

DECISIONS – 25 JUNE 2020

Site: VALLEY COTTAGE, SAWYERS HILL, WEST BUCKLAND,
WELLINGTON, TA21 9JZ

Proposal: Removal of Condition No. 11 of application 46/04/0020 to allow property to be occupied as a single dwelling house at Church View, Sawyers Hill, West Buckland (resubmission of 46/17/0052)

Application number: 46/19/0004

Reason for refusal: Appeal – Dismissed



Appeal Decision

Site visit made on 26 January 2020

by L J O'Brien BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th June 2020

Appeal Ref: APP/W3330/W/19/3239808

Church View, Sawyers hill, West Buckland, Wellington TA21 9JZ

- 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 Mr Richard Gale against the decision of Somerset West and Taunton Council.
 - The application Ref 46/19/0004, dated 31 January 2019, was refused by notice dated 3 June 2019.
 - The application sought planning permission for conversion of store building into holiday let without complying with a condition attached to planning permission Ref 46/2004/020, dated 8 July 2004.
 - The condition in dispute is No 11 which states that: the occupation of the building shall be restricted to bona fide holidaymakers for individual periods not exceeding 4 weeks in total in any period of 12 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times.
 - The reason given for the condition is: the Local Planning Authority is not prepared to allow a permanent residential site to become established because of the inadequate size of the building and wish to ensure that the approved accommodation is available for tourism.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. In 2019 West Somerset Council merged with the former Taunton Deane Borough Council to form Somerset West and Taunton Council. The relevant adopted Local Plan in this case remains the Taunton Deane Borough Council Adopted Core Strategy 2011 – 2028 (CS).

Background and Main Issue

3. The appeal property, Church View, is a single storey, two-bedroom dwelling located on the edge of West Buckland. The building is currently in use as a holiday let. The building was converted from a storage building to a one-bedroom holiday let in 2004 and has subsequently been extended.
4. The proposal is for the removal of a restrictive occupancy condition which would allow the property to be occupied as a permanent residential dwelling. The reason for the original condition in 2004 was because the Council considered the building itself too small to be a permanent residential dwelling and also due to the Council's wish to keep the accommodation available for tourism.
5. The Council refused the application to remove the condition and believe the condition remains necessary as the site is not considered to be an appropriate location for a permanent dwelling due to its position in the open countryside.
6. Consequently, the main issue is whether the condition restricting the use of the building to holiday accommodation is necessary and reasonable having regard to whether or not the proposed development would occupy an acceptable location for a permanent residential dwelling.

Reasons

7. Church View, is situated within a rural location outside of the development boundary of West Buckland; a small rural village. A small cluster of other properties surround the appeal property and a Church and surrounding field and greenery forms the visual backdrop of the site.
8. Policy SP 1 of the CS sets out the settlement hierarchy for the area and identifies existing settlements as well as setting guidelines for development which is acceptable. The policy states that outside of the settlements, proposals will be treated as being within open countryside. The appeal site is outside of an existing settlement, it is therefore, in policy terms, within the open countryside.
9. Policy DM 2 of the CS: Development in the Countryside, sets out the uses which will be supported outside of defined settlement boundaries. The proposal does not fall within any of the exceptions which would make the principle of a permanent residential dwelling in this location acceptable. The policy is clear that outside of settlement boundaries, national policy regards the re-use or continuation of buildings in economic or community uses as generally preferable to conversion to residential uses and therefore applies a sequential approach to such conversions.
10. The sequential approach sets out that the priority order is as follows; community

uses, class B business uses, other employment generating uses, holiday and tourism, affordable, farm or forestry dwellings, community housing and, in exceptional circumstances, conversion to other residential use.

11. The current, lawful, use of the appeal site is as a holiday let. However, this use has not been active since around 2013. The appellant suggests that the holiday lets are not financially viable or needed and argue that criterion 7 (iv) of policy DM 2 has been exhausted and therefore the next uses within the sequential approach must fall to be considered.
12. The evidence before me suggests that, whilst a loss was made in three of the eight years of operation, the remaining five years returned a marginal profit. However, I have not been provided with detailed evidence outlining the strategy which was used to market the property during this time and, in my view, I do not have sufficient substantive information to evidence that the holiday let was robustly marketed.
13. In any event, the evidence before me is that for the majority of operational years the business was profitable, albeit at a small scale. I note that these figures do not include any outgoings for caretaking, cleaning or facilitating change overs as this was undertaken by the appellant. However, such arrangements are not, to my mind, unusual in the context of a small business and without further detailed information around the potential future cost of such services being provided by another party I cannot reasonably conclude that these potential additional costs would be sufficient to tip the balance and render the accommodation financially unviable.
14. Furthermore, as the property has not been let or marketed since 2013/2014 the evidence provided is significantly outdated and it is therefore extremely difficult to reach a reliable determination as to the viability of the business in the current economic conditions. Moreover, the appellant's evidence states that the building was extended in January 2011. Therefore, for the vast majority of the years the business was operational the building was smaller than is currently the case and, in my view, the extension could make a difference to the potential income. Whilst I have had regard to the up to date Hosesons income projection appraisal provided by the appellant, I have not been provided with up to date costings or outgoings against which to qualify the income projections and, consequently, this information does not provide a full picture of the potential viability of the business.
15. In addition to the evidence provided with regard to the viability of the extant business, the appellant has also provided a number of marketing appraisals to support the argument that the holiday business is not a desirable acquisition. Ongoing attempts to sell the property over a number of years have not been successful. I recognise that the sale of the property has been marketed in a number of ways and acknowledge that the price has been lowered in order to secure a sale and to reflect the restrictive condition. However, as the business use ceased in around 2013, the property being marketed is not an active business and I consider this may be a factor in the lack of a sale. Irrespective of whether or not the holiday let is a desirable investment and can be sold as such, I do not consider that I have sufficient evidence to conclude that the holiday business is, itself, unviable.
16. Based on the evidence before me, I am not persuaded that there is no longer a demand for this kind of accommodation in the area and I have not been provided

with a degree of detail to enable me to conclude that the business as a whole is no longer viable. As such I consider that criterion 7 (iv) of DM 2 and the preferred use of the building has not yet been fully exhausted.

17. Policies SP 1 and DM 2 are further supplemented in their aims to promote sustainable patterns of development by Policy CP 1 of the CS. Policy CP 1 sets out that development proposals will be required to demonstrate that the issue of climate change has been addressed by, amongst other things, reducing the need to travel. The supporting text to the policy goes on to say that directing development to the most sustainable locations and reducing the need to travel through the CS Spatial Strategy will have an impact on climate change at the local level.
18. The appellant states that the appeal site is within a seven-minute walk of a pre-school, primary school, church, play area and playing field. However, the roads in the area do not have regular, accessible or continuous pavements and these characteristics are likely to discourage pedestrians and cyclists; thus increasing the reliance on private motor vehicles.
19. Other key facilities and local services are further from the site and those living within the area, therefore, are highly likely to rely upon facilities and services within other larger settlements. Moreover, there is a distinct difference between the day-to-day needs of holiday makers and those who occupy a residential dwelling in terms of accessing services and facilities. Permanent residents, for example, would have a general reliance on local services such as schools and health care services. Given my findings in relation to the likelihood of car use, this would result in a significant number of trips over and above those associated with holiday accommodation.
20. I therefore consider that, even if the sequential approach outlined under policy DM 2 was considered to have been exhausted the tests within policy CP 1 would fail to be met.
21. I therefore conclude that the condition restricting the use of the building to holiday accommodation is necessary and reasonable as, in policy terms, the preferred uses within the open countryside have not been fully exhausted and the building does not occupy an acceptable location for a permanent residential dwelling. Accordingly, the proposal would conflict with the aims of policies SP 1, DM 2 and CP 1 of the CS which set out the settlement hierarchy and the criteria which must be met in order for residential accommodation within the open countryside to be permitted.

Other Matters

22. I note that the original condition was imposed as, at that time, the Local Planning Authority was not prepared to allow a permanent residential site to become established because of the inadequate size of the building and also wished to ensure that the approved accommodation was available for tourism. These reasons did not form part of the reasons for refusal for the application which is the subject of the appeal before me and I have no evidence to suggest that this is in dispute.
23. I note the appellant's reference to the Inspector's finding in a 2015 appeal APP/D3315/C/15/3005229. Whilst the full particulars and background to the previous appeal are not before me, I have had regard to the decision taken in that instance and to the conclusion reached regarding the application of policy DM 2. Policy DM 2 specifically states that it relates to 'uses'. Whilst the dwelling in this

case has already been built and the physical works required would be minimal, I consider that should condition 11 be removed a change to the planning character of its use would be facilitated. I therefore consider this policy is engaged in my consideration of the appeal before me.

24. Notwithstanding that the proposal might accord with CS Policy CP 8, this does not outweigh the conflict with the development plan as a whole.
25. I acknowledge that there appears to be some degree of local support for the proposal and recognise that effective re-use of existing buildings is actively encouraged by Government policy. I recognise the benefits of the scheme in respect of striving to meet the Government's aim to significantly boost the supply of homes. I also acknowledge the economic benefits of engaging local professionals, trades and suppliers and the ongoing benefit of the occupiers of the dwelling utilising local facilities thus contributing positively to the viability of the village. However, those benefits would be very modest given the small scale of the proposal and must be set against the conflict with the development plan to which I attach significant weight.
26. Whilst the appellant makes reference to the existence of a number of other schemes which could be considered similar, the circumstances in each case are likely to be different. For example, appeal reference APP/D3315/W/17/3179264 was for the erection of up to 205 new dwellings and APP/D3315/A/14/2228193 was for a new dwelling and not the removal of a restrictive condition to facilitate use as a permanent residential dwelling. Whilst I am unaware of the full background to the appeal, appeal reference APP/D3315/C/15/3005229 would appear to have followed a different procedure and, in any event, the evidence put to the Inspector in that case appears to be different from that in this appeal. I have also been provided with a scheme approved by the Council (28/15/0009), once again I am unaware of the full details in this instance, however, it would appear that in this case the Council deemed the sequential test under policy DM 2 to have been effectively applied. The context in these cases was, therefore, notably different to this appeal. In any event, each case must be treated on its own merits and the existence of other examples is not sufficient reason to justify a development which I consider in itself to be inappropriate.
27. I have given careful regard to all of the above considerations. However, none are sufficient to dissuade me from the conclusions I have reached that the condition restricting the use of the building to holiday accommodation is necessary and reasonable as the building does not occupy an acceptable location for a permanent residential dwelling. The other considerations presented by the appellant do not outweigh the conflict with the development plan I have found in this instance.

Conclusion

28. For the reasons given above I dismiss the appeal.

L J O'Brien

INSPECTOR

Site: Land at Cruwys's Cross, Langley Marsh, Wiveliscombe, Somerset

Proposal: Erection of an agricultural building for storage on land at Cruwys's Cross, Langley Marsh (resubmission of 49/19/0034)

Application number: APP/W3330/W/20/3246056

Reason for refusal: Appeal – Allowed



Appeal Decision

Site visit made on 26 May 2020

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 12 June 2020

Appeal Ref: APP/W3330/W/20/3246056

Land at Cruwys's Cross, Langley Marsh, Wiveliscombe, Somerset, Grid Ref Easting: 307860 Grid Ref Northing: 129096

- 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 & Mrs Darren Smith against the decision of Somerset West and Taunton Council.
 - The application Ref 49/19/0052, dated 16 September 2019, was refused by notice dated 14 November 2019.
 - The development proposed is described as the erection of a general purpose agricultural building for the storage of agricultural machinery and preserved fodder.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a general purpose agricultural building for the storage of agricultural machinery and preserved fodder at Land at Cruwys's Cross, Langley Marsh, Wiveliscombe, Somerset, in accordance with the terms of the application, Ref: 49/19/0052, dated 16 September 2019, subject to the conditions in the attached schedule.

Procedural Matters

2. There are discrepancies between the appeal site address and descriptions of development on the Council's decision notice and the original application form and appeal form submitted by the Appellant. For consistency, I have used the address and description of development from the Appellant's appeal form in the banner at the top of this decision letter.

Main Issue

3. The main issue in this appeal is whether the proposal would constitute an appropriate form of development with particular regard to the provisions of local policy in respect of the location of the development and the effect of the proposal on the character and appearance of the surrounding area.

Reasons

4. The appeal site comprises a parcel of sloping agricultural land located adjacent to Cruwys's Cross. The appeal site is not located within any settlement boundary and, by reason of the high hedges, narrow lanes and predominately open nature of the surrounding landscape, is located within the countryside for planning purposes. The evidence before me indicates that the appeal site extends to approximately 1.6 acres (0.65 hectares) in area.
5. Policy DM2 of the Taunton Deane Borough Council Adopted Core Strategy 2011-2028 (the Core Strategy) seeks to control development within the countryside, setting out those forms of development that would be considered appropriate outside of settlement boundaries. The supporting text to Policy DM2 of the Core Strategy explains that the restrictions are in place to protect and enhance the quality of local landscapes whilst promoting sustainable patterns of development and allowing for economic growth and diversification.
6. Criterion 4 of DM2 of the Core Strategy provides that new agricultural buildings which are commensurate with the role and function of the relevant agricultural unit will be supported. There does not appear to be any disagreement between the main parties that the land comprises a separate, albeit modestly sized, agricultural unit. However, it has been put to me by the Council that, the scale of the proposed building would not be compatible, and therefore commensurate, with the size of the agricultural unit.
7. The Appellants' submissions indicate that the building would be required for the storage of hay and machinery used for the production of the hay crop as well as for maintenance of the agricultural unit. In this regard, the Appellants maintain that the machinery would be of a small scale that is appropriate for smaller agricultural holdings and that the unit would produce approximately 316 hay bales annually.
8. A block plan has been provided by the Appellants which indicates that the proposed building would provide just enough floorspace for the siting of the machinery, equipment and hay bales, whilst allowing for some limited space in order to provide access to the various pieces of equipment and to allow access for maintenance of the machinery. The height of the barn is not unusual given the proposed use of the structure and in the context of similar agricultural buildings in the local area.
9. Whilst I acknowledge the concerns of interested parties that the number of hay bales that the unit could produce annually has been overestimated, I have not been provided with any substantive evidence which brings into doubt the details provided by the Appellant. It is further noted that the Council have raised no concerns regarding the estimated level of hay that could be produced annually from the unit, nor any concerns that the equipment that is to be stored on site is not appropriate for the size and agricultural use of the holding.

10. In light of the above, it has been demonstrated that the proposed building would be commensurate with the role and function of the agricultural unit and therefore the proposal would accord with the exception to new development in the countryside as provided for under criterion 4 of Policy DM2 of the Core Strategy.
11. Policy CP8 of the Core Strategy deals with the environment and provides that, amongst other things, unallocated greenfield land outside of settlement boundaries will be protected and where possible enhanced. It also provides that development within such areas will be strictly controlled in order to preserve the environmental assets and open character of the area but provides that where development outside such boundaries takes place, it must comply with other criteria.
12. The criteria included under Policy CP8 of the Core Strategy provide that the proposal must accord with local and national policy for development within rural areas and be appropriate in terms of scale, siting and design. For the reasons given above, I have already concluded that the proposal would be commensurate with the role and function of the agricultural unit and would accord with the provisions of Policy DM2 of the Core Strategy and would therefore be of an appropriate scale. The siting of the proposed building would be in the north eastern corner of the field and close to the point of access, thereby retaining the predominately open nature of the associated land and, consequently, would therefore be appropriately sited within the appeal site.
13. Furthermore, whilst the proposal could be seen from the adjacent highways and from within the wider surrounding landscape, the proposed building would have the appearance of an agricultural barn and would be typical of modern agricultural buildings which are part and parcel of a working farmed landscape and which do not appear out of place within its surroundings. Through careful consideration of the external materials to be used in the construction of the proposal and by including appropriate landscaping measures, in my view, the appeal scheme would be appropriate in terms of design and would not be harmful to the surrounding landscape character.
14. In addition to the above, by reason of its appearance as a typical modern agricultural barn, the proposal would not diminish the open agricultural gap that exists between Langley and Langley Marsh and would therefore conserve the surrounding landscape character. There is no evidence before me that the proposal would increase the risk of flooding or would be harmful in terms of impact on protected species or habitats.
15. In summary of the above, I have found that the proposal would be commensurate with the role and function of the agricultural unit and would conserve the landscape character and appearance of the surrounding area. The appeal scheme would therefore accord with the provisions of Policies DM2 and CP8 of the Core Strategy which together, amongst other things, seek to strictly control development outside of settlement boundaries in order to conserve the environmental assets and the open character of the area, including maintaining the open breaks between settlements.

Other Matters

16. I have had regard to the presence of the nearby Grade II listed building at Cruwys Farmhouse and the need to give special attention to the desirability of preserving the setting of listed buildings. In this respect, I consider that the degree of separation between the listed building and proposed development is sufficient that no harm to the significance or setting of the heritage asset would arise.

17. Interested parties have put it to me that the appeal scheme would also have an adverse impact in terms of highway safety, would result in the loss of important hedgerow and that the building would not be used for agricultural purposes.
18. In respect of the use of the proposed building, a condition could be attached to any planning permission which required that the use of the building be restricted to agricultural only and, in the event that the building was not used for such a purpose then that would be a matter for enforcement. Furthermore, it is noted that the site is currently in agricultural use and, as I observed on my site visit, the lane adjacent to the appeal site was already used by agricultural traffic. The proposal would not significantly increase the level of use of the lane and in the absence of any concerns from the Highway Authority, I conclude that the proposal would not have an adverse effect on highway safety.
19. Finally in relation to the above, whilst I acknowledge the comments and concerns of interested parties with regards to the loss of hedgerow, the evidence before me indicates that access to the site was already in place and that the proposal does not seek to remove any of the hedgerow which is to be found at the appeal site. I therefore do not consider that the proposal would have a harmful effect in respect of these matters.

Conditions

20. In addition to the standard three year period implementation condition, which is a statutory requirement, it is necessary, in the interest of certainty and precision, to define the plans with which the appeal scheme should accord. I further find it reasonable to include conditions requiring details of any landscaping, external finish and materials, be agreed with the Local Planning Authority, in the interests preserving the character and appearance of the surrounding area. Furthermore, and also in the interest of preserving the character and appearance of the surrounding area, it is reasonable to include a condition that restricts the use of the proposed building to agricultural use.
21. Where necessary, and in the interests of clarity and precision, I have altered the conditions to better reflect the relevant guidance. The wording of the pre-commencement conditions has been agreed by the Appellants.

Conclusions

22. For the reasons given above, the appeal succeeds and planning permission granted subject to conditions identified.

A Spencer-Peet

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
- 2) The development hereby approved shall in all respects accord strictly with drawing numbers: 001 – Location Plan, 002 – Site Plan, 003 – Elevation Drawings, 004 – Floor & Roof Plan and 005 – Block Plan, received by the Local Planning Authority 19 September 2019.
- 3) Prior to the agricultural building hereby approved being erected on site details of the external appearance and materials, including the final colour shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and thereafter maintained as such.
- 4) The building hereby permitted shall only be used for purposes of agriculture in connection with the associated agricultural unit and for no other purpose.
- 5) No development shall commence until a scheme of landscaping has been submitted to and approved in writing by the Local Planning Authority.
The landscaping scheme shall provide written specifications including:
 - Details of all existing trees and hedgerows on the land (including boundaries), showing any to be retained and measures for their protection to be used in the course of development
 - Full schedule of plants
 - Details of the mix, size, distribution and density of all trees/shrubs/hedges

All planting or seeding comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development. Notice shall be given to the Local Planning Authority when the approved scheme has been completed.

Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species as those originally planted.

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

Proposal: Erection of dog kennel and log store at Fairfield Stables, Moor Lane, Churchinford

Application number: 10/19/0011

Reason for refusal: Appeal – Allowed
Costs – Dismissed



Appeal Decision

Site visit made on 28 May 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2020

Appeal Ref: APP/W3330/W/19/3243730

Fairfield Stables, Moor Lane, Churchinford TA3 7RW

- 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 S Lock against the decision of Somerset West and Taunton Council.
 - The application Ref 10/19/0011, dated 29 March 2019, was refused by notice dated 7 October 2019.
 - The development proposed is the erection of dog kennel and log store.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of dog kennel and log store at Fairfield Stables, Moor Lane, Churchinford TA3 7RW in accordance with the terms of the application, Ref 10/19/0011, dated 29 March 2019, 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 approved plans: Drawing Nos, 200.10 Rev C, 200.12 and 200.13 Rev B.
 - 3) No dogs other than those kept for breeding purposes shall be kept on the site and the total number of dogs across the combined area consisting of the area approved under Council application Ref 10/16/0028 at appeal (APP/D3315/W/3172566) and the area the subject of this appeal (Council Application Ref 10/19/0011) shall be limited to no more than 15 breeding bitches and their puppies awaiting sale.

Application for costs

2. An application for costs was made by Ms S Lock against Somerset West and Taunton Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application form describes the proposal as "Regularisation and extension to Dog Breeding Enterprise". However, regularisation is not an act of development. The supporting statement includes a section titled "The Proposal". This sets out that the proposal is to erect housing, in the form of 8 kennels, to the north east of the stable block adjacent to the existing set of kennels. The red line of the application site includes this area for the proposed 8 kennels and also an area for a log store. Plans have been submitted for the log store.
4. The Council described the proposal as "the erection of dog kennel and log store". As this description is also used as the heading in the appeal statement by the appellant, I consider that no party would be prejudiced by this description of the development.
5. Planning permission was granted at appeal for commercial dog breeding in August 2017¹ (the 2017 appeal decision). That decision is subject to condition 5 which limits the number of dogs on the site to no more than 15 breeding bitches and their puppies awaiting sale.
6. The appellant makes the case that the present proposal would not increase the number of dogs compared with the 2017 appeal decision, but also seeks to persuade me that, because it is argued that there were 3 stud dogs present at the time of the earlier appeal and subsequently, a planning condition should be attached to any approval that would allow the 3 stud dogs, in addition to the 15 breeding dogs and their puppies awaiting sale. However, the present proposal is not an application to seek to vary a condition on a previous approval. In these circumstances, as part of this appeal, I would not be able to procedurally vary the condition limiting the number of dogs on the site on this other approval². I therefore intend to determine the application based on the case that the number of dogs on the overall site would be the same as that specified by condition 5 in the 2017 appeal decision.

Main Issues

7. Having regard to the reason for refusal and the statements from the main parties, I consider that the main issues are:
 - whether the need for the kennels has been justified, with particular regard to the location within the Blackdown Hills Area of Outstanding Natural Beauty (the AONB).
 - whether the proposal would conserve or enhance the tranquillity of the AONB, having particular regard to any noise impacts.

Reasons

Need

8. The site has permission for the commercial breeding of dogs and this use has taken place over the past years. I saw at my site visit the various buildings and layout. I have made my assessment of the need for the additional accommodation based on the existing kennels permitted in the 2017 appeal decision as my

attention has not been drawn to any planning approval for further kennels since that time.

9. It is explained that the additional housing would be used for whelping and for the young, post weaning, to enable them to be housed away from the mother, prior to being sold. The site is licensed by the Council and the information indicates that the additional purpose built accommodation would assist with the appellant becoming an assured breeder in line with Kennel Club advice.

¹ APP/D3315/W/17/3172566 (with the accompanying enforcement appeal APP/D3315/C/16/3149290)

² I am aware of an application submitted to the Council to seek to vary this condition

10. The additional kennels would be positioned such that they could be operated in association with the other buildings and appear to be designed so that they would be fit for purpose. The extent of the proposed kennels in addition to those permitted in 2017 would not be unreasonable given the number of dogs allowed on the site and with regard to best practice to house puppies prior to being sold. The evidence leads me to conclude that there is a need for the additional kennels to accord with good practice and assist with the sustainability of the business.
11. The building would not cause harm to the character and appearance of the area as it would be sited in proximity to the existing group and be of a size and scale which would not appear out of place in the context of the existing site. In these circumstances, there would be no harm to the landscape and scenic beauty of the AONB³.
12. The policies referenced in the reason for refusal do not resist buildings in the AONB as a matter of principle and the proposal would accord with the National Planning Policy Framework (the Framework) approach to supporting a prosperous rural economy.
13. In the light of the above analysis, I conclude that the need for the kennels within the AONB has been justified and as a consequence there would be no conflict with Policies CP8 and DM1 of the Taunton Deane Core Strategy 2011– 2028 (the CS), Policy PD/5A of the Blackdown Hills AONB Management Plan 2019–2024 (the AONB Management Plan)⁴ or the Framework which seeks, amongst other things, to protect, conserve or enhance landscape character.

Tranquillity and noise

14. Policy PD/5A of the AONB Management Plan sets out to avoid or restrict development which detracts from the tranquillity of the Blackdown Hills. Part of the tranquillity of the AONB in this location comes from the quiet rural environment.
15. The Inspector in the 2017 appeal decision acknowledged that the breeding of dogs had the potential to introduce noise which is not capable of strict control. However, he concluded, when looking at all the circumstances of the site together with mitigation measures and that this was a breeding (and not a boarding) kennels, that any nuisance and detriment to tranquillity would be limited.

The present proposal is accompanied by a Sound Impact Assessment (August 2019). This was based on information which was considered at the 2017 appeal and supplemented with further and updated information. There is an assessment of the predicted noise levels from the proposed kennels for areas around the site and in relation to neighbouring properties. The Assessment acknowledges that there is no specific criteria or guidance relating to noise impact from kennel applications or noise impact effects from dog barking upon nearby noise sensitive properties. Nevertheless,

the Assessment is detailed and includes an analysis of technical approaches and best practice. The Assessment concludes that the operational activity of the site is unlikely to result in an adverse noise impact, or annoyance.

³ Paragraph 172 of the National Planning Policy Framework requires that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs.

⁴ The AONB Management Plan is not part of the development plan but I consider is a significant material consideration.

16. The Council's Environmental Health Officer has examined the Sound Impact Assessment and made a series of comments including that the proposed kennels are closer to the nearest residential properties than the present kennels and that noise from dogs can be very varied depending on the individual dog and the management of the operation. This advice includes that it is not possible to confirm whether or not the noise from the proposed kennels will lead to an unacceptable increase in noise levels in the area.
17. Representations including detailed objections from and on behalf of the adjoining occupiers at Fairhouse Farm explain the impact of noise from the site and other local residents indicate that they have been affected by the noise from barking dogs while walking in the lane. While any individual's considered disturbance from a particular noise source can be to some extent a matter of personal perception, I take these concerns seriously given the detail of the submissions together with the location within the AONB and the need to protect tranquillity. The Framework requires that proposals should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development.
18. The Sound Impact Assessment explains the methodology and justification for using sound readings from dogs barking at another site to help model the impact of the noise from dogs from the proposed kennels on this site. However, I am also conscious that the Environmental Health Officer indicates that the noise from dogs can be very varied depending on the individual dog and the management of the operation. As no recent noise readings of the dogs have been taken on this site, coupled with the observations of local residents, it is not straightforward to be definitive as to whether the use of the additional kennels in their proposed position would lead to any additional noise impact. Nevertheless, the Sound Impact Assessment is detailed and has been undertaken by a qualified engineer and overall I attribute the findings significant weight.
19. In terms of the layout of the site, the open section of the proposed kennels would face the road but the building would also be reasonably close to the back of the stables which would screen the building. The Sound Impact Assessment indicates that this would encourage a settled environment and the screening with existing buildings would help to ensure that the dogs were not stimulated by nearby noise sources, traffic or unfamiliar people accessing the site. Additionally, there is close boarded fencing and a hedgebank along the boundary with the road. I consider that this positioning of the proposed kennels and their orientation would help to ameliorate the impact of any dogs barking on the wider area.
20. In the general direction towards Fairhouse Farm there is also a stable building, internal close boarded fencing and gates, and Fairhouse Farm has a wall along much of the boundary with the road. While the proposed kennels would be closer

to Fairhouse Farm than the present main kennel building there would still be a reasonable separation distance with intervening structures.

21. Drawing all these matters together, on the basis that the number of dogs would remain the same as agreed in the 2017 appeal decision, I consider that the additional kennel accommodation as proposed would not be likely to increase the noise profile of the site to an appreciable extent. The proposal would therefore not materially alter the present level of tranquillity of the area including that experienced by local residents and walkers in this part of the AONB. As a consequence, there would be no conflict with the Noise Policy Statement for England.
22. Accordingly, I conclude that the proposal would conserve the tranquillity of this part of the AONB, in particular with regard to the noise impacts. As a consequence, the scheme would comply with Policies CP8 and DM1 of the CS, Policy PD/5A of the AONB Management Plan and the Framework which requires, notably, that potential noise pollution which could arise will not unacceptably harm the amenity of individual dwellings or other elements of the local environment.

Other Matters

23. I have noted the submissions in respect of the bund which formed part of the proposal considered in the 2017 appeal decision. The provision of the bund would not be materially affected by the position of the proposed kennel building or effect my overall analysis in terms of the impact of the proposal. The bund is therefore not a matter which is determinative in relation to the issues in this appeal.
24. Representations seek, if additional kennels were justified, that they should be sited on land further from Fairhouse Farm. However, this is not the proposal before me which I have considered on its merits and found acceptable.

Conditions

25. I have had regard to the conditions suggested by the Council and the advice in the Planning Practice Guidance. The statutory time limit and a condition specifying the approved plans are necessary in the interests of certainty.
26. It is necessary in the interests of preserving the tranquillity and noise environment to control the number of dogs on the site. I have already explained why my analysis has been based on the number of dogs conditioned by the 2017 appeal decision. The kennels the subject of this appeal are proposed to be sited outside the red lined site area which was the subject of the 2017 appeal decision. To avoid any doubt that the total number of dogs that may be housed across the whole site is clear, because of the differing red lined areas of the 2017 appeal decision and this proposal, I have worded the condition accordingly.
27. I have also considered all the suggestions from the adjoining occupiers regarding other planning conditions, including the suggestion that the additional kennels should be restricted to whelping mothers and their puppies. However, as I have found the proposal acceptable for the reasons explained such a condition would not meet the tests of necessity in this case.

Conclusion

28. For the above reasons and subject to the specified conditions, I conclude that the appeal should be allowed.

David Wyborn INSPECTOR



Costs Decision

Site visit made on 28 May 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2020

Costs application in relation to Appeal Ref: APP/W3330/W/19/3243730 Fairfield Stables, Moor Lane, Churchinford TA3 7RW.

- 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 S Lock for a full award of costs against Somerset West and Taunton Council.
 - The appeal was against the refusal of planning permission for the erection of dog kennel and log store.
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Decision

1. The application for costs is refused.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant seeks a full award of costs because the Council has acted unreasonably in the way it determined the application. In summary, the case is made that kennels have been justified acceptable at appeal where the key issue was the effect of noise disturbance on the Blackdown Hills Area of Outstanding Natural Beauty (the AONB) with particular regard to tranquillity. This is very similar to the reason for refusal, the appeal giving clear guidance on this matter and it is explained that dog numbers have not increased since the appeal.
4. It is argued that the planning officer, after examining the case in detail over 5 months, including the acoustic report, made a clear recommendation for conditional approval. The Committee has acted unreasonably by going against officer recommendation without any clear justification and this has led to unnecessary costs of taking the matter to appeal.
5. The Council has responded to explain that the Committee members were aware of the appeal decision and the assessment of noise but considered the application had further implications arising from the scale of the development in terms of increased noise footprint and also the location of the building in relation to existing residential properties. It is argued that in these circumstances the Council has not

behaved unreasonably and consequently there was no unnecessary or wasted expense in the appeal process.

6. The Planning Practice Guidance explains that an example of unreasonable behaviour is when a Council make vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
7. In this case the scheme was subject to a previous appeal where the impact on the tranquillity of the AONB was considered. A Sound Impact Assessment was submitted by a qualified professional with the present scheme. I have given significant weight to this Assessment and its findings, although I have noted that the advice of the Environmental Health Officer after studying the Assessment was that it was not possible to confirm whether or not the noise from the kennels will lead to an unacceptable increase in noise levels in the area. Furthermore, there is the experience of the site operating since the appeal decision with the views of local residents raising concern with the noise of the dogs. Also, the proposed kennels would be closer to the nearest neighbouring residential property than the existing main kennel building.
8. All this, to my mind, allowed the Committee to form a view that there was uncertainty regarding the potential noise impacts related to the position of the additional kennel building. Taking a precautionary approach in refusing the application was not without some foundation and the totality of information available allowed for a matter of judgement to be exercised on this issue. The Council's case at appeal was limited in extent. However, given the overall information available, especially the advice from the Environmental Health Officer who had analysed the Assessment, I consider, notwithstanding my overall conclusion, that the judgement of the Council was supported by some analysis that was not vague, generalised or inaccurate such that it could not be considered to be unreasonable.
9. As a result, it follows that I cannot agree that the Council has acted unreasonably in this case and consequently the applicant was not put to unnecessary or wasted expense in the appeal process.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and an award of costs is not justified.

David Wyborn

INSPECTOR