

10/20/0002

MS S LOCK

Variation of Condition No. 05 of application 10/16/0028 to vary the wording to include 15 breeding bitches, 3 stud dogs and puppies at Fairfield Stables, Moor Lane, Churchinford

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

Grid Reference: 321848.112402

Removal or Variation of Condition(s)

Recommendation

Recommended decision: Conditional Approval

Recommended Conditions (if applicable)

1. The development hereby permitted shall be begun within three years of the date of this permission.

Reason: In accordance with the provisions of Section 91 Town and Country Planning Act 1990 (as amended by Section 51(1) of the Planning and Compulsory Purchase Act 2004).

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

(A1) DrNo 200.03 Rev C Site Location and Block Plan

Reason: For the avoidance of doubt and in the interests of proper planning.

3. The use of the site for the stationing of a caravan for residential purposes, hereby permitted, shall be for a limited period being the period of three years from the date of this decision. The use hereby permitted shall be discontinued and the land restored to its former condition on or before three years from the date of this decision in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.

Reason: The site lies in area where new development is generally restricted to that for which there is a proven need.

4. The occupation of the caravan shall be limited to a person solely or mainly

working, or last working, in the commercial dog breeding business at Fairfield Stables, Moor Lane, Churchinford, Taunton, Somerset TA3 7RW, or a widow or widower or surviving civil partner of such a person, and to any resident dependants.

Reason: The site lies in area where new development is generally restricted to that for which there is a proven need.

5. No dogs other than those kept for breeding purposes shall be kept on the site and the number of dogs shall be limited to no more than 15 breeding bitches and their puppies awaiting sale and 3 stud dogs.

Reason : In the interest of the amenity of neighbouring occupiers, impact on the tranquility of the AONB and in accordance with Policies DM1 and CP8 of the Core Strategy.

Notes to Applicant

1. In accordance with paragraph 38 of the National Planning Policy Framework the Council has worked in a positive and pro-active way and has imposed planning conditions to enable the grant of planning permission.

Proposal

Application 10/16/0028 was refused by the Local Planning Authority in February 2017 but subsequently approved on appeal in August 2017.

The condition 05 attached to the aforementioned permission states that;

"No dogs other than those kept for breeding purposes shall be kept on the site and the number of dogs shall be limited to no more than 15 breeding bitches and their puppies awaiting sale"

This application seeks to vary condition No. 05 of application 10/16/0028 to include 3 stud dogs, 15 bitches and puppies. The suggested wording for the condition reads:

'No dogs other than those kept for breeding purposes shall be kept on the site and the number of dogs shall be limited to no more than 15 breeding bitches and their puppies awaiting sale and 3 stud dogs'.

Site Description

The application site concerns Fairfield Stables; a former equestrian site, situated approximately 400m from the edge of the village of Churchinford within the Blackdown Hills AONB. The site is accessible via Moor Lane to the south. The site

currently operates a commercial dog breeding business approved on appeal. 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 some 100m to the south east of the site on the opposite side of Moor Lane. The next nearest property is some 200m to the west along Moor Lane. A sewage treatment works is situated to the west of the site. The dogs are currently all housed in the concrete block kennels formed inside the existing pole barn. In front of each kennel and extending out into the field, there are outdoor run areas utilising temporary (moveable) metal fencing panels, a separate pedestrian walkway and direct access to an exercise area which runs alongside the neighbouring sewage works. A mobile home is located to the east of the kennels. An isolation kennel exists in one of the stables. In addition the applicant utilises some of the existing facilities on site as exercise areas for the dogs on site.

A subsequent appeal was allowed by the Planning Inspectorate on 17th June 2020 for the provision of 8 kennels to the north east of the stable block and adjacent to the existing set of kennels. Once built, this housing will be used for whelping and for the young, post weaning, to enable them to be housed away from the mother, prior to being sold. There is a portable kennel sited within the red line boundary and to be removed once permanent structures have been completed.

The applicant's commercial dog breeding business is focused on breeding four different dog breeds. Currently there are 15 bitches (7no. golden retriever, 3no. springer spaniel, 3no. German shepherd and 2no English cocker spaniel) and 3 dogs (a German shepherd, a golden retriever and an English Cocker Spaniel). They produce up to 10 litters of puppies each year, one from each of the breeding bitches.

Relevant Planning History

10/20/0012 - Decision pending for the erection of temporary dwelling at Fairfield Stables, Moor Lane, Churchinford (retention of works already undertaken)

10/16/0008 -Change of use of the land and buildings from equine to commercial dog breeding business and retention of a mobile home for use as a temporary workers dwelling refused 7.11.16

10/16/0028 -Change of use of the land and buildings from equine to commercial dog breeding business and retention of a mobile home for use as a temporary workers dwelling refused 3.2.17 Allowed on appeal 4.8.17 One of the conditions stated:

"No dogs other than those kept for breeding purposes shall be kept on the site and the number of dogs shall be limited to no more than 15 breeding bitches and their puppies awaiting sale"

10/19/0011 - permission refused on for the erection of dog kennel and log store at Fairfield Stables, Moor Lane, Churchinford. Appeal ref: APP/W3330/W/19/3243730 allowed 17.06.2020

E/0196/10/15 – Enforcement application relating to the unauthorised mobile home.

Appeal decision ref. APP/D3315/C/16/3149290.

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 2nd October 2014. An appeal decision (ref. APP/D3315/A/14/2228121) was subsequently dismissed 19th 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 27th 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) 3rd September 2009.

Consultation Responses

CHURCHSTANTON PARISH COUNCIL object to this application.

If the Planning Team are minded to approve this application to increase the number of dogs, then the Parish Council request that conditions are agreed in order to limit the area in which the dogs are kennelled to the North of the site, within the Pole Barn and no other areas.

SCC - TRANSPORT DEVELOPMENT GROUP - has no observations on this planning application.

PLANNING ENFORCEMENT - There is an outstanding planning enforcement case relating to this site.

BLACKDOWN HILLS AONB SERVICE -

Further to initial comments below, from having looked further into the history of the application and seeing other comments it appears that not only are there are indeed issues regarding noise and disturbance, but there is a question mark and lack of clarity about the usage of the site (i.e. approved plans relating to where and how dogs are kept, and what measures should be in place regarding noise) and as such compliance with approved applications. It seems that the condition under consideration is ambiguous at best, but that when it was applied it related to an application that referred to 10 bitches and 2 dogs, and the intention of it was to limit the total number of adult dogs on site to 15. To now try to secure a condition that refers to 18 adult animals is a considerable increase in numbers, when much was made of controlling numbers in the interests of protecting the quiet enjoyment of the AONB. With outstanding issues around the site it seems a precautionary approach should be taken meaning that until all matters are resolved there should be no consideration of an increase in numbers.

If this application is to regularise an existing situation, and there are no current issues regarding noise and disturbance, then it is difficult to raise concerns over this application. However, the condition is very specific and is related to protecting the tranquillity of the AONB. It would therefore have been helpful to see evidence as to whether keeping breeding bitches and stud dogs together can be a cause of additional noise (aggression, barking, whining, howling) and a such materially alter the situation. In any event, should the planning authority be minded to approve the application it is considered that the wording should be as per the condition and not the description, i.e. 15 breeding bitches and their puppies.

LANDSCAPE - No comments received

Environmental Health - all Areas including Housing Standards -

The Planning Statement with the application outlines the existing condition (imposed by the Planning Inspector on appeal) and a proposed condition.

Existing condition "No dogs other than those kept for breeding purposes shall be kept on the site and the number of dogs shall be limited to no more than 15 breeding bitches and their puppies awaiting sale".

Proposed condition

'No dogs other than those kept for breeding purposes shall be kept on the site and the number of dogs shall be limited to no more than 15 breeding bitches and their puppies awaiting sale and 3 stud dogs'.

The Statement does mention noise from dog barking and references the Planning Inspector's decision in 2017, where the appeal was upheld but the condition was imposed to restrict the number of animals on site, so as to limit the potential disturbance.

The Planning Statement concludes that "The noise impact of the development would not be unacceptable". However, there is no noise assessment of the potential for the additional 3 dogs to add to the barking on site, or how they could affect the behaviour of the other bitches or puppies, so it is not clear how this conclusion was reached.

The Council's Environmental Health Team have received complaints about the noise from dog barking at Fairfield Stables, however, the investigations have not found that the noise is persistent or severe enough to be causing a statutory nuisance. However, it is possible that the noise from the kennels will be audible at neighbouring properties, and it could affect people passing the property (which is something that is not covered by statutory nuisance legislation).

Assessing the potential noise from dogs/kennels is not straightforward, as there is no standard way to measure or assess noise from dog barking, and no criteria against which to compare any predicted noise levels. Also, noise from dogs can be very varied depending on the individual dog and the management of the operation. Therefore, it is not possible to confirm whether or not the noise from the additional dogs will lead to an unacceptable increase in noise levels in the area. However, it is likely that 3 more dogs in site could lead to some increase in barking. I note that the Planning Statement says (sec 1.2).

"This application only relates to the non-residential element of the application".

I would suggest that if the condition is varied it should apply to the whole site, as this would prevent the possibility of other dogs being kept on the residential part of the site, in addition to those on the non-residential areas.

CPRE - CPRE Somerset welcomes the opportunity to comment on the above planning application for variation of Condition 5 and wishes to **object** to this development proposal. In addition, the development site is within the setting of Blackdown Hills AONB. The Countryside and Rights of Way (CRoW) Act 2000

confirmed the significance of AONBs, and Section 85 places a statutory duty on all relevant authorities to have regard to the purpose of conserving and enhancing natural beauty when discharging any function in relation to, or affecting land within an Area of Outstanding Natural Beauty. The primary purpose of the AONB designation is to conserve and enhance natural beauty. The National Planning Policy Framework (NPPF) 2019 under paragraph 172 requires that; **‘great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues.’**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires determination of the planning application must be made in accordance with the development plan unless material considerations indicate otherwise. The relevant development plan is Taunton Deane Core Strategy (2011-2028).

The appeal decision related to this site was dated 04 August 2017 was allowed and planning permission was granted for change of use from equestrian use to a mixed use of equestrian, a commercial dog breeding business and the stationing of a caravan for residential purposes at Fairfield Stables, Moor Lane, Churchinford, Taunton, Somerset TA3 7RW in accordance with the terms of the application, Ref 10/16/0028, dated 22 November 2016, and the plans submitted with it, subject to the following conditions.

- ‘1) The development hereby permitted shall begin not later than 3 years from the date of this decision.*
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans;*
 - i) Drawing number 200.03 Rev C Site location and block plan*
 - ii) Drawing number 200.04 Rev B Site plan as proposed*
 - iii) Drawing number 200.05 Rev A Plans and elevations as proposed*
 - iv) Drawing number 200.09 Proposed plans and elevations*
 - v) Drawing number 200.10 Indicative floor plans and elevations.*
- 3) The use of the site for the stationing of a caravan for residential purposes, hereby permitted, shall be for a limited period being the period of three years from the date of this decision. The use hereby permitted shall be discontinued and the land restored to its former condition on or before three years from the date of this decision in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.*
- 4) The occupation of the caravan shall be limited to a person solely or mainly working, or last working, in the commercial dog breeding business at Fairfield Stables, Moor Lane, Churchinford, Taunton, Somerset TA3 7RW, or a widow or widower or surviving civil partner of such a person, and to any resident dependants.*
- 5) No dogs other than those kept for breeding purposes shall be kept on the site and the number of dogs shall be limited to no more than 15 breeding bitches and their puppies awaiting sale.’*

Whilst the present application seeks to vary Condition 5, CPRE Somerset considers that condition 3 is pertinent to the determination of this application. Under the appeal decision condition 3, the present use of must be discontinued as of 4th August 2020, therefore should the case officer be minded to approve this variation in condition 5, CPRE Somerset requests that Taunton Deane DC insists that Condition is complied with and the use as a commercial puppy breeding facility be discontinued on or before 4th August 2020 in the interest of proper planning and to

enhance and conserve the special quality of tranquillity of Blackdown Hills Area of Outstanding Natural Beauty. CPRE Somerset considers that there is insufficient information in the proposed application to ascertain whether or not the keeping breeding bitches with stud dogs will change the present noise dynamics. The Inspector applied Condition 5 in the interests of tranquillity of the AONB, therefore CPRE Somerset considers this application for variation of Condition 5 cannot be determined until such information is submitted to and evaluated by TDC.

It should be noted that the appeal decision stated;

'18. The National Planning Policy Framework (the Framework) sets out a presumption in favour of sustainable development, sustainability having three dimensions,; economic, environmental and social.

Noise disturbance clearly weighs against environmental sustainability and potentially social sustainability'.

In summary, CPRE Somerset objects to this variation in condition 5 at present.

ECONOMIC DEVELOPMENT - No comments received

Representations Received

Ward Cllr Ross Henley: I wish to support the comments of the Parish Council in relation to the location of dogs kept on site. As Ward Councillor I would like to ask if officers were ever minded to recommend approval I wish to exercise my prerogative as Ward Councillor for the application to come to Planning Committee.

Cllr Ken Pearson: Given the number of objections, and particularly that from CPRE also about Condition 3, that the temporary caravan should be being removed by the 4th August 2020, is it not relevant to keep things as they are until we have a definitive outcome of the whole site?

Five letters together with (video/audio tape of recorded dog barking during a two year period) received with the following comments:

- The proposal represents an increase in dogs on site which can only lead to increased noise levels
- The increase in noise will add to the existing neighbour disturbance. Noise levels from dog barking has increased in recent months.
- Keeping stud dogs on site will increase the barking when the bitches come into season
- The dogs are still often in the front of the kennels adjacent to the lane and they all bark if anyone walks along that lane
- This establishment makes considerable noise pollution which in certain conditions echoes further up the lane to the village.
- The barking of the older dogs also makes any puppies yap as well so the sound levels are pretty loud.
- This noise is disturbing for anyone walking Moor Lane as well as being intrusive to any homes in the vicinity.
- There are enough kennels already and any extra will add to the discomfort of those living in Moor Lane and/or using it for recreational walking.
- The Planning Inspector fixed the numbers of dogs on that site to be a maximum of 15 dogs, based on the application for 12 dogs. When you add in the estimated 16 extra puppies on site at any one time, there will be 34 dogs on the site which is too close to the roadside and to our house and our immediate neighbours

behind us at Little Fayrehouse.

- The proposal is detrimental to the tranquillity and character of the AONB
- Residents at Fairfield no longer enjoy their garden and are disturbed by the loud barking, particularly the dogs around the mobile home.
- I live 1/4 mile from the site and the noise from Fairfield Stables in average weather conditions is a nuisance. On a still, peaceful day the noise is a significant nuisance.
- The condition of maximum of 15 dogs was based on 15 breeding bitches. As a consequence the site does not permit stud dogs on the site.
- The idea that the *nearest stud dogs are currently in the north of England* is ridiculous as they are not unusual breeds and particularly as we believe that very local stud dogs have recently been used.
- This increase in dog numbers amounts to a 20% increase which is significant and can only mean a significant increase in noise, as has been noted and monitored since before last year.
- There is no system imposed on this business to keep a clear record of numbers of dogs on the site, including dates of birth of the puppies and therefore no way of knowing the ages of these dogs.
- We have seen dogs being moved into different areas which shows there is a clear intention to push for the re-use of the old stabling area and stable nearest the roadside, as dog kennelling.
- All the breeding dogs should be housed in the kennelling building to comply with the terms of the appeal decision. They are not as some have been kept in the old stabling block and outside the mobile home and right next to the roadside
- In case the application was approved, the council should issue an enforceable condition which clearly restricts all the dogs to be inside the designated kennelling building and isolation kennel and nowhere else on site.
- While the old metal fencing panels/run areas are still kept in place in front of the old stable block (where the dogs were kept originally), the applicant will continue to take advantage and try to move dogs in to that area to house dogs, as and when she wants to. We would like the council to ask for these to be removed as they do not form part of the approved plans or impose a condition that prevents their future use.
- With outstanding issues around the site it seems a precautionary approach should be taken meaning that until all matters are resolved there should be no consideration of an increase in numbers.
- Previously imposed condition not being complied with regarding number of dogs.
- Number of inconsistencies with the permission and enforcement issues relating to the activities that have occurred on site.
- The applicant has cut down for hedge laying most of the roadside screening trees and bushes which means that the site is completely open to view and any noise from dogs escapes much more freely.
- We don't need more 'puppy farms' or expansion to existing ones when there are so many dogs awaiting adoption at animal rescue centres in the UK.

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), the Taunton Site Allocations and Development Management Plan (2016), 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.

DM1 - General requirements,
DM2 - Development in the countryside,
CP8 - Environment,

Local finance considerations

Community Infrastructure Levy

n/a

Determining issues and considerations

The main issues for consideration in determining this application is the impact of the proposal on the noise and therefore in relation to residential amenity and the tranquillity and character of the AONB.

It seems that the wording of the condition under consideration is ambiguous at best, but that when it was applied it related to an application that referred to 10 bitches and 2 dogs. The Inspector's Report states that *'all dogs kept at the premises would be breeding dogs and would be used to their environment and local circumstances, and the number of dogs can be controlled by condition as can a restriction ensuring that only the 'resident' dogs, kept for breeding purposes, are housed on the application site'*.

The Inspector's Report further states that;

'It is not possible to predict or place strict controls on the level of noise resulting from barking dogs. However by restricting the operation to housing only breeding dogs and limiting the numbers by condition, it would be possible to limit the likely levels of noise to that which would not adversely affect the tranquillity of the AONB. In that event the proposal would not be contrary to the development plan policies or with the Framework'.

Regardless of whether the intention of condition 05 was ever to impose restrictions on the number of stud dogs on site, the comments received through public consultation demonstrates that there are current and ongoing issues and disturbance regarding noise resulting from dog barking at Fairfield Stables. The Statement does mention noise from dog barking and references the Planning Inspector's decision in 2017, where the appeal was upheld but the condition was imposed to restrict the number of breeding bitches on site, so as to limit the potential disturbance.

The Planning Statement concludes that "The noise impact of the development would not be unacceptable". However, there is no noise assessment of the potential for the

additional 3 dogs to add to the barking on site, or how they could affect the behaviour of the other bitches or puppies, so it is not clear how this conclusion was reached. The applicant has since confirmed that the dogs need to be KC registered and health tested. The nature of the business means that to try and find anything with the same pedigree as the applicant's dogs would mean she would have to travel miles. Bringing new and unfamiliar outside dogs would stress the bitches and therefore create more noise. Such practise would also place an unnecessary risk on bringing disease, infection or virus.

The Council's Environmental Health Team have received complaints about the noise from dog barking at Fairfield Stables, however, the investigations have not found that the noise is persistent or severe enough to be causing a statutory nuisance. However, it has been noted that it is possible that the noise from the kennels will be audible at neighbouring properties, and it could affect people passing the property (which is something that is not covered by statutory nuisance legislation).

The comments received from the Council's Environmental Health Consultees note that ' Assessing the potential noise from dogs/kennels is not straightforward, as there is no standard way to measure or assess noise from dog barking, and no criteria against which to compare any predicted noise levels. Also, noise from dogs can be very varied depending on the individual dog and the management of the operation. Therefore, it is not possible to confirm whether or not the noise from the additional dogs will lead to an unacceptable increase in noise levels in the area. However, it is likely that 3 more dogs in site could lead to some increase in barking.

The applicant currently keeps 15 bitches, and 3 stud dogs on site along with puppies awaiting sale. Given that the nature of the condition is to limit the number of breeding bitches, and not the number of stud dogs or puppies, her opinion is that the keeping of the stud dogs is compliant with the condition. The condition 05 only makes a reference to breeding bitches, and their puppies awaiting sale. When it was applied it related to an application that referred to 10 bitches and 2 dogs so it is clear that at the time the condition was applied the intention was to house stud dogs on the application site. For clarity purposes, the current application seeks to vary the condition to include three stud dogs. It is clear that the proposal will not lead to any increase in bitches, and therefore no increase in puppies. In fact, the amended wording is considered to provide somewhat more clarity by restricting the total number of adult dogs allowed on the application site.

Some of the comments received through the public consultation have recommended that in order to reduce the nuisance from dog barking additional conditions should be imposed in order to limit the area in which the dogs are kennelled. Whilst it is acknowledged that there are on-going issues with dog barking, the monitoring undertaken by the Environmental Health have not found a statutory nuisance. This application seeks to vary one condition of an already approved scheme, and it cannot be concluded that the proposal represents an expansion of the existing dog breeding business. Clearly all dogs need fresh air and exercising regardless of their status as breeding dogs. It is also unclear how such condition could be enforced. Exercising the dogs within the approved red line area does not constitute a breach of the original planning consent. Additionally, the provision of 8 kennels to the north east of the stable block and adjacent to the existing set of kennels was approved on appeal in June 2020. These additional kennels are outside the red lined site area which was the subject of the 2017 appeal decision. To avoid any doubt the Inspector

included a condition restricting the total number of dogs that may be housed across the combined area, and this was included as a condition in the 2020 appeal decision. In view of the above, it is not considered appropriate to impose additional conditions or restrictions that do not form part of the approved schemes.

Conclusion:

It is clear that the intention of condition 05 was aimed at controlling the numbers and the operation of the dog breeding business in the interest of protecting the residential amenity, and the quiet enjoyment of the AONB, and its tranquillity. It appears that the condition 05 and how it's currently worded is ambiguous at best and subject to different interpretation. It could be argued that the three stud dogs would equally fall under the definition of 'resident dogs housed on site' for breeding purposes. It cannot therefore be concluded that the proposal represents an expansion of the commercial dog breeding business.

Notwithstanding the above, it is considered that there is a fully justifiable reason for keeping stud dogs on the application site, as was the case with the 2 dogs, when the condition was applied. Out sourcing outside stud dogs for breeding purposes seems impractical which is likely to affect the breeding business itself. There is also a concern over animal welfare due to the risk of infection and virus. Whilst it is acknowledged that there are on-going issues with dog barking at Fairfield Stables, the monitoring undertaken by the Environmental Health have not found a statutory nuisance. It is clear that there is no intention to increase the number of breeding bitches on the site as that would clearly contravene the current condition. On balance, it is considered that the proposal is compliant with policies DM1, DM2 and CP8.

In view of the above considerations, the proposal is considered to be acceptable and is recommended for approval.

Whilst the principle for the development has been established by the previous planning permission it is considered necessary to impose previous conditions applicable to the proposal to ensure enforcement is possible.

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

Contact Officer: Mrs A-M Galliett