

APPEAL DECISIONS – 10 JUNE 2021

Site: The Station Masters House, Carnarvon Arms Drive, Brushford, Dulverton, TA22 9AF

Proposal: Installation of external spiral staircase (retention of works already undertaken)

Application number: 3/04/20/007

Reason for refusal: Allowed

Original Decision: Delegated Decision



The Planning Inspectorate

Appeal Decision

Site visit made on 5 May 2021 by **Matthew Jones BA(Hons)**

MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 May 2021

Appeal Ref: APP/W3330/D/21/3267718 The Station Masters House, Carnarvon Arms Drive, Brushford TA22 9AF

- 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 Tony Skilton against the decision of Somerset West and Taunton Council.
 - The application Ref 3/04/20/007, dated 3 September 2020, was refused by notice dated 23 December 2020.
 - The development proposed is the installation of an external spiral staircase.
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Decision

1. The appeal is allowed and planning permission is granted for the installation of an external spiral staircase at The Station Masters House, Carnarvon Arms Drive, Brushford TA22 9AF in accordance with the terms of the application Ref 3/04/20/007, dated 3 September 2020, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan, Site Plan, Sheet 1 of 3 Rev 1 Front View – Existing, Sheet 2 of 3 Rev 1 Right View - Existing, Sheet 3 of 3 Rev 1 Plan View – Existing, Sheet 1 of 3 Rev 1 Front View – Proposed, Sheet 2 of 3 Rev 1 Right View – Proposed, Sheet 3 of 3 Rev 1 Plan View – Proposed.

- 2) The roof of the conservatory shall not be used as a balcony, roof garden or similar amenity area.

Procedural Matter

2. The spiral staircase is already in situ and I made my assessment on that basis.

Main Issue

3. The main issue is the effect of the proposal on the living conditions of the occupants of Dulverton Sidings, with reference to privacy.

Reasons

4. From the staircase one is able to take in an elevated view of the neighbouring property Dulverton Sidings which was not possible before. However, the function of the staircase is for transit. It is small and confined which, together with the diminishing nature of its treads, means that it is not somewhere where one would, or could, typically dwell. As such, overlooking from the staircase towards Dulverton Sidings is inherently fleeting and is acceptable.
5. I do recognise that, by providing direct and permanent access to the conservatory roof, there is now far greater potential for the roof space to be accessed not just for maintenance but for recreational purposes. Such use, for a more prolonged period, would create an unacceptably intense degree of overlooking towards Dulverton Sidings. However, this is a matter that can be addressed pursuant to a condition.
6. I therefore conclude that the proposal has an acceptable effect on the living conditions of the occupants of Dulverton Sidings, with reference to privacy. It accords with the relevant aims of Policy BD/3 of the West Somerset Development Plan to 2032 (adopted 2016) and the National Planning Policy Framework.

Conclusion

7. For the reasons outlined above and taking all matters raised into account, I conclude that the appeal should be allowed, subject to conditions.

Matthew Jones

INSPECTOR

Site: PARK END LODGE, WEST BAGBOROUGH ROAD, WEST BAGBOROUGH, TAUNTON, TA4 3DU

Proposal: Change of use of residential garden store into Class A5 take away outlet at Park End Lodge, West Bagborough Road, West Bagborough

Application number: 06/20/0017

Reason for refusal: Allowed

Original Decision: Chair



Appeal Decision

Site visit made on 5 May 2021 by **Matthew Jones BA(Hons)**

MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2021

Appeal Ref: APP/D3315/W/20/3264558

Park End Lodge, West Bagborough Road, West Bagborough, Taunton TA4 3DU

- 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 Ms Michelle Lyons against the decision of Somerset West and Taunton Council.
 - The application Ref 06/20/0017, dated 11 November 2019, was refused by notice dated 9 November 2020.
 - The development proposed is the change of use of part of a domestic garden store into A5 take away outlet.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of part of a domestic garden store into A5 take away outlet at Park End Lodge, West Bagborough Road, West Bagborough, Taunton TA4 3DU in accordance with the terms of the application Ref 06/20/0017, dated 11 November 2019, subject to the conditions in the attached schedule.

Main Issue

2. The main issue is the suitability of the site for the proposal, having regard to (i) the effect on the landscape and scenic beauty of the Quantock Hills Area of Outstanding Natural Beauty (the AONB) and (ii) the accessibility to services.

Reasons

3. The site comprises a store and adjacent land in the domestic grounds of Park End Lodge, set within open countryside in the AONB. The store is close to a vehicular access serving the dwelling off West Bagborough Road. The National Planning Framework (the Framework) provides that Areas of Outstanding Natural Beauty have the highest status of protection in terms of landscape and scenic beauty, the conservation of which is afforded great weight.
4. In the open countryside, Policy DM2 of the Taunton Deane Core Strategy 20112028 (adopted 2012) (the TDCS) supports the provision of tourist and recreational facilities provided that increased visitor pressure would not harm the natural and man-made heritage of the area. Amongst other things, Policy CP1 of the TDCS states that proposals should reduce the need to travel through locational decisions and avoid adverse impacts through traffic generation.
5. The operation would be of a very small scale. As such, in practice it is most likely to be little more than a roadside convenience for people already with reason to be in the vicinity, rather than act as a draw for any significant increase in visitor pressure. Indeed, I gather from interested parties that a previous café in the area has been lost through fire. On this basis, it appears probable that the outlet would meet an existing locational demand and may well reduce the incentive for people to travel further afield for food and drink.
6. Even so, there would be greater footfall to the site which, together with the trappings of its new use, would inevitably alter its character and appearance. However, whilst this part of the AONB is overtly rural, the site is already manmade and domestic in character and much of the store and surrounding space are highly screened by Park End Lodge's roadside boundary hedge bank.
7. It is logical, given that the outlet would provide takeaway products, that customers would not spend prolonged periods on site. On this basis, the site is of an adequate size to accommodate necessary onsite parking for motor vehicles and bicycle storage, the provision of which would also ensure that parking along the adjacent highway could be all but avoided. For these reasons, with the detailed specification of onsite parking, bicycle storage, litter bins and seating secured by conditions, the operation of this modest outlet would not challenge the AONB's landscape and scenic beauty.
8. Moreover, whilst I recognise the potential harm that could be caused by future signage, the type of advertisement likely to have a deleterious impact upon the AONB would require express consent pursuant to the relevant Regulations¹. With regard to adverse light pollution emanating from the site, this can be resolved through a condition restricting the opening hours of the business.
9. The Council has also referred to the absence of toilet facilities and the potential for littering off site. However, these are pervasive issues which are not specific to this proposal, and which it seems to me would pose the same potential problems if people were to bring alternative food and drink into the AONB.
10. I therefore conclude that the site would be suitable for the proposal, having regard to the effect on the landscape and scenic beauty of the AONB and the accessibility to services. It would accord with the relevant aims of Policies CP1, CP8, DM1 and DM2 of the TDCS and the Framework.

Conditions

11. In addition to the standard time condition, it is necessary to define the approved plans in the interest of certainty. The proposal would make use of the existing access, which is fairly set back from the carriageway, with users therefore afforded adequate visibility on to a quite straight section of West Bagborough Road. Whilst a condition is necessary to ensure that the existing visibility at the access is not restricted, I do not consider it essential for a condition to require additional works to extend the existing splay. Given that hot food takeaways (formerly Use Class A5) are now sui generis, it is not necessary for a condition to restrict the use of the proposal to that approved.

Conclusion

12. For the reasons outlined above and taking all matters raised into account, I conclude that the appeal should be allowed, subject to conditions.

Matthew Jones

INSPECTOR

¹ Town and Country Planning (Control of Advertisements) (England) Regulations 2007

Schedule of Conditions

- 1) The development hereby permitted shall be begun within three years of the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, PEL04 Rev 0, PEL05 Rev 0, PE010 Rev 0.
- 3) The use hereby permitted shall only take place between the following hours: 09:30 – 15:30 Mondays – Sundays.
- 4) The development hereby permitted shall not be first brought into use until a plan identifying the location and specification of onsite parking for motor vehicles and bicycle storage has been submitted to an approved in writing by the Local Planning Authority. The parking and storage areas shall be developed in accordance with the approved details and thereafter used and retained for the parking of motor vehicles and the storage of bicycles and for no other purpose.
- 5) There shall be no obstruction to the existing visibility splays at the access on to West Bagborough Road.
- 6) Before the use hereby approved commences, a plan showing the location of litter bin(s) and seating shall be submitted to and approved by the Local Planning Authority. The approved bin(s) and seating shall be sited prior to the first use of the outlet and retained in their approved form.

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

Proposal: 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

Application number: 10/20/0002

Reason for refusal: Allowed

Original Decision: Committee



The Planning Inspectorate

Appeal Decision

Site visit made on 26 April 2021 by A Spencer-Peet

BSc(Hons) PGDip.LP Solicitor (Non Practicing)

an Inspector appointed by the Secretary of State

Decision date: 28 May 2021

Appeal Ref: APP/W3330/W/21/3266747 Fairfield Stables, Moor Lane, Churchinford, Taunton TA3 7RW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Ms Sally Lock against the decision of Somerset West and Taunton Council.
 - The application Ref 10/20/0002, dated 23 December 2019, was refused by notice dated 1 December 2020.
 - The application sought planning permission for change of use of the land and buildings from equine to commercial dog breeding business and retention of mobile home for use as a temporary workers dwelling without complying with a condition attached to planning permission Ref 10/16/0028, dated 4 August 2017.
 - The condition in dispute is No 5 which 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.*
 - The reason given for the condition is: *A condition limiting the number of breeding bitches kept on the site is necessary to limit the potential for noise disturbance.*
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Decision

1. The appeal is allowed and planning permission is granted for change of use of the land and buildings from equine to commercial dog breeding business and retention of mobile home for use as a temporary workers dwelling at Fairfield Stables, Moor Lane, Churchinford, Taunton, TA3 7RW in accordance with the application Ref: 10/20/0002 dated 23 December 2019 without complying with condition 5 previously imposed on the planning permission Ref: 10/16/0028 dated 4 August 2017 and subject to the conditions in the schedule attached to this decision letter.

Background and Main Issue

2. Planning permission for the change of use of the land and buildings from equine to commercial dog breeding business and retention of mobile home for use as a temporary workers dwelling was granted under appeal¹ (the Previous Appeal) on 4 August 2017 subject to a range of conditions and which included the disputed condition described above.
3. The Inspector in that appeal, concluded that the condition which limited the number of breeding bitches on site, was necessary in order to limit the potential for noise disturbance.

¹ Appeal Reference: APP/D3315/ W/17/3172566

4. The appeal before me seeks to remove and replace the said disputed condition. The Council are concerned that sufficient information has not been provided to demonstrate that by replacing the disputed condition with a condition that also specifies the number of stud dogs at the site, there would be no adverse effect with regards to the amenity of nearby residents nor any adverse effect with regards to the tranquillity of the AONB.
5. Accordingly, the main issue in this appeal is the effect of the proposed variation of the disputed condition on the living conditions of nearby residents and on the Blackdown Hills Area of Outstanding Natural Beauty (the AONB), with regard to noise and disturbance.

Reasons

6. The appeal site comprises land and buildings at Fairfield Stables, located outside of the settlement at Churchinford. The site is situated adjacent to Moor Lane with Fairhouse Farm being located on the opposite side of Moor Lane to the south of the appeal site. The site is bordered to the northwest by a sewage works, with the land to the north and northeast of the site comprising predominately open agricultural land.
7. The appeal site is located within the AONB. In accordance with the statutory duty set out in Section 85 of the Countryside and Rights of Way Act 2000, I have had regard for the special qualities and significance of the AONB, in terms of the natural beauty of the landscape and open undeveloped countryside. Furthermore, and in line with the objectives of the National Planning Policy Framework (the Framework), I have attributed great weight to matters concerning the conservation and enhancement of the landscape and natural beauty of the AONB, in reaching this decision.
8. The evidence before me indicates that the Previous Appeal decision followed a 2017 noise assessment based on 12 adult dogs – comprising 10 bitches and 2 stud dogs. The Inspector in the Previous Appeal noted that whilst the breeding of dogs had the potential to introduce noise and it was not possible to predict or place strict controls on the level of noise resulting from barking dogs, it was concluded that 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.

9. Notwithstanding the above, a further separate appeal (the Second Appeal¹) relating to the erection of a dog kennel and log store at the site was determined in May 2020 and was based on a further noise assessment dated 2019 and which concluded that the operational activity of the site is unlikely to result in an adverse noise impact or annoyance. The Second Appeal was allowed and included a condition which provided that only dogs kept for breeding purposes would be kept at the site and that no more than 15 breeding bitches, and puppies, be kept at the site.
10. The Appellant maintains that the 2019 noise assessment was based on 18 adult dogs – comprising 15 bitches and 3 stud dogs. However, the Council have put it to me that the second noise assessment dated 2019 provided by the Appellant, repurposed parts of the earlier 2017 noise assessment and did not take account of the additional number of adult dogs when compared to the original assessment and that, therefore, there is insufficient evidence to demonstrate that the additional number of dogs would not result in unacceptable levels of noise disturbance.
11. While the Council's submissions are noted, the 2019 noise assessment provides that there has not been any significant environmental changes that would alter background noise levels and that therefore the same background noise data collected for the 2017 noise assessment can be reused. There is no substantive evidence which indicates that conditions on the ground have changed since 2017 with regards to background noise, and it is apparent that the 2019 noise assessment and conclusions were based on the activity of 18 adult dogs and up to 16 puppies at the site.
12. As such, the application, which is the subject of this appeal, does not seek to increase the numbers of adult dogs when compared to the position considered by the Inspector under the Second Appeal. The 2019 noise assessment was based on the activity of 18 adult dogs and the Second Appeal was allowed on the basis of that level of activity at the site.
13. Consistent with the conclusions of the Inspector in the Second Appeal, I find that the relevant noise assessment provides a detailed analysis of technical issues and approaches and was produced by a suitably qualified professional. Furthermore, by reason of the location of the site, separation distances to the nearest residential dwellings and mitigation measures already in place at the site, in the absence of any substantive evidence to the contrary, I would concur with the findings of the noise assessment and the conclusions of the Inspectors in the cited appeals, that the appeal proposal would not adversely affect the living conditions of nearby residents nor adversely affect the tranquillity of the AONB.
14. While I acknowledge the Appellant's contention that the disputed condition does not specifically preclude the keeping of stud dogs at the site, in my view and in the interests of clarity and precision, I find that it would be necessary and reasonable that the disputed condition be removed and replaced. In this respect, it would be reasonable to specify the total number of bitch and stud dogs at the site given that specific evidence has been provided which demonstrates that there would be no

¹ Appeal Reference: APP/W3330/W/19/3243730

significant effect with regards to the tranquillity of the surrounding area nor to the living conditions of nearby residents based on these numbers of adult dogs.

15. Given that the position has not changed since the Second Appeal was determined with regards to the total number of adult dogs at the site, and by reason of the noise assessment and subsequent conclusions of the Inspector in the Second Appeal, a replacement condition which more precisely identifies the specific number of bitch and stud dogs that can be kept at the site, would not alter the position with regards to potential noise disturbance from the site. In this respect, the evidence before me indicates that monitoring undertaken by the Council's Environmental Health team have not found a statutory nuisance with regards to dog barking noise coming from the appeal site.

16. The replacement condition would not alter the total number of adult dogs at the site from that considered and approved under the Second Appeal. Given that that number of dogs has already been found to have no significant adverse effects on the living conditions of nearby residents or on the AONB, I conclude

that the replacement condition would not conflict with the provisions of Policies DM1 or CP8 of the Core Strategy which, together and amongst other things, seeks to ensure that development does not harm residential amenity and protects, conserves or enhances landscape character. For the same reasons, the replacement condition would comply with the aims and provisions of the Blackdown Hills AONB Management Plan and would accord with the Framework with regards to conserving and enhancing the natural environment.

17. I have carefully considered the submissions of all interested parties in relation to the development and to the replacement of the above described condition. I have noted the concerns regarding the use of the appeal site for the number of adult dogs specified above. However, planning permission for that use as granted under the abovementioned appeal decisions will continue to exist irrespective of the outcome of this appeal. By allowing the appeal I am granting a further permission for the same use, albeit with some differences in the wording of the disputed condition. Based on the evidence before me, I consider that the replacement condition would result in development that would have no greater adverse effect on the living conditions of nearby residents or on the tranquillity of the AONB than that authorised by the Second Appeal.

Conditions

18. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. The evidence before me confirms that the development has commenced, and I have therefore omitted the standard time limit condition as this is no longer necessary.

19. Notwithstanding the above, the Previous Appeal included conditions which concern the stationing of a caravan for residential purposes, at the appeal site, for a limited period. It is understood from submissions received from both the Council and the Appellant that the nature and extent of the two conditions which limit the siting of the caravan and which restrict occupation to those working at Fairfield Stables, are the subject of a further planning application. Such considerations are not matters that are before me in relation to this present appeal and, consequently those conditions should be restated and imposed in respect of this appeal decision.

20. However, the condition which limits the period for which the caravan can be sited at the appeal site is linked to the date of the Previous Appeal decision and, accordingly, it would be proportionate and necessary to replace this condition with further condition that specifies the date of the Previous Appeal decision. Both the Council and Appellant have confirmed that such an approach would be appropriate in the event that the appeal was allowed.

Conclusions

21. For the reasons given above and having regard to all other matters raised, the appeal is allowed.

A Spencer-Peet

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the approved plan drawing number: 200.03 Rev C Site Location and Block Plan.
- 2) 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 4 August 2017. The use hereby permitted shall be discontinued and the land restored to its former condition on or before three years from 4 August 2017 in accordance with a scheme of work that shall first have been submitted to and approved in writing by the Local Planning Authority.
- 3) 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.
- 4) 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 3 stud dogs, 15 breeding bitches and their puppies awaiting sale.