

REFERENCE: P/19/895/RLX

APPLICANT: Mr Hughes: c/o Boyer
Third floor, Park House, Greyfriars Road, Cardiff CF10 3AF

LOCATION: Ocean Farm, off David Street, Blaengarw, Bridgend

PROPOSAL: Remove condition 1 of P/16/989/RLX to enable permanent use for dog breeding

RECEIVED: 3 December 2019

BACKGROUND

This application was reported to the Development Control Committee meeting on 27 February 2020 but deferred in order that Members of the Committee could be afforded an opportunity to visit the site.

Restrictions imposed under The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 currently prevents Committee site visits. Photographs and a video of the site and its surroundings will be presented at the Development Control Committee meeting. This should enable Members to better understand the context of the development.

APPLICATION/SITE DESCRIPTION

Retrospective Planning permission was granted for a dog breeding operation at Ocean Farm in 2016 under consent P/15/626/FUL. It was a temporary permission to enable the Local Planning Authority to assess the impact of the use on the amenities of the area and highway safety. An application to increase the number of dogs to be kept at the site was approved in 2017. The temporary nature of the consent was however, retained.

This application seeks to relax condition 1 of consent of the latter permission above to remove the temporary nature of the use and to establish a permanent dog breeding operation on site. Consultant's acting on behalf of the applicant have provided the following comments in support of the application:

As we understand, the temporary nature of the approvals was in order for the Local Planning Authority to assess the operation of the dog breeding kennels before being satisfied that it does not adversely affect the privacy or visual amenities nor so significantly harms neighbours amenities as to warrant refusal.

It is noted that during the recent Section 73 application that given the nature of the development, it is considered that, overall there will be no significant adverse residual impacts on biodiversity. Also that the countryside location was considered appropriate for the use of both in terms of forming part of an existing rural enterprise but also being distant from residential properties.

It is also considered that there have been no adverse complaints regarding the operation, with the Council's own Environmental Health Officer raising no previous objection.

The dog breeding use operates from a former stable building on Ocean Farm, Blaengarw. The building which measures 9.5m x 2.4m was converted in 2015 and accommodates 13 kennels. A smaller building to the north and the adjacent yard area are also used to accommodate and to exercise the dogs.

Access to Ocean Farm is along a non-maintainable track owned by the Council which once formed part of a colliery access road. It leads from David Street and extends some

315m to the entrance of the farm.



Extract from OS Base Map of Application Site

RELEVANT HISTORY

P/10/102/FUL – Retrospective consent issued for sheep shed extension and hay shed extension on 9 April 2010.

P/15/626/FUL – Permission to change the use from stables to dog kennels for commercial dog breeding was approved on 15 March 2016. The consent was issued on a temporary basis expiring on 31 December 2019.

P/16/988/FUL – The retention of the caravan and associated buildings was refused planning permission on 15 March 2019.

P/16/989/RLX – Permission to vary condition 3 of P/15/626/FUL and to allow the number of breeding dogs to be increased on site was issued on 28 April 2017.

P/19/892/FUL – An application has been submitted for the retention of the caravan refused under P/16/988/FUL as a rural enterprise workers dwelling. This application remains undetermined but Members should be aware that the caravan is unauthorised and is the subject of an extant enforcement notice. In assessing the 2016 application for the caravan it was acknowledged that the existing small holding and dog breeding business constituted a rural enterprise but there was no evidence to justify the retention of the residential caravan. That is being reviewed again under this application.

PUBLICITY

The application has been advertised on site.

Neighbours have been notified of the receipt of the application.

The period allowed for response to consultations/publicity has expired.

CONSULTATION RESPONSES

Highway Officer: The proposal seeks to establish the kennels as a permanent development having initially been granted temporary consent under application

P/15/626/FUL. Whilst concerns were raised in Highway observations to the aforesaid application, a temporary consent was issued with restrictions on the level of development and use of the site. Following this temporary period the Highway Authority are not aware of any significant concerns which may have been raised in respect of the use of the access which is owned by the Council. Accordingly it is suggested that subject to similar restrictions on use class and intensity of use there are no highway objections to the proposal.

Garw Valley Community Council: objects to this application on the following grounds:

- The community and Community Council's concerns regarding the welfare of animals kept at the site.
- The previous decision to only grant temporary consent - there have been no changes to the circumstances to warrant permanent consent.
- The highway to the site is not suitable for additional traffic.

Councillor S K Dendy (Local Member): has raised concerns on a number of occasions concerning the condition and treatment of the animals on the property. Reference has been made to a previous ban for keeping dogs and concerns around the means of sale of puppies currently taking place. The Local Member considers that the need for a permanent dog breeding business is unnecessary and she is uncertain whether all previous conditions have been met. Concerns have also been expressed over the implementation of Lucy's Law.

Shared Regulatory Services (Environment (Enterprise & Specialist Services): Ocean Farm Breeding Kennels currently operates under a licence for 8 dogs (7 female and 1 male) and a maximum capacity of 21 puppies at one time. The Animal Health & Welfare Officer has received a large number of complaints regarding breeding at the site, however whenever officers have attended both announced and unannounced, the complaints have not been substantiated.

REPRESENTATIONS RECEIVED

Objections have been received from:-

- 1 Stable Lane - Pantygog
- 4 Stable Lane - Pantygog
- 31 David Street - Blaengarw
- 3 Mount Pleasant - Blaengarw
- 247 Erw Hir – Bridgend
- 125 Merthyr Mawr Road - Bridgend

Three emailed objections have also been received although no postal addresses were provided with the communications. The following is a summary of all the objections received:-

1. Application not in the interests of the well-being of the dogs – puppy farming (high volume breeding) is an unacceptable practice and needs to be abolished – concerns about the sales of puppies from site
2. Any person previously convicted of cruelty to animals should not be allowed to keep animals – is the breeding business currently licenced?
3. Appearance of the site is unkempt – the business is out of keeping with the area
4. Animals are poorly managed on site
5. The highway serving the site is not suitable for additional traffic

COMMENTS ON REPRESENTATIONS RECEIVED

The main objections to this application relate to the welfare of the animals and alleged offences for animal cruelty. These are extremely sensitive and emotive issues that often arise on such applications. The lack of weight normally given to such objections has been addressed in a number of appeals and in particular in a recent case in Blaenau Gwent where the Inspector considered a weight of public objection around the issue of animal welfare. The decision letter reminded us that the planning system should not be used to secure objectives which are more appropriately achieved under other legislation. The Planning Inspector did not however, underestimate the strength of feeling felt by those who had objected and his attention was drawn to issues associated with third-party sales at 'puppy farms' which is the focus of potential legislation dubbed 'Lucy's Law'. He confirmed that such ethical and moral considerations are not material to a planning decision.

The breeding operation at Ocean Farm is fully licenced and monitored by the Animal Health & Welfare Officers of the Shared Regulatory Services Section of this Council.

A puppy farm is an intensive form of dog breeding which is controlled by other legislation and that the planning system is concerned only with material considerations of land use

POLICY CONTEXT

The relevant policies relating to the proposed development from the adopted Bridgend County Borough Council Local Development Plan (LDP) (2013) are:-

- Strategic Policy SP2 – Design and Sustainable Place Making
- Strategic Policy SP3 – Strategic Transport Planning Principles
- Strategic Policy SP4 – Conservation and Enhancement of the Natural Environment
- Policy ENV1 – Development in the Countryside
- Policy ENV4 – Local/Regional Nature Conservation Site
- Policy ENV6 – Nature Conservation
- Policy ENV7 – Natural Resource Protection and Public Health

Supplementary Planning Guidance Notes (SPG): SPG19: Biodiversity and Development

Local Development Plan Policy SP2 (Design and Sustainable Place Making) is the overarching policy which should be considered in the assessment of all Planning applications. It states:

All development should contribute to creating high quality, attractive, sustainable places which enhance the community in which they are located whilst having full regard to the natural, historic and built environment by:-

- 1) Complying with all relevant national policy and guidance where appropriate;
- 2) Having a design of the highest quality possible, whilst respecting and enhancing local distinctiveness and landscape character;
- 3) Being of an appropriate scale, size and prominence;
- 4) Using land efficiently by:
 - (i) Being of a density which maximises the development potential of the land whilst respecting that of the surrounding development; and
 - (ii) Having a preference for development on previously developed land over

Greenfield land;

- 5) Providing for an appropriate mix of land uses;
- 6) Having good walking, cycling, public transport and road connections within and outside the site to ensure efficient access;
- 7) Minimising opportunities for crime to be generated or increased;
- 8) Avoiding or minimising noise, air, soil and water pollution;
- 9) Incorporating methods to ensure the site is free from contamination (including invasive species).
- 10) Safeguarding and enhancing biodiversity and green infrastructure;
- 11) Ensuring equality of access by all;
- 12) Ensuring that the viability and amenity of neighbouring uses and their users/occupiers will not be adversely affected;
- 13) Incorporating appropriate arrangements for the disposal of foul sewage, waste and water;
- 14) Make a positive contribution towards tackling the causes of, and adapting to the impacts of Climate Change; and
- 15) Appropriately contributing towards local, physical, social and community infrastructure which is affected by the development.

The supporting text to this Policy advises that Policy SP2 demands a high quality of design incorporating equality of access in all development proposals and seeks to ensure that new built development is sensitive to its surrounding environment.

In the determination of a planning application, regard should also be given to the requirements of National Planning Policy and the appropriate Technical Advice Notes.

APPRAISAL

The application is being reported to Members due to the number of objections received from residents, the Community Council and the local Ward Member.

Section 73 (S73) of the Town and Country Planning Act 1990 enables an applicant to apply to develop land without compliance with conditions attached to an extant previous planning permission. Under this Section a Local Planning Authority may amend or remove conditions but may not amend any other part of the permission. A successful S73 application results in the grant of a new planning permission and therefore the original permission remains intact. A developer may then elect between them.

When determining a S73 application, the Local Planning Authority may impose conditions beyond those proposed in the application however, the conditions imposed should only be ones which could have been imposed on the original grant. It has previously been held that the amendments permitted should not amount to a “fundamental alteration” of the proposal put forward in the original application

The main issues in the assessment of this application are:-

- i. whether relaxing condition 1 of P/16/989/RLX and permitting a permanent dog breeding operation on site would be compliant with the local and national policies that protect the countryside, safeguard the amenities of residents and the wider environment and
- ii. whether the access arrangements are acceptable to serve the proposed development.

In appraising the original application, it was recognised that all development schemes should contribute to creating high quality, attractive, sustainable places which enhance the community. The countryside, which is the location of this development, is offered special protection and development should benefit the rural economy whilst maintaining or enhancing the environment. Certain developments may be appropriate in the countryside, provided that they will encourage rural enterprise and bring wider community benefits. Given the location of the development, Policy ENV1 represents the starting point for the assessment and indicates that development may be acceptable where it is necessary for:

- Appropriate rural enterprises where a countryside location is necessary for development;
- The suitable conversion of, and limited extension to, structurally sound rural buildings where the development is modest in scale and clearly subordinate to the original structure;

The Policy further states that where development is acceptable in principle in the countryside it should where possible, utilise existing buildings and previously developed land and/or have an appropriate scale, form and details for its context.

At a local level, this countryside location is offered further protection, forming part of the Blaengarw North East Site of Importance for Nature Conservation (SINC).

From a national policy perspective, PPW states that “the countryside is seen as a multi-purpose resource that should be conserved and where possible, enhanced for the sake of its...agricultural value and for its landscape and natural resources. A strong rural economy is however essential to support sustainable and vibrant rural communities and whilst the protection of the open countryside should be maintained wherever possible, the expansion of existing businesses should be supported provided there no unacceptable impacts”.

There has always been some debate as to whether dog breeding is a rural enterprise but it is generally accepted that because of noise from barking, kennels are more appropriate in rural than urban locations. Given that the dog breeding business operates from existing rural buildings and the yard of a smallholding, the development has no significant effects on its rural setting. The condition and appearance of the kennel block that houses the breeding dogs could however be improved and this is more significant given that the application proposes a permanent use. It is therefore considered appropriate to impose a planning condition that requires a scheme of improvements to the external appearance of the building and for those works to be implemented within an established timeframe.

The Planning system should maximise its contribution to achieving the well-being goals and in particular a healthier Wales by aiming to reduce average population exposure to noise pollution. Noise and the impact on the amenities of residents is a material planning consideration. Since the issue of the temporary consent for the breeding operation, the Department is not aware of any complaints being received concerning noise. Members should be mindful that the nearest property is more than 250m from the application site. It is often cited in appeal cases that a breeding operation is far less likely to cause barking as the dogs so kept are used to each other.

A further material consideration following from the keeping of dogs is the question of smell, in particular the disposal of litter. Normally however, smell and health problems which arise from kennels are not sufficiently serious to warrant them being given much weight in the planning decision making process particularly as other legislation may be used to tackle any difficulties. There is no evidence before the Council that the operation is causing any significant harm to the amenities of residents.

In granting the temporary planning permission, the Council's Land Drainage Engineers and Dwr Cymru Welsh Water did not identify any drainage issues although the Council's Ecologist highlighted potential pollution issues associated with the washing down of kennels – the Nant Hir runs adjacent to the site. Kennels can produce both liquid and solid waste. Solid waste is collected and disposed of appropriately. The wash down from kennels is however, discharged onto the permeable yard and whilst some measure have been introduced to prevent the pollution of controlled waters, no details have been formally agreed with the Council. A condition will therefore be re-imposed on any consent granted that will require the agreement of a scheme for the disposal of the 'wash down' from the kennel building.

Safeguarding and enhancing biodiversity and green infrastructure is a requirement of Policy SP2 and follows the requirement of national legislation that requires a public authority to maintain and enhance biodiversity in the exercise of functions in relation to Wales and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions. (Section 6 of the Environment (Wales) Act 2016 refers). Section 6(2) goes on to state that "In complying with subsection (1), a public authority must take account of the resilience of ecosystems, in particular:

- (a) Diversity between and within ecosystems;
- (b) The connections between and within ecosystems;
- (c) The scale of ecosystems;
- (d) The condition of ecosystems (including their structure and functioning); and
- (e) The adaptability of ecosystems."

Regulation 9 of the Conservation of Habitats & Species Regulations 2010 requires Local Planning Authorities to take account of the presence of European Protected Species at development sites. If they are present and affected by the development proposals, the Local Planning Authority must establish whether "the three tests" have been met, prior to determining the application. The three tests that must be satisfied are:

- (1) that the development is "in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment"
- (2) that there is "no satisfactory alternative";
- (3) that the derogation is "not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range".

Given the nature of the development, it is considered that overall there will be no significant adverse impacts on biodiversity. The impacts on the SINC are longstanding and are not exacerbated by the development. Therefore, the proposal is considered to comply with the requirements of the Habitats Regulations 1994 (as amended). Section 6 of the Environment (Wales) Act 2016, guidance contained within TAN 5: Nature Conservation and Planning (2009) and relevant LDP Policies (ENV4 (2), ENV5 & ENV6).

Access to the site was formed as part of the colliery reclamation scheme in the 1990s and as well as serving this registered smallholding, it provides an informal recreational route to the lakes that now form part of the restored landscape. The route is owned by the Council and varies in width from 4 to 6m and is finished in compacted stone. The Transportation

and Development Control Section on the previous applications indicated that the existing access was not suitable to cater for a significant increase in traffic without modification. The applicant indicated that no dogs would be sold from the smallholding. The applicant stated that the dogs would be sold from his property in Blaengarw. The nature of puppy sales is that purchasers will often want to inspect the kennels and the breeding dogs before being purchased. The applicant's agent maintains that the number of visits are limited and do not represent a significant increase above that associated with the existing small farming enterprise. Highway safety was one of the reasons for issuing the temporary permission and although there is an admission that customers have called to site in breach of the condition, this has not resulted in a reports of conflict in terms of highway safety. Subject to the re-imposition of the condition that prevents the sale of dogs from the application site, the access arrangements are deemed acceptable to serve a permanent dog breeding operation on site. There is no evidence to suggest that calling customers have caused any disturbance to residents on David Street who are closest to the site access. Should the situation change in the future and there is evidence that a greater number of customers are calling to the site, enforcement action in the form of a Breach of Condition Notice, could be served. It is also open to the applicant to apply to relax the requirements of the condition controlling calling customers. Such an application would be considered on its merits at that time.

The Council has always maintained that the dog breeding business can be undertaken without the need for living accommodation on site and this was considered in the refusal of application P/16/988/FUL. The dog breeding operation is however a key element of the rural enterprise and forms part of the justification to retain the caravan. That application remains under review but the grant of a permanent consent for dog breeding would count in its favour. However a number of tests need to be met to support the grant of even a temporary permission for the caravan and to date the evidence is not complete.

Section 3 of the Wellbeing of Future Generations (Wales) Act 2015 imposes a duty on public bodies to carry out sustainable development in accordance with sustainable development principles to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs (Section 5). The well-being goals identified in the Act are:

- A prosperous Wales
- A resilient Wales
- A healthier Wales
- A more equal Wales
- A Wales of cohesive communities
- A Wales of vibrant culture and thriving Welsh language
- A globally responsible Wales

The duty has been considered in the assessment of this application. It is considered that there would be no significant or unacceptable impacts upon the achievement of wellbeing goals/objectives as a result of the proposed development.

CONCLUSION

This application which seeks to relax condition 1 of consent P/16/989/RLX and establish a permanent dog breeding operation is considered an acceptable form of development in this rural location which subject to the implementation of works to improve the external appearance of the kennel building should have no significant impact on the character of its landscape. Biodiversity habitats will be unaffected and subject to conditions, the quality of its natural resources, in this case, water should be safeguarded. Furthermore, the permanent dog breeding operation should not adversely affect the living conditions and well-being of residents or be detrimental to highway safety. The objections offered to this application have been noted but where they relate to animal welfare can be afforded little

weight as such matters are dealt with under other legislation. There are no material planning grounds therefore to refuse this application.

RECOMMENDATION

(R53) That permission be GRANTED subject to the following condition(s):-

1. The development shall be carried out in accordance with the plans received on 24 September 2015 and 7 January 2016 as agreed under Planning application P/16/989/RLX.

Reason: To avoid doubt and confusion as to the nature and extent of the approved development.

2. The site shall only be used for Dog Breeding with no sales of dogs/puppies taking place at any time from the site. The total number of dogs kept on site including puppies and pets, shall not at any time exceed 50.

Reason: To ensure that the Local Planning Authority retains effective control over the use in the interests of the general amenities of the area and in the interests of highway safety.

3. Within one month of the date of this permission, a scheme for the effective disposal of dog waste and details of the means of containing and disposing kennel wash-down and surface water on site shall be submitted to the Local Planning Authority. Within three months of the approval of the scheme, the disposal of dog waste and kennel washdown shall be implemented as agreed and undertaken throughout the duration of the approved use.

Reason: To prevent pollution of the adjacent watercourse.

4. Within one month of the date of this permission, a scheme to improve the appearance of the kennel building shall be submitted to the Local Planning Authority. The scheme shall incorporate measures to re-clad/re-render the external walls and to replace/repair the existing roof finish. The agreed scheme of improvement works shall be carried out within 6 months of the date of the details having been agreed.

Reason: To improve the appearance of the building in the interests of protecting the landscape and rural character which provide the setting for this development.

* THE FOLLOWING ARE ADVISORY NOTES NOT CONDITIONS *

The applicant is advised that effluent from kennels and the in-combination effect of the adjacent stables and its associated pollution risks can have serious pollution implications also prosecutable under the Environmental Protection Act 1990, the Groundwater Regulations 1998 and the Water Resources Act 1991 Section 85. The developer should ensure that they comply with the law and follow pollution prevention guidelines, for example Works and Maintenance in or near Water: PPG5 Environment Agency. There is a Duty of Care which requires that:-

- the land owner ensures that all waste is stored and disposed of responsibly,
- it is only handled or dealt with by individuals or companies that are authorised to deal with it and
- a record is kept of all wastes received or transferred through a system of signed Waste Transfer Notes.

The submission for condition 3 should include pollution prevention control measures to ensure that drainage is properly designed and installed and sound waste management and spillage control measures will be in place and are able to cope with extreme pollution events such as storms.

Incorporating biodiversity enhancements could help contribute to the environmental sustainability of the development and the incorporation of bat bricks, bat tiles and bat boxes into the development would provide summer roosting opportunities for bats. The developer's attention to wildlife and development and opportunities for enhancements which can be found in the Biodiversity and Development Supplementary Planning Guidance (SPG): A Green Infrastructure Approach.

**JONATHAN PARSONS
GROUP MANAGER PLANNING & DEVELOPMENT SERVICES**

Background Papers

None