
Appeal Decision

Site visit made on 5 September 2019

by R Sabu BA(Hons) MA BArch PgDip ARB RIBA

an Inspector appointed by the Secretary of State

Decision date: 25 September 2019

Appeal Ref: APP/H1515/W/19/3230004

Ladywells, Little Warley Hall Lane, Little Warley, Essex CM13 3EX

- 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 A Polley against the decision of Brentwood Borough Council.
 - The application Ref 19/00118/FUL, dated 25 February 2019, was refused by notice dated 23 April 2019.
 - The development proposed is refurbishment of outbuilding and change of use from dog agility / garage room to licensed dog boarding kennels maximum 12 no dogs 8 no heated indoor kennels with outdoor runs, external lighting and 1800 high security fencing.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The evidence indicates that the development for which planning permission is sought has already been implemented and that appeared to be the case when I conducted my site visit. I have, therefore, determined the appeal on that basis.

Main Issue

3. The appeal site lies within the Green Belt. However, since the development re-uses the existing building and preserves the openness of the Green Belt, it meets the exceptions stated in paragraphs 145(c) and 146(d) of the National Planning Policy Framework (Framework) and is not inappropriate development in the Green Belt.
4. Therefore, the main issue is the effect of the proposed development on the living conditions of neighbouring occupiers with particular regard to noise.

Reasons

5. The appeal property lies within a small ribbon of housing with open countryside beyond. I acknowledge that there would be likely to be some background noise from the A127 and from the nearby residential dwellings which may also be home to dogs. However, given the location of the ribbon of housing within open countryside and from my observations during the site visit in the afternoon on a weekday, the background noise levels in the area appear to be generally fairly low.

6. The appeal outbuilding is located at the bottom of the garden of Ladywells and the evidence indicates that a maximum of 12 dogs could be kept on the site. I note that the occupation of the kennels has fluctuated, that the number of dogs on the site would be controlled and that the dogs would be locked in their kennels overnight. I also note the evidence relating to the running of the business and care of the dogs including the timing of exercise sessions and the appellant's intention to board no more than 10 dogs. However, since dogs boarded within the kennels have free and unrestricted access to their dedicated outdoor runs for substantial parts of the day, and given that the barking of 10 or 12 dogs would potentially be of a significant volume and character, the effect on the living conditions of nearby occupiers has the potential to be significant despite the site's distance from the nearest homes.
7. I acknowledge the changes carried out to the existing building including the installation of soundproofing including insulation and double glazed windows and doors. I also note the tall trees along the boundary of the garden and the close boarded boundary fence. However, while the proposal may be an improvement on the existing provision for dogs and I do not doubt the appellant's experience as dog owners, there is not enough information before me such as noise assessments or similar that demonstrate that any noise generated by the proposal would not unacceptably affect the living conditions of nearby properties.
8. I note the drop off and collection times as well as existing levels of activity associated with the dwelling at Ladywells. The appellant has suggested the use of conditions relating to a number of matters including conditions that limit drop off and collection times, require a noise management plan, impose a limit on a reduced number of dogs, specify physical barriers or sound absorbing structures and relating to positive reinforcement training. However, since there is insufficient information before me to demonstrate that the dogs would not cause undue noise disturbance to nearby occupiers were these conditions imposed, and given the significance of the harm, there is no certainty that such conditions would be effective. I have also considered the use of a temporary planning permission. However, while it may allow the Council to monitor the use for a set period, there is little evidence before me to demonstrate that the harm would be reduced by a temporary permission, particularly given that the business has been operating for a number of months.
9. While there may be other legislation in place to deal with undue noise and disturbance and notwithstanding that noise may have been a consideration for the granting of a licence, the proposal must be determined in accordance with the development plan which among other things requires that developments do not have an unacceptable adverse impact on the amenity of others. Furthermore, the Framework requires among other things that developments avoid noise giving rise to significant impacts on quality of life.
10. Consequently, the proposed development is likely to adversely affect the living conditions of neighbouring occupiers with particular regard to noise. Therefore, it conflicts with Policies CP1 and PC4 of the Brentwood Replacement Local Plan Adopted August 2005 which together seek development that do not have an unacceptable detrimental impact on the general amenities of nearby occupiers by way of noise and disturbance. It also conflicts with the Framework in this regard.

Other Matters

11. I note local concerns including regarding animal welfare. However, these have not altered my overall decision given the degree of harm I have found as outlined above.
12. I acknowledge the comments relating to the diversification of rural business and wider matters raised in support of the appeal scheme. However, given the significance of the likely harm to the living conditions of neighbours, collectively those matters do not outweigh that harm and the associated development plan and Framework conflict.
13. I note concerns regarding communication with neighbours as well as the evidence relating to the previous use of the existing building and that the development has been operational for some time. I also acknowledge that the appellant was not aware of the need to seek planning permission for the development. While I recognise that Ladywells is the appellant's family home and the aspirations of the appellant to limit the growth of the business as well as the advantages of running a business from home, these matters have not altered my overall decision given the degree of harm I have found as outlined above.
14. From the evidence before me, there is no dispute regarding the effect of the proposed development on the character and appearance of the area, nor with the proposed lighting or fencing. However, these are a neutral matters that do not weigh in favour of the development. None of the other matters raised outweigh or alter my conclusions on the main issue.

Conclusion

15. For the reasons given above the appeal is dismissed.

R Sabu

INSPECTOR