

43/16/0063

MR J TUCKER

Erection of a dog kennel at The Byre, Westford, Wellington (retention of works already undertaken)

Location: THE BYRE, PAYTON ROAD, WESTFORD, WELLINGTON, TA21
ODT

Grid Reference: 312141.120414

Retention of Building/Works etc.

Recommendation

1. Refuse for the following reason:

The proposed development would result in the loss of car parking spaces and a turning area required under condition No. 4 of permission 43/08/008 dated 21st November 2008 for the use of The Byre as a residential dwelling and as a result would give rise to parking and manoeuvring on the adopted highway which would be likely to create safety issues and danger for all users of the road contrary to Policy DM1 of the adopted Taunton Deane Core Strategy.

2. Legal Services be authorised to **serve an Enforcement Notice and take prosecution action subject to sufficient evidence being obtained that the notice has not been complied with.**

The Enforcement Notice shall require:

- a) Remove the unauthorised building from the land
- b) Remove all the resulting materials and rubble from the land
- c) Restore the vehicular turning area and two parking bays as approved under planning permission 43/08/0080

Time for compliance:

With regards to a) above 3 months from the date on which the Notice takes effect

With regards to b) above 3 months from the date on which the Notice takes effect

With regards to c) above 3 months from the date on which the Notice takes effect

Notes to Applicant

1. In accordance with paragraphs 186 and 187 of the National Planning Policy Framework the Council works in a positive and pro-active way with applicants and looks for solutions to enable the grant of planning permission. However in this case the applicant was unable to satisfy the key policy test and as such the application has been refused.

Proposal

The proposal seeks retrospective permission for the retention of private dog kennels constructed within the rear courtyard of 'The Byre ' (a residential dwelling). The proposed building/kennel measures 5.45m long x 3.05m wide and 2.025m to eaves and 2.475m to ridge height respectively. The external walls are a mixture of brick and render with a slate pitched roof. The western elevation has two doors and a window between, with the remaining three sides being enclosed. The dogs utilise a secured yard area to the front of the kennels.

Site Description

The application site is within a courtyard area to the rear of 'The Byre', a single storey building converted from an outbuilding to a dwelling. The yard is enclosed on the other three sides by 2 storey dwellings of which No.s 1-3 Westford Court are Grade II Listed Buildings. The southwestern corner of the residential curtilage of the Byre falls within a flood zone 2 and 3.

Relevant Planning History

43/08/0080 - Conversion of redundant building to form dwelling - Conditionally approved November 2008.

Consultation Responses

SCC - TRANSPORT DEVELOPMENT GROUP -

No observations to make.

WELLINGTON TOWN COUNCIL -

Could not make comment as too little information available.

PLANNING ENFORCEMENT -

No comments received.

ENVIRONMENTAL HEALTH - NOISE & POLLUTION -

No comments received.

Representations Received

Four letters of representation have been received. The letters received concentrate on

- 1) the loss of parking and manoeuvring space for the dwelling, and
- 2) the noise and smell from the dogs.

However, the following comments are also made -

- The kennel has been built on top of main water pipes for other properties denying access for servicing and maintenance
- Application does not reference a brick wall that has been built
- No mention of water disposal methods from the new hard surfacing surrounding the kennel and from the kennel itself
- Shows upvc windows in a structure that is within the curtilage of a listed building
- Discrepancies on and omissions from the application form.

Planning Policy Context

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise.

The development plan for Taunton Deane comprises the Taunton Deane Core Strategy (2012), saved policies of the Taunton Deane Local Plan (2004), the Taunton Town Centre Area Action Plan (2008), Somerset Minerals Local Plan (2015), and Somerset Waste Core Strategy (2013).

Relevant policies of the development plan are listed below. Policies from emerging plans are also listed; these are a material consideration.

DM1 - General requirements,

Local finance considerations

None

Determining issues and considerations

The proposed development is located within the settlement limits of Wellington where the principle of development is accepted. The proposed kennels are sited to the rear of the dwelling known as 'The Byre' within an enclosed courtyard area.

Planning permission 43/08/0080 granted in November 2008 allowed for the conversion of an 'outbuilding' and the associated courtyard area to a dwelling (The Byre). The outbuilding at the time was ancillary to No.2 Westford Court and was being used as a builders storage facility and the courtyard as the associated builders yard. The proposal to convert the outbuilding into a two bedroomed dwelling included the provision of off road parking and turning provision within the courtyard area which was conditioned to remain.

In assessing the development approved under 43/09/0080, the Highway Authority stated at the time that 'the development will utilise an existing access that derives direct access from/onto a classified unnumbered highway that is subject to a 30mph speed restriction'. Amended plans were submitted during the application process to address highway safety concerns identifying a turning area and parking for 2 cars to the rear of the dwelling on the site the subject of this application. Condition 4 of permission 43/08/008 stated that 'The area allocated for parking on the submitted plan shall be properly consolidated, surfaced, drained and marked out before the use commences or the building(s) are occupied and shall not be used other than for the parking of vehicles in connection with the development permitted'. This was to ensure there was adequate space within the site for the parking of vehicles clear of the highway which was in accordance with Taunton Deane Local Plan 2004 Policy M4.

The proposed development clearly conflicts with Condition 4 of 43/09/008 and would result in the loss of the car parking provision and turning area required with this

dwelling. Vehicles would ultimately park on the public highway to the front of the dwelling and this would make the use of the property as a dwelling unacceptable on highway safety grounds. Policy DM1 'General requirements' of the Taunton Deane Core Strategy 2011- 2028 states that any development must not lead to road safety problems. In permitting the retention of the kennels and the subsequent loss of car parking provision and turning space with the curtilage of 'The Byre', it would lead to an unacceptable use of the site in highway safety terms and for this reason the application should be refused.

A number of issues have been raised by third party representations. The issue of the noise and smell of the dogs is a matter for Environmental Health rather than the planning system as there planning law cannot restrict dog ownership at a private domestic property. However, all of the other issues raised by the representations would be satisfactorily addressed by the removal of the kennel structure.

It is also noted that condition 6 of the original permission for the dwelling, removed permitted development rights. The kennel has been erected on the site without the necessary permission and therefore this application is retrospective. That in itself is not a reason for refusal, because all applications must be considered on their own merits. However, on the principle issue of loss of parking and manoeuvring facilities for the dwelling, the application does fail because it would result in parking and manoeuvring on the public highway which would lead to conditions of danger to other road users contrary to policy within the adopted Core Strategy. On this basis, permission should be refused. As this proposal relates to works already undertaken, it is also recommended that the necessary enforcement action should be taken to remove the kennels and restore the land to that required under permission 43/08/0080 to achieve the parking and turning area. As such a second recommendation is proposed to seek approval for an enforcement notice to be served to achieve these requirements.

In preparing this report the planning officer has considered fully the implications and requirements of the Human Rights Act 1998.

Contact Officer: Mrs K Wray