The Planning Inspectorate

Appeal Decision

Site visit made on 28 May 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2020

Appeal Ref: APP/W3330/W/19/3243730
Fairfield Stables, Moor Lane, Churchinford 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 Somerset West and Taunton Council.
- The application Ref 10/19/0011, dated 29 March 2019, was refused by notice dated 7 October 2019.
- The development proposed is the erection of dog kennel and log store.

Decision

1. The appeal is allowed and planning permission is granted for the erection of dog kennel and log store at Fairfield Stables, Moor Lane, Churchinford TA3 7RW in accordance with the terms of the application, Ref 10/19/0011, dated 29 March 2019, 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 approved plans: Drawing Nos, 200.10 Rev C, 200.12 and 200.13 Rev B.

    3) No dogs other than those kept for breeding purposes shall be kept on the site and the total number of dogs across the combined area consisting of the area approved under Council application Ref 10/16/0028 at appeal (APP/D3315/W/3172566) and the area the subject of this appeal (Council Application Ref 10/19/0011) shall be limited to no more than 15 breeding bitches and their puppies awaiting sale.

Application for costs

2. An application for costs was made by Ms S Lock against Somerset West and Taunton Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application form describes the proposal as "Regularisation and extension to Dog Breeding Enterprise". However, regularisation is not an act of development. The supporting statement includes a section titled "The Proposal". This sets out that the proposal is to erect housing, in the form of 8 kennels, to the north east of the stable block adjacent to the existing set of kennels. The red line of the application site includes this area for the proposed

8 kennels and also an area for a log store. Plans have been submitted for the log store.

4. The Council described the proposal as "the erection of dog kennel and log store". As this description is also used as the heading in the appeal statement by the appellant, I consider that no party would be prejudiced by this description of the development.

5. Planning permission was granted at appeal for commercial dog breeding in August 2017[1] (the 2017 appeal decision). That decision is subject to condition 5 which limits the number of dogs on the site to no more than 15 breeding bitches and their puppies awaiting sale.

6. The appellant makes the case that the present proposal would not increase the number of dogs compared with the 2017 appeal decision, but also seeks to persuade me that, because it is argued that there were 3 stud dogs present at the time of the earlier appeal and subsequently, a planning condition should be attached to any approval that would allow the 3 stud dogs, in addition to the 15 breeding dogs and their puppies awaiting sale. However, the present proposal is not an application to seek to vary a condition on a previous approval. In these circumstances, as part of this appeal, I would not be able to procedurally vary the condition limiting the number of dogs on the site on this other approval[2]. I therefore intend to determine the application based on the case that the number of dogs on the overall site would be the same as that specified by condition 5 in the 2017 appeal decision.

Main Issues

7. Having regard to the reason for refusal and the statements from the main parties, I consider that the main issues are:

   - whether the need for the kennels has been justified, with particular regard to the location within the Blackdown Hills Area of Outstanding Natural Beauty (the AONB).
   - whether the proposal would conserve or enhance the tranquillity of the AONB, having particular regard to any noise impacts.

Reasons

Need

8. The site has permission for the commercial breeding of dogs and this use has taken place over the past years. I saw at my site visit the various buildings and layout. I have made my assessment of the need for the additional accommodation based on the existing kennels permitted in the 2017 appeal decision as my attention has not been drawn to any planning approval for further kennels since that time.

9. It is explained that the additional housing would be used for whelping and for the young, post weaning, to enable them to be housed away from the mother, prior to being sold. The site is licensed by the Council and the information indicates that the additional purpose built accommodation would assist with the appellant becoming an assured breeder in line with Kennel Club advice.

[1] APP/D3315/W/17/3172566 (with the accompanying enforcement appeal APP/D3315/C/16/3149290)
[2] I am aware of an application submitted to the Council to seek to vary this condition

10. The additional kennels would positioned such that they could be operated in association with the other buildings and appear to be designed so that they would be fit for purpose. The extent of the proposed kennels in addition to those permitted in 2017 would not be unreasonable given the number of dogs allowed on the site and with regard to best practice to house puppies prior to being sold. The evidence leads me to conclude that there is a need for the additional kennels to accord with good practice and assist with the sustainability of the business.

11. The building would not cause harm to the character and appearance of the area as it would be sited in proximity to the existing group and be of a size and scale which would not appear out of place in the context of the existing site. In these circumstances, there would be no harm to the landscape and scenic beauty of the AONB[3].

12. The policies referenced in the reason for refusal do not resist buildings in the AONB as a matter of principle and the proposal would accord with the National Planning Policy Framework (the Framework) approach to supporting a prosperous rural economy.

13. In the light of the above analysis, I conclude that the need for the kennels within the AONB has been justified and as a consequence there would be no conflict with Policies CP8 and DM1 of the Taunton Deane Core Strategy 2011–2028 (the CS), Policy PD/5A of the Blackdown Hills AONB Management Plan 2019–2024 (the AONB Management Plan)[4] or the Framework which seeks, amongst other things, to protect, conserve or enhance landscape character.

Tranquillity and noise

14. Policy PD/5A of the AONB Management Plan sets out to avoid or restrict development which detract from the tranquillity of the Blackdown Hills. Part of the tranquillity of the AONB in this location comes from the quiet rural environment.

15. The Inspector in the 2017 appeal decision acknowledged that the breeding of dogs had the potential to introduce noise which is not capable of strict control. However, he concluded, when looking at all the circumstances of the site together with mitigation measures and that this was a breeding (and not a boarding) kennels, that any nuisance and detriment to tranquillity would be limited.

16. The present proposal is accompanied by a Sound Impact Assessment (August 2019). This was based on information which was considered at the 2017 appeal and supplemented with further and updated information. There is an assessment of the predicted noise levels from the proposed kennels for areas around the site and in relation to neighbouring properties. The Assessment acknowledges that there is no specific criteria or guidance relating to noise impact from kennel applications or noise impact effects from dog barking upon nearby noise sensitive properties. Nevertheless, the Assessment is detailed and includes an analysis of technical approaches and best practice. The Assessment

[3] Paragraph 172 of the National Planning Policy Framework requires that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs.
[4] The AONB Management Plan is not part of the development plan but I consider is a significant material consideration.

concludes that the operational activity of the site is unlikely to result in an adverse noise impact, or annoyance.

17. The Council's Environmental Health Officer has examined the Sound Impact Assessment and made a series of comments including that the proposed kennels are closer to the nearest residential properties than the present kennels and that noise from dogs can be very varied depending on the individual dog and the management of the operation. This advice includes that it is not possible to confirm whether or not the noise from the proposed kennels will lead to an unacceptable increase in noise levels in the area.

18. Representations including detailed objections from and on behalf of the adjoining occupiers at Fairhouse Farm explain the impact of noise from the site and other local residents indicate that they have been affected by the noise from barking dogs while walking in the lane. While any individual's considered disturbance from a particular noise source can be to some extent a matter of personal perception, I take these concerns seriously given the detail of the submissions together with the location within the AONB and the need to protect tranquillity. The Framework requires that proposals should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development.

19. The Sound Impact Assessment explains the methodology and justification for using sound readings from dogs barking at another site to help model the impact of the noise from dogs from the proposed kennels on this site. However, I am also conscious that the Environmental Health Officer indicates that the noise from dogs can be very varied depending on the individual dog and the management of the operation. As no recent noise readings of the dogs have been taken on this site, coupled with the observations of local residents, it is not straightforward to be definitive as to whether the use of the additional kennels in their proposed position would lead to any additional noise impact. Nevertheless, the Sound Impact Assessment is detailed and has been undertaken by a qualified engineer and overall I attribute the findings significant weight.

20. In terms of the layout of the site, the open section of the proposed kennels would face the road but the building would also be reasonably close to the back of the stables which would screen the building. The Sound Impact Assessment indicates that this would encourage a settled environment and the screening with existing buildings would help to ensure that the dogs were not stimulated by nearby noise sources, traffic or unfamiliar people accessing the site. Additionally, there is close boarded fencing and a hedgebank along the boundary with the road. I consider that this positioning of the proposed kennels and their orientation would help to ameliorate the impact of any dogs barking on the wider area.

21. In the general direction towards Fairhouse Farm there is also a stable building, internal close boarded fencing and gates, and Fairhouse Farm has a wall along much of the boundary with the road. While the proposed kennels would be closer to Fairhouse Farm than the present main kennel building there would still be a reasonable separation distance with intervening structures.

22. Drawing all these matters together, on the basis that the number of dogs would remain the same as agreed in the 2017 appeal decision, I consider that the additional kennel accommodation as proposed would not be likely to

increase the noise profile of the site to an appreciable extent. The proposal would therefore not materially alter the present level of tranquillity of the area including that experienced by local residents and walkers in this part of the AONB. As a consequence, there would be no conflict with the Noise Policy Statement for England.

23. Accordingly, I conclude that the proposal would conserve the tranquillity of this part of the AONB, in particular with regard to the noise impacts. As a consequence, the scheme would comply with Policies CP8 and DM1 of the CS, Policy PD/5A of the AONB Management Plan and the Framework which requires, notably, that potential noise pollution which could arise will not unacceptably harm the amenity of individual dwellings or other elements of the local environment.

Other Matters

24. I have noted the submissions in respect of the bund which formed part of the proposal considered in the 2017 appeal decision. The provision of the bund would not be materially affected by the position of the proposed kennel building or effect my overall analysis in terms of the impact of the proposal. The bund is therefore not a matter which is determinative in relation to the issues in this appeal.

25. Representations seek, if additional kennels were justified, that they should be sited on land further from Fairhouse Farm. However, this is not the proposal before me which I have considered on its merits and found acceptable.

Conditions

26. I have had regard to the conditions suggested by the Council and the advice in the Planning Practice Guidance. The statutory time limit and a condition specifying the approved plans are necessary in the interests of certainty.

27. It is necessary in the interests of preserving the tranquillity and noise environment to control the number of dogs on the site. I have already explained why my analysis has been based on the number of dogs conditioned by the 2017 appeal decision. The kennels the subject of this appeal are proposed to be sited outside the red lined site area which was the subject of the 2017 appeal decision. To avoid any doubt that the total number of dogs that may be housed across the whole site is clear, because of the differing red lined areas of the 2017 appeal decision and this proposal, I have worded the condition accordingly.

28. I have also considered all the suggestions from the adjoining occupiers regarding other planning conditions, including the suggestion that the additional kennels should be restricted to whelping mothers and their puppies. However, as I have found the proposal acceptable for the reasons explained such a condition would not meet the tests of necessity in this case.

Conclusion

29. For the above reasons and subject to the specified conditions, I conclude that the appeal should be allowed.

David Wyborn INSPECTOR