



Appeal Decision

Site visits made on 5 and 24 January 2022

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 February 2022

Appeal Ref: APP/H0738/W/21/3284623

342 Norton Road, Norton TS20 2PN

- 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 M Knowles & Mr P McGowan against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 21/0729/RET, dated 15 March 2021, was refused by notice dated 29 September 2021.
 - The development is use of former taxi base for breeding of dogs.
-

Decision

1. The appeal is allowed and planning permission is granted for use of former taxi base for breeding of dogs at 342 Norton Road, Stockton-on-Tees TS20 2PN in accordance with the terms of the application, Ref 21/0729/RET, dated 15 March 2021, subject to the conditions set out in the attached Schedule of Conditions.

Applications for costs

2. An application for an award of costs was made by Ms M Knowles and Mr P McGowan against the Stockton-on-Tees Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. My visit to the site was conducted in two parts. The first part comprised of a visit to the streets surrounding the appeal site, the second to the appeal site itself as well as a further appraisal of the surrounding area.
4. The application seeks permission retrospectively for the change of use of the appeal property to use as a dog breeding business for up to 16 dogs. It is stated that the appellants have been operating a licenced dog breeding business from the appeal property since 2016. It is clear that the Council considered the proposal on this basis and so therefore shall I.

Main Issue

5. The main issue is the effect of the use of the appeal property for the breeding of dogs on the living conditions of occupiers of neighbouring residential properties, with particular regard to noise.

Reasons

6. The appeal site lies in a principally, but not exclusively, residential setting. Along its length it is of mixed character with both residential and a mix of commercial uses in both directions from the appeal site. Directly adjacent to

342 Norton Road, at the junction of Norton Road and Imperial Avenue, a petrol filling station is a notable and significant commercial presence. However, other than the petrol filling station, residential properties lie immediately to the rear of No 342 on Granville Grove and, to the front, on the opposite side of Norton Road. My observations during my visits confirmed the agreed position of both main parties that Norton Road is a busy road.

7. The dog breeding activities take place towards the rear of the site within an existing building, attached to north-facing elevation of which is an exercise area. It is this area, partly enclosed by open metal railings on two sides, a timber fence on a third side and the existing building on the fourth, that neighbour concerns regarding noise principally relate to.
8. The appellants' Noise Impact Assessment¹ (NIA) shows that, without mitigation measures, the layout of the existing buildings effectively funnels noise between them from the eastern end of the exercise area towards the rear of the closest houses and gardens of Granville Grove. However, a range of mitigation measures are set out within the NIA, some of which had been implemented at the time of my visit, and some that had not.
9. The concerns of residents are expressed principally in terms of, but not solely limited to, the noise of barking dogs from the outside exercise area. I note the appellants' statement that the building has already been subject to the implementation of mitigation measures in line within the NIA. I noted too, that close-boarded timber fencing had been installed on the eastern end of the exercise area, and around the visible perimeter of the appeal site between the rear of the building and the side of the stable building.
10. There is no dispute between the main parties that the appellants' NIA satisfactorily demonstrates that mitigation measures would substantially reduce the noise contours arising from the dog breeding operation. Whilst neighbours complain that noise remains an issue it is clear that the mitigation measures have not, as yet, been implemented in full. In particular, the long north-facing side of the exercise area and the roof remain essentially open.
11. Whilst I have given much thought to the Council's contention that the noise arising from barking dogs is likely to be intermittent and variable in tone, pitch and volume, I have no compelling evidence to support these views, or to challenge the conclusions of the NIA. I have also carefully considered the concerns and objections of neighbours, which are clearly well-established over an extended period of time, regarding the operation of the appellants' dog breeding business.
12. However, the extent of outside time for dogs would be limited by way of a timetabled rota. So too would the numbers of dogs at any one time. There were a number of dogs outside in the exercise yard during my visit to the site and, whilst they were not barking whilst I was there, I accept that I observed just a snapshot in time during my visit. I accept too that with successive timetabled rota periods allowing for dogs to be outside within the exercise yard the length of time in which nearby residents would potentially be exposed to noise would be substantial. Nor do I doubt the comments of neighbours that

¹ Apex Acoustics 'Dog Breeding Establishment, Norton Road, Stockton-on-Tees' Ref 7775.1 Revision B dated 14 January 2021 and Apex Acoustics Memo No: 7775.M2B dated 12 May 2021

dogs have barked when outside in the past, and will no doubt continue to do so on occasion.

13. Nevertheless, I am satisfied that the measures set out within the NIA, along with others set out within the appeal scheme, demonstrate the responsible management and operation of a dog breeding enterprise by the appellants. The NIA satisfactorily demonstrates that the mitigation measures, once fully installed and maintained, would also be effective in reducing the noise levels associated with the dog breeding use experienced at the neighbouring properties.
14. The mitigation measures would not render the use silent, nor does the NIA seek to suggest as much. However, I am satisfied that the measures already undertaken, in conjunction with those proposed within the appeal scheme and the NIA would allow the use to operate within a predominantly, but not solely, residential area, without undue harm to the living conditions of occupiers of nearby residential properties.
15. Policy SD8 of the Local Plan (LP) sets out the Council's approach to sustainable design principles. It states (SD8(1)) that the Council will seek that new development will be designed to the highest possible standard, taking into consideration the context of the surrounding area and the need to respond positively to a range of factors. Proposals will need to respond positively to, amongst other factors, the privacy and amenity of all existing and future occupants of land and buildings (SD8(1)(e)).
16. LP policy ENV7 recognises that where proposals may give rise to noise pollution, mitigation measures may be appropriate as a means to reduce pollution so as not to cause unacceptable impacts on the living conditions of existing and future occupants of land and buildings. I am satisfied that the appellants have adequately demonstrated that mitigation measures in this instance would reduce incidences of the noise of dogs barking to levels advised by the Council to be satisfactory.
17. This is not to say that dogs barking would be inaudible. Rather, that in the context of the appeal site and its surroundings, taking into account the busy background noise environment of Norton Road and the petrol filling station, that noise can be adequately mitigated. Subject to the imposition of appropriately worded conditions to ensure compliance with the NIA and the management and operation of the facility, I am satisfied that there would be no conflict with LP policy SD8, particularly with reference to sub-paragraph 1e, or with LP policy ENV7.
18. In reaching this conclusion I have carefully considered the concerns and objections of nearby residents, and their description of on-going incidences of noise and disturbance from barking dogs. However, it is clear that the concerns and objections expressed relate to situations and circumstances which the appeal scheme seeks to remedy and mitigate against.

Other Matters

19. Occupants of nearby properties have objected to the proposal on a number of grounds beyond those considered above in respect of the main issue. The appellants' dog breeding enterprise has operated from the appeal property on a licenced basis for a number of years. The matter of kennel sizes is a matter for

the appropriate licencing body and is not a material consideration to which I give any significant weight.

20. Whilst I have noted the difference of opinion expressed by nearby residents regarding the extent of previous taxi office operations, I have considered the appeal on the evidence before me and on its own merits, having regard to the nature and character of the surrounding area, and not necessarily as a direct comparison with what has gone before it. Concerns regarding the further veracity of the submissions are matters for the appellants, the Council and interested parties to resolve and are not matters to which I give any significant weight.

Conditions

21. I have considered the conditions suggested by the Council against the provisions of the Framework and Planning Practice Guidance. As the appeal scheme is operational a conventional time limit condition is not appropriate, but I agree that an approved plans condition is necessary in order to provide certainty and in the interests of good planning. Where applicable, and as an alternative in this instance to a time limit condition, other conditions may require implementation within a particular time period from the date of this decision.
22. Thus, I agree that implementation of, and accordance with, the acoustic mitigation measures within one month of the decision date is proportionate, reasonable and necessary in the interests of living conditions. Intertwined with the acoustic mitigation measures, conditions regarding the number of breeding dogs, litters, access to the outdoor exercise area and external lighting are also reasonable and necessary conditions for the same reason. So too, delivery timings, drainage and waste management conditions.

Conclusion

23. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be allowed.

G Robbie

INSPECTOR

Schedule of Conditions

- 1) The development hereby approved shall be in accordance with the following approved plans: SBC0001.
- 2) The maximum number of adult dogs accommodated on the site shall not exceed 16 at any one time.
- 3) The maximum number of litters produced on the site shall not exceed 16 in any one year.
- 4) The external exercise area hereby approved shall not be used outside of the hours of 08:00 to 20:00 hours Monday to Sunday. Within those times, no more than 4 dogs shall be exercised at one time. Dogs using the exercise area must be accompanied by a member of staff at all times and any dogs repeatedly barking within the external exercise area shall be removed from the exercise area immediately and shall not return within that 1-hour period.
- 5) Notwithstanding the development hereby approved, within one month of the date of this decision notice, full details of the acoustic mitigation measures, to be installed at the external exercise area, as set out within the revised noise survey (submitted 7 September 2021, ref; 7775.M2C) shall be submitted to and be agreed in writing with the Local Planning Authority. The mitigation measures shall be implemented in strict accordance with the agreed details within one month of the date of this decision notice and thereafter shall be retained and maintained for the lifetime of the development.
- 6) Notwithstanding any information contained within this application, full details of the management of associated waste materials shall be submitted to and be agreed in writing with the Local Planning Authority within 1 month of the development hereby approved. Following approval of the waste management details, the scheme shall be implemented in full accordance with the agreed details and shall be maintained in accordance with those details thereafter, unless the Local Planning Authority first gives its written approval to any other waste management scheme.
- 7) Within one month of the date of the decision notice, details of the surface water drainage and repair work associated with the dog breeding outbuilding shall be submitted to and agreed in writing with the Local Planning Authority. Thereafter the works shall be carried out in accordance with the agreed details within one month of the details being agreed and thereafter shall be retained and maintained for the lifetime of the development.
- 8) No additional external lighting shall be installed on the site or affixed to any structures on the site and no floodlights or other methods of illuminating the site shall be erected without the prior written consent of the Local Planning Authority.
- 9) No deliveries shall be made to or from the application site and no members of the public shall visit the premise outside of the hours of 08:00 - 19:00 Monday to Sunday.

**** end of schedule****