



Appeal Decision

Site visit made on 12 April 2021

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 June 2021

Appeal Ref: APP/Q3305/W/20/3261953

Shamrock Stables, Lynch Lane, Westbury Sub Mendip, Somerset BA5 1HW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Miss Rosemary Peacock against the decision of Mendip District Council.
 - The application Ref 2019/2336/FUL, dated 20 September 2019, was approved on 28 September 2020 and planning permission was granted subject to conditions.
 - The development permitted is the installation of a septic tank; retention of reception and office building; erection of disabled toilet, kitchen and grooming room; erection of kennels; and use of fields for exercising dogs.
 - The conditions in dispute are Nos 9, 10 and 11 which state that:
 - 9) *Daily activity on the site shall not be carried on and no visitors to the site shall remain on the premises outside the hours of 7.00 and 18.00. Where operations are required outside of these hours, these shall be limited only to the care and wellbeing of animals within the care of the rescue and re-homing centre to ensure that the welfare of the animals on site is not compromised.*
 - 10) *Within 1 month of this planning permission being granted the applicant shall submit for the written approval of the Local Planning Authority a Travel Plan to demonstrate how visitors to the site will be instructed on the best route for access prior to visitation.*
 - 11) *The use of the exercise fields hereby approved shall be for the private use of the animals living on site and/or kept and housed on site by the rescue and re-homing centre only and not for commercial use.*
 - The reasons given for the conditions are:
 - 9) *To safeguard the amenities of adjoining occupiers having regards to Policies DP7 and DP8 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).*
 - 10) *To safeguard the amenity of neighbouring occupiers and to ensure that highway safety is maintained in accordance with DP7 and DP9 of the Local Plan Part 1.*
 - 11) *In the interests of amenity and highway safety having regards to Policies DP7 and DP9 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).*
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Decision

1. The appeal is allowed, and the planning permission Ref 2019/2336/FUL for the installation of a septic tank; retention of reception and office building; erection of disabled toilet, kitchen and grooming room; erection of kennels; and use of fields for exercising dogs at Shamrock Stables, Lynch Lane, Westbury Sub Mendip, Somerset BA5 1HW, granted on 28 September 2020 by Mendip District Council, is varied by deleting Conditions 9, 10 and 11.

Application for costs

2. An application for costs was made by Miss Rosemary Peacock against Mendip District Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are whether the disputed conditions are reasonable and necessary in the interests of safeguarding the amenities of neighbours to the site and highway safety.

Reasons

Condition 9

4. This condition relates to a restriction on visitors to the premises in the evening and overnight. However, from the evidence before me the site is remote from neighbouring properties (it is noted that there are two dwellings adjacent to the kennels, but these are within the site area). Any visitors would be unlikely to result in significant noise and disturbance to other residents in the area from this site. Whilst there are some comments received from interested parties with regards to noise from the dogs at the site in unsociable hours, the condition in question relates only to visitors to the site and daily activity. The dogs would still be on site overnight in many cases and what activities the condition refers to is vague. I do not consider a condition that requires that dogs would not be 'disturbed' overnight as reasonable or enforceable. I would also note at this point that if it does transpire that there is significant noise disturbance from the site then there are other legislative regimes that the Council could potentially use to address this.
5. There could be some additional traffic without this condition, but there is no substantive evidence to demonstrate that this would be to a degree that would result in disturbance to occupiers of dwellings along Lynch Lane or the wider road network.
6. As such, I do not consider this condition is necessary for the development to be acceptable or for it to comply with policies DP7 and DP8 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014). These policies require the protection of the amenity of users of neighbouring buildings and land uses and to protect the environment from impacts from noise, for example.

Condition 10

7. This condition requires a Travel Plan for the site and its visitors. Whilst sustainable travel is a positive objective, in this case there are only a low number of employees on site at any one time and if visitors are transporting dogs to the site it may be difficult to use public transport for example. I understand that some people go to the wrong address when trying to visit the site, but whilst this could disturb neighbours, I do not regard this as reason enough to require a Travel Plan. This could be achieved through simpler methods like putting a map on a website for example. Furthermore, it is not clear how a Travel Plan is required in the interests of highway safety from the evidence provided.

8. On these grounds, this condition is not reasonably necessary for the development to be acceptable or be in accordance with policies DP7 and DP9 of the Local Plan Part 1. These policies state that where appropriate, development proposals must demonstrate how they will improve or maximise the use of sustainable forms of transport and protect the amenities of neighbours.

Condition 11

9. Finally, Condition 11 relates to restricting the use of adjacent fields for dog walking in relation to the business. I understand that this was previously part of the proposal but since withdrawn, with these fields out of the red-line site area. As such, there is no substantive reason to impose a condition restricting something that is not proposed. The development (such as change of use) should all be within the 'red-line' site area as defined by the Location Plan.
10. I note that there has been an incidence of dogs chasing sheep, but this could be a relatively isolated incident and does not warrant the retention of condition 11 or any alternative condition.
11. On this basis, this condition is not reasonably necessary for the development to be acceptable or be in accordance with policies DP7 and DP9 of the Local Plan Part 1. These policies require development to protect the amenities of neighbours and avoid causing traffic or environmental problems, amongst other things.

Other Matters

12. It is clear from the interested party representations that there is some local concern regarding the development. With regards the issue of noise, I note that the Council Environmental Protection Officer has stated that "*Noise from the site has been extensively investigated previously and no nuisance determined.*"
13. There may still be some noise audible at other neighbouring properties, but I am satisfied from the evidence before me and following a site visit that this is not likely to cause a significant level of disturbance that would necessitate additional conditions to control this aspect, other than that already imposed by the Council.
14. In terms of future expansion of the site, this would likely require further planning permission or be potentially subject to enforcement action. I do not regard there as being any substantive evidence to demonstrate that there should be imposed further restrictive conditions relating to the development within the red line site area. I also note that there is a condition to restrict the number of dogs at the site, which I would regard as sufficient. There is no substantive evidence that the overall number of dogs cannot be accommodated within the site and I see no reasonable necessity to require further information on this matter via condition, for example.
15. To my mind, with the remaining conditions, the tranquillity of the Area of Outstanding Natural Beauty should be conserved sufficiently.
16. The development, without the disputed conditions, would be acceptable in all regards, though this is subject to the imposition and adherence to the remaining conditions the Council have imposed.

Conclusions

17. The appeal is allowed, and I will vary the planning permission by deleting the disputed conditions. All the other conditions on this permission remain and are required to be adhered to.

Steven Rennie

INSPECTOR