



Appeal Decision

Site visit made on 13 April 2023

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th May 2023.

Appeal Ref: APP/D0840/W/22/3308997

The Old Stables, Hayloft Courtyard, Lower Clicker Road, Menheniot, Liskard, Cornwall PL14 3PJ

- 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 Mrs C Litchfield against the decision of Cornwall Council.
 - The application Ref PA21/09891, dated 4 November 2021, was refused by notice dated 14 June 2022.
 - The development is Domestic (non boarding) kennels outbuilding.
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Decision

1. The appeal is allowed and planning permission is granted for Domestic (non boarding) kennels outbuilding at The Old Stables, Hayloft Courtyard, Lower Clicker Road, Menheniot, Liskard, Cornwall PL14 3PJ in accordance with the terms of the application, Ref PA21/09891, dated 4 November 2021, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - PL01 Rev A;
 - PL02 Rev C;
 - PL03 Rev C.
 - 2) The kennels building shall only be used in association with the dwelling known as The Old Stables and no dogs other than those belonging to the occupiers of The Old Stables shall use the kennels building. The kennels building shall not be used for any form of commercial dog kennelling, boarding or day care.

Preliminary Matters

2. The description of development in the banner heading above is taken from the application form. However, I have removed reference to the application being part retrospective as this is not an act of development.
3. I observed on my site visit that the kennels had already been constructed, although some external walls are still to be rendered. I have therefore determined the appeal on the basis that the development has already occurred and having regard to the plans submitted with the application which appear to reflect the kennels constructed to date.

Main Issue

4. The main issue is the effect of the development on the living conditions of neighbouring occupiers with particular regard to noise and odour.

Reasons

5. The appeal property primarily accommodates a sizable detached residential dwelling. It has a relatively large area of land associated with it, including a drive/turning area, garden, garage, pool, and the kennels.
6. The development provides accommodation for the appellants' dogs in a self-contained building comprising 4 kennels, whelping/puppy room, food preparation area and outside run. The kennels are used to house the appellant's pets and would be used for occasional breeding of not more than three litters every twelve months.
7. The site is alleged by a number of third parties to be in use as a commercial dog breeding business. Whether an activity or business amounts to a material change of use from a wholly domestic property is a matter of fact and degree. Amongst the considerations to determine this are whether there has been a definable change in the character of the use of the land, including whether there are any off-site impacts. In addition, ancillary or incidental uses are those that are ordinarily associated with the primary use of the property.
8. Although there is some evidence that the number of dogs that have been kept at any one time has fluctuated, the appellant states that she houses eight dogs as pets and has done so since moving into the property. The appellant has stated that she breeds from the dogs and is a registered dog breeder. It is the appellants view that the eight adult dogs at the property would be regarded as incidental to the residential use. In light of the size of the residential dwelling and its curtilage, the keeping of the dogs as pets and the limited number of litters ensuring no significant increase in visitors to the site, the keeping of the eight dogs is incidental in this instance, even though an income would be derived from the litters.
9. Despite other background noise from the A38, there is no doubt that eight dogs at the appeal site would at times contribute to noise levels in the area. However, the noise associated with the barking of eight dogs could occur regardless of whether the kennels were provided. In this location it would not be uncommon for people to keep a small number of dogs as domestic pets. It would also not be unusual behaviour for dogs at properties to occasionally react and bark at passing vehicles or visitors to properties. Furthermore, given that the appeal property is detached, benefits from a large garden, is separated from the nearest dwellings by planting and an access road, and with no windows in the kennels directly facing the closest dwellings, this adequately helps to diminish the transmission of sound from dogs barking.
10. In addition to the above, the kennels are constructed from rendered blockwork, brick, roofing tiles and benefit from double-glazed windows. This is a higher standard of construction than is often provided by kennels, and as a result provides a good level of noise insulation when the dogs are housed within it.
11. Numerous objections have been received in respect of noise from the dogs at the appeal property. A number of these question the appellant's noise survey and methodology. I do not doubt that the neighbours can at times hear the

dogs barking. I also recognise that the noise survey does not assess the impact from dogs outside the kennels, that the noise readings were taken from one position on a limited number of days with the report acknowledging no specific criteria or noise guidance for dog kennels. However, there is an absence of any convincing technical rebuttal of the noise survey and an absence of evidence from the Council's Environmental Health team of the receipt of complaints, outside of the planning application process, or concerns regarding the noise survey. In light of this and given that the dogs would be allowed outside even if housed elsewhere on the site, I have little compelling evidence that there is an unreasonable level of noise and disturbance from dog activity associated with the kennels.

12. As a result, with a total of eight dogs, mainly housed within the kennel building, this would not result in any disproportionate or continuous noise intrusion over and above what could be expected from a similar number of domestic dogs housed on the site without the benefit of the kennels.
13. I appreciate that eight dogs could produce a considerable amount of waste and that this could generate odour. However, this could occur regardless of whether the kennels are provided, and the appellant has advised that dog waste would be disposed of alongside household waste. In light of this, and it not being in the appellant's interest to overload their own septic tank, the waste can be adequately disposed of without resulting in significant harm to neighbouring occupiers. As a result, I do not consider it necessary to secure a detailed waste management plan by condition.
14. Therefore, I conclude that the development would not harm the living conditions of nearby occupiers, with particular regard to noise and odour. It accords with Policy 12.2 of the Cornwall Local Plan Strategic Policies 2010 – 2030 (LP) and with the National Planning Policy Framework (the Framework). Amongst other things, these seek to ensure that development proposals protect individuals and property from unreasonable noise and disturbance and mitigate and reduce to a minimum adverse impacts resulting from noise, and avoid noise giving rise to significant adverse impacts on health and the quality of life.
15. The Council reference LP policy 5.1 in their reason for refusal. However, as this relates to business, tourism, and the provision of employment space, and I have found that the development is incidental to the dwelling, this policy is not determinative.

Other Matters

16. Although the site is located within an Area of Great Landscape Value, the kennels are single storey, partly screened by landscaping and viewed in association with the surrounding residential development which is finished in similar materials. In light of this, the location, scale and appearance of the kennels maintain the character and distinctive qualities of the area. This is regardless of the historic condition of the land, use of adjoining land, and whether or not there was a building on this part of the site previously. Due to the design, small scale and position of the kennels, there would be no harm to adjoining trees, ecology, highway safety or harm from overlooking or overbearing relationships with neighbouring properties. It is noteworthy that the Council came to similar conclusions in these regards.

17. Concerns have been raised regarding public safety in relation to the keeping of this number of dogs. However, the kennels are well secured with an enclosed outside run to prevent means of escape and the Council have not raised this as a concern. As such, the appeal does not fall on this matter.
18. I note that the dwelling may not benefit from permitted development rights, but that does not prevent the submission and consideration of a planning application or subsequent appeal. Whether or not there were kennels at the appellants' previous property, the fact the property was purchased without the kennels, that trees may have been felled on the site and the property possibly being for sale questioning the need for the kennels going forward, are neutral factors in my consideration. As are the concerns related to the appellant's conduct.
19. The Council have drawn my attention to other appeal decisions relating to kennels. However, the circumstances of those appeals are significantly different. I have therefore determined the appeal on its merits.

Conditions

20. I have considered the suggested conditions in relation to the National Planning Practice Guidance. As the development has commenced, there is no need for the standard time condition.
21. A condition to confirm the approved plans is necessary in the interests of certainty. A further condition is necessary to ensure that the kennels are only used in association with the main dwelling and by the occupiers' dogs and is not used as a commercial dog kennel for boarding or day care in the interests of the living conditions of neighbouring occupiers. I have amended the Council's suggested condition to reflect this.
22. It is possible that the keeping of more than eight dogs and the breeding of more than 3 litters a year could dominate the residential use and so no longer be incidental to the enjoyment of the dwelling. This could be, for example, if the ancillary use generates additional noise, traffic, and visitors. However, given that a such a change to the intensification of the use would require further consent from the Council anyway, I do not find the suggested condition from the Council limiting the number of dogs or litter numbers necessary or reasonable.

Conclusion

23. For the reasons given I conclude that the appeal should succeed.

C Rose

INSPECTOR