

Parish:	Upwell	
Proposal:	Retrospective planning application for change of use of residential garden for the keeping and breeding of dogs and part retrospective permission for the erection of kennels and runs.	
Location:	The Cottage Welney Road Lakes End Norfolk	
Applicant:	Mrs S Millington	
Case No:	19/01526/F (Full Application)	
Case Officer:	Bradley Downes	Date for Determination: 11 November 2019 Extension of Time Expiry Date: 7 February 2020

Reason for Referral to Planning Committee – View of Parish Council contrary to Officer Recommendation and application was referred to Planning Committee by Sifting Panel

Neighbourhood Plan: No

Case Summary

The site lies in the countryside on the east side of Wisbech Road, approximately 160m south of Lakes End and 1.6km north of Welney. The proposal is for the retrospective change of use of part of the residential garden of The Cottage, Wisbech Road for the keeping of dogs for commercial breeding purposes. The business currently has 16 adult dogs with a license for 20, however the application is for no more than 16 adult dogs (reduced from 20 originally applied for). The application is also for part retrospective permission for the erection of kennels and associated facilities (grooming room etc).

Key Issues

Principle of development
Noise and disturbance of neighbours
Highway safety and access
Form and character

Recommendation

APPROVE

THE APPLICATION

The site lies in the countryside on the east side of Wisbech Road, approximately 160m south of Lakes End and 1.6km north of Welney. The proposal is for the retrospective change of

Planning Committee
3 February 2020

use of part of the residential garden of The Cottage, Wisbech Road for the keeping of dogs for commercial breeding purposes. Lakes End is classified as a rural village and hamlet in the Core Strategy 2011, as such it doesn't have a development boundary.

The business currently has 16 adult dogs with a license for 20, however the application is for no more than 16 adult dogs (reduced from 20 originally applied for). The application is also for part retrospective permission for the erection of kennels and associated facilities (grooming room etc). The business expects up to 25 puppies per year, however there are rarely more than 10 on site at once. The business has a 4 star license which means it is rated above average for animal welfare and management.

SUPPORTING CASE

The existing site had a small holding licence in 2010 which consisted of 7 dogs, puppies, pigs, poultry, and pony's. Since 2010 the number of animals on site has reduced and the number of adult dogs has increased from 7 to 16. Since 2010 the client has not had any complaints regarding smells, noise, vermin, or flies. There have only been complaints since this application has been submitted.

Throughout this application, we have worked with the Planning Officer and Consultants to improve the site to make everyone happy. This also includes relocating already built dog kennels away from the neighbouring boundary, adding additional off-road parking for visitors and also installing sound acoustic fences to further decrease noise.

In 2019 my client had 16 adult dogs and over the entire year had 4no litters (25 puppies total for the year). There is normally only 1no litter at any one time. My client has an up to date Noise Management Plan which has been approved by the Community Safety & Neighbourhood Nuisance department as well as the Licencing Team which was required for their Licence.

My clients dogs are Kennel Club Assured and council licenced breeders and exhibitors of German Shephard Dogs, Miniature Longhaired Dachshunds and Miniature Pinschers. All of the puppies are born and raised in my clients home and are out of health tested parents. They breed first for health, temperament and fit for function. They believe health and temperament as well as a low inbreeding co-efficiency are the cornerstones of healthy pedigree dogs.

The site since 2010 has always had dog kennels / other animal encloses which have been replaced with block-built Kennels to improve the facilities which also allows for improved noise transference, and improved security. The northern and western boundary is made up of either 1.8m High close boarded fences or is screened by dense vegetation (very High Conifer Trees) with the proposed southern boundaries being 2m high Acoustic Fencing.

PLANNING HISTORY No relevant planning history

RESPONSE TO CONSULTATION

Parish Council: OBJECT for the following reasons:

- Noise from dogs on site affecting neighbours.
- Does not appear to be an exercise area for the dogs other than their runs which is inadequate (a concrete hardstanding does not seem appropriate if this is the intention).

Planning Committee
3 February 2020

- Concern regarding disposal of dog waste. The plans appear to show that dog waste from the kennel block adjacent to the road is washed into a single drain to a septic tank, but there is no provision for such disposal for the other kennels on site.
- Other than the 'private garden' this is over development of the site for kennels.
- The car parking arrangement and access is unsuitable as visitors will have to reverse park in the proposed parking area to enable emergence onto the A1102 in forward gear. There is evidence that claims visitors are currently parking on the side of the road.
- If permission is granted, soiled bedding and waste should be kept in a covered skip and emptied when full.
- No amount of fencing of any type would stop the noise and disturbance of barking dogs.

Highways Authority: NO OBJECTION

On the basis of the information submitted, it would appear the site is used for the breeding and sale of dogs only. The resultant traffic generation would be low. I suggest a condition to restrict the use of the site to breeding only as boarding of third party dogs and grooming would result in undesirable traffic.

CSNN: NO OBJECTION

The agent has provided information which addresses the queries that I had and indicates that there are a number of control measures on site and within the operation of the business which should help to control noise etc. I therefore have no grounds to object.

Many of the points the applicant has included in their noise management plan are not enforceable. To strike a balance and to protect the nearest residents from an adverse impact I would recommend the following changes;

- A condition that states dog will be confined to their kennel between the hours of 21.30 hrs to 08.00hrs unless there is an emergency would be suitable.
- A condition that is timed relating to the insulation and acoustic fencing would also be suitable.
- A condition stating that one person will be on site at all times is also suitable. It does not need to be the applicant but one person should be on site and responsible for the dogs at all times.
- The point in the NMP regarding the dog exercise area is also enforceable and should be included as a condition as long as the dog exercise area is clearly referenced from a submitted drawing.

Lastly I would recommend that a timed condition be applied to requiring a noise management plan to be submitted to and approved by CSNN. This will allow our team to have details to refer to should a complaint be received but would not be an ongoing planning condition.

It is also requested that an informative relating to nuisance issues relating to kennels is included on any decision notice. Without the support of this condition there is no guarantee noise can be controlled.

Environment Agency: NO OBJECTION

The site is located within Flood Zone 3 of our Flood Map for Planning. The EA's Fenland Hazard Mapping shows the site could flood to a depth of up to 0.5m with velocities of up to 0.3m/s in the event of a breach of the Ouse Washes defences in a 1 in 100 year event. We have no objection to the proposed development on flood risk safety grounds, because an

Planning Committee
3 February 2020

emergency plan has been submitted by the applicant. We have not made an assessment of the safety of the route of access / egress from the site in a flood event. Our involvement during an emergency will be limited to delivering flood warnings to users covered by our flood warning network.

Your authority must be satisfied with regard to the safety of people (including those with restricted mobility) and the ability of emergency services to access such buildings and rescue/evacuate people. It is the responsibility of the Local Planning Authority to determine if the sequential test has to be applied.

Emergency Planning: NO OBJECTION Due to the location in an area at risk of flooding it's advised that the occupants' sign up to the EA FWD service and prepare a flood evacuation plan. The submitted flood evacuation plan is fit for purpose.

Natural England: NO COMMENT Please refer to Standing Advice.

Licensing: NO OBJECTION The premises was inspected last year and met the higher standards. It is a condition of the license that dogs are exercised at least once a day. If the welfare conditions are not being met then licensing can inspect and take action.

REPRESENTATIONS

13 different letters were received in total, with **12 OBJECTING** to the application, and **1 SUPPORTING**.

The supporting letter raises the following points:

- One of the people objecting to the application has acted unreasonably.
- Apparently many people don't have a problem with Mr and Mrs Millington and their plans, as they have heard no dog noise.
- I see no foundation to the claims that the dogs cause any disturbance, beyond the amount of barking that would be found from any household.

The 12 letters of objection raise the following concerns:

- There is excessive noise coming from the property from the dogs, and shouting from Mr and Mrs Millington to shut the dogs up.
- With more dogs the noise would be horrendous.
- Dog noise significantly reduces quality of life.
- Having 20 dogs of different character and temperament means there is limited opportunity for normalisation of noise omitted from the property.
- No noise assessment has been undertaken so there is no basis on which to make an informed decision as to whether the proposed mitigation will be effective.
- Pet dogs in surrounding properties are continuously getting wound up by the barking.
- The intensity and frequency of the impacts have disproportionately increased over the last 18 months.
- Feel driven from home by the noise, but fear will not be able to sell.
- Doesn't seem to be enough space in the garden for runs.
- The parking situation is ridiculous, customers often use neighbouring drives.
- Constant barking disturbs sleep of children in neighbouring properties.
- Site has been left unattended for hours in the past.
- Mr Millington ripped down the site notice so neighbours couldn't complain.
- Change of use from residential to commercial will significantly devalue houses in the area.

- Doesn't meet requirements of Policy DM15 because there would be significant noise impact.
- Proximity of breeding kennels results in odours that impact upon enjoyment and amenity of garden.
- The kennels do not provide an adequate range of accommodation and exercise areas to meet the needs of a range of dogs, in the Model License Conditions and Guidance for Dog Boarding Establishments 2016.
- At 90 degrees from the highway, the parking does not meet the minimum 6m length.
- Acoustic fencing doesn't always work, it depends how much is put up and the height.
- What is proposed is not enforceable and there is no guarantee that it will be implemented.

LDF CORE STRATEGY POLICIES

CS02 - The Settlement Hierarchy

CS06 - Development in Rural Areas

CS08 - Sustainable Development

SITE ALLOCATIONS AND DEVELOPMENT MANAGEMENT POLICIES PLAN 2016

DM2 – Development Boundaries

DM15 – Environment, Design and Amenity

NATIONAL GUIDANCE

National Planning Policy Framework (NPPF)
 Planning Practice Guidance (PPG)
 National Design Guide 2019

PLANNING CONSIDERATIONS

The main considerations:

- The principle of development
- Impact on character and appearance
- Impact on neighbour amenity
- Highway Safety

Principle of development

The site doesn't lie in any development boundary so it is subject to those policies which seek to restrict development in the countryside to that which is identified as suitable in rural areas as set out in other policies of the Development Plan. In this case, Policy CS10 of the Core Strategy 2011 is relevant, which concerns economic development. The policy makes an allowance for rural employment sites in the countryside, with the criteria that the operation should be appropriate in size and scale to the local area, it should be adjacent to the settlement, and the proposed development would not be detrimental to the local residents. However, the NPPF says that planning decisions should enable the sustainable growth of all

types of business in rural areas and there are many cases of kennels in rural areas in the borough.

It is considered the principle of a business use such as this qualifies as suitable development in a rural area. The key issue in this case is the impact on the amenity of neighbours, which is considered later in the report.

Impact on character and appearance:

The development involves part retrospective permission for the facilities on site (more to be erected). Since the business has been running since 2010, it is likely that much of the existing building work on site is lawful. For the avoidance of doubt, all of the buildings existing and proposed will be considered as part of this application.

The small scale of the buildings means that they are not easily visible from the street, as the site is screened by a 2m fence and tall trees along the roadside. There is also a row of vegetation on the east side of the site, screening the development from the countryside. It is considered overall the proposed development would have no significant impact on the character or appearance of the area or the wider countryside.

Impact on neighbour amenity:

The proposed kennels, grooming room and run etc are not considered to pose any significant overshadowing, overbearing or overlooking concerns due to their small scale and location away from the boundaries of neighbouring dwellings. It is considered waste will be adequately managed as there is an existing septic system. The main issue relating to amenity with this application is the potential for noise and disturbance from the dogs on the site. There are 3 residential neighbours in close proximity to the site. These neighbours include Stanborough which is approximately 40m away to the north west on the other side of Wisbech Road, and Nos 2 & 1 Fred Hartley Bungalows which are approximately 25m and 40m away from the site respectively. The applicant's dwelling, The Cottage lies between the application site and Nos 1 & 2 Fred Hartley Bungalows.

There have been objections to the proposal relating to noise and disturbance issues. During the course of this application, certain aspects have been amended in order to mitigate the noise impact as far as is practicable. This has included reducing the total number of adult dogs from 20 down to 16, moving the puppy area further away from the boundary with the neighbour to the south, and adding acoustic fencing between the kennels and the neighbour to the south.

The submitted noise management plan sets out the strategies to be employed to further mitigate noise on site. This management plan mentions that there is a daily routine, daily exercise and socialising; and it sets out the building attenuation details, acoustic fencing details, hours that the dogs are confined to their bed areas, the maximum number of dogs permitted in the exercise area at once and the hours they may be in this area, and states that at least one member of staff will live on-site to attend to any barking incident. The welfare of the dogs and the general management of the site are not planning considerations, but it is acknowledged they have an impact on the overall noise generated by the site. The welfare of the dogs and the management of the business is monitored by Licensing and they are responsible for its enforcement, hence it is considered there is sufficient mitigation to avoid detrimental impacts on surrounding neighbours

In terms of noise impacts, the Community Safety and Neighbourhood Nuisance team has no objection to the planning application. The CSNN team also recommend a number of conditions to further mitigate noise. These conditions include the use of the site being limited

to keeping and breeding of the applicants dogs only, with no boarding or grooming of third party dogs allowed, customer visiting time hours limited, maximum number of adult dogs permitted on site, and a condition that the business is run in accordance with the noise management plan. However, a condition binding the current noise management plan would not be enforceable given its present contents, and this is discussed later in the report.

Highway safety:

The development is not likely to pose a risk to highway safety due to the relatively low number of trips generated from the business. In accordance with the comments of the highway officer, the decision should be conditioned so that no boarding or third party grooming takes place. Public comments have raised concerns regarding the parking arrangements, however the parking spaces proposed are adequate to serve the needs of the business, and there is no objection from the County Highway Officer.

Specific comments or issues:

There have been a number of misconceptions about the proposal throughout this application. Firstly, the use of the site is for keeping and breeding dogs owned by the applicant only. No boarding is proposed of other dogs. Secondly, this planning application does not involve an increase in the number of dogs from how many are currently (unlawfully) housed on site for breeding purposes. There are currently 16 adult dogs, and this figure will be conditioned as the maximum adult dogs allowed. The additional facilities to be constructed as part of the development are to accommodate and better attenuate the impact of the existing dogs, not to provide facilities for additional dogs.

One of the concerns among third party representations was the sale value of surrounding properties, however this is not a material planning consideration.

Much of the currently submitted noise management plan is not enforceable from a planning point of view. Kennel staff implementing a daily routine, dogs given opportunities to exercise and socialise with staff and other dogs, keeping a stock of toys, and how noisy dogs are to be dealt with are not enforceable. However, the Licensing department already enforces those aspects of the business relating to management of the site and welfare of the animals, and there shall not be duplication of controls. As such, it is considered that a condition binding the whole current noise management plan is not necessary. Some elements included in the noise management plan will be conditioned though, including the exercise area time and dog limit, having at least one staff member on site, and having the dogs confined to their kennels at certain times.

It is not reasonable to condition the maximum number of puppies because it is not pre-determinable how many puppies a litter will contain. It is considered the limit to the number of adult dogs will naturally keep the number of puppies relatively low as they will be sold so as to not contribute to the number of adult dogs.

CONCLUSION

The principle of the proposed development is considered acceptable. The key issue is consideration of potential impact on neighbours from the operation of the business. Officers consider that due to the existing controls in place by the Licensing team and the further mitigation proposed in the form of acoustic fencing and insulation to the kennels, it is considered the operation of the business would, on balance, not have such a detrimental impact on the amenity of neighbouring occupiers to warrant the refusal of permission. The development would pose no material impact on the character and appearance of the area

and would not be detrimental to highway safety. The recommendation is, therefore, to approve the application.

RECOMMENDATION:

APPROVE subject to the imposition of the following condition(s):

- 1 Condition: The development hereby permitted shall be carried out and completed in accordance with the following approved plans. Dwg nos. 19/P25/PL001B (Location Plan only), 19-P25-PL003B (Proposed Site Plan and Typical Kennel Section), 19-P25-PL002A (Existing and Proposed Elevations), and 06 J7/01043 (Acoustic Fencing Details).
- 1 Reason: For the avoidance of doubt and in the interests of proper planning.
- 2 Condition: The use of the kennels, with associated infrastructure and grooming room, hereby approved shall be for the sole use of the occupiers of the dwelling and remain linked to the donor dwelling, and shall at no time be separated or sold as a separate business site. No boarding, grooming or day care of dogs not owned by the applicant is permitted.
- 2 Reason: For the avoidance of doubt and to safeguard the amenities of the locality in accordance with the NPPF.
- 3 Condition: Customers may only visit via appointment between the times of 9am - 6pm Monday to Saturday and 11am - 4pm on Sundays.
- 3 Reason: For the avoidance of doubt and to safeguard the amenities of the locality in accordance with the NPPF.
- 4 Condition: The change of use of the land is for the keeping and breeding of dogs owned by the occupiers of The Cottage only, and the maximum number of adult dogs (exceeding 6 months in age) on site shall not exceed 16.
- 4 Reason: For the avoidance of doubt and to safeguard the amenities of the locality in accordance with the NPPF.
- 5 Condition: Within 3 months from the date of this decision, the kennel buildings shall be insulated as per dwg no. 19-P25-PL003B and acoustic fencing installed in accordance with dwg nos. 19-P25-PL003B and 06 J7/01043.
- 5 Reason: For the avoidance of doubt and to safeguard the amenities of the locality in accordance with the NPPF.
- 6 Condition: *Unless there is an emergency, dogs shall be confined to the areas indicated as kennels on the proposed site plan (not including the kennel runs) between the hours of 21:30 pm and 08:00 am.

*At least one member of staff shall be on site at all times to be responsible for the dogs and attend incidents of barking.

*Only 4 dogs shall use the area indicated as 'dogs exercise area' at any one time. The exercise area shall only be used by the dogs between the hours of 09:00 am and 17:00 pm.

- 6 Reason: For the avoidance of doubt and to safeguard the amenities of the locality in accordance with the NPPF.