



Appeal Decision

Site Visit made on 18 December 2020

by A M Nilsson BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2021

Appeal Ref: APP/X1355/W/20/3259196

The Gate House, The Waterworks, Dalton-Le-Dale, Seaham, SR7 8RQ

- 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 Mr Paul Bedding against the decision of Durham County Council.
 - The application Ref DM/19/03521/FPA, dated 6 November 2019, was refused by notice dated 11 March 2020.
 - The development proposed is partial building change of use of existing stables and barn to 9 dog kennels, treatment area and construction of freestanding building.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The development, insofar as it relates to the partial change of use of the stables to kennels, has been undertaken. I am therefore considering this aspect of the appeal retrospectively.
3. Since the original decision the Council have adopted the County Durham Plan. This replaces the Easington District Local Plan such that the policies of that plan cited on the decision notice are no longer part of the development plan and have no weight. I have therefore determined the appeal having regard to the relevant policies within the County Durham Plan (2020).

Main Issue

4. The main issue is the effect of the development on the living conditions of occupiers of neighbouring properties, with particular regard to noise and disturbance.

Reasons

5. The appeal site comprises a stable building and paddock area to the side/rear of The Gate House which is a residential property that is also within the appeal site. The site is located adjacent to the B1432 and is near to an industrial estate and the A19 dual carriageway. There are existing residential properties to either side of the appeal site, namely 3 and 4 The Waterworks, Chapel Lodge and Chapel House.
6. The stable building which accommodates 9 kennels for up to 18 dogs, is located to the rear of the site where due to the upward slope of the land, occupies an elevated position. The paddock in front of the building is used for the exercise of the dogs. The building faces towards the rear elevation of the closest residential property, which is also adjacent to the paddock. This

residential property has a number of windows overlooking the appeal site and a small outdoor seating area. At present there is a mixed boundary treatment of boarded fencing and railings, although the plans propose a 2m high acoustic fence and hedging along the shared boundary.

7. At the time of my visit I counted 7 dogs within the kennels. No dogs were outside the building. The dogs were relatively calm and there was minimal barking during my visit that lasted around 30 minutes. Nevertheless, this was but a snapshot in time for a brief period, where all dogs were inside and there were only 7 dogs present as opposed to the up to 18 dogs that would be possible. Although my observations weigh in favour of the appeal, I cannot be certain that this would be the same noise environment at all times with 18 dogs present, particularly when being exercised outdoors.
8. A Noise Assessment was submitted with the planning application. The assessment states that 'the dog kennel is currently in operation and houses 5 dogs at present'. A noise survey was carried out over a 24-hour period. The conclusion of the noise survey states that it suggests that there is no evidence to demonstrate that the use of the stable for private kennelling results in any significant adverse effect on living conditions of the occupants of neighbouring properties through any significant increase in noise and disturbance. A number of mitigation measures are also proposed which have been calculated to reduce the predicted noise levels.
9. In their consideration of the noise assessment the Council highlight that as stated in the assessment, there is no specific methodology which can be used to assess dog barking, and that the methodology that was used is intended for longer term noise sources such as traffic rather than impulse or intermittent noise sources such as dog barking.
10. I share a similar concern with the assessment. I find that its monitoring over only one 24-hour period to provide a less than certain noise environment, particularly considering the noise source being measured is one that can be random, spontaneous and in effect not technically controllable. Such sudden noises, unlike continuous noise, can be significantly more intrusive and perceptible, with the potential to cause significant harm.
11. The assessment also suggests that the measurements were undertaken when there were 5 dogs present, as opposed to the 18 that would be possible. I therefore cannot be certain that the noise assessment is a true reflection of the use as a whole, with it being entirely possible that there was in fact less noise generated on the day of measurements being taken than at other times, particularly when used by more dogs.
12. The appellant has referred to other noise sources in the area including traffic at the nearby industrial estate, ambulance sirens and noise from agricultural activities and machinery on land to the north. I observed traffic noise during my visit, and I do not doubt that the other noise sources exist from time to time, yet these are somewhat inevitable in the context. They do not justify allowing an additional, unacceptable noise source in such close proximity to residential properties.
13. Although there appears to be some ill-feeling between the appellant and the neighbouring residents, I must give appropriate weight to the representations

received from the four properties surrounding the appeal site. These refer to significant noise disturbance occurring in regard to the use being undertaken.

14. That the appellants family reside close to the kennels, and that dogs can be tended to quickly if distressed, does not lead me to conclude that there would not be unacceptable levels of noise, as this would not be a preventative or mitigating factor to noise generation in the first instance.
15. A number of controlling conditions have been put forward, including a management plan and noise mitigation measures, including the erection of an acoustic fence. I find that elements of the management plan that are relevant to the matter at hand, such as no more than two dogs exercised at any one given time when not on a lead, would be difficult to enforce and would not overcome the harm I have identified. Similarly, I am not persuaded that the installation of an acoustic fence or other mitigation measures as referred to would prevent the potential for noise disturbance. A condition restricting the permission to use by the appellant only has been suggested. Planning permission usually runs with the land and such a condition is rarely appropriate, and in this instance would not overcome the harm I have identified.
16. Due to the noise from the use of the building as kennels, combined with the use of the paddock area for exercising dogs, I conclude that significant harm is caused to the living conditions of occupants of surrounding residential properties. As a result, it is contrary to Policies 29 and 31 of the County Durham Plan (2020) which require, amongst other things, that development provides high standards of amenity, and minimises the impact of development upon the occupants of existing and nearby properties; and that development which has an unacceptable impact, such as through noise, will not be permitted unless satisfactory mitigation measures can be demonstrated.
17. The development is also contrary to paragraph 180 of the National Planning Policy Framework (2019) (the Framework) which seeks to ensure that new development is appropriate for its location taking into account the likely effect (including cumulative effects) on, amongst other things, living conditions, and avoid noise giving rise to significant adverse impacts on quality of life.

Other Matters

18. The appellant has provided information in relation to the reasons behind keeping greyhounds and in relation to the breed themselves. I acknowledge the appellants knowledge, suitability and clear devotion and emotional ties with looking after dogs. I also have no doubt that animal welfare is of paramount importance to them. Nevertheless, whilst I have given moderate weight to these matters, they do not override the harm I have identified.
19. That the development may represent a sustainable re-use of part of a previously underused part of the stable, as the appellant puts forward, does not override the harm that I have identified is caused to living conditions.

Conclusion

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

A M Nilsson INSPECTOR