



Appeal Decisions

Site visit made on 7 July 2020

by Nick Fagan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 August 2020

Appeal A Ref: APP/P1133/C/20/3247323

56 Windsor Avenue, Newton Abbot, Devon TQ12 4DW

- 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 Chihuahua World UK (Mrs Laura Hazeldine) against an enforcement notice issued by Teignbridge District Council.
 - The enforcement notice, numbered 18/00179/ENF, was issued on 13 January 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of a residential property to a mixed use of residential and a dog breeding business.
 - The requirements of the notice are:
 - i) cease using the land and property to operate a dog breeding business, and
 - ii) reduce the number of dogs to no more than 6.
 - The period for compliance with the requirements is 6 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/P1133/W/20/3247313

56 Windsor Avenue, Newton Abbot, Devon TQ12 4DW

- 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 Chihuahua World UK against the decision of Teignbridge District Council.
 - The application Ref 19/00594/FUL, dated 3 March 2019, was refused by notice dated 11 November 2019.
 - The development proposed is the use of part of the property for a dog breeding business including ancillary buildings.
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Decision

1. Appeal A is allowed on grounds (f) and (g) only, and it is directed that the enforcement notice be varied: by the deletion of the requirement to reduce the number of dogs to no more than 6 to no more than 9, and the substitution of 6 months as the period for compliance to 9 months from the date of this decision. Subject to these variations the appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
2. Appeal B is dismissed.

Main Issue

3. The main issue in ground (a) of Appeal A and in Appeal B is the effect of the dog breeding business on the living conditions of neighbouring residential occupiers with regard to noise and odour.

Reasons

The Main Issue

4. The property is a two-storey semi-detached house. During my site visit I inspected the various internal and external facilities provided in the rear garden of the property and the garage for the dog breeding business. These facilities are shown on the submitted plans. The dogs were not present in these facilities at the time. Mrs Hazeldine said that they were in the house since they would be disturbed by my presence inspecting the site. She said that there were currently 25 dogs on the site.
5. I note that there were 40 dogs on the site when a Council officer visited the site on 18 April 2019. I acknowledge the comments of the Council's Environmental Health department that the number of litters produced by the breeding bitches has been limited to 10 a year, that the site is very well managed and that the dogs are cared for to a high standard.
6. But virtually the whole of the rear garden and the property's domestic garage is given over to the dog breeding business. This is a suburban area of semi-detached two storey houses with modest sized gardens, several of which are sited quite close to No 52's rear garden. The rear gardens of four of these houses directly abut No 52's rear garden. Consequently, it is unsurprising that 9 statutory nuisance complaints from 5 different addresses have been received by the Environmental Health department since 7 July 2017, nor that frequent intrusive dog barking has been witnessed by Council officers both on the property and on neighbouring properties. I also note the 4 objections to the planning application including on grounds of noise and odour impact.
7. I acknowledge the appellant's point that there have been no further complaints since 18 February 2019 and her statement that this complaint was withdrawn by the complainant. However, it seems inevitable that the presence of a large quantity of dogs, such as are bound to be associated with the business, is likely to continue to give rise to noise (by dogs barking) and odour impacts to the occupiers of neighbouring houses. I smelt during my visit that, although the rear garden area including the dogs' internal quarters was very clean, there was nonetheless a strong odour of the animals that was clearly noticeable at the rear garden's side boundaries. This leads me to conclude that the site is fundamentally inappropriate to house such a dog breeding business, because of its inevitable long-term harmful impact on the living conditions of its residential neighbours.
8. I notice that the appellant asked the Council whether taking the large building down would help with the planning application. However, my concerns relate to the adverse consequence of having an excessive number of dogs at the site and not necessarily to the presence of associated buildings. Moreover, it appears that the buildings may be required to meet licensing requirements. Consequently, such a proposal would not address the planning difficulties of the scheme.

9. I appreciate and acknowledge that the appellant has worked closely with the Council to secure her dog breeding license and that this has cost her a large amount of money in improving the dogs' facilities on the site. But the dog day play area has an open front and the fenced rear garden area next to the conservatory is used by the dogs, who obviously need some outdoor exercise space on site. The use of such areas by the dogs is likely to continue to generate adverse noise and odour impacts for neighbours, which is unacceptable in such a residential area.
10. Policy EC4 (Working from Home) of the Teignbridge Local Plan 2013-2033 supports home-working in residential areas but only subject to no detrimental effect on the amenity of the area. Likewise, Policy S1 (Sustainable Development Criteria) states that proposals are required to perform well in terms of the effects of noise and smell arising from development. The dog breeding business has a detrimental impact on neighbouring residents' living conditions as detailed above, and so these development plan policies are not complied with.
11. For these reasons ground (a) of Appeal A and Appeal B are dismissed.

Grounds (f) and (g) of Appeal A

12. Ground (f) is that the steps required by the notice, or the activities required by the notice to cease, exceed what is necessary to remedy the breach of planning control or to remedy any injury to amenity which has been caused by any breach of planning control. In this case the reason for issuing the notice is to rectify the detrimental impact on the living conditions of surrounding residents, as identified under section 173(4)(b) of the Act as amended. Ground (g) is that the compliance period specified in the notice falls short of what should reasonably be allowed.
13. The appellant states that 9 of the dogs are her personal pets and live with her in the house, and I note that the Council makes no challenge to that statement. I acknowledge the Council's arguments in respect of the *Wallington* case¹, namely that the keeping of more than 6 dogs in a dwelling may (my emphasis) result in a material change of use. But the Council acknowledges that there is no such rule of thumb which may be applied relating to the numbers of animals housed.
14. Chihuahuas are notoriously small dogs and the keeping of 9 chihuahuas is likely to be more manageable, in terms of their general impact on the amenity of a dwelling or the local area, than the keeping of 9 larger dogs, such as Alsations, Dobermans or even Labradors, for instance.
15. For these reasons I conclude that ground (f) of Appeal A should succeed because there is no good reason to prevent Mrs Hazeldine from keeping her own 9 pet chihuahuas on the site, notwithstanding that the retention of the dog breeding business is unacceptable for the reasons indicated above.
16. The appellant argues under ground (g) that she needs more time to recoup enough money to allow her to move somewhere where she could continue her

¹ *Wallington v Secretary of State for Wales and Montgomeryshire District Council* (1991)

dog breeding business, since the works required for her to gain her dog breeding License here have depleted her entire savings.

17. The continuing breach of planning control is not warranted to recoup expenses associated with an unauthorised business, especially where it results, as in this case, in harmful impact on neighbours' living conditions.
18. However, it is possible, especially under the current restrictions and tribulations associated with the Covid-19 pandemic, that it will take longer than 6 months for the appellant to market and sell her property and to find and move her business to another property, especially if the latter requires planning permission to change its use.
19. Consequently, given such circumstances, I consider it would be reasonable to allow an additional 3 months for her to complete such matters: 9 months instead of 6 months. For these reasons I conclude that ground (g) of Appeal A should succeed.

Conclusion

20. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with the above variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Nick Fagan

INSPECTOR