
Appeal Decision

Site visit made on 17 November 2020

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 December 2020

Appeal Ref: APP/W1145/C/20/3254284

Orchard House and Russett Orchard House, Little Lashbrook, Thornbury, Devon, EX22 7BA

- 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 Janet Anne Pearson against an enforcement notice issued by Torridge District Council.
 - The enforcement notice, numbered ENF/001/2020, was issued on 29 May 2020.
 - The breach of planning control as alleged in the notice is the material change of use of the barn from agricultural to the unlawful use as a dog kennels.
 - The requirements of the notice are :
 - (i) Cease the use of the barn for the kennelling of dogs, the barn can be identified hatched in blue on Appendix 1 attached to the notice;
 - (ii) reduce the total number of dogs on the land, both domestic dogs and rescue dogs to a total number of no more than six (6) dogs, the land can be identified hatched in red on Appendix 1 attached to the notice.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
 - **Summary of decision:** appeal dismissed and planning permission refused.
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Procedural Matters

1. A Council representative did not attend the site inspection.
2. Where an appeal is made on a legal ground, the onus of proof rests with the appellant and the level of proof is on the balance of probability.
3. There has been a significant breakdown in the appellant's relationship with neighbours in which a number of allegations have been made and actions taken including the involvement of the police and actions to protect the appellant's privacy. However little of this is relevant and I have restricted my determination of this appeal to those matters that are material.

Application for costs

4. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

The site and relevant planning history

5. The appeal site is within the small hamlet of Thornbury and comprises adjoining dwellings known as 'Orchard House' and 'Russett' which is let out as a holiday cottage. To the south west of the dwellings is a barn that has been

converted into 14 kennels, with two having outside runs. Within the garden of dwellings are three dog runs. At the time of my visit, the garden runs were not in use but some 22 dogs were being kept in the kennels. The kennels appeared clean and the dogs in good health. Whilst they were lively in my presence, they were not excessively noisy. According to the appellant the dogs are let out in groups of four, time five times a day.

6. To the north and west of the site are open fields. The properties of Little Lashbrook and Lashbrook border the site and there are other residential dwellings in the hamlet.

The appeal on ground (e)

7. An appeal on this ground is that the notice was not properly served on everyone with an interest in the land. The appellant states 'the people looking after the dogs, who have their own dogs, were not advised'. However the Council carried out a Land Registry search and served the notice on those listed with an interest in the land and on the occupiers of the land as shown on the enforcement notice.
8. The appellant fails to provide details of the persons she claims were not served but even had there been an error in the service of the notice, section 176(5) allows the non-service of a notice to be disregarded, provided that neither the appellant nor that person has been substantially prejudiced by the failure to serve him or her. Generally someone who has appealed and makes written representations, cannot be said to be "substantially" prejudiced.
9. The appeal on this ground fails.

The appeal on ground (c)

10. An appeal on this ground is that there has not been a breach of planning control.
11. The appellant states that when she acquired the property in 2001, which was separated into four dwellings, the kennels had been in use as breeding kennels for spaniels by the previous owners, Nigel and Wendy Marsh, for over 10 years. However, no evidence has been submitted to support this claim. Indeed, the resident of nearby Lashbrook Farm states that in the 55 years he has lived there, the barn has never been used for dogs. Additionally, a neighbour has contacted Mr and Mrs Marsh who confirmed that the building was never used for the kennelling of dogs.
12. Council tax evidence indicates that the appellant was registered as living at the property between 2001–2010; the property was unoccupied and unfurnished between March 2010 and January 2011 following which it was a House in Multiple Occupation until December 2014. It was then tenanted until February 2015. Since that date Council Tax has been in the appellant's name. The appellant says that Russett has been let as a holiday cottage since 2008 but is in dispute with the Council over its status.
13. The appellant contends that the dogs are rescue greyhounds but that this is not a commercial business. She claims that she does not require planning permission for keeping pet dogs but submits no evidence in support of this contention.

14. The appellant has operated and advertised a greyhound re-homing service. Photographs submitted as part of the Council's statement and in the representations of a neighbour, show a van illustrated with 'Racer 3RS Retirement and Rehoming'; 'Licensed by Greyhound Board of Great Britain'; and the website address 'www.lashbrookkennels.com', which offers greyhounds for re-homing. Whilst the re-homing centre may not be run in the normal commercial sense, it is not clear how the centre is financed or whether it is run as a non-profit making organisation.
15. It follows that if the barn is being used as ancillary to the use of the land for residential purposes and not as commercial kennels, then different considerations apply. The number of dogs kept indicates that as a matter of fact and degree, and based on objective reasonableness, this use has reached a point where it is no longer ancillary to the residential use but has resulted in a material change of use such that a mixed use comprising residential and kennels has occurred. Although there is no hard and fast rule that having more than a certain number of dogs is excessive, in general terms keeping up to six dogs is considered reasonable depending on the circumstances of the case. In this particular case some 22 dogs are kept and this exceeds what would otherwise normally be regarded as being ancillary. I have had regard to *Wallington v SoSW and Montgomeryshire DC [1991] 62 P&CR 150* in this context.
16. I conclude on this ground that planning permission is required for the use of the property for kennels accommodating 22 dogs and that no such permission exists. The appeal on this ground therefore fails.

The appeal on ground (d)

17. An appeal on this ground is that it is too late to take enforcement action.
18. Section 171(b) sets out the time limits for the taking of enforcement action in respect of breaches of planning control. The period for unauthorised changes of use is 10 years beginning with the date of the breach.
19. Information provided by the appellant to the Council's Environmental Protection service in August 2019 indicated that there were 12 rescue dogs, 8 dogs relating to an employee and four of her own.
20. Although the appellant refers to the previous owners' breeding of spaniels, no evidence has been submitted to prove on the balance of probability that such a use existed for the period required for the use to become immune from enforcement action, either by the previous owners or by the appellant.
21. The appeal on this ground fails.

The appeal on ground (a)

22. An appeal on this ground is that planning permission should be granted for what is alleged. The main issue is the affect that the unauthorised use has on the living conditions of those living nearby.
23. Policy DMO1 of the North Devon and Torridge Local Plan relates to amenity considerations and refers to development being supported where it would not significantly harm the amenities of any neighbouring occupiers or uses.

24. Complaints to the Environment Protection Department resulted in 791 recordings of the dogs within the site barking in excess of the allowed decibel levels and the serving of a noise abatement notice. The notice has been breached and the appellant fined recently in the Magistrates Court. No noise mitigation proposals have been submitted by the appellant.
25. Numerous representations have been made by neighbouring residents, the Thornbury Parish Council and the editor of the village magazine in response to this appeal complaining about excessive noise and disturbance at all times of the day and night from the dogs housed in the kennels. It is alleged by a neighbour that the appellant started bringing retired greyhounds onto her property in the summer of 2018 and keeping them in an agricultural barn that had originally been sub-divided into pens for farm animals. Complaints received include one from a resident in a dwelling some 400m from the appeal site in which it is stated that because the barn is elevated in the landscape the noise travels across the fields. This provides an indication that the noise is not confined to a small area but travels some distance from its source.
26. The representations of local residents about noise and disturbance, notwithstanding the fact that the dogs were generally quiet at the time of my visit; the serving of an abatement notice; the non-compliance with the notice; and, the subsequent prosecution, are clear indicators of the harm caused to the living conditions of people living in and around the hamlet. The failure of the appellant to take action to mitigate the harm adds to my conclusion that planning permission should not be granted as the unauthorised use is unacceptable and contrary to Local Plan Policy DMO1.
27. The appeal on this ground fails.

The appeal on ground (f)

28. An appeal on this ground is that the steps required to comply with the notice are excessive and lesser steps would overcome the objections. However, the appellant does not suggest what lesser steps would overcome the harm caused but refers to the planning merits of the location of the appeal site.
29. The Council consider that having regard to the *Wallington* case, a maximum of six dogs would be reasonable as this would allow for the appellant's own four dogs plus an additional two.
30. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach.
31. The appeal on this ground fails.

The appeal on ground (g)

32. An appeal on this ground is that the compliance period of three months is too short. The appellant does not indicate what would be a reasonable compliance period but refers to awaiting legal advice and that the notices were served during the coronavirus lockdown.

33. In view of the harm to the living conditions of residents in the hamlet caused by noise and disturbance arising from the use, it is not in the public interest for the compliance period to be extended beyond what should be the maximum period necessary to meet the requirements of the notice, which in this case, is three months.

34. The appeal on this ground fails.

Conclusion

35. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Decision

36. 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.

P N Jarratt

Inspector