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## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 28/02/20

gan Paul Selby BEng (Hons) MSc  
MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 08.04.2020

## Appeal Decision

Site visit made on 28/02/20

by Paul Selby BEng (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 08.04.2020

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**Appeal Ref: APP/X6910/A/19/3243676**

**Site address: Star Fields, off Mountain Road, Grid Ref 317718 209001, Ebbw Vale**

**The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Lee Bowerman against the decision of Blaenau Gwent County Borough Council.
  - The application Ref C/2019/0090, dated 29 May 2019, was refused by notice dated 4 October 2019.
  - The development is the change of use of stable (building 4), outbuilding and containers for storage purposes; and the change of use of stable (building 1) to dog breeding kennels.
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### Decision

1. The appeal is allowed and planning permission is granted for the change of use of stable (building 4), outbuilding and containers for storage purposes; and the change of use of stable (building 1) to dog breeding kennels, at Star Fields, off Mountain Road, Grid Ref 317718 209001, Ebbw Vale, in accordance with the terms of the application, Ref C/2019/0090, dated 29 May 2019, subject to the conditions set out in the schedule to this decision letter.

### Application for costs

2. An application for costs was made by Mr Lee Bowerman against Blaenau Gwent County Borough Council. This application is the subject of a separate Decision.

### Procedural Matters

3. After the Decision Notice was published the Council issued a Certificate of Lawfulness of Existing Use or Development (CLEUD) in relation to the appeal site (ref: C/2019/0293). This confirms the lawfulness of the six 'substantially completed' structures erected on the appeal site but it does not extend to their use as dog breeding kennels or storage. The CLEUD represents a material change in circumstance since the planning application was determined, and one on which parties have been able to comment during the appeal. I have therefore had regard to it.
  4. Since retention is not an act of development as described in section 55 of the Town and Country Planning Act 1990 I am treating the appeal as one for planning permission for development as has been carried out. Consequently, and notwithstanding the description given on the planning application, I have amended the
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description of development to omit the word 'retention'. Whilst the CLEUD notes that no evidence has been submitted to demonstrate the lawful use of buildings on the site, there is little dispute that the appeal development seeks to retrospectively change their use. Consequently that is how I have described the development.

5. I note that an enforcement notice has been served in relation to the wider landholding, purporting to an importation of waste material and associated engineering works. The alleged breach of planning control relates to an area of land outside the appeal site. This matter lies outside the scope of this appeal and I have therefore not had regard to it when coming to my decision.

### **Main Issue**

6. The Council's reason for refusal relates to the visual effect of the development on the Special Landscape Area (SLA) in which it is situated. Having regard to this reason for refusal and all other material submitted, I consider the main issue in this case to be the effect of the development on the character and appearance of the SLA.

### **Reasons**

7. The appeal relates to an area of tiered land accessed via a narrow rural lane and situated on a steep hillside to the east of Ebbw Vale. The site hosts two clusters of steel or concrete structures of various sizes, a service bay and a sloping track. The former Morning Star Inn, now a dwelling with two attached cottages, lies to the north; otherwise there are few other buildings in close range.
8. The site lies within the Mynydd Carn-y-Cefn and Cefn yr Arail SLA as designated in the Blaenau Gwent Local Development Plan (LDP). The grasslands, dispersed woodland, hedgerows and stone boundary walls of this SLA provide a defined rural setting to the urbanised valley floor to the west. The SLA's open character and relative absence of built form are key features which contribute to its landscape value.
9. Several of the structures on the appeal site have an unkempt visual appearance. Nonetheless, all six have been confirmed as lawful in their substantially completed state; that is, they are exempt from planning control. On the evidence before me I consider it likely that they would remain in situ even were I to dismiss the appeal. Consequently, irrespective of whether the structures were erected prior to the SLA being designated, the question at hand is whether their change of use to kennels and storage has a materially harmful visual impact on the SLA.
10. The structures clustered at the eastern edge of the appeal site are modest in scale. Whilst they are clearly visible from the lane, even at close range there is little to indicate that they are not used for activities more typically found in a rural location, i.e. for the keeping of livestock or horses. They are thus not perceived as obtrusive.
11. Two of the three structures in the western cluster are greater in scale. The largest of these ('building 1') is used for dog breeding kennels and is the focus of the Council's concern. Roller shuttered doors have been installed to the front and rear, with double glazed windows to the side elevations providing light to the interior. Although not typical of a stable building, the windows are not prominent features due to their modest size, external treatment and the building's position between an embankment and a neighbouring store. The roller doors are more apparent, but their brown coating and the building's orientation relative to the landform reduces their prominence. Moreover, given the building's form and scale the roller doors do not appear overtly urban or obtrusive.

12. Other than some external tanks there is little else to indicate that the use of building 1, or the two adjacent structures, are used for dog breeding kennels or storage. Whilst engineering works may have taken place to facilitate the current use, the land profiling within the appeal site is not unsympathetic to the underlying topography and the visual impact of hard surfaced areas is softened by grass verges. In any case, the structures in their present location have been confirmed as lawful.
13. Consequently I find that the use of the site for dog breeding kennels and storage has a minor visual impact, not only in longer distance views from the west but also at close range. The use is not perceived as inappropriate to its context, or as representing a material urbanisation of the site, with little detectable harm to the landscape qualities for which the SLA has been designated. Whilst the external proliferation of feed, waste, refuse, storage tanks, lighting or other paraphernalia associated with the dog breeding kennels and storage use would have the potential to cause visual harm to the SLA by eroding the site's openness and rural character, such matters would be suitably mitigated by conditions to prevent the outside storage of materials and to control external lighting on the appeal site.
14. For the above reasons I conclude that the development accords with the design objectives of LDP policy DM2, and with policy ENV2, which expects development within SLAs to conform to the highest standards of design, siting, layout and materials appropriate to the character of the area.

### **Other Matters**

15. Several representations and a petition attracting a substantial number of signatories have been submitted in relation to the planning application and appeal. These representations raise several concerns, particularly in relation to the welfare of dogs.
16. Planning Policy Wales (PPW) Edition 10 paragraph 1.20 states that the planning system should not be used to secure objectives which are more appropriately achieved under other legislation. I am informed that under an agreement with Blaenau Gwent County Borough Council, Powys County Council (PCC) is responsible for issuing licences for dog breeding. It is clear from the Council officer's report that a Licensing Officer from PCC has provided advice during the consideration of the application and has visited the appeal site.
17. On my site visit I inspected the interior of 'building 1' and saw that it accommodates 30 stalls. I note the comments of the PCC Licensing Officer, set out in the Council officer's report, that stalls may have to be combined and reduced in number due to the size of dogs being kept. Moreover, having regard to the described use as kennels for the purpose of dog breeding, space would inevitably be needed within building 1 for litters to be kept with their mothers for an appropriate period. The Council has proposed a condition limiting the number of adult dogs to be kept on the appeal site to 25. Given the extent of the available accommodation, I consider that this represents a reasonable upper limit in the context of the described use.
18. Restricting the number of adult dogs to 25 would also assist in controlling the level of noise generated. At the time of my site visit dogs were being fed and, as others have asserted, I noted that they could be heard from outside the site. As borne out by the findings of the submitted Noise Survey, the noise of dogs barking was also appreciably louder when the roller door was opened. Nonetheless, given the considerable distance between building 1 and the nearest dwellings, and the building's orientation and location relative to the former Morning Star Inn, I consider that the installed noise attenuation measures are sufficient to avoid harmful noise and disturbance to

residents in the vicinity. A condition to restrict noise levels consistent with the findings of the submitted Noise Survey is, however, necessary to prevent harm arising in this regard. For the same reason a condition is also necessary to limit the keeping of dogs to building 1, which is the only structure with proven satisfactory noise attenuation.

19. The lane serving the appeal site is narrow and steep in places but there is little evidence that the use generates such a volume of vehicular trips that it is harmful to highway safety. A condition prohibiting the sale and purchase of dogs at the site would, however, provide clarity in limiting the use to that described and, with it, the number of vehicular movements generated. This would safeguard the safety of highway users and would also remove the potential for noise and disturbance to arise from any additional vehicular movements. There is little evidence that such a condition would not be in the interests of securing the welfare of dogs under other legislation, particularly as the Council officer's report states that the appellant has planning permission and a licence for the sale of pups from his home address.
20. The site is located in the open countryside, within which LDP policy SB1 seeks to prevent 'inappropriate development'. However, in my view the potential for noise and disturbance arising from dog breeding kennels warrants physical separation from noise-sensitive uses which may typically be found at greater density in a more urban environment. Moreover, as vehicular access to the appeal site is obtained via a lane leading from the nearby settlement, the site has a strong functional relationship with Ebbw Vale. Having regard to the specific circumstances of the case I find no clear conflict with local or national planning policy in this regard.
21. I do not underestimate the strength of feeling felt by those who have taken the time to submit representations. My attention has been drawn to issues associated with third-party sales at 'puppy farms', which is the focus of potential legislation dubbed 'Lucy's Law'. However such ethical and moral considerations are not material to this planning decision. Whilst the appeal site does not feature any residential accommodation, the availability of staff to provide care to dogs is a licensing matter and not one to which I could afford material weight in the planning balance. There is nothing to indicate that the appeal site is so unsuitably located or 'building 1' so inadequately constructed that the welfare of dogs could not be secured under the relevant legislation. Consequently there is little risk that allowing the appeal would be reputationally harmful to the local area or to Wales, as some have claimed.
22. Assertions have been made that the appeal development has been insufficiently publicised but the volume of submitted representations indicate that those with an interest in the case have been afforded an opportunity to submit their considered views. Some matters which have been raised, including land ownership and allegations made about the appellant, are not relevant planning considerations and I afford them no weight as a result.

### **Conditions**

23. As set out above I have found that several conditions are needed to make the development acceptable in planning terms. Other conditions have been suggested by Council officers and the appellant, to which I have had regard.
24. Conditions which I consider necessary have been imposed for the stated reasons. Where necessary these have been adjusted to accord with the advice set out in Welsh Government Circular 16/14 'The Use of Conditions for Development Management'. In the light of the current national emergency I have extended the deadline for the submission and approval of a Waste Management Plan to account for the time period

during which restrictions on movement currently apply. A condition suggested by the Council seeking to restrict the permission only to the buildings and structures shown on the submitted plans duplicates conditions 1 and 4 and is therefore not necessary.

### **Conclusion**

25. I have considered the other matters raised but none alter my decision. For the reasons given above I conclude that the appeal should be allowed.
26. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective of building healthier communities and better environments.

*Paul Selby*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1) The development shall be carried out in accordance with the following approved plans: Drg Ref 19/LB/100 (Existing Site Location Plan); Drg Ref 19/LB/101 (Proposed Site Location Plan); Drg Ref 19/LB/102 (Proposed Floor Plan and Elevations of Kennel Building – Unit 1; Drg Ref 19/LB/103 (Revised) (Proposed Floor Plan Layout and Elevations of Store Building – Unit 2); Drg Ref 19/LB/104 (Proposed Floor Plan and Elevations of Open Hay Building – Unit 3); Drg Ref 19/LB/105 (Revised) (Proposed Floor Plan Layout and Elevations of Stable Building – Unit 4); Drg Ref 19/LB/106 (Revised) (Proposed Floor Plan Layout and Elevations of Steel Containers – Unit 5 & 6).  
Reason: To ensure that the development is carried out in accordance with the approved documents, plans and drawings submitted with the application.
- 2) The level of noise emitted from the site shall not exceed the levels identified in the submitted Noise Survey dated 9 June 2019 at the locations of monitoring points identified in that Noise Survey.  
Reason: In the interests of the amenities of neighbouring occupiers (LDP policy DM1).
- 3) The number of dogs (excepting pups under the age of 12 weeks) kept on site shall not exceed 25 at any time.
- 4) Reason: In the interests of the amenities of neighbouring occupiers (LDP policy DM1).
- 5) The keeping and breeding of dogs shall not take place anywhere on site except within the building identified as 'Dog Breeding Kennel' / 'Unit 1' on drawing Nos 19/LB/101 and 19/LB/102.
- 6) Reason: In the interests of the amenities of neighbouring occupiers (LDP policy DM1).
- 7) No dogs shall be bought or sold on site.

Reason: To clearly define the scope of the permitted use, and in the interests of the amenities of neighbouring occupiers (LDP policy DM1) and highway safety (LDP policy DM1).

- 8) Unless within 2 months of the date of this decision a Waste Management Plan specifying the method of disposal of all waste produced by the use hereby approved is submitted in writing to the local planning authority for approval, and unless the approved Waste Management Plan is implemented within 1 month of the local planning authority's approval, the use of the site shall cease until such time as a scheme is approved and implemented.

If no Waste Management Plan in accordance with this condition is approved within 2 months of the date of this decision, the use of the site shall cease until such time as a Waste Management Plan approved by the local planning authority is implemented.

Upon implementation of the approved Waste Management Plan specified in this condition, that Waste Management Plan shall thereafter remain in use.

Reason: In the interests of the amenities of neighbouring occupiers, waste management and environmental protection (LDP policy DM1).

- 9) No materials, products, waste or refuse of any kind shall be stored in the open on the site.

Reason: In the interests of the area's character and appearance (LDP policies DM2 and ENV2).

- 10) There shall be no external lighting on the site other than in accordance with details which have been submitted to and approved by the local planning authority.

Reason: In the interests of the area's character and appearance (LDP policies DM2 and ENV2) and biodiversity (LDP policy DM1).