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# Appeal Decision

Site visit made on 5 December 2023

**by R Gee BA (Hons) Dip TP PGCert UD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 February 2024**

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**Appeal Ref: APP/D3125/W/23/3315582**

**Fish Hill Farm, Wilcote Road, North Leigh, Witney, Oxfordshire OX29 6WT**

- 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 Jill Thompson against the decision of West Oxfordshire District Council.
  - The application Ref 22/01153/FUL, dated 14 April 2022, was refused by notice dated 18 November 2022.
  - The development proposed is described as conversion of existing barn on small holding, currently used to raise goats, to boarding kennels for dogs.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework). Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests has been prejudiced.

## Main Issue

3. The main issue is the effect of the proposed development on the character of the Wychwood Project Area (WPA), with particular regard to its tranquillity.

## Reasons

4. The appeal site comprises a modern single storey detached farm building. A dog exercise area is proposed to the front of the building. The proposal would provide for a sizeable boarding kennels comprising 17 kennels with a maximum of 20 dogs.
5. The appeal site is located in a rural area, and within the WPA that is designated as a rich mosaic of landscape and wildlife habitats where development plan policy affords special protection to the landscape and biodiversity of the area.
6. The appeal site lies within a valley and is accessed by a quiet rural road with limited traffic. At my site visit I observed a dwelling, Wisteria Cottage, and the New Yatt Riding for the Disabled, which comprises an indoor arena, stables and paddock, nearby to the appeal site. There is a network of public rights of way in the locality. The Council describes the area as being popular with leisure walkers and cyclists. Although only a snapshot of time, during my visit I

observed background noise levels to be low and characteristic of a rural location.

7. Policy OS2 of the West Oxfordshire Local Plan 2031 Adopted September 2018 (WOLP) states that development in the open countryside will be limited to that which requires and is appropriate for a rural location and which respects the intrinsic character of the area. One of its principles for all development is that it should as far as reasonably possible, protect or enhance the local landscape. WOLP Policy EH2 says that the quality, character and distinctiveness of West Oxfordshire's natural environment, including its landscape, cultural and historic value, tranquillity, geology, countryside, soil and biodiversity, will be conserved and enhanced. Proposed development, it says, should avoid causing pollution, especially noise and light, which has an adverse impact upon landscape character and should incorporate measures to maintain or improve the existing level of tranquillity and dark-sky quality, reversing existing pollution where possible. Furthermore, the policy states that special attention and protection will be given to the landscape and biodiversity of the WPA, wherein lies the site of this appeal.
8. Policy OS2 of the WOLP allows for non-residential development within the open countryside where development will make a positive contribution to farm diversification and where the re-use of appropriate existing building would lead to an enhancement of their immediate setting with preference given to employment, tourism and community uses. The proposal is part of a farm diversification scheme, and it would therefore comply with the first part of the policy criteria. Furthermore, Policy E2 of the WOLP supports the rural economy and Policy E3 of the WOLP supports the re-use of non-residential buildings for employment uses where the development relates to an agricultural holding and the proposal is part of a farm diversification scheme under Policy E2. The principle of the proposal therefore complies with these identified policies.
9. From my visit, it is clear that the landscape of the WPA is characterised by its tranquillity, its peace, calm and lack of noise or disturbance. It is influenced by what can be seen and heard in the area. The WPA landscape, which is characterised by tranquillity, is enjoyed by people using public rights of way within close vicinity of the appeal site.
10. The variety of pitch and the variable sounds from different dogs barking, would be likely to be highly noticeable in the quiet rural environment and would be intrusive, particularly when the dogs are exercised outside. When the dogs are taken out of the kennels to be exercised, they may be prone to barking as they become excitable. Whilst I recognise that boundary planting would soften the visual effect of the use on the landscape, which could be secured by conditions, it would not provide effective noise mitigation to the outside exercise area.
11. Different breeds of dogs have contrasting temperaments with some dogs being more susceptible to barking or howling when they are separated from their owners; others become nervous and restless in the company of other dogs, especially within unfamiliar environments such as kennels. These behavioural effects, which are not entirely within the control of the operator, would disturb the tranquillity of the WPA which I experienced, and undermine an intrinsic element of its landscape character.
12. The Noise Impact Assessment (NIA) identifies existing background noise levels to be very low during the day, and extremely low at night. This is consistent

with the noise levels I observed during my site visit and those referred to in representations. The NIA acknowledges that noise arising from the development would need to be mitigated against, and refers to enhancing the roof structure. This could be controlled by condition. It is clear, and not contested, that there would be no harm to the living conditions of the dwelling to the south of the appeal site, subject to securing these improvements.

13. However, the focus of the NIA is the impact upon residential amenity rather than the proposed developments impact upon the tranquillity of the local environment, including the users of the nearby public footpaths within the WPA. There are notable differences to the intervening characteristics of the appeal site to Wisteria Cottage and the nearby public footpaths. The outdoor exercise area would be orientated towards the public right of way, in direct line of sight. Furthermore, to the west of the appeal site the intervening land is relatively flat with no substantial landscaping whereas substantial trees and buildings are located to the east of the appeal site between the appeal site and the nearest dwellings. It is reasonable to assume that noise would emanate from the outdoor exercise area and that the local environment would be noisier than the existing situation. Accordingly, in the context of tranquillity it has not been demonstrated that this area in the WPA would remain tranquil.
14. The Noise Management Plan (NMP) suggests a number of measures whereby potential noise and disturbance might be controlled. Amongst others, these include feeding and exercise regimes. Given the overall capacity for dogs at the kennels, and the assertion that a maximum of two dogs would be exercised at once, it is not clear how the dogs would be exercised in the outdoor exercise area within the parameters of the NMP. Furthermore, it is not clear if mitigation is proposed for the outdoor exercise area. Despite the assurances of the appellant, the noise from the dogs has the potential to be highly variable and unpredictable. The noise of dogs barking would be inherently intrusive to the character of this landscape, and particularly noticeable to the users of the public rights of way which are approximately 230m to the north west and 206m to the south east of the appeal site.
15. Notwithstanding the measures in the NMP, the behaviour and nature of individual dogs cannot be completely controlled and therefore the effectiveness of the measures set out in the NMP would be unpredictable and uncertain. As a result, the tranquillity of the area, particularly during the daytime arising from the outdoor exercise area, would likely be harmed. This would be detrimental to the landscape character of the WPA.
16. Whilst I note that the building has been used for the rearing of kid goats and lambs, I do not consider this to be comparable to the appeal scheme before me.
17. I conclude that the proposed development would not respect the intrinsic character of the area. It would have a harmful impact on the landscape character of the WPA, with particular regard to its tranquillity. Accordingly, the proposed development would be contrary to Policies OS2 and EH2 of the WOLP. These policies reflect the aims of the Framework, which in paragraph 180(a) states that decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes in a manner commensurate with their statutory status or identified quality in the development plan.

## **Other Matters**

18. The proposed use would utilise an established access. Based on the evidence before me, including the comments from the Local Highway Authority, and my own observations the number of traffic movements generated by the proposal would be limited. It would not have an unacceptable impact on traffic safety. Due to the limited alterations proposed to the external appearance of the building I am satisfied that the agricultural character of the building would remain, and the proposal would be acceptable in this regard. Having regard to the NIA and the comments of the Council's Technical Pollution Services officer I am satisfied that the proposal would not lead to undue harm to the living conditions of nearby residents. However, these are neutral elements and do not outweigh the harm I have identified.
19. I am mindful that the proposal would re-use an existing building and would deliver the public benefit of supporting a prosperous rural economy through the growth of business in a rural area as set out in the Framework. This weighs in favour of the proposal.
20. My attention has been drawn to Archway and Gamegoer Kennels. However, I have not been provided with full details of these cases and so cannot be certain they represent a direct parallel to the appeal before me, which I have determined on its individual merits.
21. No evidence is before me regarding incidents with amateur dog walkers and dog sitting facilities or the demand for kennels in the locality. These matters therefore carry limited weight in the determination of the appeal.
22. I have had regard to the desirability of preserving the setting of the listed buildings in the area, in particular St. Mary's Church and the chest tombs and headstones beside it. Given the limited extent and nature of the external changes to the existing building, the physical separation between the appeal site and these designated heritage assets, which includes fields, trees, hedgerows and roads I am satisfied that the setting of the listed Church and tombs, and thereby their significance, would be preserved. This reflects the Council's similar conclusion.
23. I note the representations of support for the development. However, these have not led me to a different conclusion on the main issue of the appeal.

## **Conclusion**

24. For the reasons given above, the proposal conflicts with the development plan as a whole and there are no material considerations, including the Framework, that would outweigh that conflict. Therefore, the appeal is dismissed.

*R. Gee*

INSPECTOR