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## Appeal Decision

Site visit made on 16 December 2019

**by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 21 January 2020**

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**Appeal Ref: APP/D3315/W/19/3236409**

**Priory Farm, Birds Farm Lane, Knapp, North Curry, Somerset TA3 6BA**

- 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 C McNeil-Regan (Rushton Dog Rescue) against the decision of Somerset West and Taunton Council.
  - The application Ref 24/18/0049, dated 3 December 2018, was refused by notice dated 14 August 2019.
  - The development proposed is the change of use of land and buildings from residential to a mixed use comprising residential and the keeping of rescue dogs.
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### Decision

1. The appeal is allowed and planning permission is granted for the change of use of land and buildings from residential to a mixed use comprising residential and the keeping of rescue dogs at Priory Farm, Birds Farm Lane, Knapp, North Curry, Somerset TA3 6BA, in accordance with the terms of the application, Ref 24/18/0049, dated 3 December 2018, subject to the conditions set out in the attached Schedule.

### Application for costs

2. An application for costs was made by Ms C McNeil-Regan (Rushton Dog Rescue) against Somerset West and Taunton Council. This application is the subject of a separate Decision.

### Procedural Matters

3. As explained by the Council in their statement, the local planning authority is now called Somerset West and Taunton Council, however prior to April 2019 the site was within the Taunton Deane Borough Council region. This council has since amalgamated with West Somerset Council to form the new Somerset West and Taunton Council.
4. The Council has confirmed that it does not wish to contest reason 2 of the refusal of planning permission, relating to impacts of the development to landscape setting impacts as this issue "could be addressed through planning conditions and negotiations involving planning enforcement to remove unsightly items and generally tidy up the peripheries of the site." (extract from Council Statement).

## **Main Issues**

5. The main issues are:

- The effect of the development on the living conditions of neighbours to the site, particularly through noise from dogs.
- The effect of the development on public right of way No T17/43 and its users, which currently runs through the site.

## **Reasons**

### *Living Conditions*

6. The application site is a former farmhouse set within substantial grounds on the edge of the small village of Knapp. According to the appellant, the site has been used as a mix of residential and dog rescue centre since 2016, with the house used to keep the dogs to allow them to adjust before finding new permanent homes.
7. The appellants state that the dogs would be kept indoors all night and much of the day. However, it is clear that there would be times when the dogs are outdoors and when they bark this would be audible from outside of the site. Indeed, at the time of my site visit I could hear dogs barking from what was likely to be the site from different places within the village and the surrounding areas. These barks were infrequent and not loud at the points where I heard them, especially taking into account some background noise.
8. I recognise that there have been formal complaints to the Council with regards the noise, but I understand that none of these were made before 2018, whereas there have been dogs at the site from 2016. This does not indicate to me that there has been a significant long-term issue since the keeping of dogs at the site commenced. Nonetheless, complaints have been received, with objections to the proposal made which I have taken into account.
9. As part of the planning application the Environmental Health Department was consulted who provided a response. It is apparent from this that it is difficult to assess the level of noise from dogs if the numbers of dogs fluctuate. Also, I understand that this will depend to an extent on the temperament of the dogs kept at that time. I have no detailed information that any of the objections to Environmental Health has resulted in action taken.
10. The appellant has also submitted an Environmental Noise Assessment (JSP Consultants) with their final statement. I note this was submitted only with the final statement, but it is relevant evidence. The conclusions of this report are that the barking heard from outside the site was intermittent and infrequent, but in places was not measurable due to background noise. Whilst this report concluded that based on the site visit the author of the report undertook, the noise would not warrant such complaints as received, but suggested conditions could change.
11. Whilst there have been objections to the proposal citing noise, there is no substantive evidence that demonstrates that the level of barking has previously or would in the future result in undue levels of disturbance for neighbours to the site. There is also no clear evidence that the dogs kept at the rescue centre would be aggressive or agitated due to their ordeal, travel or new temporary

home. In this regard, I also note that most dwellings are a substantial distance from the site, which would mitigate the noise impact to some extent.

12. Furthermore, I would consider it reasonable to put a maximum figure on the number of dogs kept at the site at any one time. The figure of 20 dogs maximum has been suggested by the Council in the recommended conditions for this appeal if allowed. The appellant has stated they would be happier with a figure of 25. These numbers would be significantly less than the approximate 45 dogs said by the appellant to have been kept at the site previously. Keeping a clear maximum via condition, would help significantly with keeping noise to a reasonable level.
13. Therefore, from the evidence before me, the noise made by the dogs on site is not at a level that results in significant harm to the living conditions of neighbours to the site. The proposal is therefore in accordance with adopted Taunton Deane Borough Council Core Strategy policy (General Requirements) DM1, clauses 'e' and 'f'. This policy requires that development does not result in unacceptable to harm amenities through noise pollution from a proposed development.

#### *Public Right of Way*

14. The proposed development is at a site which is currently crossed by public right of way T17/43. I recognise that the route is currently obstructed. The route has been informally diverted around the site since 2010, according to the appellant. In March 2019 there was an application to Somerset County Council to formally divert the path, but I understand this has not been determined as yet.
15. As set out in the Rights of Way Officer response to the planning application, a temporary closure order would be needed, and a suitable alternative route must be provided. There was no objection with this response from the Officer. The appellant states that the Council has confirmed that in principle the alternative route is acceptable.
16. I have no information as to whether a temporary diversion order is in place, but it seems likely to me that anyone walking this route would use the informal diversion in place. However, if there is no diversion or other order in place, then it is my understanding that the route should remain open for public use.
17. Whilst there are dogs at the site, if the right of way route was used as currently defined then I understand that there is a legal duty to ensure the safety of the public for the land owners when the public use the footpath. Furthermore, even without the proposed change of use, owners of the property could keep dogs currently as pets, which could have the potential to put off walkers from using the right of way route, especially if the dogs appeared aggressive in some way.
18. Any future realignment of the right of way would possibly mean new fencing and surfacing, but this is not required yet as the application for the diversion has not been approved by the Council.
19. Overall, there is currently a public right of way across the site and I see no reason why this proposal would result in a need for an obstruction to the right of way. Planning permission does not mean the right of way is stopped up or diverted. It is for the Council to determine any application for a temporary or permanent diversion, with an application to this effect being currently

considered. The proposal is therefore in accordance with the National Planning Policy Framework advice on rights of way.

### **Other Matters**

20. Comments have been submitted with concern about traffic generation and the use of the access lane. I would agree that the lane is narrow with limited visibility, but this is an established access track. I do not regard it likely that the traffic to and from the site has increased significantly to intensify the use of the access lane or the surrounding rural road network as a consequence of the dog rescue centre. I therefore have no concerns on these matters.
21. There have been comments from neighbours with regards escaped dogs from the site. I have no detailed evidence of such occurrences previously happening and the appellant has stated the boundaries of the site are such that dogs are unable to escape.

### **Conditions**

22. I have considered the conditions put forward by the Council against the requirements of the Planning Practice Guidance (PPG) and the Framework. The conditions I have included from the recommended list have been subject to some alterations to improve clarity and ensure consistency with the Framework and PPG.
23. There is no standard time limit condition as the use as proposed has already commenced. Furthermore, there is no plans condition as there are no physical alterations or developments proposed on site and no plans of proposals have been included.
24. I have included a condition limiting the number of dogs kept at the site to 20. I understand the appellant would prefer 25, which is the number they have had in the past. However, the 20 dogs should be only for dogs as part of rescue centre and not include pet dogs that may also be kept at the site. Restricting the amount of personal pets at the house I would regard as unreasonable. This is a number which I consider should sufficiently help mitigate the potential for noise from barking at the site, in the interest of the living conditions of neighbours.
25. As the site would have a mixed use that would include a dog rescue centre then it is reasonable to consider the potential impacts of events that might take place. Although there is no indication of such events being planned, considering the site location and accessibility restrictions then I have added the condition stating there should be no associated events to be held at Priory Farm.
26. I have also added the condition that the dogs kept as part of the dog rescue centre at the site shall be supervised when outside and shall not be exercised at night time, to mitigate further against any potential noise disturbance.
27. The Council has recommended a condition putting a time limit on the use that has been sought with the proposal. However, I do not regard this as necessary as the dog rescue use has been in operation from circa 2016 and so the impacts of this use have been established for some time and I have no substantive evidence before me that this has led to significant neighbour impacts. I have therefore not included this recommended condition.

28. The Council has recommended a condition requiring details of fencing and gates to separate the public right of way that runs across the site from the areas where dogs are kept and exercised. However, I do not regard this condition as either reasonable nor necessary as there is no substantive evidence that the dogs would cause problems or threats to people walking the route, or how this would differ from a right of way through a field with livestock or a property with their own dogs. As such, I have not included this condition.
29. Finally, I have not included the Council recommended condition to restrict permitted development on the site. It has not been explained thoroughly why further buildings developed under permitted development would be harmful. Also, the number of dogs at the site would be restricted and so any further building or structure under permitted development on the site would not result in more dogs than the 20 allowed at the site.

### **Conclusion**

30. The appeal should be allowed, subject to the following conditions.

*S. Rennie*

INSPECTOR

### **Schedule – Conditions**

1. No more than 20 dogs shall be kept at the site as part of the dog rescue use at any one time. The operators of the premises shall keep records of all these dogs kept at the site and these shall be available for inspection at all times by officers from the local planning authority.
2. The application site shall not be used for fundraising events, open days and charity events associated with the proposed use.
3. When exercising the 'rescue' dogs outdoors they shall be supervised at all times. No dogs shall be exercised externally between the hours of 9pm at night and 7am the following morning.