

Appeal Decision Notice

Decision by Michael McGlynn, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-190-2083
- Site address: The Stables, Brown Street, Greenholm, Newmilns, East Ayrshire, KA16 9BP
- Appeal by Mrs W Brown against the decision by East Ayrshire Council
- Application for planning permission 21/0864/PP dated 14 December 2021 refused by notice dated 22 April 2022
- The development proposed: to change the use from a builders yard to form a dog kennel
- Date of site visit by Reporter: 29 August 2022

Date of appeal decision: 9 September 2022

Decision

I dismiss the appeal and refuse planning permission.

Reasoning

Development Plan

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan the key issues are: principle of development, impact on residential amenity, and site layout and servicing.
2. The development plan in this case comprises the East Ayrshire Local Development Plan 2017 (LDP) and the Minerals Local Development Plan 2020 and associated statutory supplementary guidance. The minerals local development plan is not relevant in this case nor any supplementary guidance.
3. The appellant has questioned which policies of the local development plan are relevant and in turn this has affected how they have put a case forward for the proposal. I find that it is for the appellant to take a view on this matter in making a submission through the appeal process. In this respect I note that the appellant has not indicated which policies of the local development plan should be considered.
4. Following on from the above, I find that the relevant policies of the East Ayrshire Local Development Plan 2017 are: Policy IND2 General Business and Industrial Development, Policy RES11 Residential Amenity, Policy T1 Transportation Requirements for New Development, Policy INF2 Installation of Next Generation Broadband for New Developments, Policy ENV11 Flood Prevention, Policy ENV 12 Water, Air and Light and Noise Pollution, Policy ENV 13 Contaminated Land, Policy ENV14 Low and Zero Carbon Buildings, Policy WM3 Sustainable Waste Management and New Developments, and Overarching Policy OP1.

5. I note from the council's submission that the East Ayrshire Local Development Plan 2 has been consulted upon. No parties have drawn my attention to any matters in this plan that is of relevance to the assessment of the proposal.

Principle of development

6. The appeal site is located within an industrial area covered by Policy IND2. This states that proposals for business and industrial developments falling within classes 4, 5 or 6 of the use classes order will be directed to those sites, outwith Strategic Business Locations, safeguarded for business and industrial use as detailed in schedule 3 and on the local development plan maps.

7. Schedule 3 identifies the area, including the appeal site, as a local business location with reference 348B.

8. The proposed development is for a dog breeding kennel which does not fall within classes 4, 5, or 6 of the use classes order. No evidence has been brought to my attention to demonstrate that an exception to the policy is applicable in this case. On this basis I find the proposal is contrary to Policy IND2.

9. Overarching Policy OP1, in summary, sets out criteria for new development with the relevant criteria in this case being (i) compliance with the LDP vision and spatial strategy and relevant policies, (ii) compatible with surrounding uses, (iii) enhances the amenity of the area in terms of site layout and design, and (xi) meet with the requirements of the Ayrshire Roads Alliance. I address criteria (ii), (iii) and (xi) in the sections below.

10. As I note above, the proposal is contrary to the land use allocation for business and industrial uses as established by Policy IND2. On that basis I find that the proposal therefore does not comply with the local development plan vision and spatial strategy and therefore contrary to criteria (i) of Policy OP1.

11. I am mindful that the proposal may potentially provide some economic benefits through its operation and employment opportunities. However, no evidence has been brought to my attention that demonstrates that the economic benefits of the proposed use outweigh the policy requirement to safeguard the site for business and industrial uses, which if developed for those purposes, would bring economic benefits.

12. On the basis of the above, I find that the principle of the proposed development at this location is contrary to Policy IND2 and criteria (i) of Policy OP1.

Impact on residential amenity

13. To the north of the appeal site is a line of deciduous woodland which is adjacent to the River Irvine and on the opposite side of the river are rear gardens of semi-detached residential properties within an established residential area. Given the relationship between the proposed use and the residential properties, the potential impact on residential amenity is a consideration.

14. Policy RES11 Residential Amenity states that the council will, at all times, seek to protect, preserve and enhance the residential character and amenity of existing residential areas. There will be a general presumption against the establishment of non-residential uses within, or in close proximity to residential areas which potentially have detrimental effects on local amenity or which cause unacceptable disturbance to local residents.
15. I note from the council's report of handling that the appellant holds a licence to keep a breeding establishment for dogs at the appeal site. I understand that this allows for 10 dogs to be accommodated at the site, eight breeding bitches and two stud dogs. I also note that the appellant has applied to increase the number of breeding bitches.
16. Block plan reference number JBBS102 sets out the number and type of buildings proposed. At the site inspection it was noted that a number of the proposed buildings have been erected and this included the repositioning of the whelping kennels next to the block of four kennels. The appellant advised at the site inspection that he was considering re-arranging a number of the buildings. Whilst noting this I have to base my assessment on the information formally submitted as part of the appeal process. From the information submitted and the site inspection I would estimate that the proposal could accommodate between 10 to 12 dogs.
17. The council recognise that given the business and industrial allocation of the appeal site and surrounding area, a degree of noise impact to neighbouring areas may reasonably be expected to occur. However, the council go on to say that the proposed use presents a different noise impact from that associated with general business and industrial uses. Therefore, it is the council's position that it is necessary to properly establish the potential noise impact of this use to determine whether any unacceptable amenity impacts could occur.
18. I agree with the council's view on this matter that the nature of kennels can give rise to noise and disturbance due to dogs barking. This noise has the potential to carry a distance, and therefore be heard by the residents to the north of the appeal site. This could potentially affect residential amenity unless it can be demonstrated that noise levels do not adversely impact residents or can be mitigated through noise reduction measures and/or on site management.
19. I note that the council required the submission of a noise impact assessment (NIA) to demonstrate how noise would be reduced and controlled in so far as is reasonably practical. No such NIA was submitted by the appellant with the planning application. In turn it is the council's view that the appellant has not demonstrated that the site may be considered appropriate for the proposed use at this location, particularly given its proximity to residential properties.
20. The appellant's position is that the council's planning department had stated that they would carry out a noise test and that is why a noise test was not submitted. The appellant was waiting on the council carrying out the test.
21. I note that there is a dispute between the parties on the responsibility for the submission of a NIA. From experience it is normally the responsibility of the applicant to provide the necessary technical submissions in support of their proposal and this is then assessed by the council. The position is that a NIA has not been submitted in support of the proposed development.

22. From the site inspection I observed that there was a low level of background noise associated with the business and industrial uses, including the adjacent electricity sub-station. As part of my site inspection, I also observed the level of noise from the business and industrial uses that could be audible at the properties on Queens Crescent with them being the nearest to the appeal site. From this I noted that there was a very low level of background noise audible from the business and industrial uses. This would not in my view be sufficient to give rise to any significant level of disturbance to residents.

23. By comparison, the noise that could arise from the proposed use is likely to be noticeably different due to the characteristics of audible barking noise from dogs in terms of its impulsivity, duration, frequency of repetition and it could occur at any time of day and night. Noise could arise from dogs as they are exercised and when they are within and transferred to and from the kennels. In this context, I am mindful that there could be up to 12 dogs present on the site at any one time.

24. I find that it is reasonable to conclude that given the nature of the proposed use and its relationship to residential properties that noise arising from the proposed use would be audible to residents. Due to the nature and potential level of noise, I find that it would likely disturb residents to a degree that would not protect, preserve and enhance residential character and amenity. In the absence of a NIA the appellant has not demonstrated that the noise arising from the proposed use would not have an impact on residential properties. This I find is a significant issue in assessing the suitability of the proposed use at this location and I agree with the council's view that it would therefore not be appropriate to address this through the use of a planning condition. On this basis I find that the proposal is contrary to Policy RES11.

25. The relevant section of Policy ENV12 relating to noise states that all new development must ensure that significant adverse noise impacts on surrounding properties and uses are avoided. A noise impact assessment may be required in this regard and noise mitigation measures may be required through planning conditions and/or section 75 obligations.

26. No NIA has been submitted to demonstrate that this proposal would not have significant adverse noise impact on surrounding properties and uses. No evidence has been brought to my attention that would demonstrate any potential noise issues can be addressed through mitigation measures and could be controlled through planning conditions and/or section 75 obligations. Therefore, I find that the proposal does not comply with Policy ENV12.

27. Given my findings in relation to Policy RES11 and Policy ENV12, I find that the proposal in terms of noise impact would not be fully compatible with surrounding established uses, in particular residential uses. Therefore, I find that the proposal is contrary to criteria (ii) of Overarching Policy OP1.

28. Based on the above, I conclude the proposal would have an unacceptable impact on residential amenity and therefore contrary to policies RES11, ENV12 and OP1 (ii).

Site layout and servicing

29. In the council's report of handling a number of detailed matters relating to the layout and servicing of the site has been considered. The council concludes that these detailed matters can be addressed through the use of planning conditions and therefore would comply with the relevant local development plan policies: T1, INF2, ENV11, ENV13, ENV14 and WM3. I agree with that position having reviewed the consultation responses and policy requirements.

30. Given the siting, scale and design of the buildings they would have a minimal visual impact on surrounding uses, including the residential properties to the north. Due to the functional design of the buildings and positioning within the appeal site the proposal does not enhance the character and amenity of the area as required by criteria (iii) of Policy OP1, however it does not detract from it either. I note that there are no objections from the Ayrshire Roads Alliance. On this basis I find that the proposal broadly complies with criteria (iii) and (xi) of Policy OP1.

31. I find that the detailed aspects of the proposal meet with the requirements of local development plan policies or can be made to do so through planning conditions. However, I do not consider this to be sufficient to offset the lack of compliance with other policies that do not support the development at this location.

32. On the foregoing assessment as a whole, I conclude that the proposed development does not accord with the local development plan.

Material considerations

33. In the council's report of handling they have assessed the proposal against Scottish Planning Policy and noting that the development plan is more than 5 years old. This assessment concludes that the proposal does not accord with Scottish Planning Policy. The appellant has not commented on this matter.

34. I have addressed the matters raised by the council in the context of Scottish Planning Policy in my assessment of the proposal against the local development plan in relation to the use of land allocated for business and industrial uses and impact on surrounding uses. I therefore find that the proposal is not consistent with Scottish Planning Policy in terms of allocating land for business and employment uses while taking into account the impact on surrounding sensitive uses and local amenity.

35. The proposal has attracted a level of public interest. The issues raised, in summary, relate to: noise from the facility at present and concern for further noise, impact on enjoyment of garden from noise, unable to open windows at night due to noise, concerns regarding waste management arrangements and an increase in traffic. I have considered the above issues in my assessment of the proposal in the preceding paragraphs.

36. Within the representations I found several issues that are not material to the consideration of this appeal. In summary, these issues relate to: animal welfare, no details on expected litter numbers, appropriateness of the appellant to operate a commercial venture, too many commercial breeding facilities and how they are operated.

37. The appellant has stated that the relevant certifications are in place required to operate the kennels and there has been regular inspections by council officers. I understand that the appellant is referring to the licence to keep a breeding establishment for dogs. This licence and inspection regime is dealt with through separate legislation distinct from the consideration of the proposed use through the planning process. Scottish Planning Policy broadly directs that the planning system should not duplicate other control regimes or secure objectives that are properly achieved under other legislation. I appreciate the point the appellant is seeking to make, that there are relevant certifications in place that allow for the operation of the kennels. However, it does not follow that planning permission is inevitably approved as the assessment of the proposal through the planning system requires to consider other matters, as set out in the preceding paragraphs. Therefore, while the existence of the licence is a material consideration it is not one that I consider to be of significance nor offsets the planning issues I have identified in my assessment of the proposal.

38. I have addressed the appellant's comments in relation to the submission of a noise impact assessment above. The issue of the council informing the appellant on proposed planning conditions is not a matter for me to comment on.

39. Overall, I conclude that the relevant material considerations, including issues raised in the representations, support dismissing the appeal.

Conclusions

40. I therefore conclude, for the reasons set out above, that the proposal does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would justify granting planning permission. I have considered all the other matters raised but there are none which would lead me to alter my conclusions.

Michael McGlynn
Reporter