



Appeal Decision

Site visit made on 17 May 2021

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 July 2021

Appeal Ref: APP/D0840/W/21/3267714

Land West of Palverna, High Street, St Austell PL26 7SP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Alan Ead against the decision of Cornwall Council.
 - The application Ref PA19/08172, dated 4 November 2019, was refused by notice dated 27 July 2020.
 - The development proposed is outline planning residential development.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal application was made in outline form with all matters save for access reserved for future consideration. Consequently, all potential layout options detailed in the submitted plans have been treated as purely indicative.

Main Issues

3. The main issue is whether satisfactory living conditions would be created for future occupants, with particular regard to the effects of noise from the nearby commercial dog kennels.

Reasons

4. The site comprises part of a hedgebank and tree-bound field which rises up in a northerly direction and which is elevated above the adjoining A3058 to the south. The dwellings, Palverna and Wayside Cottage, are to the east and west respectively. To the rear of Palverna is a dwelling and associated commercial dog boarding kennels, Yeovale Kennels, which has a capacity to cater for 30 boarding or 'day-care' dogs under the terms of its licence. It contains a kennel building and numerous exercise areas which adjoin the eastern boundary of the field of which the site forms a part.
5. Whilst I note that the suggested layout is to be treated as indicative, the size and location of the site dictates that the proposal would likely take the form of frontage infilling between Wayside and Palverna, the latter of which is also seen in context with another dwelling to the east, 'The Lodge'. If taking the form in the suggested layout plan, the rear of the proposed dwellings would be within around 40 - 65 metres from the kennel building, with rear gardens closer still.
6. Paragraph 180 of the National Planning Policy Framework (the Framework) requires decisions to ensure that development is appropriate for its location and, in doing so, avoid noise giving rise to significant adverse impacts on

health and the quality of life. Paragraph 182 states that decisions should ensure that new development can be integrated effectively with existing businesses and community facilities. The Planning Practice Guidance (PPG)¹ advises that the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected².

7. The Lodge, Palverna and Wayside are unrelated to Yeovale Kennels and the occupiers of the latter have indicated that they have approached the owners of the kennels to seek co-operation in respect of containing the noise of barking dogs. I understand that dog barking is most problematic when the dogs are being exercised outdoors, but that to date, no formal complaints have been made to the Council's Community Protection Team.
8. The appellant's noise evidence states that, from the attended surveys undertaken in November 2019 (the 2019 data), the specific sound levels were recorded as 63.4 LA_{max} and 51.7 LA_{eq,T}. The unattended results vary between the positions of the monitors (MP1 and MP2) and between 60 LA_{max} during the night and 74 LA_{max} during the day. From these results, the resultant specific sound level associated with the dog kennel-attributed events was calculated as being LA_{eq,T} 42.8 dB. The unattended results indicated that the kennels were not audible during the night and the measured noise levels were well within the overall context of the maxima events present in the ambient sound climate, from sources not associated with the commercial dog kennels, such as road traffic from the adjoining A3058.
9. Further attended noise surveys were undertaken in September 2020 (the 2020 data), where the specific sound levels associated with the kennels were recorded as 63.7 LA_{max} and 51.9 LA_{eq,T}. These broadly similar results derived the same resultant specific sound level as that produced from the 2019 data, i.e. LA_{eq,T} 42.8 dB. It is claimed that as the two surveys corroborate the same impact from the commercial dog kennels, and given that the measurements were undertaken over two distinctly different time periods, that the overall noise conclusions and recommended mitigation can be considered to be robust.
10. For the duration of my visit, I observed audible and persistent dog barking from dogs using the external exercise areas which varied in volume and composition. From the evidence, the 2019 data appears to be based on the presence of up to 8 boarding dogs, with the 2020 data taken at a time when a total of 10 dogs were boarding. It is not clear whether all resident dogs were exercised simultaneously during the measurement periods and the initial evidence appeared to be incorrect in relation to exercise frequencies and periods. However, given that the kennels is not restricted by any planning conditions or legal agreements in relation to exercise regimes, there is a potential that simultaneous exercising of a far greater number of dogs could occur.
11. Though the appellant considers that the number of dogs and instances of outdoor exercise is immaterial to the noise measurement outcome, from my own observations, it seems to me that if more dogs are exercising outside simultaneously, there is the potential for noise levels experienced at the appeal site to be greater. The 2019 and 2020 data has been collected at times when

¹ Department for Communities and Local Government (DCLG), 2014. National Planning Practice Guidance for England: Noise

² Paragraph: 006 Reference ID: 30-006-20190722

the number of dogs boarding was lower than usual (relating to winter months and the effects of COVID-19 in terms of travel restrictions) and the data is based on only the difference of an additional two dogs. I do not regard this sufficient evidence that it is immaterial whether there 2, 8, 10 or 30 dogs as claimed.

12. I note that the Rated Sound Level has been derived from the Measured Specific Sound Level with the addition of penalties for tonality and impulsivity. However, the subjective method with which the penalties are applied gives rise to a degree of concern about its robustness. In this case, both effects were considered to be only 'just perceptible', i.e. with the minimum tonal penalty rating of +2dB and the minimum impulsivity penalty rating of +3dB applied, without any further corrections applied for measurement uncertainty.
13. I note that the impulsivity correction feature does not differentiate between the number of occurrences of the impulsive event, i.e. barking, and in my view, it appears to be a blunt tool in this regard. Given the degree of subjectivity involved in the application of the penalties and in light of the concerns expressed by the Council's Community Protection Team, I too regard the lack of a mutually agreed, or at least a precautionary approach to be concerning, particularly given the margins between the potential outcomes of either a 'No Observed Adverse Effect Level', 'Lowest Observed Adverse Effect Level' and 'Significant Observed Adverse Effect level'. Consequently, I cannot be certain that noise levels within the dwelling would not be to a greater adverse level or potentially significant level in the context of BS4142:2014+A1:2019³.
14. With regard to the outdoor space, BS8233:2014⁴ states that "*it is desirable that the external noise level does not exceed 50dB LAeq,T, with an upper guideline value of 55dB LAeq,T which would be acceptable in noisier environments*". The measured sound level during the daytime period is stated as being LAeq 52 dB at the position of the monitoring equipment at 'MP2'. Whilst it is suggested that the upper guideline value of LAeq,T 55 dB would be achieved, this is of limited comfort given that the upper guideline limit is supposed to be applicable to 'noisier environments'.
15. The appellant's evidence suggests that the construction of an acoustic barrier, comprising a 2m high, close boarded continuous fence of a specified density would be expected to achieve acoustic reductions of 5 to 8 dB. This is suggested to ensure that the internal environment of all new dwellings could achieve the NOAEL, even with only a normal elevational treatment as required for thermal performance and with windows open to a degree. Whilst the appellant's evidence assert that the excess of the rating sound level over the background sound level is all that is relevant, if there is some uncertainty about the figure derived from this calculation, then the adequacy of such acoustic reductions is also brought into doubt.
16. I accept that there could be a scientifically proven case for barking noise to be found acceptable and I also recognise that the Council's Statement has been prepared by an officer without an acoustic-specialist related qualification. Nonetheless, based on the evidence before me, it appears that much reliance is being placed on a calculation which may not have been derived from a robust worst-case scenario. Whilst I note that neighbouring occupiers have existed in

³ British Standard 4142: 2014+A1:2019 Method for rating and assessing commercial sound. BSI

⁴ British Standard 8233: 2014 Guidance on sound insulation and noise reduction for buildings. BSI

close proximity of the kennels thus far, the fragility of this situation may yet result in change being triggered in the future, without adding a likely catalyst for such an event through the introduction of new residents into the mix.

17. I have considered the appeal decision for the development nearby⁵. Due to the very site-specific circumstances in this case, which were not present in that, I do not consider that it is of such relevance that it is capable of altering my findings in this instance.
18. Consequently, in the absence of clear and convincing evidence to the contrary, in my view, future occupants would not be adequately protected from the effects of noise from the nearby commercial dog kennels. The proposal would therefore conflict with Policies 12, 13 and 16 of the Cornwall Local Plan (2016) which seek to protect individuals and property, and alleviate risk to, people and the environment from unsafe, unhealthy and polluted environments from aspects such as unreasonable noise and disturbance. For similar reasons, the proposal would also conflict with the Framework.

Planning balance and conclusion

19. The appellant raises that the proposal has not been found in conflict with any other policies of the development plan, in respect of its location or other effects on landscape or highway safety. However, a single instance of development plan conflict is sufficient to bring the development into conflict with it when considered as a whole; as is the case in this instance.
20. The proposal would add a small number of dwellings to the local housing stock, increasing access to housing with associated social benefits. There would also be short-term economic benefits during construction, followed by longer-term economic benefits through the reliance on local goods and services by new residents. However, these benefits attract only modest weight relative to the scale of the scheme. As such, the benefits of the scheme do not outweigh the identified harm in this instance and do not indicate that a decision should be made other than in accordance with the development plan.
21. For the reasons set out above, and having regard to all other matters raised, the appeal is dismissed.

Hollie Nicholls

INSPECTOR

⁵ Appeal decision ref: APP/D0840/W/18/3208610