

10/16/0008

MS S LOCK

**Change of use of land and buildings from equine to commercial dog breeding business to include retention of mobile home for use as temporary workers dwelling at Fairfield Stables, Moor Lane, Churchinford (retention of works already undertaken)**

Location: FAIRFIELD STABLES, MOOR LANE, CHURCHINFORD, TAUNTON,  
TA3 7RW

Grid Reference: 321927.112356

Retention of Building/Works etc.

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## **Recommendation**

### **Recommended decision: Refusal**

- 1 The proposed dog breeding business, by virtue of its siting within close proximity of residential properties, would cause harm to the residential amenity of neighbouring occupiers by way of noise. In particular, it is considered that the identified 'adverse' noise impact would give rise to significant disturbance and nuisance to the occupiers of Fairhouse Farm. The proposal is therefore contrary to Policy DM1 of the Taunton Deane Core Strategy and Paragraph 123 of the National Planning Policy Framework.
- 2 The proposed dog breeding business would give rise to increased levels of noise disturbance within an area of the Blackdown Hills AONB. In particular, it is considered that the proposal fails to enhance or preserve the tranquillity of the area, which would cause harm to the special recreational and amenity value of this designated asset. The proposal is therefore contrary to Policies CP8 and DM1 of the Taunton Deane Core Strategy, Policy PD5/A of the Blackdown Hills AONB Management Plan and Paragraph 123 of the National Planning Policy Framework.
- 3 No evidence has been submitted to accompany the application to satisfy the requirements for a temporary workers dwelling to be situated on site. Fundamentally, as the proposed dog breeding business is considered to be unacceptable on noise grounds, the functional need for residential occupation of the site has not been satisfied. The proposal is therefore contrary to Policy DM2 of the Taunton Deane Core Strategy and emerging Policy H1b of the Taunton Deane Site Allocations and Development Management Policies.

### **Recommended Conditions (if applicable)**

## Notes to Applicant

1. In accordance with paragraphs 186 and 187 of the National Planning Policy Framework the Council has worked in a positive and pro-active way with the applicant and has looked 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

Retrospective permission is sought for a change of use of land from equine to a commercial dog breeding business use. The application 'red-line' has also been amended to include an unauthorised mobile home on site. This would regularise an existing situation, where it is assumed some degree of residential occupation would be required to operate the business.

All dogs would be housed in the former timber stable building, which would be altered internally to create 5no. individual kennels. Outdoor run areas would be created to the front of each kennel using temporary (moveable) fencing panels.

It is also proposed to create an isolation kennel in the existing block stable building, which is situated across the yard from the timber kennels, allowing the necessary separation of animals if required.

All dogs would be exercised daily in the existing exercise areas, formally used as the riding area and woodchip turn out area.

The breeding element of the business would involve 10 bitches and two dogs, with 10 litters of puppies being produced each year. The proposed breeds are Golden Retrievers, German Shepherds and Cairn Terriers.

An acoustic barrier is proposed along the southern and eastern boundaries of the kennel run (as per the acoustic report) but this is not indicated on any plan.

## Site Description

The application site concerns Fairfield Stables; an existing equestrian site, situated approximately 0.3m to the east of the village of Churchinford. The site is accessible via Moor Lane to the south.

The site is situated in a reasonably remote and rural location, with agricultural land surrounding the majority of the site. However, there is a residential property, Fairhouse Farm, situated to the south of the site on the opposite side of the road. A sewage treatment works is situated to the west of the site.

The site consists of two main stable buildings to the south-western corner of the site, with an unauthorised mobile home situated in-between. There are two exercise areas; one situated to the south-east of the southern most stable building and one

area situated to the east of the access point.

The barns are reasonably well screened by existing trees and other vegetation planting situated along the southern boundary of the site.

## **Relevant Planning History**

E/0196/10/15 – Enforcement application relating to the unauthorised mobile home. Appeal decision ref. APP/D3315/C/16/3149290 is still ongoing but has been held in abeyance following the outcome of this application.

10/14/0025 - Permission for a new detached dwelling was sought in association with the equestrian business. However, the financial information submitted was insufficient to demonstrate that the business was financially viable and was refused on these grounds 2<sup>nd</sup> October 2014. An appeal decision (ref. APP/D3315/A/14/2228121) was subsequently dismissed 19<sup>th</sup> February 2015.

10/08/0026 – Change of use of land for the provision of a temporary occupational dwelling in the form of a mobile home for a period of three years. Permission was refused 27<sup>th</sup> November 2008, as the development was considered to be visually intrusive within the AONB and would result in increased traffic generation to a site that would have been car dependant. However, permission was subsequently allowed at appeal (ref. APP/D3315/A/09/2105152) 3<sup>rd</sup> September 2009.

## **Consultation Responses**

*CHURCHSTANTON PARISH COUNCIL* - Objects to the granting of permission:

The noise level is unacceptable in a residential area, The Council have already received complaints from householders who live more than 600m from the site.

For 10 breeding bitches, resident on-site supervision is required. No business plan has been supplied to justify residential accommodation on this agricultural site.

The Council objects to the urbanisation of an agricultural field.

*SCC - TRANSPORT DEVELOPMENT GROUP* - Refer to standing advice. Standing advice requires:

Sufficient parking and turning space should be provided.

*PLANNING ENFORCEMENT* - No response received.

*[Case Officer Note: There have been numerous verbal discussions relating to the unauthorised mobile home, which was agreed could be considered as part of this application].*

*BLACKDOWN HILLS AONB SERVICE* - Applications for commercial development in the AONB do require careful consideration to ensure that they contribute to conserving and enhancing the natural beauty of the area and are not detrimental to the AONB's special qualities. Particular considerations for this proposal in relation to conserving and enhancing the AONB include:

- Impact on the tranquillity of the AONB - The AONB management plan encourages quiet enjoyment of the AONB, and supports the restriction of developments and activities that detract from the tranquillity of the Blackdown Hills. Experience from elsewhere in the AONB suggests that despite best intentions groups of dogs do bark, whine and howl, including when able to see, smell or hear people and other dogs nearby. In this location, as well as affecting nearby neighbours, this would affect those using the lanes around the village and the wider tranquillity of the AONB.
- Impact on local character – through adding to the equestrian structures with the development of runs, exercise areas and associated paraphernalia.

It is also considered that the residential use of this site should be resolved prior to any further usage or development.

*LANDSCAPE* - Comments as follows:

The change of use will not result in any further landscape impact.

*ENVIRONMENTAL HEALTH - NOISE & POLLUTION* -

*Original comments received prior to the submission of noise report:*

It is difficult to comment on noise issues regarding the above as a noise report has not been provided by the applicant.

However it should be noted that this department has received complaints regarding dog barking from Fairfield Stables and we have concerns about noise of this nature causing disturbance to neighbouring properties in the future. From the application it can be seen that there are no barriers to reduce noise between the open kennels/exercise areas and neighbouring properties. In addition to this the construction materials of the kennels are not effective for minimising noise.

We would also expect that there will be an increase of people/vehicles entering the site to view and purchase puppies. This disruption may cause increased noise from the dogs and disturbance to neighbouring properties.

*Comments received following submission of noise report:*

The report includes a description of the site and the proposed business. It notes that the kennels are to be sited in an existing stable block and so are likely to be less well sealed against noise breakout than purpose built kennels, which confirms my previous comments. The report also proposes that an acoustic barrier is built along the southern and eastern sides of the kennel/open run area, and the calculation of the noise impact does assume that this barrier is in place.

To assess the potential impact of noise from the kennels Soundguard Acoustics used noise measurement data that they had from monitoring at another kennels, and also data from a guide on kennel design. Measurements of background noise levels were taken at the kennel site.

The report reviews the different standards and guidance that are available to assess the impact of noise and notes that there are no specific guidance or criteria for assessing noise from dog barking.

There is an assessment using British Standard BS4142:2014, which estimates the rated noise level of the dog barking at nearby houses and compares it to the existing background level. This found that the rated level could exceed the background level by 9dB during the daytime. BS4142 suggests that a difference of +5dB or more is likely to be an indication of an adverse impact; and that an exceedence of 10dB or more is likely to be an indication of a significant adverse impact (depending on context).

It is noted by the consultant that the guidance says that it should not be used for assessing noise from domestic animals, which would imply that it should not be used for assessing dog barking in kennels. However, as there is no specific guidance for dog barking it is not uncommon for this standard to be used to give an indication of any potential impact in a variety of circumstances.

When considering planning applications for commercial developments where the BS4142 standard would apply (for example, noise from fixed machinery at a factory), Environmental Health would normally recommend that the level of noise from any new development should not exceed the background level, although, depending on the location and context an exceedence of 3dB has been agreed.

The report does say that “active dogs are considered during daytime hours, most notably at feeding time, and during exercise or play”. It also says that noise impact could be minimised by exercising dogs in land to the north of the site and that the owners will “avoid concentrated exercise area at the site”. However, the plans show the exercise areas to the south east of the site, close to residential properties, the lane and the entrance to the site. There is no mention of a noise barrier around the exercise areas which, as the report says, are likely to be where dogs are active, and so potentially noisy. The report does not include an assessment of noise from the exercise areas shown on the plan.

The report also quotes sections from the National Planning Policy Framework (NPPF) which says that planning policies and decisions should aim to “mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development.” At this site the proposed kennels are located close to the lane and the open runs are adjacent to the lane, rather than on the far side of the kennels. The kennel building is not purpose built and is not likely to give good level of noise attenuation. The noise report recommends that the exercise areas should be on land to the north of the site, however, the plans show them close to neighbour properties and the lane.

The noise assessment using BS4142 concludes that the development will not lead to “significant adverse impacts”, but only “adverse impact”. This assessment does rely on a 3m high noise barrier, does not include the exercise areas and even then

it is still only 1dB from significant impact (although it is recognised that this assessment method is not appropriate for assessing dog barking).

As the report has stated, there are no criteria for assessing the impact of noise from dog barking at kennel. It can be hard to estimate the level of noise as it can vary depending on the individual dogs, the number on site, the location and layout of the kennels, exercise areas and acoustic barriers and the management of the premises. Any quantitative assessment using BS4142 should only be used to give an indication of potential noise. It is likely that the noise from dog barking will be audible at nearby premises, but it is hard to make an objective assessment of the potential impact.

*ECONOMIC DEVELOPMENT* - No response received.

## **Representations Received**

A site notice was erected 10<sup>th</sup> May 2016 and neighbours notified 21<sup>st</sup> April 2016.

A total of four letters of objection have been received, their comments summarised as follows:

### Noise impact

- Application site outside settlements limits and within AONB. The development, by virtue of increased noise (barking) fails to conserve or enhance the tranquillity of the AONB.
- Noise impact would cause unacceptable harm to the residential amenity of neighbours.
- Unacceptable noise levels within area, are exacerbated when walkers walk past the site along the lane.
- The location fails to help mitigate against potential noise impacts. Should be situated in an isolated location or on a site where the noise and traffic would not have an adverse effect on residential amenity (ie. beside a motorway/industrial site).
- Any proposed expansion of the business would increase noise impact.
- Isolation kennel situated even closer to Fairfield Farm (neighbouring property) increasing noise impact.

### Business use / functional need for dwelling

- The intent of the applicant seems to be to develop a business to establish an 'essential functional need' that will allow residential permission on the site. Whilst this is understandable it is not a reason to grant permission.
- A business plan to support the residential development has not been submitted.
- Concern as to whether 10 litters of puppies would constitute a viable

business.

#### Other

- It is proposed to dispose of runoff from the kennels via a soakaway – this should be treated as trade effluent, not as surface water.
- No sewer connection available.
- No consideration for impact upon local wildlife.
- Increased traffic.

Further neighbour consultation was conducted 10<sup>th</sup> August 2016 following the submission of an acoustic report. Two objection letters have been received, their comments summarised as follows:

#### Noise comments in relation to acoustic report

- Noise impact still too severe by virtue of the developments proximity of neighbours / Moor Lane (which is popular walking route).
- The (noise) assessment and its suggestions to mitigate the noise levels are unconvincing and would not be able to coexist with neighbours due to increased amenity issues.
- Report makes clear inherent limitations to this assessment – not least due to the lack of clear published guidance.
- Report does not take into account amenity of Little Fayrefield (directly behind Fairhouse Farm).
- Report does not specify which dogs and how many were present on site during the assessment.
- The bigger dogs are most frequently put in the large exercise area, away from the noise monitoring equipment.
- Existing kennels are not purpose built for dog breeding and fail to mitigate noise issues.
- Increase in visitors (to view and buy puppies) will inevitably lead to increased noise.
- Excessive noise levels are currently experienced from site, which would be made worse with any expansion of the business.
- The effectiveness of the proposed acoustic barrier fencing in reducing the noise nuisance is questionable.

#### Other

- Business is already operational without planning consent.
- This sort of 'puppy farm' is considered very bad practice (possibly illegal) and the RSPCA considers that such businesses should not be allowed to operate.

- Concerns about welfare of dogs (breeding without licence).
- It would not be possible to screen the large exercise areas closest to neighbours.
- The LPA should consider all other relevant legislation in relation to such businesses. *[Case Officer Note: The LPA can only consider relevant planning legislation in this respect].*

A further 9 letters of support were received 27<sup>th</sup> September 2016, their comments summarised as follows:

- Applicant has always worked with animals, which are well cared for.
- Applicant has lived and run a successful business at Fairfield Stables for many years. She should be allowed to continue to live on site.
- When walking toward the site dogs do not bark. For the few seconds spent walking past the site several of the dogs do bark but stop once passed.
- Applicant reassures dogs to be quiet when needed.
- Kennels themselves clean, tidy and well maintained with good welfare standards.
- Applicant needs to reside on site to care for the dogs.
- Site is situated a sufficient distance from local residents and causes no disruption.

## 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.

SP1 - Sustainable development locations,  
 CP8 - Environment,  
 DM1 - General requirements,  
 DM2 - Development in the countryside,  
 H1B - Temporary rural workers dwellings,  
 PD 5/A - Blackdown Hills AONB Management Plan



## **Local finance considerations**

### **Community Infrastructure Levy**

The development would not be liable for any Community Infrastructure Levy (CIL) payments in this instance.

## **Determining issues and considerations**

The application is, in effect, seeking planning consent for two separate aspects; a dog breeding business and a workers dwelling. It is therefore considered practical to assess the application in two parts. First, consideration needs to be given as to whether the principle of establishing a dog breeding business is acceptable, taking into account the potential issues associated with such a business. Secondly, it must be established whether there is a 'functional need' for a workers dwelling to be situated on site to operate the business.

### *1. COMMERCIAL DOG BREEDING BUSINESS*

In relation to the first matter, the main issues for consideration in this application include the principle of development, noise impacts in relation to residential amenity and setting within AONB, impact upon visual amenity / landscape and impact upon highways.

#### **Principle of development**

It is proposed to utilise and convert existing stable buildings and associated land previously in use for equestrian purposes, for use as a commercial dog breeding business. The application site itself is situated outside defined settlement limits, which, in accordance with Policy SP1 of the Taunton Deane Core Strategy (TDCS), is considered to be development within the 'open countryside'. The conversion of existing buildings to a more beneficial business use is considered to accord with the general aspirations of TDCS Policy DM2 and the principle of developing a commercial dog breeding business in a predominantly rural and remote location is considered to be acceptable in this respect.

#### **Noise – Residential amenity**

The development would utilise existing buildings and land previously in use for an equestrian business. As such, the development would not give rise to any increased residential amenity impact by way of overbearance, privacy or light. That being said, it is recognised that the nature of the proposed dog breeding business may give rise to significant disturbance and nuisance by way of noise.

Following a number of neighbour concerns, including concerns raised by the TDBC Environmental Health Team in relation to noise complaints received, a noise impact

assessment was prepared and submitted by 'Soundguard Acoustics' in order to assess the significance of potential noise disturbance.

Environmental Health have provided comments in relation to the submitted details and, although they have not formally objected to the proposal, they have confirmed that, from the information contained within the submitted noise impact assessment, there is the potential for a significant noise nuisance to arise as a direct result of the development.

It is acknowledged that there is no specific guidance, standard or criteria available to assess noise impact from dog barking. It is therefore considered pertinent to make an assessment using the British Standard BS4142:2014, which estimates the related noise level of dog barking at nearby houses and compares it to the existing backgrounds level. This approach was indeed taken by the acoustic consultant who prepared the submitted noise impact assessment. The submitted report indicated that, in accordance with this standard, the rated level could exceed the background level by 9dB during the daytime. This in itself is defined as an 'adverse impact' and is only 1dB below that considered to be a 'significant adverse impact'.

If this were a planning application for a commercial development, the noise level should not exceed the background level, although, depending on the location and context an exceedance of 3dB has been agreed. In this application however, the noise level could reach three times the maximum noise level of a commercial site, where impact by way of noise is highly likely to cause a significant nuisance and disturbance to nearby neighbours. Whilst it is agreed that noise levels would not be consistently audible at 9dB, the unknown timing, frequency and duration of potential noise impact is considered to be an even greater nuisance than if the noise were consistent. Furthermore, as the noise impact relates to disturbance directly from animals, any impact would be extremely difficult to control.

There are a few other key points raised within the submitted acoustic report. The report acknowledges that it is proposed to utilise existing stable block buildings and, because of this, the buildings themselves are likely to be less well sealed against noise breakout than purpose built kennels. The report also proposes that an acoustic barrier is built along the southern and eastern sides of the kennel/open run area, and the calculation of the noise impact does assume that this barrier is in place – it is not, however, shown on plan as part of the development. Whilst the report acknowledges that there is the potential for dogs to be exercised to the north of the site, again this is not shown on plan and the report does not include an assessment of noise from the exercise area that is shown immediately adjacent to the site access, which is less than 15m away from the neighbouring residential property, Fairhouse Farm, to the south.

Paragraph 123 of the NPPF states "planning policies and decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development". The noise impact assessment concludes that the development will not lead to "significant adverse impacts", but only "adverse impact". However, this assessment does rely on a 3m high noise barrier, does not include the exercise areas and even then it is only 1dB from significant impact. Whilst it is acknowledged that it is very difficult to ascertain how significant the noise impact would be by way of dog barking, it is evident that the development would give

rise to some degree of impact. This, in addition to the developments siting adjacent to Moor Lane, is highly likely to result in an unacceptable level of disturbance and nuisance by way of noise, which would cause significant harm to the residential amenity of neighbouring occupiers. For this, it is recommended permission be refused.

### **Noise – Blackdown Hills AONB**

The application site is situated within the Blackdown Hills; a designated area of outstanding natural beauty (AONB), where careful consideration has to be given to development proposals to ensure that they contribute to conserving and enhancing the natural beauty of the area and are not detrimental to the AONB's special qualities.

Paragraph 123 of the NPPF states that “planning policies and decisions should aim to identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.” Additionally, the Blackdown Hill AONB Management Plan encourages quiet enjoyment of the AONB, and supports the restriction of developments and activities that detract from the tranquillity of the Blackdown Hills. Most notably, Policy PD5/A states that the tranquillity of the AONB should be conserved and enhanced by restricting or reducing noise and the Local Planning Authority should avoid or restrict development which would detract from the tranquillity of the Blackdown Hills.

The Blackdown Hills AONB Officer has confirmed that, despite best intentions, groups of dogs do bark, whine and howl, including when able to see, smell or hear people and other dogs nearby. In this location, this would affect those using the lanes around the village and the wider tranquillity of the AONB. Furthermore, it is evident from the submitted noise impact assessment that the development would result in an ‘adverse’ noise impact, which is considered to harm the tranquillity of the AONB. The development is therefore considered to be in direct conflict with the core aims of the Blackdown Hills AONB Management Plan, the NPPF, as well as Policies CP8 and DM1 of the Taunton Deane Core Strategy. It is therefore recommended that permission should be refused on these grounds.

### **Visual amenity / Landscape**

The site is reasonably well screened by trees and other vegetation planting that are situated along the boundary, with the only direct sightlines of the site available through the access gate itself. In addition to this, it is recognised that the development would utilise existing buildings currently on site and there would be no increased development of the site. On this basis, the development is not considered to cause any significant harm to the visual amenity of the area or surrounding landscape.

Notwithstanding the above, it is noted from the submitted noise impact assessment, that a 3m high acoustic barrier should be used to help mitigate against potential noise impacts. Details of this have not been submitted to accompany the application and consideration has therefore not been given to the impact such a barrier would have on the character of the landscape. Further consideration would be required to assess any potential visual amenity impact in this regard.

### **Highways**

There is sufficient parking and turning space available within the site and the development is not expected to give rise to any significant increase in vehicle movements that would cause harm to highway safety.

## **Conclusion**

It is recognised that the impact of such a development by way of noise is extremely difficult to assess and there is no clear guidance or criteria in place in which to do so. However, it is evident that the development would give rise to an increased 'adverse' noise impact, which for the reasons outlined above, is considered to impact directly upon the residential amenity of neighbouring occupiers and the tranquillity of the Blackdown Hills AONB. It is therefore recommended permission be refused.

## **2. TEMPORARY WORKERS DWELLING**

In relation to the second matter, the main issue for consideration is the principle of development and whether the application is able to satisfy the policy requirements for a workers dwelling to be situated on site.

It is understood that there is currently an unauthorised mobile home on site, which is currently being considered under an enforcement appeal (ref. APP/D3315/C/16/3149290). Nevertheless, it is appreciated that some form of residential accommodation would likely be required in order to support the running of a commercial dog breeding business – albeit on a temporary 3 year basis in the first instance.

Policy CP8 of the Taunton Deane Core Strategy prevents isolated new dwellings in the open countryside. However, paragraph 55 of the NPPF sets out circumstances in which isolated dwellings may be permissible in the open countryside, including where it is essential for the proper functioning of an agricultural or rural enterprise. It is considered that, where the case is properly demonstrated, this outweighs the general presumption against the development outlined in the development plan.

Whilst Policy DM2 of the Taunton Deane Core Strategy would also apply, it does not provide specific detail in relation to the creation of new agricultural workers dwellings. Emerging Policy H1b of the Site Allocations and Development Management Policies (SADMP) is therefore afforded a great deal of weight in this instance. This policy sets out criteria where new temporary rural worker's dwellings may be permissible in the open countryside.

Emerging Policy H1b clearly states that permission should only be granted if all the criteria requirements are satisfied. In this respect, no information has been provided to support the case for a workers dwelling on site. Fundamentally, however, as the dog breeding business is considered to be unacceptable on noise grounds, there is clearly no functional need for residential occupation of the site. It is therefore recommended permission be refused on these grounds.

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

**Contact Officer: James Culshaw**