

DECISIONS – 30 JANUARY 2020

Site: 61 Gillards Close, Rockwell Green, Wellington, TA21 9DX

Proposal: Erection of walls to the front and side and fencing to the side and rear of 61 Gillards Close, Rockwell Green, Wellington (retention of part works already undertaken)

Application number: 43/19/0018

Reason for refusal: Allowed



The Planning Inspectorate

Appeal Decision

Site visit made on 18 December 2019 by **Nick Davies BSc(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 January 2020

Appeal Ref: APP/W3330/D/19/3238604 61 Gillards Close, Rockwell Green, Wellington TA21 9DX

- 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 Mr Shaun Hill against the decision of Somerset West and Taunton Council.
 - The application Ref 43/19/0018, dated 23 February 2019, was refused by notice dated 27 September 2019.
 - The development proposed is erection of walls to the front and side and fencing to the side and rear.
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Decision

1. The appeal is allowed and planning permission is granted for erection of walls to the front and side and fencing to the side and rear at 61 Gillards Close, Rockwell Green, Wellington TA21 9DX in accordance with the terms of the application, Ref 43/19/0018, dated 23 February 2019, and the plans submitted with it, subject to the following condition:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 005_PL00_rev/; 005_PL03_rev/; 005_PL10_rev/; Scale 1:50 Front View; Scale 1:50 Side View.

Procedural Matters

2. The description of the development given on the application and appeal forms was very lengthy and contained matters that did not relate to the development proposed. For the purposes of clarity, I have adopted the description used by the council on its decision notice, which concisely and accurately describes the proposal.
3. I saw that the wall directly in front of the house and the fencing had already been constructed at the time of my site visit. I am therefore dealing with these elements of the proposal retrospectively.

Main Issue

4. The main issue is the effect of the development on the character and appearance of the area.

Reasons

5. 61 Gillards Close is an end-terraced house on a residential estate dating from the late 1980s. It lies at the head of a cul de sac, so forms a terminating view when looking down the Close from the east. It occupies a slightly elevated position relative to the turning head, which it is separated from by a small front garden. The estate comprises of two-storey detached, semi-detached and terraced houses of brick construction with concrete tiled roofs. The properties are arranged around standard tarmacked residential estate roads, with kerbed pavements. The houses generally have small, unenclosed front gardens, some of which are lawned and others gravelled. As a result, the area has a typically suburban character.
6. The proposals involve the enclosure of the rear garden with a 1.88m high close-board fence, together with a 900mm high brick wall to the front of the property, which would also extend around part of the side boundary to meet the fence. The drawings specify bricks to match the house, and I saw that those used in the portion of the wall that has already been constructed are very similar in colour.
7. The evidence provided by the council indicates that the 1.88m fences to the rear and side of the house are permitted development and do not therefore require planning permission. In any event, I saw that, as they are set back behind the line of buildings, they have little impact on the character and appearance of the area.
8. The wall would also normally be permitted development, but a condition attached to the original planning permission for the estate removes rights to erect means of enclosure forward of the front walls of the houses. The purpose of the condition is to maintain the openness of the street scene within the development. The fact that the proposed front and side boundary walls would be in breach of this condition does not, of itself, mean that they are unacceptable, but it does mean that planning permission is required and that their impact on the character and appearance of the area should be considered.
9. I was unable to identify walls or fences enclosing the front gardens of any other houses in the area. However, I did see a number of walls, fences, or combinations of the two, erected immediately on the back-edge of the pavement that enclose side and rear gardens. One such example, at 79 Gillards Close, is prominent in eastward views from outside the appeal property. Boundary enclosures close to the pavement are not, therefore, uncharacteristic of the estate.

10. The proposed wall would only be 900mm in height, so would not be an imposing feature in the street scene. The use of matching bricks means that it would assimilate into its surroundings without appearing incongruous. The house itself is at a higher level, so the top of the wall is at a similar height to the bottom of the front door. The entire house would therefore remain visible in views down the Close. The wall would not be at a height that concealed any activities beyond, and any planting in the front garden would be readily evident in the street scene. Consequently, the wall would not result in the house and front garden having an enclosed appearance.
11. I therefore find that the proposal would not harm the spacious suburban character and Policy DM1 of the Taunton Deane Adopted Site Allocations and Development Management Plan (2016), which seeks to ensure that development does not unacceptably harm the appearance and character of any affected street scene.

Other Matters

12. I have considered the impact of the development on the living conditions of the occupants of 65 Gillards Close. The fence and wall are not at such a height that there would be an appreciable loss of light to the window and door in the side elevation.

Conditions

13. As the development has already commenced, I do not need to impose the standard condition requiring implementation within a limited period. I have, however, imposed a condition identifying the approved plans to provide certainty.

Conclusion

14. For the reasons given above, I conclude that the appeal should be allowed.

Nick Davies

INSPECTOR

Site: Priory Farm, Birds Farm Lane, Knapp, North Curry, Somerset TA3 6BA

Proposal: Change of use of land and buildings to mixed use residential and dog rescue centre at Priory Farm, Birds Farm Lane, Knapp, North Curry (resubmission of 24/18/0032) (retention of works already undertaken)

Application number: 24/18/0049

Reason for refusal: Appeal – Allowed
Costs - Refused



Appeal Decision

Site visit made on 16 December 2019

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2020

Appeal Ref: APP/D3315/W/19/3236409

Priory Farm, Birds Farm Lane, Knapp, North Curry, Somerset TA3 6BA

- 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 C McNeil-Regan (Rushton Dog Rescue) against the decision of Somerset West and Taunton Council.
 - The application Ref 24/18/0049, dated 3 December 2018, was refused by notice dated 14 August 2019.
 - The development proposed is the change of use of land and buildings from residential to a mixed use comprising residential and the keeping of rescue dogs.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land and buildings from residential to a mixed use comprising residential and the keeping of rescue dogs at Priory Farm, Birds Farm Lane, Knapp, North Curry, Somerset TA3 6BA, in accordance with the terms of the application, Ref 24/18/0049, dated 3 December 2018, subject to the conditions set out in the attached Schedule.

Application for costs

2. An application for costs was made by Ms C McNeil-Regan (Rushton Dog Rescue) against Somerset West and Taunton Council. This application is the subject of a separate Decision.

Procedural Matters

3. As explained by the Council in their statement, the local planning authority is now called Somerset West and Taunton Council, however prior to April 2019 the site was within the Taunton Deane Borough Council region. This council has since amalgamated with West Somerset Council to form the new Somerset West and Taunton Council.
4. The Council has confirmed that it does not wish to contest reason 2 of the refusal of planning permission, relating to impacts of the development to landscape setting impacts as this issue “could be addressed through planning conditions and negotiations involving planning enforcement to remove unsightly items and generally tidy up the peripheries of the site.” (extract from Council Statement).

Main Issues

5. The main issues are:
 - The effect of the development on the living conditions of neighbours to the site, particularly through noise from dogs.
 - The effect of the development on public right of way No T17/43 and its users, which currently runs through the site.

Reasons

Living Conditions

6. The application site is a former farmhouse set within substantial grounds on the edge of the small village of Knapp. According to the appellant, the site has been used as a mix of residential and dog rescue centre since 2016, with the house used to keep the dogs to allow them to adjust before finding new permanent homes.
7. The appellants state that the dogs would be kept indoors all night and much of the day. However, it is clear that there would be times when the dogs are outdoors and when they bark this would be audible from outside of the site. Indeed, at the time of my site visit I could hear dogs barking from what was likely to be the site from different places within the village and the surrounding areas. These barks were infrequent and not loud at the points where I heard them, especially taking into account some background noise.
8. I recognise that there have been formal complaints to the Council with regards the noise, but I understand that none of these were made before 2018, whereas there have been dogs at the site from 2016. This does not indicate to me that there has been a significant long-term issue since the keeping of dogs at the site commenced. Nonetheless, complaints have been received, with objections to the proposal made which I have taken into account.
9. As part of the planning application the Environmental Health Department was consulted who provided a response. It is apparent from this that it is difficult to assess the level of noise from dogs if the numbers of dogs fluctuate. Also, I understand that this will depend to an extent on the temperament of the dogs kept at that time. I have no detailed information that any of the objections to Environmental Health has resulted in action taken.
10. The appellant has also submitted an Environmental Noise Assessment (JSP Consultants) with their final statement. I note this was submitted only with the final

statement, but it is relevant evidence. The conclusions of this report are that the barking heard from outside the site was intermittent and infrequent, but in places was not measurable due to background noise. Whilst this report concluded that based on the site visit the author of the report undertook, the noise would not warrant such complaints as received, but suggested conditions could change.

11. Whilst there have been objections to the proposal citing noise, there is no substantive evidence that demonstrates that the level of barking has previously or would in the future result in undue levels of disturbance for neighbours to the site. There is also no clear evidence that the dogs kept at the rescue centre would be aggressive or agitated due to their ordeal, travel or new temporary home. In this regard, I also note that most dwellings are a substantial distance from the site, which would mitigate the noise impact to some extent.
12. Furthermore, I would consider it reasonable to put a maximum figure on the number of dogs kept at the site at any one time. The figure of 20 dogs maximum has been suggested by the Council in the recommended conditions for this appeal if allowed. The appellant has stated they would be happier with a figure of 25. These numbers would be significantly less than the approximate 45 dogs said by the appellant to have been kept at the site previously. Keeping a clear maximum via condition, would help significantly with keeping noise to a reasonable level.
13. Therefore, from the evidence before me, the noise made by the dogs on site is not at a level that results in significant harm to the living conditions of neighbours to the site. The proposal is therefore in accordance with adopted Taunton Deane Borough Council Core Strategy policy (General Requirements) DM1, clauses 'e' and 'f'. This policy requires that development does not result in unacceptable to harm amenities through noise pollution from a proposed development.

Public Right of Way

14. The proposed development is at a site which is currently crossed by public right of way T17/43. I recognise that the route is currently obstructed. The route has been informally diverted around the site since 2010, according to the appellant. In March 2019 there was an application to Somerset County Council to formally divert the path, but I understand this has not been determined as yet.
15. As set out in the Rights of Way Officer response to the planning application, a temporary closure order would be needed, and a suitable alternative route must be provided. There was no objection with this response from the Officer. The appellant states that the Council has confirmed that in principle the alternative route is acceptable.
16. I have no information as to whether a temporary diversion order is in place, but it seems likely to me that anyone walking this route would use the informal diversion in place. However, if there is no diversion or other order in place, then it is my understanding that the route should remain open for public use.
17. Whilst there are dogs at the site, if the right of way route was used as currently defined then I understand that there is a legal duty to ensure the safety of the public for the land owners when the public use the footpath. Furthermore, even without the proposed change of use, owners of the property could keep dogs currently as pets, which could have the potential to put off walkers from using the right of way route, especially if the dogs appeared aggressive in some way.
18. Any future realignment of the right of way would possibly mean new fencing and surfacing, but this is not required yet as the application for the diversion has not been approved by the Council.

19. Overall, there is currently a public right of way across the site and I see no reason why this proposal would result in a need for an obstruction to the right of way. Planning permission does not mean the right of way is stopped up or diverted. It is for the Council to determine any application for a temporary or permanent diversion, with an application to this effect being currently considered. The proposal is therefore in accordance with the National Planning Policy Framework advice on rights of way.

Other Matters

20. Comments have been submitted with concern about traffic generation and the use of the access lane. I would agree that the lane is narrow with limited visibility, but this is an established access track. I do not regard it likely that the traffic to and from the site has increased significantly to intensify the use of the access lane or the surrounding rural road network as a consequence of the dog rescue centre. I therefore have no concerns on these matters.
21. There have been comments from neighbours with regards escaped dogs from the site. I have no detailed evidence of such occurrences previously happening and the appellant has stated the boundaries of the site are such that dogs are unable to escape.

Conditions

22. I have considered the conditions put forward by the Council against the requirements of the Planning Practice Guidance (PPG) and the Framework. The conditions I have included from the recommended list have been subject to some alterations to improve clarity and ensure consistency with the Framework and PPG.
23. There is no standard time limit condition as the use as proposed has already commenced. Furthermore, there is no plans condition as there are no physical alterations or developments proposed on site and no plans of proposals have been included.
24. I have included a condition limiting the number of dogs kept at the site to 20. I understand the appellant would prefer 25, which is the number they have had in the past. However, the 20 dogs should be only for dogs as part of rescue centre and not include pet dogs that may also be kept at the site. Restricting the amount of personal pets at the house I would regard as unreasonable. This is a number which I consider should sufficiently help mitigate the potential for noise from barking at the site, in the interest of the living conditions of neighbours.
25. As the site would have a mixed use that would include a dog rescue centre then it is reasonable to consider the potential impacts of events that might take place. Although there is no indication of such events being planned, considering the site location and accessibility restrictions then I have added the condition stating there should be no associated events to be held at Priory Farm.
26. I have also added the condition that the dogs kept as part of the dog rescue centre at the site shall be supervised when outside and shall not be exercised at night time, to mitigate further against any potential noise disturbance.
27. The Council has recommended a condition putting a time limit on the use that has been sought with the proposal. However, I do not regard this as necessary as the dog rescue use has been in operation from circa 2016 and so the impacts of this use have been established for some time and I have no substantive evidence before me that this has led to significant neighbour impacts. I have therefore not included this recommended condition.

28. The Council has recommended a condition requiring details of fencing and gates to separate the public right of way that runs across the site from the areas where dogs are kept and exercised. However, I do not regard this condition as either reasonable nor necessary as there is no substantive evidence that the dogs would cause problems or threats to people walking the route, or how this would differ from a right of way through a field with livestock or a property with their own dogs. As such, I have not included this condition.
29. Finally, I have not included the Council recommended condition to restrict permitted development on the site. It has not been explained thoroughly why further buildings developed under permitted development would be harmful. Also, the number of dogs at the site would be restricted and so any further building or structure under permitted development on the site would not result in more dogs than the 20 allowed at the site.

Conclusion

30. The appeal should be allowed, subject to the following conditions.

S. Rennie

INSPECTOR

Schedule – Conditions

1. No more than 20 dogs shall be kept at the site as part of the dog rescue use at any one time. The operators of the premises shall keep records of all these dogs kept at the site and these shall be available for inspection at all times by officers from the local planning authority.
2. The application site shall not be used for fundraising events, open days and charity events associated with the proposed use.
3. When exercising the 'rescue' dogs outdoors they shall be supervised at all times. No dogs shall be exercised externally between the hours of 9pm at night and 7am the following morning.

Costs Decision

Site visit made on 16 December 2019

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2020

Costs application in relation to Appeal Ref: APP/D3315/W/19/3236409 Priory Farm, Birds Farm Lane, Knapp, North Curry, Somerset TA3 6BA

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Ms C McNeil-Regan (Rushton Dog Rescue) for a full award of costs against Somerset West and Taunton Council.
 - The appeal was against the refusal of planning permission for the change of use of land and buildings from residential to a mixed use comprising residential and the keeping of rescue dogs.
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Decision

1. The application for costs is refused.

Reasons

2. Planning Practice Guidance advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Planning Practice Guidance states that examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The application for costs states that the Council has acted unreasonably in refusing their application, resulting in an appeal being made. Regarding the noise issue, the Council acted reasonably in fully considering the comments made by neighbours to the site. Although these comments may not have included technical information regarding noise, they still form evidence for the Council and Committee Members to take into consideration. I have no substantive evidence that the Council actively encouraged local residents to object to the proposal.
5. Furthermore, I am also aware that the noise assessment was submitted with the appeal and was not available evidence for the Council before then.
6. I am aware that this was a decision made by the Planning Committee Members against the recommendation of the Planning Officer. I also note that there was not a clear objection from the Environmental Health Officer or Rights of Way Officer. However, making such at that time. In terms of the decision, as set out in the Decision Notice and the subsequent appeal statement, I found the reasons for

refusal and supporting information from the Council to be thorough and reasoned, concluding against planning policy. However, as can be seen from the appeal decision, after considering all the evidence the appeal was allowed, but this does not in itself suggest the Council was unreasonable in the decision they made.

7. The comments made by the Council about potentially aggressive dogs which could attack people was not made with any substantive evidence about the dogs at the appeal site. However, I recognise that dogs have a range of personalities and therefore I do not believe it to be unreasonable to suggest that at some time there could be dogs at the site who could be more aggressive. However, I did not conclude that this was a reason to dismiss the appeal.
8. The possible involvement of an Enforcement Team from the Council is understandable given there was a refused planning application for a use already commenced. However, any correspondence from Planning Enforcement at the Council with the applicant has had no bearing on the decision I have made on the appeal.
9. Overall, whilst I have allowed the appeal the Council has not behaved unreasonably in coming to the decision it did, including the noise issue which led to the first reason for refusal.
10. Whilst I recognise that the applicant is a charity, I have concluded that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

S. Rennie
INSPECTOR