
Appeal Decision

Site visit made on 22 September 2020

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2020

Appeal Ref: APP/V2635/W/20/3255274

The Cottage, Welney Road, Lakesend PE14 9QB

- 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 Mrs S Millington against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref: 19/01526/F, dated 28 August 2019, was refused by notice dated 5 February 2020.
 - The development proposed is the change of use of residential garden for the keeping and breeding of dogs and the erection of kennels and runs.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have not included the full description of development that was agreed by the Council and appellant as it makes reference to the proposal being retrospective and 'retention' is not in itself development as defined in the Town and Country Planning Act 1990 (as amended). However, I was able to see on my site visit that the appeal site was being used for the keeping and breeding of dogs and that most of the works shown on the plans submitted have already been undertaken. I have determined the appeal on that basis.

Main Issue

3. The main issue is the effect of the development upon the living conditions of the occupiers of nearby dwellings, with particular reference to noise and disturbance.

Reasons

4. Although the appeal site is located in the countryside, it is in close proximity to existing dwellings at 1 and 2 Fred Hartley's Bungalows, which it is positioned next to on the same side of Welney Road. No 2 directly shares a boundary with the appeal site, with its rear garden and rear elevation being close to the common boundary. The dwelling at Stanborough is located diagonally opposite on the other side of the road.
5. The appeal is accompanied by a Noise Assessment (NA) which has been subject to comment by the Council and interested parties during the appeal process. The Council raises no objection in principle to the methodology that has been adopted by the NA. The NA concludes that the noise levels from dog barking at

- the boundary with No 2, this being the closest dwelling, would be below World Health Organisation Guidelines for the onset of moderate annoyance during both daytime and night-time hours.
6. In addition, further mitigation would be provided by the erection of acoustic fencing of 2 metres in height and by the insulation of the kennels themselves. Conditions are suggested relating to the management of the proposed use and these would include restrictions on the hours that customers could visit the site, the number of adult dogs that could be kept and the hours during which dogs must be kept in their kennels.
 7. However, there are limitations with the information that has been provided. The NA is comprehensive, but the appellant confirms that it was based on 16 dogs being on the appeal site, consisting of two German Shepherd dogs and a mixture of Miniature Pinschers and Long Haired Dachshunds. There is no confirmation as to the age of these dogs and whether it included puppies, but there is no suggestion that there were more than 16 dogs of any age on the site at the time that the NA was undertaken.
 8. The suggested condition would restrict the number of adult dogs (defined as being over 6 months in age) to a maximum of 16 and would therefore not include a restriction on the number of puppies under that age. The appellant's submission indicates that it would be expected that no more than 10 puppies would be present at any one time, but no substantive evidence has been provided to demonstrate that this would be the upper limit. In any event, the suggested condition would not restrict the number of puppies to 10.
 9. Aside from these issues, the NA does not consider the impact from noise of there being more than 16 dogs on the site. Therefore, as I cannot be certain as to how many dogs would be on the appeal site at any one time (adult dogs and puppies), other than it could be substantially more than 16, I cannot establish what noise environment is likely to be generated by the use.
 10. I have given consideration to whether a planning condition could be imposed to reduce the number of dogs on site to 16 in total. However aside from the fact that this is not the proposal which is before me, by the appellant's own admission the number of puppies per litter is unpredictable. Therefore, I am not satisfied that such an approach would be a reasonable or enforceable way in which to address the area of concern that arises.
 11. My attention has been drawn to correspondence from the Council which states that the keeping of up to 11 dogs on the site would not require planning permission. However, this appears to be an informal view offered by a Council Officer. It is not within the remit of this appeal to consider what would or would not be a lawful use of the land, but irrespective of this, the proposal is for more than 11 dogs being on the site.
 12. Whilst the appellant has a dog breeding license, that license relates to separate non-planning legislation. I have not been provided with any substantive evidence to demonstrate that this would ensure noise and disturbance from the site would be adequately restricted in the interests of protecting the living conditions of nearby residents, as opposed to in the interests of the welfare of the dogs themselves.

13. I acknowledge that there was no objection from the Council's Community Safety and Neighbourhood Nuisance team and that the application was recommended for approval by the Council's Planning Officer. I also note that there has historically been only a limited number of complaints made about the use and that it has been suggested that in all instances these were not pursued by the complainant. However, these considerations do not overcome the substantive issue relating to the number of dogs that would be on the site.
14. I therefore conclude that, due to the difficulty of establishing how many dogs/puppies could be present at any one time, it has not been demonstrated that there would not be unacceptable levels of noise which could give rise to significant adverse impacts on the quality of life of the occupiers of nearby properties. Consequently, in the absence of this, the development fails to accord with Policy DM15 of the Site Allocations and Development Management Policies Plan 2016, where it seeks to protect living conditions. There would also be conflict with The National Planning Policy Framework where it seeks to achieve the same aims.

Conclusion

15. For the reasons given above, I conclude that the appeal should be dismissed.

Graham Wraight

INSPECTOR