



Appeal Decision

Site visit made on 19 November 2020

by B Davies MSc FGS CGeol

an Inspector appointed by the Secretary of State

Decision date: 18 January 2021

Appeal Ref: APP/G1630/W/20/3257408

Stonehaven, Twigworth Fields, Twigworth, Gloucester, GL2 9NH

- 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 Selina Greenland (Coats and Tails) against the decision of Tewkesbury Borough Council.
 - The application Ref 19/01027/FUL, dated 27 October 2019, was refused by notice dated 22 June 2020.
 - The development proposed is the change of use of ancillary residential building and part of garden to include business use as dog day care/dog grooming (amended red line). Change of use of adjacent strip of land to residential and dog/daycare use.
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use of ancillary residential building and part of garden to include business use as dog day care/dog grooming and change of use of adjacent strip of land to residential and dog/daycare use at Stonehaven, Twigworth Fields, Twigworth, Gloucester, GL2 9NH in accordance with the terms of the application, 19/01027/FUL, dated 27 October 2019, subject to the conditions in the attached Schedule.

Application for costs

2. An application for costs was made by Ms Selina Greenland (Coats and Tails) against Tewkesbury Borough Council. This application is the subject of a separate Decision.

Procedural matters

3. The description was amended from that on the application form during the application process and I have reflected this in the banner above.

Main issues

4. The main issues are:
 - the effect of the proposal on the living conditions of neighbours with respect to noise; and,
 - the effect on the character and appearance of the area.

Reasons

Living conditions

5. Stonehaven is part of a small cluster of buildings in a predominantly rural area. The appeal site includes a large, modern building to the rear of the main house, that was originally built as a garage and workshop. An orchard to the rear of the garden and strip of land along the adjacent field would provide outdoor space for the dogs. The site is approached from the nearby, busy A38 along a private track, which also provides access to several other dwellings.
6. The appellant's Noise Impact Assessment¹ allows for 24 dogs, which I consider a reasonable representation of 20 licensed dogs in addition to occasional dogs for grooming and the owner's pets. The report assesses the impact at the adjacent property, 'the Hoot', and calculates that noise levels within living rooms and the garden would be acceptable in the context of the baseline noise climate, which is dominated by the A38. The report concludes that noise would be heard but that it would not change behaviour or attitude.
7. An application² for 10 houses in the adjacent field was submitted in 2015, permission for which appears to have been delayed whilst waiting for a section 106 obligation. The Council acknowledges that this may not come forward and therefore affords it limited weight. There is still potential for the agreement to be completed and hence planning permission to be approved, and the future occupants are therefore potential receptors of noise. However, I consider that the modelling undertaken for The Hoot is equivalent to the proposed houses and the results can be applied to both.
8. Both parties agree that there is no standard method of assessing the barking of dogs in the UK, and that any evaluation can be expected to combine both quantitative and qualitative approaches. I consider that the Noise Impact Assessment takes a reasonable approach to fulfilling both of these requirements, by both investigating the prevailing noise climate and meeting the criteria listed by Worcester Regulatory Services (WRS), on behalf of the Council, for a 'subjective review' of the impact taking into account proximity, time of day, audibility and potential intensity.
9. The assessment has been completed by a qualified and experienced specialist in the field and WRS state that the report has been undertaken with integrity. I therefore give considerable weight to these conclusions.
10. However, WRS state that there is a potential for significant impact upon amenity because there are several residential receptors within 150 metres, with the nearest being less than 50 metres away. This is based on WRS' experience of regulating similar facilities, from which they conclude properties up to 400 metres can be affected by dogs barking. As this is based on their extensive experience and specialist knowledge of the subject, I give this considerable weight. I do note, however, that WRS compares the site to kennels, which are in operation overnight and at weekends. The current appeal would only operate during the day, which is a significant difference when assessing the effect on living conditions.

¹ Acoustic Consultants Ltd, Reference 8117/BL (December 2019)

² 15/00898/OUT

11. Policy SD14 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) adopted December 2017 states that development must not cause unacceptable harm to local amenity, impact on human health or exceed relevant limits. To assess what would be 'unacceptable', the Planning Practice Guidance³ (PPG) references the level at which the noise exposure would be above the significant observed adverse effect (SOAEL). Based on the conclusion of the Noise Impact Assessment, the noise would be heard within neighbouring houses, but would not cause a change in behaviour, and in this respect is the equivalent to 'no observed adverse effect'. I find that the proposal therefore meets the requirements of Policy SD14 within neighbouring houses.
12. However, the appellant concludes that cumulative levels would be 55 dB LAeq in the centre of the neighbouring garden. This is above the threshold for 'moderate annoyance' in an outdoor living area according to the WHO guidelines, although I note that the increase from background would be within the IEMA⁴ category of 'minor' impact from the change. In addition, the Council draws attention to the sporadic nature of barking and subjective reaction of the recipient, which cannot be entirely captured in the modelling. For these reasons, I consider that the proposal has the potential to cause harm to living conditions in neighbouring gardens. With reference to the PPG, I conclude this would likely be 'present and intrusive' and above the 'observed adverse effect level'.
13. In this event, the associated action in the PPG is to 'mitigate and reduce to a minimum', which is consistent with Policy SD14 of the JCS. The NIA states that the gaps in the 1.8 metre barrier between the neighbouring property, the host house and the day care centre should be fully sealed. I note that this is not entirely consistent with the application, which is to raise fencing to 1.6 metres to prevent dogs escaping. Notwithstanding this, no details of the mitigation measures are provided, nor assessment of the effectiveness of these compared to other reasonable options, as per the PPG⁵. I am therefore not persuaded that the proposed mitigation measures reflect a reasonable minimum reduction in noise that can be achieved. However, I consider that this is a matter that can be controlled by a condition on the planning permission. On this basis, I conclude that the development would not cause unacceptable harm to local amenity.
14. I have had regard to several appeals brought to my attention by the Council. The Inspector at Ty Llwyd in Powys⁶ concluded that the likely increase in noise level from barking would be compounded by the very low existing background noise. In the current case, background noise from the main road is considerable and will to some extent mask the barking. The decision in South Tyneside⁷ has, unfortunately, been misquoted. The Inspector states that 'given the limited capacity of the grooming parlour I am *not* persuaded that the numbers of dogs present on the site would give rise to unacceptable levels of noise' (my emphasis). However, if the Council is drawing my attention to the Inspector's comparison of the dog grooming business to a residential property,

³ Paragraph: 003 Reference ID: 30-003-20190722, Revised 22 July 2019

⁴ Institute of Environmental Management and Assessment (IEMA) Guidelines for Environmental Noise Impact Assessment, Version 1.2 (November 2014).

⁵ Paragraph: 010 Reference ID: 30-010-20190722, 22 July 2019

⁶ APP/T6850/A/14/2223421 (5 December 2014)

⁷ APP/A4520/W/16/3157682 (16 May 2017)

I do not find this a valid comparison; that site was at the end of a terrace of housing, whereas this is an ancillary building in open countryside, behind scattered development. With regard to the site at Thorley Lane Nursery⁸, the neighbouring bungalow appeared to be adjacent to the site, not just the external space as is the case here, and the site was the subject of an ongoing noise complaint. Opening hours were longer than those before me, including opening on a Saturday. On this basis, I do not consider the sites to be directly comparable.

15. While I find there would be no harm to the living conditions of occupants in nearby houses, I conclude that the noise in the neighbouring garden has the potential to be above the observed adverse effect level. Mitigation measures have been proposed, and the details of these can be secured by condition. The proposal therefore meets the requirements of Policy SD14 of the JCS, which states that there should be no unacceptable harm to local amenity.

Character and appearance

16. I observed that the narrow strip of land along the side of the adjacent field was neatly hedged and when viewed from beyond the site was domestic in appearance. In the context of a backdrop of residential use, when viewed across the field it does not appear intrusive in character. In addition, it has the appearance and width of a grassed country lane, accessed by a wooden gate from the private track, and therefore maintains the rural character of the area. It is not easily visible from the road, even in winter when leaf cover is at its lowest.
17. There is no prevailing pattern to the layout of houses and gardens in the area. 'The Hoot' appeared to have linear subdivisions of its rear garden, and straight hedges demarcating domestic properties and agricultural land can be seen nearby. For this reason, I do not consider that the hedged strip of land is out of keeping with the character of the area.
18. The Council have drawn my attention to 3 appeals. The first, regarding the field adjacent to the site⁹, describes buildings in the area as 'spread out with fields and areas of undeveloped land in between', with which I entirely concur. However, in this decision it is necessary to assess whether the addition of a small strip of field would be harmful to the character and appearance of the area, which for the reasons above, I do not find to be the case. The appeal in Carlisle¹⁰ is of different character; it extends a domestic garden beyond a clear boundary between residential and agricultural land, in a conspicuous location. The Council has not clearly stated why a third case in Devon¹¹ is comparable, but I note that the application was for a pond and hard landscaping, at odds with the agricultural landscape, which is not the case here.
19. I conclude that the proposal is consistent with Policy SD6 of the JCS and HOU10 of the saved policy of the Tewkesbury Borough Local Plan to 2011 (March 2006), which seek to protect landscape character.

⁸ APP/Q4245/W/16/3152560 (4 December 2016)

⁹ APP/G1630/W/20/3246922 (21 August 2020)

¹⁰ APP/E0915/W/20/3250546 (28 July 2020)

¹¹ APP/Q1153/C/16/3149560 (10 February 2017)

Other matters

20. The Council reports that the change of use of the strip of field forming part of the appeal site was not authorised but has stated that a change from agricultural use to residential curtilage is acceptable in principle. It has not been specifically confirmed that a change to commercial use is acceptable, but I consider that this is a logical outcome when viewed as part of the overall scheme and have therefore not assessed this further. I note that the Council could still take enforcement action in regard to the change of use, but this matter is beyond the scope of this decision.
21. Consultation on the emerging Tewkesbury Borough Plan completed in November 2019 and was submitted for examination in May 2020. The policies therefore attract some weight. For the reasons above, I do not find conflict with the draft policies EM4, EM5 and RES11 that have been brought to my attention.

Conditions and conclusion

22. The conditions set out in the accompanying schedule are based on those suggested by the Council. Where necessary I have amended the wording in the interests of precision and clarity, and in order to comply with advice in the PPG.
23. In addition to the statutory time limit I have imposed a condition to secure accordance with the approved plans in the interests of certainty. Given the potential importance of mitigation of noise, I consider it necessary and reasonable to require details of boundary treatments prior to commencement of use. The appellant has suggested a condition controlling the number of dogs and I consider this is appropriate in the interests of the living conditions of residents in the area. I have limited the number of dogs to 20 in line with the proposal and the appellant's suggested condition.
24. I have imposed a condition to control external lighting to protect living conditions of the neighbours and the character and appearance of the area. I have removed the generic reference to all external lighting however, because I consider it reasonable that modest lighting could be required for safety purposes.
25. I have included a condition to restrict working hours to protect the living conditions of neighbours from noise associated with the business, including barking. Both parties have agreed to the wording of this condition.
26. I have not included a condition restricting permitted development rights because I do not consider it necessary. This is because the strip of land is very narrow so development is inevitably restricted, and I consider that a small structure would not be harmful to character and appearance against a backdrop of the ancillary building and host house.
27. I note the appellant's suggestion of a temporary permission but based on the evidence before me I am satisfied that the issues relating to noise can be appropriately controlled via the conditions below.
28. For these reasons, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

B Davies, INSPECTOR

Schedule of 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 following approved plans:
 - Revised site location plan (including access)
 - Existing floor plans and elevations ('alternative garage drawing' T397.05A, November 2006)
- 3) Prior to the commencement of use as dog day care details of boundary treatments shall be submitted and agreed with the local planning authority and implemented in accordance with the details.
- 4) There shall be no floodlighting.
- 5) The use hereby permitted shall only take place between the following hours: 0730 – 1800, Mondays to Fridays.
- 6) No more than 20 dogs shall be kept at the site at any one time. The operators of the site shall keep records of the dogs and these shall be made available for inspection at all reasonable times by officers from the local planning authority.