



Appeal Decision

Hearing Held on 3 October 2019

Site visit made on 3 October 2019

by J Ayres BA Hons, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 19 November 2019

Appeal Ref: APP/D3505/W/18/3212245

White Horse Farm Kennels, Bentley Lane, Stutton IP9 2SX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr N Pearce against the decision of Babergh District Council.
 - The application Ref DC/18/01157, dated 17 March 2018, was refused by notice dated 11 May 2018.
 - The application sought planning permission for erection of detached dwelling and garage (following demolition of existing dwelling and garage) without complying with a condition attached to planning permission Ref B/17/00973, dated 1 September 2017.
 - The condition in dispute is No 4 which states that: *The occupation of the dwelling shall be limited to a person wholly or mainly employed at White House Kennels.*
 - The reason given for the condition is: *The application site is outside any area where planning permission would normally be forthcoming for residential development were it not for the special circumstances as set out in the application.*
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Decision

1. The appeal is allowed and planning permission is granted for erection of detached dwelling and garage (following demolition of existing dwelling and garage) at White Horse Farm Kennels, Bentley Lane, Stutton IP9 2SX in accordance with the application Ref DC/18/01157, dated 17 March 2018, without compliance with condition number 4 previously imposed on planning permission B/17/00973, dated 1 September 2017 and subject to the conditions in the attached schedule.

Background and Main Issue

2. White House Farm kennels has evolved in a rather complicated manner, largely due to the physical inclusion of two dwellings that have been associated with the business. The appellant's mother purchased a cottage, and then went on to use the adjacent land for kennels and as a cattery. The cottage was in a state of disrepair and was granted permission in 1973 to be redeveloped, it also benefited from a later permission in 1976. Both grants included a condition restricting occupation of the redeveloped cottage to a person involved with the adjacent business. In 1976 a further permission was granted for a flat within the site of the kennels and this also included an occupancy condition. Therefore, since 1976 there have been two dwellings subject to occupancy conditions attached to the kennel business.

3. In 2017 permission was granted for a replacement dwelling which would involve the demolition of the cottage (now a large detached house) and erection of a large Georgian style dwelling (the 2017 permission).
4. The main issue is whether Condition 4 continues to be necessary having regard to the National and Local Policies.

Reasons

5. Through-out the lifetime of the kennel business it has been necessary to have a number of people on the site to ensure that the property is maintained and security provided for the business. The nature of dog and cat care has changed, and a number of people now choose to have animals cared for within domestic properties. Therefore, whilst the kennel business continues to operate, and this was evident at the site visit, it was explained at the hearing that the number of animals being cared for fluctuates throughout the year depending on demand.
6. The licence governing the appeal site requires that a person is available at all times and this is detailed in the statutory declaration of Mrs Pearce. It is therefore clear that it is necessary for someone to be available and in recent years this function has been served through occupation of the flat within the kennel area. The flat looks out over, and is accessed from, the Kennel area and as such it has a physical and functional link to the business and serves the purpose of fulfilling the terms of the licence.
7. Turning then to the cottage, which is now a substantial detached dwelling known as White House Farm. It is not stipulated in the licence that two dwellings are necessary for the proper functioning of the site and the removal of condition 4 would not result in a breach of the licence. The kennel business would continue to function in accordance with the legislative requirements due to the flat on site and the attached occupancy condition.
8. There is no evidence to suggest that the business physically requires two residential dwellings associated with it. Some discussion took place regarding holiday cover, however the flat on site has two bedrooms, and staff are able to travel into work from further afield to cover staff holidays. The house in question existed in some form (albeit a small cottage) for a significant period prior to the development of the kennels. The house was only tied to the kennels in 1973 when permission was granted for its redevelopment, and at this time the demand for the business was such that the appellants sought to have a number of staff on site at all times. I note that the economic development team were consulted as part of the s73 application and did not raise any objections to the removal of condition 4, such that might suggest it would negatively affect the viability of the business. Taking account the change in circumstances set out above I am satisfied that the condition is no longer necessary to ensure that the permitted use for a kennel business can be carried out.
9. The replacement dwelling would be located some 70 metres from the kennel site and attached to the permission for the dwelling are conditions relating to landscaping and boundary planting. Whilst issues regarding noise were raised by the Council, no evidence has been submitted that would lead me to conclude that the noise from the kennels would result in an unacceptable level of noise that would be harmful to the living conditions of the future

occupiers of the dwelling. The environmental health team were not consulted as part of the s73 application, nor were they asked to provide any evidence for the purposes of the appeal. Taking into account the location of the replacement dwelling and the conditions relating to landscaping I am satisfied that there is ample opportunity to ensure that removing the condition would not result in the kennel use causing harm to the living conditions of future occupants of the dwelling.

10. Having regard to the above, I find that the condition is not necessary to ensure the safe and legally compliant running of the kennel business, nor is it necessary to protect the amenity of neighbouring occupiers, and it no longer serves a planning purpose.

Other matters

11. The council's reasons for refusal of the removal of the condition related solely to the fact that, in the opinion of the council, removal of the condition would result in a new dwelling in the countryside. There seems to be some disparity prior to 2017 as to whether the Council would consider the application as a replacement or as a new dwelling, however ultimately the 2017 permission was considered in accordance with Policy HS05 of the Local Plan which allows the replacement of a dwelling subject to certain criteria. Whilst the replacement dwelling would be larger than the existing dwelling, the LPA accepted that this would be partly due to the basement and attic space.
12. I note that the explanatory text of HS05 refers to a 30-35% increase being acceptable, the purpose of which is to avoid the loss of small homes within the countryside. However, the dwelling permitted by the 1976 permission is a substantial 4 bedroom house with a number of ancillary outbuildings. The 2017 permission would replace that dwelling with another substantial dwelling, and in the context of this appeal I do not consider that the 35% limit is applicable.
13. In all other respects the dwelling approved by the 2017 permission complies with Policy HS05 in providing a dwelling that would represent high quality design and craftsmanship, representative of the wider area set within an exceptionally large undulating plot with the retention of mature trees and boundaries such to enhance the visual character of the area.
14. The appellant appears to have raised concerns during the application process for the 2017 permission regarding the use of Condition 4, and following grant of the 2017 permission they then sought to have the condition removed. As such the sequence of events has led to a situation where a replacement dwelling was permitted, and subsequently a s73 application determined in relation to the disputed condition.
15. The Council subsequently referred to Policies CS2 and CS15 of the Babergh Core Strategy 2014 which govern new housing within the countryside. Paragraph 79 of the National Planning Policy Framework also concerns new housing in the countryside and is referenced by the Council.
16. However, despite substantial discussion around this taking place at the hearing, the Council subsequently agreed at the hearing that, had a s73 application have been submitted to remove the condition attached to the 1976 dwelling, and been approved, a proposal to replace that dwelling would have

been considered against the terms of policy HS05 and treated as a replacement dwelling. In light of this, and given my finding in respect of the necessity for the condition, it would seem appropriate in this case to apply Policy HS05 and treat the dwelling as a replacement.

Conclusions

17. I conclude that the condition is not necessary to ensure the proper functioning of the kennels business and no longer serves a planning purpose. The development without the condition would not result in a new dwelling in the countryside, nor would it have a detrimental impact on the amenity of future residents to be located on a site adjacent to the kennel business. It would therefore comply with saved Policy HS05 of the Babergh Local Plan (2006) which governs replacement dwellings.
18. For the reasons above I conclude that the appeal should be allowed.

Conditions

19. In allowing the appeal it is necessary for me to consider the conditions imposed on the 2017 permission together with the subject matter of an additional condition put forward by the council which was discussed at the hearing. Conditions are needed to secure landscaping and materials in order to protect the character of the area. It is necessary to ensure that the dwelling to be demolished is in fact demolished and removed in order to ensure that the proposal does not result in an increase in the number of units. It is necessary to provide for the annex to be an ancillary and incidental element of the main dwelling to ensure that the permission does not result in an additional dwelling. A condition restricting permitted development is justified in these circumstances taking into account the particular design features of the dwelling and the adjacent business use. I have listed the plans referred to for certainty.
20. The 2017 permission allows for a replacement dwelling. By removing the condition that links occupation to those related to the business there is no actual increase in the number of units on the site. The existing dwelling would be replaced by another dwelling, the total number of units on the site would remain the same, namely one. Therefore, when assessed objectively the occupation of the replacement dwelling would not result in an increase in visitor pressure to the Stour and Orwell Estuary SPA and Ramsar above the existing level of pressure from the existing dwelling. As such I am satisfied that the replacement dwelling would not adversely affect the integrity of the sites and therefore the condition required by the council which would require measures to reduce impact on the site is not necessary.

J Ayres

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be begun not later than the expiration of five years from the date of this permission.

- 2) The development hereby permitted shall be carried out in accordance with the following drawings/documents:

Elevations - Existing 1302 - Received 28/04/2017
Elevations - Existing 1301 - Received 28/04/2017
Floor Plan - Existing 1202 - Received 28/04/2017
Floor Plan - Existing 1201 - Received 28/04/2017
Elevations - Proposed A-201 - Received 28/04/2017
Elevations - Proposed A-202 - Received 28/04/2017
Elevations - Proposed A-203 - Received 28/04/2017
Elevations - Proposed A-204 - Received 28/04/2017
Elevations - Proposed A-210 - Received 28/04/2017
Floor Plan - Proposed A-100 - Received 28/04/2017
Floor Plan - Proposed A-101 - Received 28/04/2017
Land Contamination Assessment - Received 13/04/2017
Application Form - Received 10/04/2017 21
Design and Access Statement - Received 10/04/2017
Site Location Plan - Received 10/04/2017
Land Contamination Questionnaire - Received 10/04/2017
Landscaping Plan 15.200-P-201 B - Received 10/04/2017
Landscape and Visual Impact Assessment - Received 10/04/2017
Ecological Survey/Report - Received 10/04/2017
A-220 - Received 10/04/2017
A-221 - Received 10/04/2017
A-222 - Received 10/04/2017
A-201 - Received 10/04/2017
Block Plan - Proposed L-100 - Received 10/04/2017
Block Plan - Proposed L-101 - Received 10/04/2017
Block Plan - Proposed L-102 - Received 10/04/2017

or such other drawings/documents as may be approved by the Local Planning Authority in writing pursuant to other conditions of this permission or such drawings/documents as may subsequently be approved in writing by the Local Planning Authority as a non material amendment following an application in that regard.

- 3) No development/works shall be commenced above slab level until precise details of the manufacturer and types and colours of the external facing and roofing materials to be used in construction have been submitted to and approved, in writing, by the Local Planning Authority. Such materials as may be agreed shall be those used in the development and fully applied prior to the first use/occupation.
- 4) All ecological mitigation & enhancement measures and/or works shall be carried out in accordance with the details contained in the Phase I Ecological Survey (Robson Ecology issued 28th September 2016 [rev A]) as submitted with the planning application and an approved document of this permission granted.
- 5) No development shall take place until there has been submitted to and approved, in writing, by the Local Planning Authority a scheme of hard, soft

and boundary treatment landscaping works for the site, which shall include any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained, together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication "BS 5837:2012 Trees in relation to design, demolition and construction.

- 6) All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details; shall be carried out in full during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be approved, in writing, by the Local Planning Authority up to the first use or first occupation of the development. Any trees, hedges, shrubs or turf identified within the approved landscaping details (both proposed planting and existing) which die, are removed, seriously damaged or seriously diseased, within a period of 5 years of being planted or in the case of existing planting within a period of 5 years from the commencement of development, shall be replaced in the next planting season with others of similar size and species.
- 7) Prior to installation, detailed large scale drawings which shall include details of frames sections and profiles, materials, finishes, method of opening, glazing and placing within the wall profile of all windows, roof lights and doors and their surrounds to be installed shall be submitted to and approved, in writing, by the Local Planning Authority and shall thereafter be entirely implemented as approved.
- 8) Notwithstanding Section 55 (2)(a)(ii) of the Town and Country Planning Act 1990 as amended and the provisions of Article 3, Schedule 2 Part 1 Classes A to E of the Town and Country Planning (General Permitted Development) Order 2015, (or any Order revoking and re-enacting that Order with or without modification):- - no enlargement, improvement, insertion of new openings or other alteration of the dwelling house(s) shall be carried out, - no garage, car port, fence, gate, wall or any other means of enclosure, building or structure shall be erected, except pursuant to the grant of planning permission on an application made in that regard.
- 9) This permission shall only authorise the use and occupation of the annexe accommodation for purposes incidental and ancillary to the host replacement dwelling hereby permitted; and does not permit the use of the accommodation for a separate household.
- 10) The existing dwelling on the site shall be wholly demolished to ground level and all materials either recycled within the development or removed from the site within six calendar months of the hereby permitted dwelling being first occupied.

END OF SCHEDULE

APPEARANCES:

For the Local Planning Authority:

Samantha Summers	Planning Officer
Vincent Pearce	Head of Planning

For the Appellant:

Rebecca Clutten	Francus Taylor Chambers
Robert Pomery	Planning Agent
Nathan Pearce	Appellant
Ela Pearce	Interested Party
Helen Pearce	Interested Party

Documents submitted at the Hearing:

Pre-application advice dated 11 February 2015

Attendance List