



Appeal Decision

Site visit made on 24 May 2022

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 22nd August 2022

Appeal Ref: APP/Y3940/W/21/3289403

The Grain Barn, The Hillocks, Lyneham, Wilts, SN15 4DJ

- 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 D Porter against the decision of Wiltshire Council.
 - The application Ref PL/2021/04295, dated 29 March 2021, was refused by notice dated 28 July 2021.
 - The development proposed is change of use from grain store to kennels for 50 greyhounds and provision of portaloo, 2 storage containers and 4 dog runs – retrospective application.
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Decision

1. The appeal is allowed, and planning permission is granted for change of use from grain store to kennels for 50 greyhounds and provision of portaloo, 2 storage containers and 4 dog runs at The Grain Barn, The Hillocks, Lyneham, Wilts, SN15 4DJ, in accordance with the terms of the application, Ref: PL/2021/04295, dated 29 March 2021, in accordance with the following submitted plans: Centre Maps Live 1:1250 plan dated 15 March 2021, Drawing No. 1A, Drawing No. 2, and subject to the conditions set out in the attached Schedule.

Preliminary Matters

2. The development has already been carried out. I have considered the appeal on this basis.
3. There are references before me to the Lyneham and Bradenstoke Neighbourhood Development Plan 2020 to 2030. However, the map set out at Figure 1 of this document shows that the site is outside of the plan area. This document has not therefore been determinative.

Main Issues

4. The main issues are:
 - a) Whether the site is suitably located for the development having regard to local and national planning policies,
 - b) The effect of the development on the living conditions of nearby residents with regard to noise.

Reasons

Location

5. The barn is located in the corner of a field in an isolated rural location. The Council's settlement strategy is set out in Policy CP1 of the Wiltshire Core Strategy 2015 (CS), and applied to the Royal Wootton Bassett and Cricklade Community Area by Policy CP19 of the CS. The site is outside any of the settlements identified by these Policies. Policy CP2 of the CS establishes that development will not be permitted outside the limits of development unless it is permitted by other CP Policies, including Policy CP48.
6. Policy CP48 refers to the conversion and re-use of rural buildings for employment, tourism, cultural and community uses. The development relates to the conversion and re-use of part of an existing rural building. The Council suggests that the use is not for employment however it is clear from the evidence that, although the numbers are small, people are employed at the site to look after the dogs. There is no requirement within Policy CP48 for an employment use to be of a certain scale. I am therefore satisfied that the development can be considered to constitute the conversion and re-use of a rural building for employment. I also need to consider whether the development satisfies criteria i-v of this part of the Policy.
7. With regard to criterion i, the building appears to be structurally sound and as the development has already been carried out it is proven that it is capable of being put to use for kennelling without major rebuilding. Work is proposed to address the matter of noise transmission from within the building, however this cannot be considered major rebuilding. The development includes some minor external development, however this would appear to be within the confines of this criteria which allows for some modification.
8. With regard to criterion ii, the modest post and wire boundaries enclosing the four dog runs do not appear out of place in this agricultural setting, and they are between the existing building and the mature hedges bounding the northwest and southwest site boundaries. The development has included two storage containers and a portaloo. Although the storage containers are not typical agricultural structures, they are physically well related to the existing building and more modest in scale than its tall end gable elevation. Furthermore, the site is well contained behind mature hedges, and owing to the nature of the road, would generally only be glimpsed by persons travelling past at speed.
9. For these reasons I am satisfied that the use does not detract from the character or appearance of the landscape. This criterion also refers to residential amenity which is a matter that forms the second main issue of the appeal.
10. The existing access benefits from good visibility and the site is large enough to allow a driver to turn a vehicle to exit in a forward gear. Evidence suggests that the building is without basic services, however this has not prevented the appellant from implementing the development. For these reasons I am satisfied that the site has access and infrastructure that is adequate for the development and thus accords with criterion iii.

11. Criterion iv seeks to ensure that the building is served by reasonable access to local services. What is meant by 'reasonable' access is not specified in the Policy. Given that this Policy relates to rural areas it is likely that access to local services will be less convenient than in built up areas, and that transport options are likely to be less also. However, a failure of an existing building to provide good access to local services by a variety of transport modes does not necessarily mean that it fails to provide reasonable access to such services.
12. I accept that the site is detached from any settlement or other development. However, it is close to the settlement of Lyneham and also the larger settlement of Royal Wootton Bassett. Both settlements appear to provide a wide range of local services. Access to either settlement from the site would be achieved easily along the A3102. Whilst persons working at the kennels would be most likely to use a private car to access the site or to move between the site and local services, I am satisfied that such an arrangement constitutes reasonable access to local services.
13. The barn is not a heritage asset, so criterion v is not relevant.
14. Policy CP60 of the CS sets out the Council's sustainable transport objectives to help reduce the need to travel by private car. Policy CP61 of the CS seeks to ensure that new development is located and designed to reduce the need to travel particularly by private car. Paragraph 105 of the National Planning Policy Framework (the Framework) establishes that the planning system should actively manage patterns of growth. Whilst I give weight to these objectives, the proposal re-uses an existing building and accords with Policy CP48, which is the most directly relevant Policy. Notwithstanding this I have found that the site has reasonable access to local services. It is likely that journeys associated with the site would be made by private vehicles, however such vehicle movements are low frequency, and some journeys can only realistically be made by a private vehicle owing to the nature of the use, such as those that involve the transportation of dogs or when goods are delivered.
15. The distance between the appellant's home and the site has no bearing on my finding that the proposal accords with Policy CP48 of the CS. Similarly, the Policy does not require the conversion and re-use of a rural building to only relate to a use that is countryside based, or that alternative locations should be explored.
16. As to whether the development meets a local need, this is a matter referred to in the supporting text of Policy CP48 of the CS in the context of reusing buildings. However, it is not a requirement of the exception set out in the Policy. Therefore, whilst it is helpful in understanding the background to the Policy, a lack of clear local need does not mean that the development falls short of the Policy position.
17. In summary, taking all these matters into account, I am satisfied that the site is suitably located for the development. It accords with the exception set out in Policy CP48 of the CS for the conversion and re-use of rural buildings. It also accords with paragraph 111 of Framework which seeks to prevent development that has an unacceptable impact on highway safety.

Living Conditions

18. A Noise Impact Assessment by Ian Sharland Limited dated 30 November 2021 (the Noise Assessment) was submitted with the appeal. The report considers the impacts arising from keeping dogs at the site on the living conditions of the occupiers of the closest dwellings, No. 20 The Hillocks to the northeast and Lillybrook House to the west.
19. There can be no doubt that the noise of a group of dogs barking or whining has a very different impact on the human psyche than a more consistent and steady noise such as that generated by traffic on a busy road. The sudden and sharp sounds that a dog makes can cause alarm to a person and would certainly be intrusive if heard nearby during the night, sufficient to disturb sleep and harm the living conditions of those living near to the site.
20. The Noise Assessment finds that the sound that the dogs make during the day would not be a significant issue, particularly as the background noise of the road is significant, and the occasional bark of a dog or even a few dogs would not be particularly intrusive during the daytime. However, it is still considered necessary to erect an acoustic barrier to contain the noise generated when the dog runs are in use. Based on the evidence before me this would appear to be necessary and would not have an adverse impact on the character and appearance of the area as the barrier would be positioned between the sides of the runs and the existing mature hedge.
21. During the night, when background noise is lower there is the potential for the noise that the dogs make from within the building to be a problem. Indeed, the occupiers of one of the closest dwellings, who are well placed to provide evidence on this matter, report that the howling of dogs early in the morning or late at night is a most disturbing noise that can be unbearable at times.
22. The existing building does not appear to be ideal for the housing of a large number of dogs. However, the Noise Assessment suggests significant work to the internal envelope of the building that would reduce the transmission of sound from the building and address the matter of night-time noise disturbance. The appellant is willing to carry out the work and a robustly worded condition will ensure that this matter can be enforced by the Council if necessary.
23. The roof above the kennels includes areas of clear plastic that provide natural light. The installation of the suspended ceiling will need to be designed to maintain natural light to the area of the kennels. This is a matter that is recognised by the appellant in the submissions. Whilst this may require the existing clear sheets to be upgraded to something that better manages sound transmission, this would be similar to the way that an insulated ceiling is finished around a rooflight, and I am thus satisfied that this would not present an insurmountable problem.
24. The movement of dogs from inside the building into a van for transportation for racing and returning the dogs after a race has the potential to create a short but significant burst of barking outside of the building. Evidence submitted suggests that this can occur past 22:00 when it would be a nuisance to the occupiers of nearby buildings. To manage this the appellant has suggested that evening races could be earlier so that the dogs are returned back to the

kennels earlier. A suitably worded condition would secure this and ensure that the matter can be enforced by the Council in the future as necessary.

25. In summary, I am satisfied that the development will not harm the living conditions of the nearby residents on the basis that the recommendations set out in the Noise Assessment are carried out. It would thus accord with Policy CP57 of the CS and Saved Policy NE18 of the North Wiltshire Local Plan 2011, which together seek to ensure that development proposals have regard to the amenities of the occupants of adjoining buildings and do not harm public health.

Other Matters

26. The Council issued a further refusal reason, reason No. 2, which suggested that granting planning permission for the development would likely result in a requirement for a permanent presence on the site in the form of a new dwelling in the open countryside. There is nothing before me to suggest that this would be likely. Indeed, the appellant confirms that he ran a similar kennels business from a different location for many years without living on site, and that security at the site could be improved by installing CCTV and / or alarms in the future if it was considered necessary.
27. It is essential to consider each application on its own merits. I am not satisfied that it is appropriate to consider in detail a refusal reason for something that may occur in the future for which the appellant has not applied and for which there is little evidence to suggest that it is a possibility. Accordingly, this matter has not formed a main issue of the appeal.
28. I have a high number of representations before me relating to the principle of keeping dogs in kennels and specific concerns about the suitability of the building for such purposes. Whilst I do not dispute that such matters are valid concerns, they are managed by other legislative regimes and should not therefore weigh against the development.

Conditions

29. I have had regard to the planning conditions suggested by the Council. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance.
30. I have imposed a condition to require the first 5 metres of the access to be consolidated to prevent loose material from discharging onto the highway. I accept that the barn and access already existed prior to the development taking place, however the road from which the site is accessed is an A road that appears to carry a reasonable volume of traffic and upon which vehicles can travel past the site speed. As such this is a matter of considerable importance. Furthermore, although a detailed comparison has not been made, it is likely that vehicle movements associated with the site have increased as a result of the development, increasing the potential for loose material to be carried onto the highway from the site.
31. I have imposed two conditions that follow on from the recommendations of the Noise Assessment. These ensure that works are carried out in a timely manner to address the transmission of sound from the site and ensure that the development does not adversely affect the living conditions of the occupiers of nearby dwellings.

32. Conditions 1-3 set out a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of these matters before the development takes place. The conditions will ensure that the development can be enforced against if the requirements are not met.
33. I have imposed conditions to require the submission of details relating to the installation of additional external lighting or CCTV equipment, to ensure that such fittings do not harm the character and appearance of the area.
34. I have imposed a condition to control the hours of noise generating activity at the site that could be audible from outside the building and thus harm the living conditions of the occupiers of nearby dwellings. This allows for the short burst of activity associated with returning the dogs to the kennels after an evening race but ensures that this does not take place after 21:15.
35. The Council suggests that such a condition would be difficult to enforce, that it would rely on reports from the occupiers of neighbouring dwellings and would be regularly breached for a number of foreseeable reasons. In terms of enforceability, a breach of the condition would be quite straightforward to detect as it would be easy to identify activity at the site outside of the stated hours. I accept that this may require formal observations to be carried out outside of normal working hours, or a reliance on reports from neighbours. However, this is comparable to many similar conditions that restrict certain activities during night-time hours to safeguard the living conditions of the occupiers of nearby dwellings. It provides a clear framework within which the site should be able to operate on a day-to-day basis and I note that the appellant is happy with this approach.
36. I accept that scenarios may arise where the condition might be breached, such as for animal welfare reasons or site security. There is however nothing before me to suggest that this would be likely or that out of hours activity at the site occurs presently, apart from that associated with returning the dogs to the site after a race, which I have accounted for. It would be up to the Council to decide whether it would be expedient to take action against such breaches should they occur.
37. This condition is necessary to make the development acceptable as it safeguards the living conditions of those who reside near to the site. I am satisfied that it is also enforceable and reasonable in all other respects for the reasons given.
38. I have not imposed the Council's suggested conditions relating to landscaping. The external changes to the site are modest and have not harmed the character or appearance of the area. I do not therefore consider it necessary for further landscaping to be carried out to make the development acceptable.

Conclusion

39. For the reasons above, the appeal should be allowed.

A Tucker

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Unless within 3 months of the date of this decision a suitable access to the highway such that the first 5 metres of the access, measured from the edge of the carriageway, has been consolidated and surfaced (not loose stone or gravel), the use of the site as kennels for 50 greyhounds shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is implemented. Once the consolidated surface has been laid it shall be maintained as such thereafter. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 2) Unless within 3 months of the date of this decision a Site Management Plan (as recommended by the Noise Impact Assessment by Ian Sharland Limited dated 30 November 2021) is submitted in writing to the local planning authority for approval, and unless the approved Site Management Plan is implemented in accordance with the timetable set out within the document, as approved by the local planning authority, the use of the site as kennels for 50 greyhounds shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such a time as a scheme is approved and implemented. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 3) Unless within 6 months of the date of this decision a statement from a suitably qualified acoustician confirming that the works have been carried out to an appropriate standard, has been submitted to and approved by the local planning authority, the use of the site as kennels for 50 greyhounds shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such as a time as the statement is approved. The statement shall verify that the recommended upgrades and acoustic barrier detailed within the Noise Impact Assessment have been carried out satisfactorily. The approved work shall be maintained in perpetuity thereafter. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 4) No new external lighting shall be installed on site until plans showing the type of light appliance, the height and position of fitting, illumination levels and light spillage in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting Professionals in their publication "Guidance Note 01/21 The Reduction of Obtrusive Light" (ILP, 2021)", have been submitted to and approved in writing by the Local Planning Authority. The approved lighting shall be installed and shall be maintained in accordance with the approved details and no additional external lighting shall be installed.
- 5) No CCTV or security equipment shall be installed on site until full details of these have been submitted to and approved in writing by the local planning

authority. The equipment shall be installed in accordance with the approved details and maintained as such thereafter or until it is removed.

- 6) Outside of the hours of 08:00 – 20:00 on any day of the week, there shall be no deliveries to the kennels, visits to the kennels for maintenance or waste collection, use of the external dog runs or any other kennel related activity apart from that required to return dogs to the kennels after a race, which shall not take place outside of the hours of 08:00 – 21:15 on any day of the week.

END OF SCHEDULE