



Appeal Decision

Site visit made on 9 November 2023

by C Harding BA (Hons) PGCert PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th December 2023

Appeal Ref: APP/A2525/W/23/3315911

West View, Hall Gate, Moulton, Spalding, Lincolnshire PE12 6QG

- 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 Miss Ernesta Tamutyte against the decision of South Holland District Council.
 - The application Ref H13-0734-22, dated 21 July 2022, was refused by notice dated 26 September 2022.
 - The development is described as “retrospective application to keep more than 6 dogs on site. The site will not house more than 15 dogs at any given moment.”
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development used by the Council on its decision notice differs from that on the planning application form and reads “Use of site to keep more than 6 dogs, including the sale of puppies and retired dogs and erection of kennels and grooming area – retrospective”, however there is no indication that the appellant agreed to this change.
3. However, the provided plans indicate that the development includes the erection of kennels and a grooming area. These elements were present on the site at the time of my visit and appeared to reflect the structures shown on the plans, and the kennels were in use. On this basis, and although I saw no more than five dogs during my visit, I have considered the development on a retrospective basis.

Main Issue

4. The main issue is the effect of the development on the living conditions of occupiers of nearby residential properties with particular regard to noise and disturbance.

Reasons

5. The appeal relates to a detached dwelling which forms part of a small cluster of residential properties on the eastern side of the B1357. On the other side of the road and located slightly to the south is an agricultural complex, with further residential properties beyond.
6. Agricultural fields, in arable use at the time of my site visit, adjoin the appeal property to the south and east. The closest neighbouring residential property adjoins the appeal property to the north.

7. The appellant keeps 15 dogs for breeding purposes, which are a mix of French and American Bulldogs. It is expected that the 11 female dogs have an average of three litters in a year. The evidence indicates that the main residential dwelling is used during pre-birth, birth, whelping and weaning. I understand that puppies are re-homed at around 8 weeks old.
8. To the rear of the property, located against the rear boundary of the property is a range of kennels, which are of a cage construction with a solid roof and each incorporating an indoor enclosed space. At the time of my visit, not all of the kennels appeared to be occupied, however I was able to see that at least five dogs were present at the appeal site. The boundary of the appeal property is a composite close-boarded fence of around two metres in height.
9. The kennels, although located at the limit of the appeal property, are nevertheless close to the shared boundary with a neighbouring property. The neighbouring dwelling itself is located further away, but not significantly so. No substantive evidence in the form of noise surveys has been provided by either of the main parties, however, I consider it likely that given the proximity of the neighbouring property, and its garden, that any barking by dogs at the appeal property would be likely to be noticeable. Given this proximity and the number of dogs that could potentially be kept at the appeal site, it is possible that such noise would be intrusive, as well as potentially persistent, and therefore harmful to the living conditions of the occupiers of the neighbouring property.
10. It is indicated that both American and French Bulldogs are placid breeds which are not predisposed to high levels of barking. I was able to see on my site visit that those dogs that I did see were generally placid and did not react noisily to the presence of a stranger. Whether this could be attributed to the nature of those particular animals, or the operation of the ultrasonic anti-barking device referred to within the appellant's evidence is unclear.
11. I am also aware that dogs being kept within familiar conditions are less likely to generate high levels of noise, than those kept, for example, at temporary kennels, and that the only formal noise complaint lodged with the Council in the preceding period of the appellant keeping dogs at the site was unsubstantiated and related to a period when the kennels were in a different location within the appeal site. However, I am also mindful that the kennels did not appear to be operating at the maximum proposed capacity of 15 animals at the time of my visit, and that the low level of noise that I experienced would not be necessarily representative of all potential situations or of all dogs kept at the site, regardless of their predisposition.
12. The operation of the premises could be controlled to some extent through the use of planning conditions to restrict the number of dogs kept at the appeal site, however aside from the use of the anti-barking device, no other detailed management measures are before me that would satisfy me that the proposed use could be adequately controlled. Given the potential variability of behaviour between animals, imposing a restriction on the breeds of dog that could be kept at the appeal property would not provide sufficient assurance that excessive levels of noise would not be generated.
13. Furthermore, I have been provided with no details of the ultrasonic anti-barking device, its operation, or its expected levels of effectiveness. Nor have I been provided with details of the acoustic performance of the existing composite fence which comprises the boundary to the appeal property or

details of any potential bunding or barrier. Additionally, it is unclear how noise insulating materials could be incorporated into the fabric of the kennels, or how well such interventions would perform. I cannot, therefore, rely on these measures as effective means of attenuation.

14. Across the road from the appeal site is a farm complex. At the time of my site visit, whilst only a snapshot in time, this appeared to be being used primarily for the storage of equipment and levels of activity were low. Whilst many farming activities, both arable and livestock related, can lead to noise being generated there is no substantive evidence before me in relation to background noise levels at the appeal site, or the timing, level or nature of any noise generated at the farm complex. Accordingly, I afford this factor only limited weight in my consideration.
15. I acknowledge that the Council has previously identified that the proposal would not constitute statutory nuisance, and that a previous noise complaint was not taken further. However, the fact that an activity might not amount to statutory nuisance does not necessarily mean that it would not have an unacceptable effect upon the living conditions of the occupiers of neighbouring properties. This, therefore, is not a determinative factor in my considerations.
16. Therefore, I conclude that the development has an unacceptable effect on the living conditions of the occupiers of nearby neighbouring properties with particular regard to noise and disturbance. It would therefore be contrary to Policies 2, 3 and 30 of the South East Lincolnshire Local Plan 2019, which together, and amongst other factors, state that development will be permitted where considerations in relation to the impact upon neighbouring land uses by reason of noise are met, that it is demonstrated that residential amenity can be secured, and that development proposals will not be permitted where, after any mitigation, they would lead to unacceptable adverse impacts upon the amenities of the area by way of noise and disturbance.

Other Matters

17. I acknowledge that the kennels and area around them appeared to be clean and tidy at the time of my site visit, with no mess evident. However, the Council has raised no concern in this regard, and the cleanliness of the site is a neutral factor that does not weigh in favour of the scheme. Equally, even if I were to agree that the proposal was acceptable in respect of the quality of the design and materials used for the kennels and surrounding hardstanding, this would also be a neutral factor.
18. It has been put to me that sites suitable for the proposed activity are difficult to find, and that the site performs well in this regard due to its rural location and relatively few neighbours. However, whilst it is the case that the appeal is located in an area less densely populated than a more urban location, this does not overcome the fact that the closest neighbouring property is situated in close proximity to the appeal site and the kennels within it.
19. I have had regard to the appeal decisions that have been presented to me in relation to similar proposals elsewhere. I have not been provided with the full details of these cases; however, both appear to materially differ from that which is before me. In one of these cases no objection to the proposal was raised by the Council's Environmental Health section. Furthermore, that Inspector in coming to their decision had regard to other legislation relating to

the control of dog breeding and any associated noise and nuisance, as well as the specific nature of the appeal site and compound within which the dogs would be kept. I have not been provided any evidence or details in relation to these matters.

20. In the other case, that Inspector identified that the closest residential properties to the appeal site were situated around 100 metres away, on the opposite side of the road, with a further property around 200 metres away. This would represent a different situation to that which is before me, where the nearest residential property directly adjoins the site and where kennels are located, in part, adjacent to the shared boundary.
21. Accordingly, whilst mindful of the findings of the Inspectors in these cases, they do not indicate that I should reach a different conclusion, and I have considered this appeal on the merits of the evidence before me.
22. I also acknowledge that the development is likely to have a positive effect on the local economy, and that it represents a rural business making effective use of land. On the basis of the scale and nature of the use, I afford these factors modest weight in favour of the proposal. However, they are insufficient to outweigh the harm that I have found.

Conclusion

23. The proposal would conflict with the development plan when read as a whole. There are no other considerations, including the Framework, which would indicate that a decision should be taken other than in accordance with it.
24. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

C Harding

INSPECTOR