



Appeal Decisions

Site visit made on 19 September 2023

by James Blackwell LLB (Hons) PGDip

an Inspector appointed by the Secretary of State

Decision date: 13th December 2023

Appeal A Ref: APP/H1840/C/22/3309285

Churchfields, Hill View Road, Strensham, Worcester WR8 9LJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Ms Katy Woods against an enforcement notice issued by Wychavon District Council.
- The notice, ref W/ENF/22/0249, was issued on 16 September 2022.
- The breach of planning control as alleged in the notice is: "Without planning permission, the unauthorised material change of use of the land from the use as a dwellinghouse with associated residential gardens and equestrian to a mixed use of dwellinghouse with associated residential gardens, equestrian and for the operation of a commercial dog breeding and grooming business; and without planning permission, the unauthorised erection of outbuildings used in association with the commercial dog breeding and grooming business shown approximately edged in blue on the attached plan".
- The requirements of the notice are to: "permanently cease the use of the land edged red on the attached plan for the operation of a commercial dog breeding and grooming business; permanently remove the outbuildings used in association with the operation of a commercial dog breeding and grooming business. Approximately edged in blue on the attached plan from the land edged red on the attached plan; and permanently remove any associated paraphernalia connected with the operation of a commercial dog breeding business, from the land edged red on the attached plan".
- The period for compliance with the requirements is within 6 calendar months of the day on which the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeal succeeds in part and the enforcement notice is upheld with the corrections and variations set out below in the Formal Decision.

Appeal B Ref: APP/H1840/W/22/3309283

Churchfields, Hill View Road, Strensham, Worcester WR8 9LJ

- 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 Katy Woods of Arihzans Kennels Ltd against the decision of Wychavon District Council.
- The application Ref W/22/00546/CU, dated 3 March 2022, was refused by notice dated 10 June 2022.
- The development proposed is the change of use from domestic/agricultural/equestrian land to dog breeding facilities. Erection of pens, kennels and grooming parlour (retrospective).

Summary Decision: The appeal is dismissed.

Applications for Costs

1. Applications for costs have been made by Ms Katy Woods against the Council in respect of both appeals. These applications are the subject of a separate decision.

Preliminary Matters

2. The appeals relate to a material change of use of the appeal site (MCU) to include a commercial dog breeding and grooming use, together with associated operational development. Appeal A relates to the enforcement notice (EN) issued by the Council in respect of this development and Appeal B relates to a linked s78 appeal, following the Council's refusal of a retrospective planning application for that same development.
3. Whilst the description of development differs slightly between the EN and the linked s78 appeal, the substantive content of the two developments is essentially the same. In terms of Appeal B, I have used the Council's description as this more comprehensively describes the scheme, including the elements of operational development. Given that the main issues are similar between both appeals, I have dealt with them together in my reasoning.
4. There are fewer outbuildings shown on the plan attached to the EN than shown on the plans submitted for the s78 application. In particular, the plan attached to the EN does not include kennels 7-14, as shown on the Block and Parking Plan submitted with the s78 application. The building described as "Puppy House" is also not included on the EN plan. Both of these buildings were present on my site visit. Whilst the outcome of the Enforcement Appeal (Appeal A) only relates to the outbuildings specifically shown hatched blue on the plan attached to the EN, determination of the s78 appeal (Appeal B) relates to all the outbuildings included on the plans submitted with that application. All references to the outbuildings should therefore be construed accordingly.
5. Since the appeal start date, the 2021 iteration of the National Planning Policy Framework (Framework) has been superseded. I am satisfied that the updates to the Framework do not materially affect its content insofar as it is relevant to the main issues of this appeal. I have therefore determined this appeal with regard to the current version, published in September 2023.

Appeal on Ground D (Appeal A)

6. Pursuant to ground (d), the appellant contends that parts of the alleged operational development, being the erection of certain outbuildings used in conjunction with the business, are immune from enforcement as they were built more than four years ago. This ground relates to just three of the outbuildings within the appeal site, being the grooming parlour, kennels 1-2 and kennels 3-6.
7. A satellite image appears to show these buildings in situ in June 2018, which was more than four years before the Council issued the EN. Based on my own observations during my site visit, the buildings shown on this satellite image appear to correspond accurately with the footprint of the buildings now in situ.
8. Moreover, each of the relevant outbuildings are relatively basic in terms of their physical structure, and would not have required any extensive fit out or internal works to be considered substantially complete. I therefore consider it

likely that the buildings have been in situ and substantially complete, for a period of more than four years before the EN was issued.

9. I note that the Council says that the kennels “*have been erected in the last 2 years*”, however this is a sweeping statement which could simply refer to the other kennels within the appeal site. Indeed, no further suggestion beyond this statement is made that the satellite image is in any way inaccurate, or that the three relevant outbuildings were not constructed and substantially complete more than four years prior to the issuing of the EN.
10. On the balance of probability, I am therefore satisfied that the grooming parlour, kennels 1-2 and kennels 3-6 were all immune from enforcement at the date the EN was issued. The appeal on ground (d) therefore succeeds, but only insofar as it relates to the operational development comprising these three buildings. I must highlight that success on this ground relates solely to the physical structure of these buildings. Although described as having been erected ‘in association’ with the business, the Council’s reasons for issuing the EN included that the operational development alleged had occurred within the previous four years, and there is no suggestion that any period other than four years should apply when deciding whether the buildings are immune from enforcement.

Appeal on Ground A and Linked s78 Application (Appeals A and B)

11. Given that the appeal on ground (d) in relation to part of the development has been successful, consideration of ground (a) relates only to the MCU and to the outbuildings which are not immune from enforcement.
12. The effect of the development on the character and appearance of the surrounding landscape was listed as a reason for issuing the EN, however it was not included as a reason for refusal of the retrospective s78 application. During the course of the appeal, the Council has since conceded that the development does not cause any harm in terms of landscape impact, and that this factor should not have been included in the reasoning for the EN. Based on my own observations during site visit, I agree with this conclusion. I have therefore not addressed this factor as a main issue.

Main Issues

13. In this context, the main issues are:
 - the effect of the MCU on the living conditions of neighbouring occupiers, with particular regard to noise; and
 - whether the location of the development is acceptable with regard to sustainability and development plan policy.

Reasons

Noise

14. Churchfields is located on the western side of Hill View Road, and is the first house on the southern approach into the hamlet of Lower Strensham. The property comprises a detached dwelling, residential garden, a separate detached garage and a stables to the rear. The dwellings within Lower Strensham are predominantly focused around the T-junction where Hill View Road meets Baughton Lane. The closest dwellings to Churchfields include 115

Bourne Road, The Old Barn and The Stables, all of which sit just to the south of the appeal site. Whilst separated by fields, there are also two cottages, nos. 32 and 34 Baughton Lane, located to the rear of Churchfields. Whilst again separated by fields, the M5 motorway runs to the south of the hamlet.

15. The appellant commissioned a Noise Assessment¹ (NA) to assess the impact of noise arising from its business on neighbouring residential properties. The NA acknowledges that there is no formal noise related guidance or standard for assessing noise from dog kennels, so the assessment was, in part, carried out by reference to BS4142:2014, which provides methods for rating and assessing specific sound sources of an industrial and/or commercial nature. Four separate locations were monitored as part of the NA, three of which were within the appeal site and one of which was located adjacent to the closest neighbouring dwelling.
16. The NA found that the background sound level in the area was relatively high, ranging between 40dB² and 57dB in the monitoring locations during the daytime, and between 39dB and 56dB during the night time. This is likely attributed to the proximity of the M5 motorway to the south of the hamlet. The NA notes that for traditional external areas that are used for amenity space, such as gardens and patios, it is desirable that the external noise level should not exceed 50dB, or 55dB in noisier environments. The external background sound level in and around the appeal site is therefore at, over, or very close to these thresholds.
17. The NA is based on a “worst case” assumption that the dogs within the kennels would bark continuously for 30 seconds each hour, day and night. The assessment concluded that the sound arising from the kennels would have a low impact on the nearest residential properties. Internally, sound pressure levels within the nearest residential receptors were also found to achieve a good standard in daytime and a reasonable standard in the night-time. These findings are, at least in part, attributed to the high background sound level within Lower Strensham, as background noise can lessen the impact from specific sound sources.
18. Notwithstanding these findings, I do have some concerns with the NA. In particular, the NA only considered the noise impact from the kennels and grooming parlour. It does not appear to have factored in the puppy house or associated outdoor puppy training area. Whilst the appellant’s Noise Rebuttal suggests that noises arising from puppies will be less impactful than from mature dogs, no specific detail is given with regards to this potential additional impact. This is a concern, as these areas do comprise a significant element of the appellant’s business. The outdoor puppy play area is also situated to the rear of the site, where there are fewer acoustic barriers between neighbouring properties.
19. It is also not clear how many dogs were present within the appeal site when the NA was carried out, which means I have no way of knowing whether the kennels were at full capacity. In turn, I cannot properly assess whether the NA is truly representative of the noise impact from the business as a whole. Local residents have also suggested that the intensity of the business has continued

¹ Environmental Noise Assessment – Dog Kennels, 28th April 2022 (Noise.co.uk)

² References to dB are to dB LA90, 15 min (description and measurement of environmental noise, Part 2: Guide to the acquisition of data pertinent to land use)

to increase since opening, which means the noise impact may conceivably be different now, than when the NA was carried out in April 2022.

20. Given that external background noise levels in the area are already near to the threshold of what may be considered acceptable within external amenity areas, particular caution is required. This is because any noise impact arising from the development could take noise levels beyond this acceptable threshold. I am therefore very mindful of the potential shortcomings of the NA, given the particular sensitivities of this location with regard to noise.
21. During my site visit, the kennels appeared to be close to capacity. Whilst I appreciate my visit would have caused disturbance to the dogs, the noise from dogs barking was significant. When one dog barks, it triggers others, which elevates the associated noise and can take some time to subside. Based on my own experience, it therefore seems likely that periods of barking could extend far beyond the 30 second periods of continuous barking per hour, which was deemed to be the worst-case scenario in the NA. Whilst not independently verified, recordings taken from inside a nearby neighbour's home also suggest this to be the case. I therefore consider it very likely that the noise impact of the development is more severe than concluded by the NA. In turn, it would risk breaching the thresholds of acceptability already outlined, particularly within the outdoor amenity areas to the nearest residential properties.
22. Whilst acoustic screening has been suggested as mitigation, there is limited detail before me in terms of the extent to which this would reduce the associated noise impact. This means I am unable to determine its likely effectiveness. Without evidence to the contrary, I am therefore not persuaded that such mitigation would adequately overcome the risk of harm.
23. For these reasons, I consider that the development leads to an adverse noise impact, which harms the living conditions of neighbouring occupiers. The development therefore conflicts with Policy SWDP31 of the South Worcestershire Development Plan 2016 (SWDP), which says development proposals must avoid significant adverse impacts from pollution, including cumulative ones, on human health and wellbeing. The development also conflicts with the overarching amenity principles of the Framework.

Location of Development

24. The appeal site is located outside of any defined settlement boundaries, and is therefore considered to be in the open countryside. Policy SWDP2 of the SWDP, which sets out the overall settlement strategy for the district, says that new development should safeguard, and where possible enhance, the open countryside. The Policy goes on to say that development within the open countryside shall be strictly controlled, and shall be limited to development specifically permitted within other policies of the SWDP.
25. The most relevant of these to the development is Policy SWDP 8, which concerns economic growth in the district. Part E of this Policy says that the provision of employment land, including on unallocated sites, will be supported providing the development supports an existing business or new enterprise of a scale appropriate to the location.
26. Subject to scale and appropriateness, this means there could be policy support for a dog business of the type proposed within the countryside. However, as

concluded above, the scale of the business and the resultant number of dogs, leads to an adverse noise impact in this instance, which harms the amenity of nearby residents. Consequently, the scale of the appeal business is not appropriate to the location. In turn, the MCU falls foul of Policy SWDP 8 (noting that I have not been asked to consider whether any smaller or less intensive business would be acceptable in the same location).

27. Similarly, the outbuildings (which are not immune from enforcement) used in conjunction with the business would also not be supported by policy. This is because operational development of this kind is only be supported within a countryside location if it is built in conjunction with an appropriate employment use, or if it would meet some other countryside exception policy. The other exception policies concern rural worker dwellings, rural exception sites, buildings for agriculture and forestry, replacement dwellings, house extensions, and renewable energy projects, none of which appear relevant in this instance. On the available evidence, the construction of these buildings would therefore not be justified by policy.
28. Given the location of the appeal site in a small hamlet, there are also very limited public transport options available to gain access to the appeal business. Strictly speaking, the development therefore conflicts with the travel objectives of Policy SWDP 4 of the SWDP, which seek to promote sustainable transport options to new development. However, given the nature of the business, it is highly likely that the majority of users would access the site in private vehicles in any event, wherever such a business may be located. The associated harm arising from this policy conflict is therefore limited.
29. Nonetheless, for the reasons outlined, the location of the development would not be acceptable with regard to Policies SWDP 2, SWDP 4 or SWDP 8 of the SWDP. The development also conflicts with the Framework insofar as it seeks to protect the intrinsic beauty of the countryside.

Appeal on Ground F (Appeal A)

30. Pursuant to ground (f), the appellant contends that the steps required to be taken in the EN exceed what is necessary to remedy the alleged breach of planning control. However, this ground primarily relates to the outbuildings which are said to be immune from enforcement, which has already been addressed through the ground (d) appeal.
31. As per s173(4) of the Town and Country Planning Act 1990, the purpose of the EN is to remedy the breach of planning control. The requirements set out in the EN must therefore achieve this purpose. Notwithstanding the outbuildings which are immune from enforcement, the remaining requirements of the EN require cessation of the MCU and removal of outbuildings constructed in conjunction with this MCU. These steps go no further than remedying the alleged breach, and any lesser steps would fail to achieve this purpose.
32. Nonetheless, I have made a minor variation to the requirements of the EN to ensure the requirements are sufficiently clear in terms of the buildings shown on the EN plan. The appeal on ground (f) therefore succeeds, but to this extent alone.

Appeal on Ground G (Appeal A)

33. Pursuant to ground (g), the appellant contends that the period for compliance with the requirements of the EN falls short of what should reasonably be allowed. The EN currently requires the steps to be complied with within six months of the date that the notice takes effect.
34. I am mindful of how long it may take for the appellant to secure suitable alternative premises for their business, and to obtain any necessary consents. However, this need must be carefully balanced against the noise impact of the development on nearby residents, and the harm that this may cause.
35. In the circumstances, I consider that a period of nine months would provide adequate time to source alternative premises, whilst also balancing the longer-term health and wellbeing of neighbouring residents. The appeal on ground (g) therefore succeeds, but only to this extent.

Conclusions

36. For the reasons given, I conclude that the grooming parlour, kennels 1-2 and kennels 3-6, were constructed and substantially completed more than four years before the issue of the EN and are therefore immune from enforcement. Appeal A on ground (d) therefore succeeds insofar as it relates to these buildings. To reiterate, this finding relates solely to the physical structure of these buildings.
37. Appeal A on grounds (f) and (g) also succeeds, but only to the extent outlined above. Otherwise, for the reasons given, Appeal A on ground (a) fails. I shall therefore uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. Similarly, for the reasons given, Appeal B should be dismissed.

Formal Decisions

Appeal A

38. It is directed that the enforcement notice is corrected by:
- (a) substituting the plan for the revised plan attached to this decision;
 - (b) deleting the words "edged in blue on the attached plan" from paragraph 3.2 and substituting them with the words "edged and/or hatched in blue on the attached plan";
- and varied by:
- (c) deleting the words ". Approximately edged in blue on the attached plan from the land edged red on the attached plan" from paragraph 5.2 and substituting them with the words "shown approximately edged and/or hatched in blue on the attached plan".
39. Subject to the corrections and variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 as amended.

Appeal B

40. The appeal is dismissed.

James Blackwell

INSPECTOR

Plan

Revised Plan to be attached to the Enforcement Notice dated 16 September 2022

Land at: Churchfields, Hill View Road, Strensham, Worcester WR8 9LJ

Reference: APP/H1840/C/22/3309285

Scale: Not to Scale

