breeding purposes shall be kept on the site and the number of dogs shall be limited to no more than 15 breeding bitches and their puppies awaiting sale.

Decision Appeal A

5. It is directed that the enforcement notice be corrected by the deletion of the breach of planning control alleged and the substitution thereof by 'The breach

of planning control as alleged in the notice is without planning permission the material change of use of the site from equestrian to a mixed use of equestrian and residential use by the stationing of a caravan that is being used together with a stable building as a single residential unit on the site.'

6. Subject to this correction the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended. Reliance is placed on s180 of the Act which states that where after the service of a copy of an enforcement notice planning permission is granted before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.

Appeal B Main Issues

7. The main issues in this appeal are the effect of noise disturbance on the Blackdown Hills Area of Outstanding Natural Beauty (AONB), with particular regard to tranquillity, and the functional requirement for residential occupation.

Appeal B Reasons

8. The appeal site is located approximately 400m from the edge of the village of Churchinford within the Blackdown Hills AONB. The nearest residential property is Fairhouse Farm some 100m to the south east on the opposite side of Moor Lane. The next nearest property is some 200m to the west along Moor Lane.
9. The authorised use of the appeal site is equestrian and planning permission for the provision of an occupational dwelling in the form of a mobile home for a period of three years was granted on appeal in September 2009.
10. The appellant currently operates a commercial dog breeding business from the appeal site and the planning application sought planning permission for that business along with permission to site the existing, but now unauthorised, mobile home (caravan) on the site for residential purposes in association with the dog breeding business.
11. An existing building in the north west of the site, adapted and extended with penned runs is proposed for the housing of the dogs (replacing temporary kennels and runs closer to Moor Lane) and an isolation kennel is proposed in one of the existing stables. A new solid wall to the south east of the runs along with a new earth bund screen is proposed to the south east of the runs to attenuate the propagation of any noise towards Fairhouse Farm.
12. The Council contend that the proposal would introduce noise to the AONB contrary to Policies CP 8 and DM 1 of the Taunton Deane Core Strategy (CS). CS Policy CP 8 is a general core policy aimed at conserving and enhancing the natural environment. The policy states that the Borough Council will conserve and enhance the natural and historic environment and will not permit development proposals that would harm these interests or the setting of the towns and rural centres unless material factors are sufficient to override their importance. CS Policy DM 1 sets out a number of criteria to be met by new development, including criterion (e) which seeks to prevent noise pollution or nuisance.
13. Clearly the breeding of dogs has the potential to introduce noise which is not capable of strict control. The Council contend, therefore, that the proposed

development has the potential for significant detriment to the tranquillity of the AONB, one of its principal attributes. The AONB Management plan has the following objectives and policies related to tranquillity; The Blackdown Hills landscape is valued as a place where a sense of tranquillity can be enjoyed free from man-made noise and visual intrusion (Objective LC 3); support and promote initiatives for the understanding of tranquillity and encourage the quiet enjoyment of the AONB. (Policy LC 3/A); and support measures to conserve and enhance tranquillity and dark skies. (Policy LC 3/B).

14. The parties agree that there is no objective guidance on the subject of tranquillity or a consistent application of approach. The appellant, however, has produced an assessment based on a numerical methodology assigning weight to various positive and negative visual and aural aspects, utilising the Cranborne Chase and West Wiltshire Downs AONB Tranquillity Mapping Ground Truthing and Methodology (December 2009). Given that this methodology is not generally recognised I have given the results little weight in the determination of the appeal.
15. The likely receptors of any noise resulting from dogs barking are walkers along Moor Lane or the occupiers of Fairhouse Farm, some 100m away. Any noise emanating in that direction, from dogs within the kennels and runs, would be constrained due to the orientation of the building, the proposed wall to the south east and bund. The dog exercise area would be located further to the north away from the road. Some barking noise may be carried over the valley to the north but any receptors would in all likelihood be sufficiently distant not to be caused nuisance.
16. Furthermore all dogs kept at the premises would be breeding dogs and would be used to their environment and local circumstances. Although some may bark in the presence of strangers, as witnessed during the site visit, they would be less likely to be distressed than dogs in boarding kennels. The number of dogs can be controlled by condition as can a restriction ensuring that only the 'resident' dogs, kept for breeding purposes, are housed on the appeal site.
17. Whilst there remains the potential for a degree of barking to be audible in the immediate vicinity, any nuisance and detriment to tranquillity would be limited.
18. The National Planning Policy Framework (the Framework) sets out a presumption in favour of sustainable development, sustainability having three dimensions,; economic, environmental and social. Noise disturbance clearly weighs against environmental sustainability and potentially social sustainability.
19. In relation to noise, the Framework states, at paragraph 123 that planning policies and decisions should aim to avoid noise from giving rise to significant adverse impact; referring to the Noise Policy Statement for England (Defra 2010) (NPSE). That document explains that there are two established concepts from toxicology that are currently being applied to noise impacts, for example, by the World Health Organisation. They are:
NOEL – No Observed Effect Level
This is the level below which no effect can be detected. In simple terms, below this level, there is no detectable effect on health and quality of life due to the noise.
LOAEL – Lowest Observed Adverse Effect Level

This is the level above which adverse effects on health and quality of life can be detected.

and that extending these concepts for the purpose of this NPSE leads to the concept of a significant observed adverse effect level.

SOAEL – Significant Observed Adverse Effect Level

This is the level above which significant adverse effects on health and quality of life occur.

20. NPSE adds that it is not possible to have a single objective noise-based measure that defines SOAEL that is applicable to all sources of noise in all situations. Consequently, the SOAEL is likely to be different for different noise sources, for different receptors and at different times. It is acknowledged that further research is required to increase our understanding of what may constitute a significant adverse impact on health and quality of life from noise. However, not having specific SOAEL values in the NPSE provides the necessary policy flexibility until further evidence and suitable guidance is available.
21. The first aim of the NPSE states that significant adverse effects on health and quality of life should be avoided while also taking into account the guiding principles of sustainable development. The second aim of the NPSE refers to the situation where the impact lies somewhere between LOAEL and SOAEL. It requires that all reasonable steps should be taken to mitigate and minimise adverse effects on health and quality of life while also taking into account the guiding principles of sustainable development.
22. The third aim of the NPSE seeks, where possible, positively to improve health and quality of life through the pro-active management of noise while also taking into account the guiding principles of sustainable development, recognising that there will be opportunities for such measures to be taken and that they will deliver potential benefits to society. The protection of quiet places and quiet times as well as the enhancement of the acoustic environment will assist with delivering this aim.
23. The proposed development would result in some noise impact in Moor Lane and at Fairhouse Farm. Whilst this could be above the 'LOAEL' it would not reach the level where it would have significant adverse effects on health and quality of life. Measures have been incorporated into the proposal to mitigate adverse effects.
24. It is not possible to predict or place strict controls on the level of noise resulting from barking dogs. However by restricting the operation to housing only breeding dogs and limiting the numbers by condition, it would be possible to limit the likely levels of noise to that which would not adversely affect the tranquillity of the AONB. In that event the proposed development of the commercial dog breeding business would not be contrary to the development plan policies cited above or with the Framework.
25. CS Policy DM 2 allows for affordable housing in rural areas to meet an identified local need which cannot be met in the nearest identified rural centre. It is a condition of the licence required for a commercial dog breeding establishment that there is a residential presence on the site to ensure the health and wellbeing of the dogs. The appellant has demonstrated that the commercial

business is economically viable but for the period during which the viability is being fully tested a temporary dwelling in the form of a caravan is justified.

26. For the reasons given above I conclude that Appeal B should be allowed.

Conditions

27. A condition requiring the development to be carried out in accordance with the approved drawings is necessary in the interests of proper planning.

28. A condition requiring the occupation of the caravan to be limited to a person involved the commercial dog breeding business and to be for a temporary period of 3 years is necessary given the justification for the development.

29. A condition limiting the number of breeding bitches kept on the site is necessary to limit the potential for noise disturbance.

Appeal A Reasons

The Ground (a) Appeal

30. A ground (a) appeal seeks planning permission for what is alleged in the notice (in this case as corrected), namely the material change of use of the site from equestrian to a mixed use of equestrian and residential use by the stationing of a caravan that is being used together with a stable building as a single residential unit on the site. There is no mention in the enforcement notice of the commercial dog breeding business.

31. The justification for the siting of the caravan for residential purposes is based upon the commercial dog breeding business and any planning permission granted as a result of allowing the ground (a) appeal could not be subject to a condition requiring occupation to be limited to a person involved in an unauthorised business.

32. Therefore, notwithstanding the above decision on Appeal B Appeal A is dismissed and reliance is placed on s180 of the Act which states that where after the service of a copy of an enforcement notice planning permission is granted before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.

The Ground (g) Appeal

33. Under ground (g) the appellant pleads that 3 months would be insufficient time to relocate and clear the site in accordance with the requirements of the notice, particularly given the need to relocate the dogs.

34. The enforcement does not require the removal of the dogs from the site, albeit that their removal would be necessitated by the appellant vacating the site.

35. However, provided that the appellant carries on the commercial dog breeding business for which purpose the dogs are kept on the site, the requirements of the notice shall cease to have effect.

36. For the above reasons the Appeal A on ground (g) fails.

Andrew Hammond

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr James Whilding (Acorus)

Ms Laura Wall (Acorus)

Ms S Lock

Mr S Liddle

FOR THE LOCAL PLANNING AUTHORITY:

Ms Ann Dunford (Taunton Deane District Council)

Mr Gareth Clifford (Taunton Deane District Council)