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## Appeal Decision

Site visit made on 11 December 2018

**by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 21<sup>st</sup> January 2019**

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**Appeal Ref: APP/B9506/W/18/3197544**

**Fyre Stychen, Mount Pleasant Lane, Lymington SO41 8LS**

- 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 Jayne Woodford against the decision of New Forest National Park Authority.
  - The application Ref 17/00659, dated 31 July 2017, was refused by notice dated 28 September 2017.
  - The development proposed is, erection of replacement boarding kennels and car parking.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are:
  - the effect of the development on highways safety;
  - the effect of the development on the living conditions of the occupiers of neighbouring properties with regard to noise and disturbance; and,
  - the effect of the development on the character and appearance of the area, including the New Forest National Park (the National Park).

### Reasons

#### *Background*

3. Kennels were first established at the site in 1969. Based on the submissions the use was actively continued over a period of 40 years until 2009. Numbers of dogs accommodated varied over time, and fell from a licensed for 36 in 2008, to 10 in 2009, prior to the apparent cessation of use. Though the buildings on site have subsequently fallen into a state of advanced dereliction, the Council has not indicated that it considers the use to have been abandoned, or therefore that the appeal scheme represents a wholly new use. Indeed the Council's assessment of the appeal scheme was partly based on consideration of the proposed use relative to the last licensed use, and of the proposed buildings relative to the previous buildings. This indicates some apparent acceptance of the site and its use as it existed in 2009 as a baseline against which to assess the current proposals. These are indeed the terms in which the reasons for refusal can be most clearly understood, and I have therefore also approached my assessment of the appeal scheme on this basis.

### *Highways*

4. The site is accessed via a track with a broad entry from Mount Pleasant Lane. A good level of visibility exists from the entry looking north. When looking south however, visibility is severely limited by a bend in the road and a section of hedging. Approaching the access from the north, driver visibility of both the access and oncoming traffic appears adequate, however approaching from the south driver visibility of the access and oncoming traffic is again severely limited. Though it is reasonable to consider that limited forward visibility acts to naturally reduce the speed of vehicles approaching from the south, I nonetheless observed both cars and bicycles travelling round the bend at high speed during my visit, and see no reason to consider that this was exceptional. Turning out of the access and travelling to the south, and to a much lesser extent the north, could therefore be hazardous given the potential for a collision with a vehicle appearing suddenly from the south.
5. A mirror has been installed opposite the access point to facilitate its safe use, however this was misted during my visit, and is therefore an unreliable safety device.
6. The Highways Authority (the HA) provided no comments in relation to the appeal scheme. Comments made by the HA in relation to the previously refused planning application 16/00553 have however been referenced in the appellant's submissions. Whilst acknowledging that the access is sub-standard, these indicate an acceptance in principle of use of the access at a level consistent with that allowed by any 'extant' permission.
7. In this regard the parties dispute the relevance of the last planning permission, reference 76/04839, insofar as the capacity of the kennels then approved was greater than the number of dogs last licensed, and indeed greater than now proposed. This is indeed demonstrated by the 2008 license for 36 dogs. Be that as it may, and particularly given the time elapsed since the last active use occurred, I consider that the most relevant point of comparison remains the last licensed use of the site for 10 dogs, and the vehicle movements generated in relation to this use.
8. No evidence for the number or frequency of vehicle movements generated by the past use of the site has been placed before me. Furthermore no evidence relating to the use of Mount Pleasant Lane has been provided, which may have been subject to change since 2009. The kennelling of twice as many dogs on site than in 2009 might however be reasonably taken to suggest that a greater number of staff would be required to travel to the site, and that a greater number of clients would visit than was the case at this time. It would also not be unreasonable to consider that national increases in road traffic might also be reflected in greater use of the Lane. These factors would, in combination, be likely to increase the risks associated with use of the access relative to the situation as it existed in 2009.
9. The appellant's intended collection and delivery service set out within the submitted Management Plan would clearly reduce visits to the site. However the value of this Plan is questionable as it could not be made the subject of an enforceable condition, and the projected level of uptake could not be guaranteed. Further, as journeys would continue to be made to transport dogs to and from this facility it is not clear that this would alter the overall number of trips generated. So, whilst greater familiarity with use of the access by

drivers responsible for the service would be likely to reduce the risks associated with its use, the risks would not be removed for visitors to the site, or indeed for other road users.

10. The appellant has confirmed that improvement of visibility from and toward the access would not be possible. This is because obstructing vegetation lies in separate ownership. In the absence of any other proposed solution, the development does not therefore provide any secure means of mitigating the risks associated with the likely increased use of the access.
11. For the reasons set out above I conclude that the development would have an unacceptable adverse effect on highway safety. It would therefore conflict with the objectives of Policy CP19 of the New Forest National Park Core Strategy and Development Management Policies DPD (the CS), which amongst other things seeks to promote improvements to make roads safer.

#### *Noise*

12. Constant background traffic noise was audible during my visit to the site, the source of which appears to have been the A337, which is located to the west. Though this represents a moment in time, I see no reason to consider that the level of traffic noise was exceptional. Further reference is made in the submissions to noise generated by commercial uses in the area. Consequently, whilst the site occupies a rural location, it cannot be considered wholly 'tranquil' given that it is not intrinsically quiet.
13. Interested party opposition to the appeal scheme is generally based on an objection to the generation of any noise related to the kennelling of dogs on the site. A break in the operation of the kennels has clearly resulted in a period during which no noise has been generated in relation to the kennelling of dogs. Nevertheless, accepting that the principle of kennel use is established on the site, some level of noise is inevitable.
14. In this regard 20 dogs could clearly generate noise as a result of barking and other sounds, but how much more noise 20 dogs would generate than the 10 dogs licensed in 2009 is unclear. The appellant's noise report however indicates that noise levels would not increase at the same rate as the number of dogs. Therefore 20 dogs would not sound twice as loud as 10, and in the unlikely event that all 20 dogs barked in unison, the sound generated would be louder, but not considerably louder than 10 dogs barking in unison.
15. The proposed kennels have been produced by specialists in the design of such buildings, and that construction would include both thermal and acoustic insulation. This would act to reduce the leakage of internally generated noise. Though the specification has been criticised by interested parties, I see no reason to consider that the insulation would not be installed correctly, and further note that no such insulation is apparent in the remnants of the original kennel buildings, which chiefly consist of rudimentary concrete block work. The former kennels themselves also appear to have been much less well contained within the surrounding building structure than is proposed. It is reasonable to conclude therefore that the containment of noise within the kennels as they existed in 2009 was limited and significantly less effective than would be the case in the kennels now proposed.

16. Insulation would nonetheless be breached by the opening of windows or doors, and would be ineffective when dogs were outside. However I see no reason to consider that the kennels could not be serviced by mechanical means of ventilation and cooling, obviating the need for openable windows in those parts of the building generating the most noise. Whilst the plans do not clearly indicate that such a system would be installed, the plans are also not comprehensive in regard to other aspects of building operation, such as plumbing and heating. I am therefore satisfied that further details of the heating, cooling and ventilation systems, as too the locations of openable windows within the building, could be obtained and agreed by condition.
17. The appellant's management plan indicates ways in which the noise generated by dogs outside the kennels would be minimised, and this is further considered in the submitted noise report. Whilst the plan could not be the subject of an enforceable condition, it is nonetheless the case that in the event that such management failed, other statutory means exist to manage any nuisance which might arise.
18. I see no reason to consider that dog walking carried out in relation to the kennelling would itself generate significant amounts of noise, or indeed more noise than could be generated by unlimited numbers of members of the public who are able to walk their dogs along local footpaths in the area.
19. In the context of existing traffic noise, including that generated by use of Mount Pleasant Lane, any additional noise generated by vehicles accessing the site on a daily basis would be unlikely to cause an unacceptable degree of disturbance to neighbours.
20. For the reasons outlined above I conclude that the development would not cause unacceptable adverse effects on the living conditions of the occupiers of neighbouring properties by virtue of noise and disturbance. The development would not therefore conflict with Policy CP6 of the CS, which amongst other things seeks to reduce the impacts of noise, or Policy DP1 of the CS, which amongst other things seeks to ensure that no adverse impacts arise with regard to noise.

#### *Character and Appearance*

21. The appeal site is located on sloping ground atop a modest ridge. Some screening is provided by trees to the north. Though further trees exist to the south, the site is generally open on its south side. The surrounding landscape is dominated by equestrian uses, featuring a large number of fenced enclosures, sheds and other structures of sometimes substantial size. These are widely distributed and clearly visible features within the setting of the site.
22. The site is currently occupied by the derelict remnants of the former kennel buildings, with related debris widely scattered. This is clearly viewed from the adjacent footpath and greatly detracts from the visual character of the locality.
23. For the purposes of considering Policy DP16 of the CS, the parties dispute the extent to which the proposed buildings would represent an increase in the footprint of the buildings previously present. Policy DP16 however makes reference to floorspace not footprint. The area occupied by the internal structure of the proposed buildings is likely to be far greater than that associated with the previous buildings given the increased wall thickness. A

significant difference in footprint could therefore be anticipated even if the floorspace itself was unchanged. On this basis the margin of difference between the building footprints quoted by the parties is insufficient to reach a conclusion that there would be any material difference in terms of the floorspace occupied by the proposed kennels relative to those previously present.

24. Though the buildings would be of greater mass than those replaced, the design quality would be substantially improved relative to the rudimentary construction employed in the previous buildings. This would utilise a layout and composition that would suggest an agricultural rather than 'urban', 'suburban' or 'commercial' character. Viewed in relation to other existing structures within the vicinity, the building would not appear at odds with its rural context. The resulting appearance would achieve a significant enhancement of the locality.
25. With regard to noise and vehicle movements resulting from the proposed intensification in the use of the site, neither the noise generated by the kennels, nor the simple visibility and sound of vehicles accessing the site would have any significant impact on the character of the area.
26. The decision notice makes reference to the potential loss of roadside vegetation, presumably meaning the domestic hedgerow to the south of the access. Whilst this hedge does not in fact appear to be particularly typical of roadside vegetation along Mount Pleasant Lane, its removal is not proposed, and indeed both parties acknowledge that this and other vegetation lies outside the control of the appellant. As such the adverse impact claimed by the Council would not arise as a result of the development.
27. I have taken into account the purposes of the National Park designation, and advice in paragraph 172 of the National Planning Policy Framework to give great weight to the conservation and enhancement of landscape and scenic beauty in National Parks. For the reasons outlined above, the development would not harm the character or appearance of the landscape, or the scenic beauty of the National Park, and indeed may result in some enhancement.
28. I conclude that the development would not have an adverse effect on the character or appearance of the area including the landscape and scenic beauty of the National Park. The development would not therefore conflict with Policy CP8 of the CS, which does not permit development that would erode the local character of the National Park, Policy CP14 of the CS, which provides support for small scale employment development where it would not have an adverse impact on the National Park, or Policy DP16 of the CS which amongst other things supports the redevelopment of employment sites where there would be no material increase in floorspace or the level of the impact of the activity generated.

### **Other Matters**

29. The Council has raised a concern that the facility may be used by a greater number of dogs than the 20 indicated. However it is apparent that the design has been specifically produced to house 20 dogs, and reasonable to consider that more exacting space standards exist now than in the 1960s and 1970s. The number of dogs kept would itself be subject to a separate system of licensing, in much the same way as it was in the past.

30. Whilst the need for kennels has been questioned, I have been provided with no evidence that were the kennels to be built they would fail to be used.
31. I note the appellant's point that there has been a long standing breach of a condition covering agricultural occupancy of the dwelling, and that this may provide a basis to allow at least one member of staff to live adjacent to the kennels. This is ultimately for the Council to determine however, and no formal confirmation of the acceptability of this arrangement has been provided.
32. I note the appellant's further point that employment opportunities and businesses need to be accommodated within the National Park. However this does not alter my conclusion that the development would have an unacceptable adverse effect on highway safety.

### **Conclusion**

33. Though I have found that the development would not have an adverse effect on the character or appearance of the area or the living conditions of occupiers of neighbouring properties with regard to noise and disturbance, there would be an unacceptable adverse effect on highway safety.
34. Therefore, exercising my duty under section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended, I find that in this case material considerations do not indicate that my decision should be made other than in accordance with the development plan. For the reasons set out above I therefore conclude that the appeal should be dismissed.

*Benjamin Webb*

INSPECTOR