

**APPEAL DECISIONS FOR COMMITTEE AGENDA –12 AUGUST 2015**

<b>APPEAL</b>	<b>PROPOSAL</b>	<b>REASON(S) FOR INITIAL DECISION</b>	<b>APPLICATION NUMBER</b>	<b>INSPECTOR'S REMARKS</b>
APP/D3315/D/15/3 004343	BEACON LANE FARM, FOXMOOR ROAD, WELLINGTON, TA21 9NX	The proposed development, by reason of the scale of the business, the location of the kennels and their design is considered to cause unacceptable noise disturbance and harm to the peace and tranquillity of the Blackdown Hills Area of Outstanding Natural Beauty. Visitors to the area currently enjoy a peaceful natural environment with little in the way of noise disturbances and the proposed development would fail to maintain the peace and tranquillity of the Blackdown Hills AONB and conditions could not overcome this harm. The proposed development therefore fails to comply with Policies DM1, DM2 and CP8 of the Taunton Deane Core Strategy and guidance within the National Planning Policy Framework.	44/14/0010	APPEAL DISMISSED (PLEASE SEE ATTACHED LETTER)



# The Planning Inspectorate

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Julie Harcombe  
Taunton Deane Borough Council  
Review Support Manager  
The Deane House  
Belvedere Rd  
Taunton  
TA1 1HE

Your Ref: MC/102567/PD/11/A/956  
Our Ref: APP/D3315/C/14/3000141  
Further appeal references at foot of letter

09 July 2015

Dear Ms Harcombe,

Town and Country Planning Act 1990  
Appeals by MRS JULIE COATE  
Site Addresses: Beacon Lane Farm, Foxmoor Road, WELLINGTON, Somerset,  
TA21 9NX and Beacon Lane Farm, Voxmoor, WELLINGTON, Somerset, TA21

I enclose a copy of our Inspector's decision on the above appeal(s).

If you have queries or feedback about the decision or the way we handled the appeal(s), you should submit them using our "Feedback" webpage at <http://www.planningportal.gov.uk/planning/planninginspectorate/customerfeedback/feedback>.

If you do not have internet access please write to the Quality Assurance Unit at the address above.

If you would prefer hard copies of our information on the right to challenge and our feedback procedure, please contact our Customer Service Team on 0303 444 5000.

Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

The Planning Inspectorate cannot change or revoke the outcome in the attached decision. If you want to alter the outcome you should consider obtaining legal advice as only the High Court can quash this decision.

Yours sincerely,

***Rebecca Sippitt***  
Rebecca Sippitt

Where applicable, you can use the internet to submit documents, to see information and to check the progress of cases through the Planning Portal. The address of our search page is - [www.planningportal.gov.uk/planning/appeals/online/search](http://www.planningportal.gov.uk/planning/appeals/online/search)

Linked cases: APP/D3315/W/15/3004343

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## Appeal Decisions

Site visit made on 22 June 2015

**by Gareth Symons BSc(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 9 July 2015**

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### **Appeal A: APP/D3315/C/14/3000141**

**Beacon Lane Farm, Beacon Lane, Voxmoor, Wellington, Somerset, TA21 9NX**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mrs Julie Coate against an enforcement notice issued by Taunton Deane Borough Council.
  - The notice was issued on 18 September 2014.
  - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised change of use of agricultural land to a dog breeding business together with the siting of wooden structures to accommodate dogs and associated hardstanding as shown on the three photographs attached to this enforcement notice.
  - The requirements of the notice are: (i) Cease using the land for a non agricultural use, namely the keeping of dogs; and (ii) Remove from the land all buildings and structures and hardstanding used in connection with the keeping of dogs.
  - The period for compliance with the requirements is: 2 months.
  - 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.
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### **Appeal B: APP/D3315/W/15/3004343**

**Beacon Lane Farm, Beacon Lane, Voxmoor, Wellington, Somerset, TA21 9NX**

- 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 Mrs Julie Coate against the decision of Taunton Deane Borough Council.
  - The application Ref: 44/14/0010, dated 3 June 2014, was refused by notice dated 12 January 2015.
  - The development proposed is the retention of dog breeding kennelling on existing yard area.
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## Decisions

### **Appeal A – APP/D3315/C/14/3000141**

1. It is directed that the enforcement notice be varied by deleting the text “2 months from the date that this Enforcement Notice takes effect” from paragraph 6 and replacing that with “6 months”. Subject to this variation the appeal is dismissed and the enforcement notice is upheld. Planning permission for the application deemed to have been made under S177(5) of the 1990 Act is refused.

## **Appeal B – APP/D3315/W/15/3004343**

2. The appeal is dismissed.

### **Appeals A and B – planning merits**

3. The main issues are the effects of the development on the character, appearance and tranquillity of the Blackdown Hills Area of Outstanding Natural Beauty (AONB) and on the living conditions of residential occupiers in the area with particular regard to noise from barking dogs.

#### *Character, Appearance and Tranquillity*

4. Beacon Lane Farm is around two miles from the centre of the town of Wellington. It is accessed by a single roughly surfaced track from Beacon Lane that leads up the hillside for about 550m. It is a secluded location from where there are far reaching views down over the M5 motorway across a level vale to the backdrop of the Quantocks Hills AONB in the distance. The track is also a public right of way that proceeds past the appeal site through a nature reserve to the top of the hill where the imposing Wellington monument stands. A public footpath also skirts immediately to the north of the farmstead.
5. Planning permission was granted in 2012 (LPA Ref: 44/11/0020) to convert the barns to form a dog breeding enterprise and residential space. The appellant advises that the permission catered for an existing business of 28 breeding bitches. Work on converting one of the barns to residential accommodation has been completed but work on the two others barns planned to be used in connection with the dog breeding business has yet to be commenced.
6. Dog breeding kennels were though erected without planning permission in the corner of a field some distance to the south of the farm buildings further up the hillside. In 2014 an application (LPA Ref: 44/14/0001) to change the agricultural use of that site to an area for dog breeding kennels with hardstanding was refused planning permission. A subsequent appeal was dismissed (APP/D3315/A/14/2218011). That site was also subject to enforcement action and the kennels have been relocated to the current appeal site which is a small area of land just to the north of the barns but outside of the area originally granted planning permission for the barn conversions.
7. There are six typical kennel type sheds behind an outdoor dog training area that is enclosed by a tall close boarded fence. On the one side of this there is a larger shed that can accommodate several dogs which has a door into the training compound. When I was there the door was open and the dogs were able to go into and out of the shed as they wished. The business now caters for 50 breeding dogs. The kennels are next to the yard to the barns and there is a stone wall to the front next to the access track with large double gates in it. The wall wraps partly around the north boundary of the site.
8. Along with National Parks, AONB's are afforded the highest status of protection when it comes to their landscape and scenic beauty. The National Planning Policy Framework (NPPF) also states that "*great weight should be given to conserving landscape and scenic beauty of...Areas of Outstanding Natural Beauty...*". Policies DM1, DM2 and CP8 from the Taunton Deane Core Strategy reflect these objectives by seeking to protect the appearance and character of landscapes from harmful development and protecting, conserving and enhancing landscape character and natural assets.

9. Although the kennels are now located in a less exposed position than before, the conglomeration of sheds and fencing are not in keeping with the range of traditional farm buildings and, particularly when the gates are open, they are visible from the public footpath. Despite the Council planning officer in his Committee report finding the sheds and fencing acceptable in landscape terms, in my opinion they detract significantly from the quality of this highly protected landscape that persons walking along the well-used footpath up to the monument have come to enjoy.
10. Moreover, critical to the enjoyment of the area is its peacefulness. 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. Policy DM2 sets out the uses which might be appropriate within the AONB. Dog breeding is not one of those. While I was at the site the wind was blowing from the motorway towards the farm. Thus the motorway traffic noise was audible. However, I note that when the previous Inspector was at the farm the noise from the motorway was imperceptible.
11. Arrivals at the site, which I witnessed, cause a raucous reaction from the dogs with a lot of barking. Walking along in front of the kennels and peering over the fence into the training area also causes the dogs to bark, which must happen when the dogs are tended to during the day. Due to the closeness of the kennels to the footpaths there is also the risk for disturbance from passing walkers to set the dogs off. It is noted that the Council officer visits on foot did not trigger any barking, but variations to the acoustic conditions and whether walkers are, for example, talking to each other may cause the dogs to bark. These may be fairly short lived episodes but the intensity of the barking from so many dogs is a serious intrusion into the quiet ambience of the area.
12. It is suggested that use of the outdoor training would be restricted to 1.5 hours twice per day. However, I agree with the previous Inspector that this would be very difficult to control and enforce by a planning condition. Also, when I visited the site the dogs kept in the larger shed could move freely in and out of the building. The outside keeping of the dogs is likely to more noisy than if they were inside.
13. It is acknowledged that a dog breeding business has already been accepted at the appeal site. However, the dogs would have been in the existing stone barns which probably have better acoustic attenuation qualities, and there would have been far fewer dogs. Consequently the noise intrusion under the approved scheme would probably have been less and new buildings would not have been required. Even by enclosing the current wooden kennels more I doubt that this would lead to a significant reduction in the intrusiveness of the barking noise in the vicinity of the site.
14. I have found material harm to the character and appearance of the AONB that is in conflict with the highest status of national protection when it comes to landscape and scenic beauty. Moreover, the tranquillity of the area popular with walkers using the local footpaths would be seriously undermined. The planning applications made under Appeals A and B are thus contrary to the landscape character protection aims of national policy and policies DM1, DM2 and CP8 from the Taunton Deane Core Strategy.

### *Living Conditions*

15. The appellant's acoustic report demonstrates that at the nearest residential properties the noise from dog barking was not perceptible. However, the occupants of one of those properties have provided a detailed diary of when dogs could be heard over a full two year period (2013-2014). Some of this time may have been when the kennels were in the open field. However, one of the days recorded was 15 July 2014 at 12:30 pm when the kennels were where they are now. On that same day, albeit in the morning, is when the noise monitoring was carried out for the acoustic report.
16. Variations to background noise and weather conditions may have led to the differences in the above findings. I also acknowledge that just hearing dogs bark does not necessarily cause a statutory noise nuisance. Nevertheless, people's reaction to noise varies depending on their sensitivity to it and its type. There is first hand evidence in this case that barking can be regularly heard. To those persons it is a source of annoyance that at the moment adversely impacts on their living conditions.
17. I can see against this background why the Council's planning officer was recommending a two year temporary planning permission which would have allowed the issue to be monitored, during which time further noise attenuation measures could also have been provided. It is also acknowledged that the scheme under Appeal B was supported by the planning officer on the basis of a temporary planning permission. However, elected members are not bound to accept the advice of their officers and I have found harm to the character and appearance of the AONB and disturbance to its tranquillity. A temporary planning permission is thus not an option that I can follow.

### **Appeal A – ground (d)**

18. The appellant's case is that the hardstanding the enforcement notice requires to be removed is the floor slab of the former farmhouse that was demolished 35-40 years ago. As such this part of the development is now immune from enforcement action. The burden in legal grounds of appeal such as this to substantiate the case rests firmly with the appellant.
19. Despite reference to historical ordnance survey information or on site investigation there is no evidence to back up the appellant's claim. I was told at the site visit that the largest kennel building sits on top of the old floor slab. However, there was no evidence to show this and it is not my place in a written representations appeal to go unearthing or scraping back ground cover to show what may have been floor tiles underneath. Even if I had, exposing a slab does not necessarily prove when it was put down. For these reasons the appellant has not made her case out and so this ground of appeal must fail.

### **Appeal A – ground (f)**

20. It is not excessive to require operational development to be removed from the land that has facilitated the unauthorised use. Cessation of the dog breeding use and removal of the kennels and the hardstanding are necessary steps to remedy the breach of planning control in order to restore the land back to its condition before the breach took place. Thus the ground (f) appeal also fails. However, if the Council felt in the future that after the use had ceased and the kennels had been removed those actions were sufficient to remedy the breach

of planning control, it could waive or relax any of the requirements of the notice if that was appropriate.

### **Appeal A – ground (g)**

21. Ceasing the use and removing the associated development would be a relatively straight forward exercise. Two months is not, on its face, an unreasonable period of time in which to comply with the notice. The appellant though considers that a period of 18-24 months would be necessary to find new premises to relocate to. While I mindful of the business need there is a fallback here of being able to convert the barns. This may not meet the total needs of the business now because for viability reasons the barns could not accommodate enough dogs. However, it is at least a readily available part solution which the Council suggests could be achieved with low level works. Weighing against the needs of the business is the harm to the AONB.
22. Taking all of these factors into account, I consider that 6 months would strike the right balance between the needs of the business and the upholding of planning policies that seek to prevent harm to the highly protected landscape. On this basis the ground (g) appeal succeeds.

### **Conclusions**

23. Having had regard to all other matters raised, it is concluded that the enforcement notice under Appeal A should be varied in line with the above and both appeals should then be dismissed.

*Gareth Symons*

INSPECTOR



**APPEALS RECEIVED FOR COMMITTEE AGENDA – 12 AUGUST 2015**

<b>APPEAL NO</b>	<b>PROPOSAL</b>	<b>APPLICATION NUMBER</b>
<b>APP/D3315/D/15/3062070</b>	ERECTION OF REPLACEMENT SINGLE STOREY AND TWO STOREY EXTENSION TO THE REAR OF 55 RICHMOND ROAD, TAUNTON.	<b>38/15/0049</b>