

24/18/0049

RUSHTON DOG RESCUE

Change of use of land and buildings to mixed use residential and dog rescue centre at Priory Farm, Birds Farm Lane, Knapp, North Curry (resubmission of 24/18/0032) (retention of works already undertaken)

Location: RUSHTON DOG RESCUE, PRIORY FARM, BIRDS FARM LANE,
KNAPP NORTH CURRY, TAUNTON

Grid Reference: 329965.125613 Retention of Building/Works etc.

Recommendation

Recommended decision: Conditional Approval

Recommended Conditions (if applicable)

1. No more than 20 dogs shall be kept at the site at any one time. The operators of the premises shall keep records of all dogs kept at the site and these shall be available for inspection at all times by officers from the local planning authority.

Reason

In the interests of amenity and to ensure that the intensity of use of the site does not increase.

2. The application site shall not be used for fundraising events, open days and charity events.

Reason

In the interests of amenity and highway safety, and to prevent parking on the public highway.

3. The use of land and buildings hereby permitted shall be discontinued and the land restored to its former condition on or before 2 August 2020 in accordance with a scheme of work that shall be submitted to and approved by the Local Planning Authority prior to those approved works being carried out.

Reason: To allow the Local Planning Authority to reassess the impact of the use and development upon the area and local residential amenity within an appropriate time frame

4. When exercising the dogs outdoors they shall be supervised at all times. No

dogs shall be exercised out of doors between the hours of 9pm at night and 7am the following morning.

Reason

In the interests of amenity and to prevent noise at night.

5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 or any order revoking and re-enacting the 2015 Order with or without modification), no outbuildings shall be erected on the site other than that expressly authorised by this permission shall be carried out without the further grant of planning permission.

Reason: To prevent the development of further facilities for housing dogs which are not part of the development hereby approved.

Notes to Applicant

1. In accordance with paragraph 38 of the National Planning Policy Framework the Council has worked in a positive and pro-active way with the applicant and has negotiated amendments to the application to enable the grant of planning permission.
2. Development, insofar as it affects the rights of way should not be started, and the rights of way should be kept open for public use until the necessary Order (temporary closure/stopping up/diversion) or other authorisation has come into effect/ been granted. Failure to comply with this request may result in the developer being prosecuted if the path is built on or otherwise interfered with.
3. No animal known to the landowner to be dangerous should be kept in the same enclosure as public footpath T 17/43.

Proposal

Change of use of land and buildings to mixed use residential and dog rescue centre at Priory Farm, Birds Farm Lane, Knapp, North Curry (resubmission of 24/18/0032) (retention of works already undertaken)

Site Description

The site is a former farmhouse with a range of small outbuildings and associated curtilage land, the applicants also have use of adjoining agricultural land. A public footpath runs through the site. The site has an existing highways access and is located at the end of a narrow road. There are residential dwellings, including holiday lets to the south (approximately 110m) and south-east (approximately 130m). To the north and west the site is surrounded by agricultural fields

Relevant Planning History

24/18/0032 - change of use of land and buildings to a mixed use residential and dog

Consultation Responses

NORTH CURRY PARISH COUNCIL - North Curry Parish Council objects to the granting of permission for the following reasons – The footpath diversion and change of usage, further details below;

1. Noise - the noise from Priory Farm is unacceptable being frequent, highly intrusive and occurring from early morning to late at night. This affects a large number of properties, there being 25+ properties within 500m of Priory Farm, (hardly a “sporadic hamlet”). The noise is not temporary as stated in the Agent’s letter as there is a continual changeover of dogs due to the nature of the business. Neighbours have also noted that on occasions where the site has been visited for the purposes of considering this application, that the noise has reduced and query if some dogs are removed from site on these days.

2. There is a public footpath in existence directly behind the house which has been blocked and diverted without permission. It would be difficult to enforce the maintenance of the footpath if it is not an official diversion. Even with the diversion there is risk of coming into contact with the dogs as they access the land associated with Priory Farm. It is understood that this planning application cannot be agreed until an application to divert the footpath has been formally agreed.

3. Health and Safety – the source of many of the dogs means they would be unsocialised and pose a greater risk to the public and livestock. The number and nature of the dogs being exercised at one time is causing people to feel intimidated when meeting them while using the footpath across the farm and on surrounding paths. There are also a number of reports of dogs having escaped and being loose without the owner’s knowledge onto the footpath and surrounding areas.

4. There is concern that this is a residential property that has not got the necessary facilities for a dog rescue centre. (It is noted that, in addition to rescue dogs waiting for rehoming, the Rushton Rescue Centre website suggests that a further 25 dogs, that the applicant doesn’t want to part with or that aren’t suitable for rehoming, are resident at the property on a long term basis.)

5. The Parish Council has concern about the accuracy of the application and Agent’s covering letter, bearing in mind this is a retrospective application. These include:

- At item 6 of the application form, the proposal does require a diversion of a right of way, the currently approved right of way passes directly behind the property but has been unofficially diverted.

- The agent claims that “most of the land comprises woodland” and this is indicated on the site plan, however this is not the case. The “woods” are open fields with occasional trees, with one very small area of woodland at the end, this does not serve to muffle the noise of the dogs in any way as claimed.

[later comments were also received]

‘The situation we saw on our visit was artificial, as all the dogs were in the house, and not running in the exercise lawn. How could Mr Lawrey judge the noise levels as the dogs were not running loose, which is the norm during a normal day. Therefore a visit should be made when the dogs are out.’

SCC - TRANSPORT DEVELOPMENT GROUP - The proposal is to regularise works already undertaken at the site to change the use of land and buildings from agricultural to a mixed residential and dog rescue centre at Priory Farm in Knapp.

The site lies to the north east of Birds Farm Lane, which is accessed from Knapp Lane in the hamlet of Knapp, near North Curry. Birds Farm Lane is a narrow, single carriageway, declassified highway with a derestricted speed limit with Knapp Lane being a classified un-numbered derestricted highway. Observed speeds on site are approximately 25-30mph.

The extant permitted use of the site is as an agricultural unit which would see some vehicle movements to and from the site. The application is accompanied by a planning statement that identifies that members of the public are not encouraged to visit the site in order to rehome a dog. To this end it is not considered that the change of use of the site to a mixed residential and dog rescue centre would see a material increase in traffic movements over the extant agricultural use.

Given that the change of use, as set out in the planning statement, would not seem to result in a significant increase in vehicle movements the Highways Authority would not raise an objection, however, should the mechanism of the rehoming of the rescued dogs alter the Highways Authority would welcome the opportunity to revisit their response.

SCC - RIGHTS OF WAY - various discussions were held between the LPA and SCC PROW officers, the final consultation response is below:

I can assume from this that the applicant hasn't provided any information on dangerous dogs that they might keep on the premises?, which if kept in the same enclosure as the footpath we would class as an 'obstruction'.

In addition to having an informative about the diversion application, please also add the following standard text as an informative:

Development, insofar as it affects the rights of way should not be started, and the rights of way should be kept open for public use until the necessary Order (temporary closure/stopping up/diversion) or other authorisation has come into effect/ been granted. Failure to comply with this request may result in the developer being prosecuted if the path is built on or otherwise interfered with.

This informative is part of our standard response, but for some reason fell off the initial consultation response on this application. I'm afraid we don't have a specific diversion reference as yet, as we haven't started a legal file. I suggest you use the footpath reference as the reference when referring to the diversion application, ie: T 17/43.

Not something that would necessarily be suitable for a condition, but given the commentary surrounding this application would you be happy to include a further informative to the effect of:

No animal known to the landowner to be dangerous should be kept in the same enclosure as public footpath T 17/43.

LANDSCAPE - no comments received

ENVIRONMENTAL HEALTH - NOISE & POLLUTION - Thank you for consulting on the above application regarding concerns about noise.

Some information has been submitted with the application, including plans of the site and a Planning Statement from Dorset Property Surveys (29th November 2018). I have also recently received a copy of an email from the applicant (dated 3 July 2019) giving information on the numbers of dogs at the property.

The information states that the proposed use is as a residential and dog rescue centre and that the premises has been used for this purpose for a period of time.

It states that dogs are housed in the farmhouse, they are exercised outdoors in the morning and no new buildings will be built. It accepts that there may be some noise during the day when dogs are exercised outdoors, but says that there will not be any noise at night as all the dogs will be housed inside the farmhouse. There is an outbuilding which provides an alternative kennelling facility for boisterous dogs or when animals need to be separated.

The planning statement says that some dogs can cause more noise than others, but says this is a temporary problem as all of the dogs are available for adoption and "generally dogs will only be held on site for a matter of weeks before moving on to their new homes". It also says that dogs will be encouraged to remain quiet. It mentions that there is woodland and hedges around the property and states that the noise will be occasional and sporadic and not out of place or intrusive.

Comment.

Environmental Health have received 3 complaints from nearby residents about the noise from dog barking at Priory Farm (in February and March 2019). In line with the Council's procedures a letter was sent to Priory Farm and letters and diary sheets sent to the residents asking them to keep a record of when the noise is affecting them at their property. So far no diary sheets have been returned.

The planning statement does give some information on noise, however, there is no detailed noise assessment, therefore it is not possible to give an objective comment on the potential for noise to affect any nearby neighbours.

I note that the proposal is to keep the dogs inside a residential property rather than kennels. From a noise perspective a residential building is likely to provide better noise attenuation than an outdoor kennel (unless the kennels are purpose built to contain noise), although there is no information to be able to confirm this.

For information, trees and hedges do not attenuate noise.

Regarding the number of dogs that have been on site, the email from the applicant lists 17 dogs that have been in "permanent residence" and 5 dogs looking for home. The Planning Statement says that the dogs would be kept on site for a few weeks before moving on, so it is not clear about the number of dogs that have been on site since the operation started.

The application does admit that there could be some noise from dogs when outside. However, there is also no information about where the dogs have been kept and how long they have been outside, Therefore, it is not clear whether the noise generated over the last year or so will be the same if the new proposal for 25 dogs is given permission.

Assessing the potential noise from dogs/kennels is not straightforward, as there is no standard way to measure or assess noise from dog barking, and no criteria against which to compare any predicted noise levels. Also, noise from dogs can be very varied depending on the individual dog and the management of the operation.

If the proposal is to go ahead the best way to control any noise would be

- Limit the number of dogs that can be housed at the property

- Restrict where the dogs can be housed (the application says this will be inside the farmhouse, is there anything to prevent the applicant from keeping dogs outside or in kennels?)
- It is possible to put a restriction on the number of dogs that can be exercised outside at any time, and ensure that they are supervised at all times so that they can be controlled if they become noisy?

PLANNING ENFORCEMENT - This application was submitted as a result of a current and pending planning enforcement case. Please contact me should you need any more information.

Representations Received

One representation in support of the application has been received.

Seventeen representations objecting have been received, although three of these are sent from the same address and correspondents as others, so it can be said that fourteen separate households have sent in letters of objection. The main issues cited are:

- Noise from dogs barking and howling, including long term detrimental impacts particularly due to way dogs are allowed to exercise outdoors without restrictions and behave as a pack
- Reduction in noise impacts when planning applications are submitted and then noise returns to previous levels
- Noise was lower when planning officer visited the site but should be recorded during an unannounced visit
- Blocking of public right of way and need for footpath diversion order
- Walkers put off by danger from dogs
- Risk of dogs escaping, including instances cited when this has happened
- Traffic impacts on narrow lane accessing the site
- Possible use of the site for fundraising and other charity events, and impacts on parking and traffic as a result
- Mistakes in the submitted documentation
- Area described as woodland is not forested
- A previous case in the area of dog breeding from circa 2004 resulting in noise issues which would be greater with the current application

Planning Policy Context

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise.

The development plan for Taunton Deane comprises the Taunton Deane Core Strategy (2012), the Taunton Site Allocations and Development Management Plan (2016), the Taunton Town Centre Area Action Plan (2008), Somerset Minerals Local Plan (2015), and Somerset Waste Core Strategy (2013).

Relevant policies of the development plan are listed below.

ROW - Rights of Way,
DM1 - General requirements,
DM2 - Development in the countryside,
CP8 - Environment,

This takes into account the recent adoption of the SADMP.

Local finance considerations

None

Determining issues and considerations

The main issues are the principle of development, proposed use and scale, noise and amenity, public right of way, highways and traffic impacts, landscape impacts and waste disposal.

Principle of development

This application follows from a previous application at the site for essentially the same development, which seeks to gain retrospective consent for the change of use of a farmhouse and associated land to a mixed residential and dog rescue centre use. The previous application was withdrawn due to issues with the public footpath which runs through the site not having been adequately addressed in the application. The previous application, reference 48/18/0032 followed on from a current enforcement case (E/0074/24/18) related to the unauthorised change of use. It is acknowledged by the applicants that the use of the site for this purpose has been ongoing since circa 2017.

Use and scale

The applicant has supplied information which indicates that there are currently a total of 22 dogs housed at the site and the application seeks permission for a maximum number of 25 dogs at any one time to be kept within the grounds. A number below this level is not considered by the applicants to be viable. The site is run as a rescue centre for dogs, many of which are imported from abroad and have been through the requisite quarantine procedures first. Many, although not all of the dogs, are intended to be re-homed after a period of rehabilitation at the site. The applicant has stated that 17 of the dogs are permanent housed there, others are temporarily homed at the site whilst undergoing a process of rehabilitation. The dogs are principally housed within the main farmhouse building, staying with humans to aid in their rehabilitation as many are from distressed backgrounds. Some dogs are also kept in isolation in outbuildings. The proposed scale of use, at a maximum number of 25 dogs, is not considered to be appropriate for the size of the dwelling and associated land, a lower figure of 20 is considered acceptable, subject to an evaluation of amenity impacts and other considerations. As the supplied information from the applicants indicates that currently there are 22 dogs at the site a figure of a maximum of 20 would not then require removal of the majority of existing dogs that are housed at the site and would prevent a further intensification in the use as

proposed. It is also recommended that if permission is granted it is on a temporary basis, for a year, so that the planning authority and colleagues in Environmental Health, have the opportunity to assess impacts. The site is rented and the use applied for is *sui generis* (not a recognised specifically defined use in the use classes order) and is only of relevance to the current applicants, so in this instance a temporary permission is considered to be appropriate.

The site (in terms of the dwelling) is more than 100m from the nearest neighbouring dwelling (this is distance is disputed in some of the letters of representation but measurements taken from the LPA's mapping system confirm that the nearest dwelling to the host site is 111m to the south, the boundaries to the curtilage are however closer). The site is relatively isolated and, as such, is well placed to provide such a facility. Comparable sites such as the St Giles Animal Centre in Wrantage, and the RSPCA facility in West Hatch are located much closer to residential properties, in the case of St Giles these are within 20m of the site. However these are purpose built facilities and the proposed development is largely reliant on using a domestic dwelling to house the majority of the dogs.

Noise and amenity impacts

The assessment of impacts on amenity is based upon a comparison between the use as proposed and that of the dwelling and land before the unauthorised use commenced, when it was a residential dwelling and had been in use as a farmhouse with attendant animals, including dogs likely to have been present at the site. At a domestic scale it is likely that neighbours and others will also keep dogs and it is of relevance to consider the differences between a domestic scale use of dwellings for the keeping of dogs and the intensification in this activity that the application seeks permission for. A domestic scale keeping of dogs as pets could perhaps see up to five or six dogs, and similar might be expected of working dogs on, as an example, a sheep farm. The scale of use proposed is considered to be nearer to that of fox hunting kennels which could witness over 30 dogs housed in one location, or a commercial pet boarding kennel. Facilities such as commercial kennels and fox hunt kennels are usually located in fairly remote places, away from residential properties due to potential impacts from noise.

Prior to 2019 the council's Environmental Health department had not received any complaints about noise, since then one complaint was received in February 2019 and two in March 2019. However it is acknowledged that in terms of this application and the previously withdrawn application virtually all objections cited the main issue as being noise impacts from barking and howling. The consultation response has requested that restrictions are put on maximum numbers of dogs to be kept at the site, that when dogs are exercised they are supervised and that dogs are only housed in the existing facilities, namely the house and existing outbuildings. These can be set by condition, including a condition restricting permitted development rights for outbuildings. Additionally a condition would be attached to any permission granted stopping outdoor exercising of dogs at night between the hours of 9pm and 7am, this would help to mitigate the impacts of disturbance to neighbours.

It is considered that taking as baseline the potential noise that could be generated from the keeping of perhaps five or six dogs on working farm, or as domestic pets, would not be significantly less than that of up to 20 dogs as a total maximum,

although the 25 figure as proposed by the applicants is considered excessive. Evaluating noise impacts is complex and is partially dependent upon how dogs are managed and if they were kept in sound-proofed environments. Whilst there have been recent complaints about noise the centre was in operation for several years before any complaints were received. However 25 is considered to be more than the site can cope with in terms of the facilities available and concurrent impacts on amenity from excessive noise. Therefore 20 should be an absolute maximum number and if the application is approved this should be set by condition which would include provisions for accurate and up to date records to be kept of all dogs (including those that the applicants view as 'pets') housed at the site, and that such records will be available for inspection by local authority officers at all times.

Public Right of Way

The site has part of the T17/43 public right of way (PROW) passing through it. The applicant has confirmed that continued rights of way will be fully observed at the site and no obstruction will be placed over this footpath. There is also a 'permissive' path running around the site which has been in use for some years, however this has no formal status as a right of way. The applicants have applied to have the footpath diverted around the site to the County's PROW department. The PROW officer has not objected to the application but has requested that two informatives are placed on any permission granted, partially addressing the issue of the diversion order and also the potential existence of dangerous dogs which could be housed at the site. The officer has stated that any dog which could bar entry to members of the public would be considered as an 'obstruction', and, as such, would not be in compliance with the relevant legislation. However provided that any animals considered to present a risk to the public are controlled the PROW team do not object to the application. It is considered that the issue of dangerous dogs is akin to that of a right of way running through a field used by livestock, in which a farmer would have a legal duty to ensure the safety of the public when they used the footpath, and, as such, does not represent a material reason to refuse the application.

Highways

The Highways Authority have concluded that the application, as it stands, does not represent a significant increase in traffic volumes and have not objected to the proposal. The site is accessed via a narrow lane which is unsuitable for large increases in traffic. However it is considered that the proposed development would not significantly increase trip generation.

Waste

The applicants have stated that dog waste from the site is managed via a dedicated toxic waste facility. This considered to be acceptable.

Landscape impacts

A letter of representation has raised the issue of a fence which has been erected around the garden/paddock area used for exercising dogs. This cited as being 6'

high which would mean that it is likely to be permitted development. Whilst this may have minor detrimental impacts on the landscape character as permitted development the LPA would have no control of such boundary treatments and overall the proposed development has little discernible impact on the landscape.

Other matters

Letters of representation have been received mainly objecting to the development although one letter of support has been received. The main issues raised are noise, access to the footpath, traffic impacts and risks of dogs escaping. These matters are discussed above. One letter also raised the issue of the site being used for fundraising events. This is not considered to be an appropriate use of the site and a condition will be in place to stop such uses.

The parish council have commented that they object due to noise impacts, problems with accessing the footpath, inaccuracies in the submitted documentation, health and safety concerns and unsuitability of the dwelling to function as a rescue centre. These matters are dealt with above.

Conclusion

Whilst there are clear issues related to the use proposed it is considered that a reduction in the scale of the proposed use would help to mitigate impacts on amenity from noise generated by the dogs. Additionally removal of permitted development rights would stop any new outbuildings. An issue raised by an objector related to the potential use of the site for charity events can also be controlled by condition. As the application is retrospective conditions cannot be 'prior to commencement' but the use of a time-limited permission would allow for an evaluation of the site over a year to see if professional management practices can be put in place to curtail detrimental noise impacts. It is noted in several letters of objection that noise problems have tended to be minimal when planning applications are submitted which suggests that it is possible to properly manage the dogs to reduce, if not completely eliminate noise issues. Therefore a time-limited permission is considered to be appropriate for the applicants to demonstrate that they can provide a good charitable service for their stated purposes and act as responsible neighbours, taking the views of objectors into account. Additionally a time-limited permission would allow time for the process of the application for a footpath diversion to be completed

In preparing this report the planning officer has considered fully the implications and requirements of the Human Rights Act 1998.

Contact Officer: Mr Alex Lawrey