

Application No: 24/00386VAR Variation / Removal of Condition

Site: Land at 'Little Meadow', Newbridge Road, Newbridge, Cadnam, SO40 2NW

Proposal: Application to vary condition 2 of appeal decision APP/B9506/W/21/3278440 of planning application 20/00901 to allow change of personal permission name for continued use of land and building for dog day care; hardsurfacing

Applicant: Mr F Baker

Case Officer: Carly Cochrane

Parish: Copythorne Parish Council

1. REASON FOR COMMITTEE CONSIDERATION

Contrary to Parish Council view.

2. POLICIES

Development Plan Designations

Conservation Area

Principal Development Plan Policies

- DP2 General development principles
- SP1 Supporting sustainable development
- SP7 Landscape character
- SP15 Tranquillity
- SP16 The historic and built environment
- SP17 Local distinctiveness
- SP42 Business and employment development

NPPF

- Sec 12 - Achieving well-designed and beautiful places
- Sec 15 - Conserving and enhancing the natural environment
- Sec 16 - Conserving and enhancing the historic environment

3. MEMBER COMMENTS

None received

4. PARISH COUNCIL COMMENTS

Copythorne Parish Council: Recommend refusal. NFNPA previously

(20/00901) refused permission, which was only granted on appeal subject to seven specific conditions.

- We strongly feel that all seven conditions should be enforced.
- In particular, we cannot see that condition 7 (see below) has ever been discharged?

7. Within two months of the grant of planning permission, a Noise Management Plan shall be submitted to the local planning authority detailing all measures in place/to be put in place to control noise from the dog day care use of the site. This Noise Management Plan shall be agreed in writing by the local planning authority and all measures set out within the agreed Noise Management Plan shall be implemented in full and retained throughout the operation of the site by the site occupier/operator, as named within Condition 2 above.

- Local residents advise that complaints have been made to NFDC Environmental Protection (this is not reflected in the response from this consultee?).
- Number of local objections raising similar and other concerns.
Note: We are aware of at least two that have been submitted to NFNPA but are yet to appear on the Planning Portal

5. CONSULTTEES

Hampshire County Council Highways: No objection.

New Forest District Council Environmental Protection: No objection.

6. REPRESENTATIONS

Three letters of representation have been received in objection to the proposal. The comments made are summarised as follows:

- Personal permission granted by the Inspectorate is not transferable.
- Noise management plan conditioned had no effect/was not discharged.
- 'Pack Buddies' (previous applicant) ceased using the site in Autumn 2023; the land was not returned to its former agricultural use as required by the condition, however, two horses were grazing the land.
- Adverse impact upon neighbouring amenity from there being 18 dogs on sites, and the noise they generate as well as noise made by shouting etc. from staff.
- Applicant is not local and therefore is not concerned with the impact of the business upon the residents.
- Service is not used by local residents, so there is no benefit to the area.

A letter of representation from the applicant's agent has been received, responding to the comments made within the letters of objection submitted. The key points are summarised as follows:

- The principle of the use and operation of the site was considered acceptable by the Inspectorate.
- Condition 7 was discharged on 23 August 2022.
- No record of complaints made to Environmental Health, and no letter of objection from the occupier of the nearest neighbouring property.
- The use can continue exactly as before, with only a change in the named operator.

7. RELEVANT HISTORY

Continued use of land and building for dog day care; hardsurfacing (20/00901) refused on 16 February 2021. Subsequent appeal allowed on 22 June 2022

8. ASSESSMENT

Application Site

- 8.1 The application site is located to the north-eastern side of Newbridge Road and comprises a 0.6 hectare parcel of land which projects north and rises away from the highway. The site lies within the Forest Central (North) Conservation Area. The north boundary of the site is directly adjoined by a public right of way. Residential properties lie to the north and east of the site.
- 8.2 By way of background, planning permission was retrospectively granted at appeal in 2022 for the use of the land and a former stables building for dog day care. Condition 2 of the appeal decision is as follows:

“The use hereby permitted shall be carried out only by Sandra Oliveira [the applicant at the time] under the permission hereby granted and shall not enure for any other person. In the event that the use should cease, all structures (temporary or otherwise except for the former stable structure) shall be removed from the land and the land shall revert to its former use or for agricultural purposes.”

No conflict with Policies SP1, SP7, SP15, SP16, SP17, SP42 was identified by the Inspector.

Proposed Development

- 8.3 This application seeks to vary the above condition to allow the current applicant to operate the site, instead of the person named within the condition. It is stated that all other conditions would be adhered to.

Consideration

- 8.4 There is no statutory definition in respect of the scope of a variation of condition application such as this. In general, the amendments being sought cannot alter or change the operative part of the planning permission. In this instance, the operative part of the planning permission, being the “continued use of land and building for dog day care” would not be altered by the proposal to change the details in respect of Condition 2. Additionally, whilst the wording of Condition 2 results in a personal permission, this does not prevent or prohibit an application being made to vary this condition to enable the continued use of the land.
- 8.5 As aforementioned, it is proposed that the dog day care operations would continue exactly in accordance with the use as granted permission. For clarity, the full set of conditions imposed by the Inspector are as follows:
1. The development shall be implemented/maintained in accordance with drawing numbers DR1, Plan 1 and Plan 2.
 2. The use hereby permitted shall be carried out only by Sandra Oliveira under the permission hereby granted and shall not enure for any other person. In the event that the use should cease, all structures (temporary or otherwise except for the former stable structure) shall be removed from the land and the land shall revert to its former use or for agricultural purposes.
 3. There shall be no more than 18 dogs at the site at any one time.
 4. The dog day care use hereby permitted shall not be operated other than between the hours of 10:00 and 15:00 Mondays to Fridays and at no time on Saturdays, Sundays and Bank/Public Holidays.
 5. No lighting shall be installed on the site.
 6. The existing grass verge in the primary (northern) direction shall be retained as existing and be maintained with no obstructions or vegetation growth above 0.6m in height within the verge.
 7. Within two months of the grant of planning permission, a Noise Management Plan shall be submitted to the local planning authority detailing all measures in place/to be put in place to control noise from the dog day care use of the site. This Noise Management Plan shall be agreed in writing by the local planning authority and all measures set out within the agreed Noise Management Plan shall be implemented in full and retained throughout the operation of the site by the site occupier/operator, as named within Condition 2 above.

- 8.6 Concern has been raised in respect of noise disturbance and nuisance within the letters of representation and by the Parish Council, and it is asserted that Condition 7 (Noise Management Plan) was never discharged. This condition was discharged on 23 August 2022. New Forest District Council's Environmental Protection Team have raised no objection to the application and have not advised that they have been in receipt of complaints in respect of noise levels or nuisance arising from the use of the site. Whilst it is not disputed that the use of the site for the purpose granted permission has likely resulted in elevated noise levels over and above the use of the site for low-key grazing by horses, for example, there is no evidence to suggest that the continued use of the land for dog day care would conflict with Policy SP15 of the Local Plan. Notwithstanding the discharge of Condition 7 previously, it is considered that the re-imposition of Condition 7 remains necessary as it was linked to the operator specified within Condition 2. As this is proposed to change, then it needs to be ensured that the new operator would manage the site in an appropriate manner in respect of noise.
- 8.7 This application seeks to change only the named person operating the dog daycare business at the site; all other restrictions within the conditions would be adhered to. As such, there would be no change to or intensification of the use of the site in comparison to the situation considered by and found acceptable by the Inspectorate. It would therefore be unreasonable, in the absence of any evidence of demonstrable significant harm, for the Authority to take an alternative view now.

Conclusion

- 8.8 Therefore, subject to the re-imposition of all previously imposed conditions, it is recommended that the variation to Condition 2 of permission reference 20/00901 be granted.

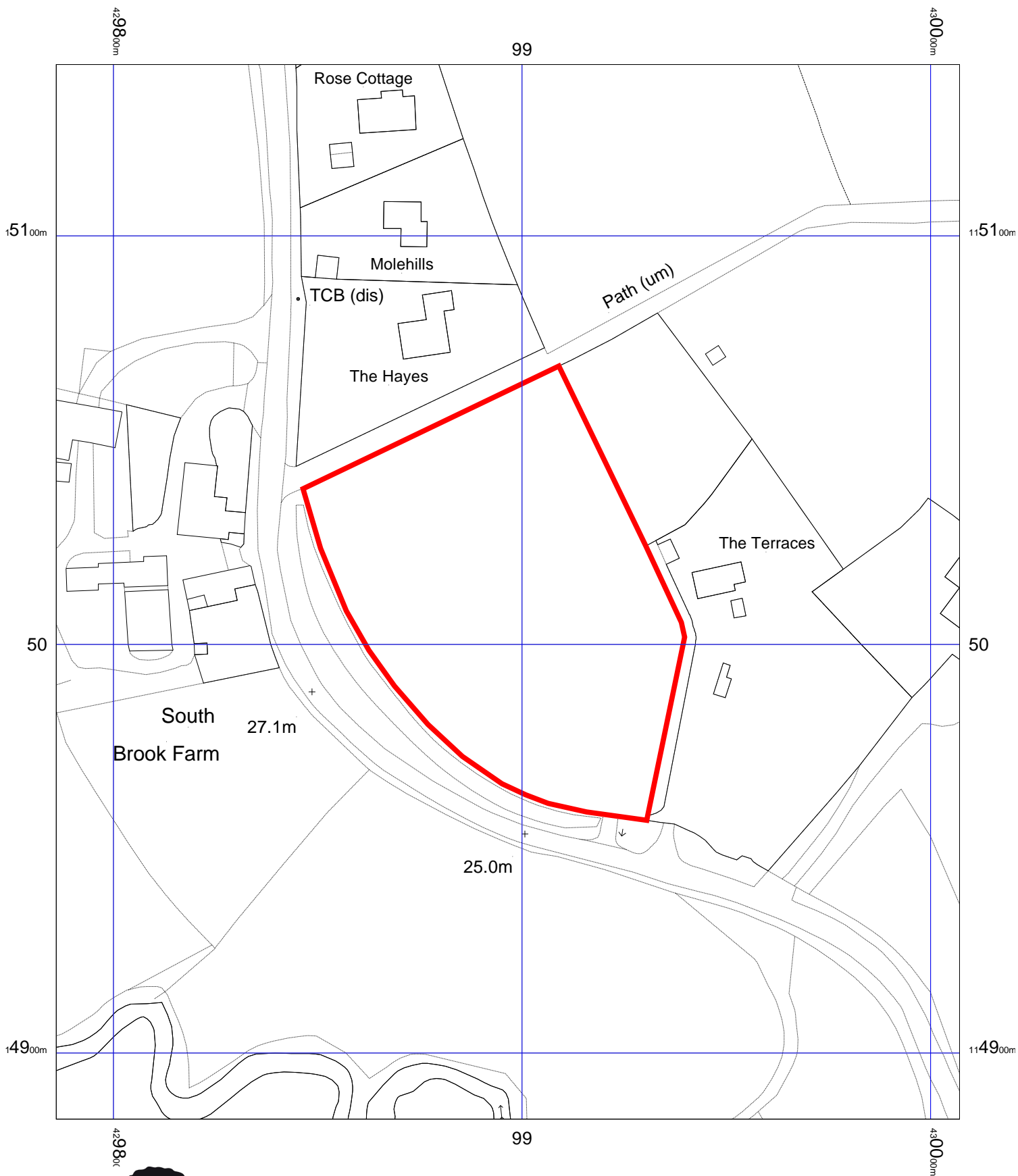
9. RECOMMENDATION

Grant Subject to Conditions

Condition(s)

1. The development shall be implemented/maintained in accordance with drawing numbers DR1, Plan 1 and Plan 2 of permission reference 20/00901.
2. The use hereby permitted shall be carried out only by Mr Farley Baker under the permission hereby granted and shall not enure for any other person. In the event that the use should cease, all structures (temporary or otherwise except for the former stable structure) shall be removed from the land and the land shall revert to its former use or for agricultural purposes.

3. There shall be no more than 18 dogs at the site at any one time.
4. The dog day care use hereby permitted shall not be operated other than between the hours of 10:00 and 15:00 Mondays to Fridays and at no time on Saturdays, Sundays and Bank/Public Holidays.
5. No external lighting shall be installed on the site.
6. The existing grass verge in the primary (northern) direction shall be retained as existing and be maintained with no obstructions or vegetation growth above 0.6m in height within the verge.
7. Within two months of the grant of planning permission, a Noise Management Plan shall be submitted to the local planning authority detailing all measures in place/to be put in place to control noise from the dog day care use of the site. This Noise Management Plan shall be agreed in writing by the local planning authority and all measures set out within the agreed Noise Management Plan shall be implemented in full and retained throughout the operation of the site by the site occupier/operator, as named within Condition 2 above.



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