



Appeal Decision

Site visit made on 21 May 2024

by H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd June 2024

Appeal Ref: APP/Z3825/W/23/3328171

The Levee, Loxwood Road, Rudgwick, West Sussex RH12 3BP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr & Mrs Martin Hill against the decision of Horsham District Council.
- The application Ref is DC/22/2156.
- The development proposed is replacement dog breeding kennels with ancillary facilities.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by the appellant against the Council. This application will be subject of a separate decision.

Preliminary Matters

3. The description of the development listed on the Council's decision notice referred to the "*erection of 3no buildings for the provision of dog breeding kennels with ancillary facilities and works*". Whether the development would constitute the replacement of existing dog breeding kennels is a matter for the appeal as outlined below.
4. I noted on my site visit that an area of land within the blue line area to the east of the site had been levelled and a bund created around its outer perimeter. This appears to be separate to the bund detailed within the application and thus, has not been treated as forming part of the proposal.
5. The Council confirmed that the Preliminary Ecological Appraisal¹ which was submitted with the appeal satisfactorily addressed the fourth reason for refusal on biodiversity grounds. I have assessed the appeal on this basis.

Main Issues

6. The main issues in the appeal are:
 - the effects of the proposal on the surrounding countryside;
 - the effects of the proposal on the living conditions of neighbouring occupiers, in terms of noise and disturbance; and
 - the effects of the proposal on the Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites (the Arun Valley Protected Sites).

¹ Environmental Assessment Services Ltd, April 2023

Reasons

Countryside effects

7. The application site lies in the countryside closest to the village of Rudgwick. The application red line site area currently comprises a large lawned area to the south of the access lane, partly bound by some post-and-rail fencing. The dwelling, The Levee, also in the appellants' ownership, falls within the blue line area, along with an existing stable building and areas of surrounding land. A collection of sheds close to the northern boundary exists within the red line site area but is not apparent on the plans other than that appended to the Noise Impact Assessment (NIA).
8. In terms of the policy context, Policy 10 of the Horsham District Planning Framework (HDPF) (2015) indicates that in the countryside, development which maintains the quality and character of the area, whilst sustaining its varied and productive social and economic activity will be supported in principle. Policy 26 of the HDPF sets out that outside built-up area boundaries, the rural character and undeveloped nature of the countryside will be protected against inappropriate development and must be of a scale appropriate to its countryside character and location.
9. The stable building was granted permission in 2006 and was restricted by condition to be used for incidental purposes only. I understand from the evidence that the appellants have used the stable building within the blue line site area for the purposes of breeding dogs over a number of years. The appellants assert that planning permission was not needed for the use of the stables for a dog breeding business as it was a hobby.
10. Whether and when a material change of use of part of the planning unit occurred through the intensification of the hobby is not clear. However, the contingent position put forward is that though permission was not sought, if it was needed, it has accrued lawfulness by virtue of the passage of time since that use commenced, i.e., over 10 years, and would now be immune from enforcement action.
11. Much is made in the evidence about the omission of the word 'replacement' from the description of development. However, whilst new buildings to facilitate a dog breeding enterprise are proposed, no buildings are being demolished and the use which has allegedly accrued immunity has not been confirmed as being lawful. Therefore, in my view, the use of the term 'replacement' dog breeding kennels does not provide the clarity on which the appellant seeks to rely. Whilst a condition may be capable of controlling uses and aspects within the blue line area, the lack of confirmation of the stables' lawful use being anything other than an incidental domestic outbuilding would render the imposition of such a condition illogical. The suggestion about the portability of the licence and that no further licence would be granted to the appellants for another breeding premises does not provide the necessary comfort in this regard.
12. Therefore, even if the scale and design of the proposed buildings would be functionally related to their intended use, there would be a vastly increased mass of buildings and number of comings and goings, at odds with the rural location and relative to the assumed lawful domestic use of the planning unit.

13. In conclusion, the scale and location of the proposal would give rise to harm to the surrounding countryside contrary to, in particular, Policies 10 and 26 of the Horsham District Planning Framework (2015) (HDPF).

Noise and disturbance

14. There are unrelated noise sensitive premises (neighbouring dwellings) around 120m or more in a northerly direction from the application site. It appears that the Council's Environmental Health Officer (EHO) requested that a noise assessment be submitted, albeit without any specified requirements as to what methodology or parameters to apply. This is regrettable given the difficulties of defining how precisely such assessments should be undertaken and as the Council have since questioned its findings.
15. The Council have offered little in the way of specific criticisms about the submitted NIA², but my review leaves me with some doubt about its robustness. The way in which the noise measurements have been taken and predicted appears relatively blunt in my view. The use of only specified dB levels without correction features imposed for tonality or impulsivity relative to the distinctive character of dog barking noise suggests a narrow assessment without adequate margin for error. In addition, the indication that a 95.1dB measurement was recorded in relation to the external dog exercise area which is undefined on the plans suggests that there is potential for harm to the living conditions of neighbouring occupiers that a simple acoustic fence around the proposed kennel building themselves may not adequately address and that the use and effects, lawful or otherwise, need to be considered in the round.
16. In view of the above, in the absence of robust evidence to the contrary, the proposal would harm the living conditions of neighbouring occupiers through noise and disturbance, contrary to, in particular, Policy 33 of the HDPF. This Policy seeks to ensure that development is designed to avoid unacceptable harm to the amenity of occupiers/users of nearby property and land, for example through overlooking or noise, whilst having regard to the sensitivities of surrounding development.

Arun Valley Protected Sites

17. The River Arun and its floodplain contain habitats and species of international importance, recognised within the designation of the Protected Sites under the Conservation of Habitats and Species Regulations 2017, as amended, (Habitats Regulations). They support a series of wetland meadows, alluvial grazing marsh and former raised peat bog, dissected by a network of ditches. Variation in soils and water supply lead to a wide range of ecological conditions and hence a rich and diverse flora and fauna. The relevant qualifying features of the Protected Sites formally comprise: wildfowl and waterbird assemblages, including Bewick's swan, shoveler, teal and wigeon; wetland invertebrates, as well as a range of rare flora, including duckweed, water-cress, milfoils, dropworts and pondweeds.
18. The conservation objectives for the Protected Sites are to ensure their integrity by maintaining or restoring the extent, distribution, structure and function of the qualifying habitats and species, the processes on which they rely and the population and distribution of those species within the sites. The hydrology of

² Environmental Assessment Services Ltd – September 2022

the Arun River is the major factor affecting the quantity, depth and flow of water within the Protected Sites, which in turn contribute to achieving the favourable conservation status of their qualifying features.

19. Water abstraction within the WRZ is adversely affecting the integrity of the Protected Sites through the reduction in water levels and flow within their wetland habitats. This is set out in the Position Statement and Addendum of Natural England³ (NE). Accordingly, NE advises that further developments within the WRZ must not add to existing impacts, and that one way of achieving this is to demonstrate water neutrality, i.e., no additional abstraction from the WRZ.
20. Given that impacts on the Protected Sites' integrity cannot be screened out, under Regulation 63 of the Habitats Regulations, I am required to undertake an Appropriate Assessment (AA) of the implications of the proposed development, including consideration of any conditions or restrictions, such as legal obligations, to which it is proposed a permission should be given and to the manner in which it is proposed the development should be carried out.
21. In short, it is claimed that the development will be water neutral as there would be no increase in the number of dogs or change in the associated care activities.
22. A dog breeding hobby-turned-business would undoubtedly have a different character in water abstraction terms when compared to a solely domestic use. With this proposal, a large number of kennels are proposed, including kennels available for rotational cleaning and a better layout and design to facilitate washing down than is the case with the existing converted stable building and other existing kennels. With the desire for improved welfare standards, it seems unlikely that the total water usage will remain unchanged. Additionally, a rainwater harvesting system is offered as a belt and braces approach to offset any potential increase in demand, though limited details are offered of its offsetting capacity.
23. There is a need for scientific evidence to quantify any potential effects on the Protected Sites, either positive, neutral or negative. The submission of one water bill detailing the total domestic and business water use over a six month period without contextual analysis does not clarify any generalised water demand assumptions outlined in the appellant's submissions.
24. The screening direction issued in relation to this proposal under the Environmental Impact Assessment Regulations 2017 (as amended) does not confirm the water demand from the scheme or that the proposal could ensure the integrity of the Arun Valley Protected Sites. It only concludes that an environmental impact assessment is not needed as the effects would not be so significant or complex to warrant such, which is a different test to that under the Conservation of Habitats and Species Regulations 2017.
25. In conclusion and in the absence of robust evidence to the contrary, taking a precautionary approach, the proposal would harm the integrity of the Protected Sites, contrary to the expectations of the Habitats Regulations and Policy 31 of the HDPF which seeks to ensure any development that would harm the

³ *Natural England's Position Statement for Applications within the Sussex North Water Supply Zone September 2021 – Interim Approach and Addendum to Natural England's Position Statement*

integrity of the Protected Sites is provided with the necessary mitigation in accordance with the HDPF.

Other Matters

26. I understand that the proposal was subject to some pre-application discussions with the Council though I am unaware of the comprehensive outcome of said process. In any event, I have focussed my assessment on the merits of the proposal and submitted evidence and I am not bound by any previously issued advice.

Planning Balance and Conclusion

27. For the reasons outlined above, the proposal would be contrary to the development plan when taken as a whole.

28. I have fully understood the motive behind the proposal to ensure the highest welfare standards for the dogs in the care of the appellant which has stemmed from the adoption of '*Lucy's Law*' and other related environmental legislation⁴. This factor weighs heavily in favour of the proposal.

29. However, I have not found this factor or any other stated benefits, such as the economic benefits, so compelling that they outweigh the identified harms or indicate that a decision should be taken other than in accordance with the development plan. None of the offered planning conditions could address these harms such that they would make the proposal acceptable in planning terms either.

30. Taking account of all of the foregoing, the appeal should be dismissed.

H Nicholls

INSPECTOR

⁴ Animal Welfare (Licensing of Activities Involving Animals) (England) (Amendment) Regulations 2019