



REPORT FROM: PLANNING, ECONOMIC DEVELOPMENT AND
REGULATORY SERVICES MANAGER

TO: NELSON, BRIERFIELD AND REEDLEY COMMITTEE

DATE: 4th JULY 2022

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PLANNING APPLICATIONS

PURPOSE OF REPORT

To determine the attached planning applications.

REPORT TO NELSON, BRIERFIELD AND REEDLEY COMMITTEE ON 4TH JULY 2022

Application Ref: 22/0278/CEA

Proposal: Certificate of Lawful Use (S.192 Proposed Development): Use of land for the daytime boarding of dogs.

At: Robin Hill Cottage Kennels, Greenhead Lane, Reedley

On Behalf of: Miss Sarah Seed

Date Registered: 25/04/2022

Expiry Date: 20/06/2022

Case Officer: Laura Barnes

This application has been brought before Committee due to the level of public interest.

Site Description and Proposal

The application site relates to a two storey, semi-detached property, beyond the settlement boundary located within the Green Belt.

This proposal seeks a Certificate of Lawfulness (Section 192 – Proposed Development) to establish whether the proposed use of land for the daytime boarding of dogs is lawful.

Planning History

None relevant

Consultee Comments

As necessary

Public Response

Multiple representations have been received in relation to this application.

Those in support of the application have raised the following issues:

- This is a longstanding business which will be affected and provides a good service locally
- There is no unacceptable noise from the dogs which are kept on site
- The additional people coming and going to drop and collect for day-care would not be significant
- This is an agricultural area where noise from animals should be expected
- Access is not an issue and the business has had an established access up this track for many years
- There are no dogs running loose on the track causing a danger
- The business was bought as a going concern so why has this been raised now?
- The business employs local people and allows others to go to work whilst their animals are being cared for

- There has always been an issue with HGVs on the track and this is not caused by the kennels

Those objecting have raised the following issues:

- Concerns around impact upon residential amenity
- Barking dogs will cause distress to cattle and other farm animals
- Increase in vehicular movements are a nuisance
- Loss of privacy due to customers coming and going
- Health and safety issues with lots more vehicles using the track for access
- Loose dogs in the area is a safety issues
- Greenhead Lane itself is dangerous for the increased amount of vehicles
- Users of the public right of way will be affected
- The application is in conflict with the Local Plan in that it would prevent the use of high quality open spaces

Officer Comments

The consideration in determining this Lawful Development Certificate is whether, on the balance of probability, the day boarding of dogs is lawful, within the context of condition 2 of planning permission 13/07/0408P.

There have been many comments about the merits of the business and its impacts in the area. The merits of the business are irrelevant to the determination of this application. The question being asked is one of fact and the only consideration is whether the activity of having dogs at the site during the day would or would not constitute boarding of dogs.

Assessment

The condition which this Lawful Development Certificate relates, from planning permission 13/07/0408P to is worded as follows:

“2. The permission is confined to a maximum of 14 boarding dogs

Reason: To control development of the site in the interest of residential and visual amenity”

The applicant has submitted a supporting statement which needs to be read in whole but which raises the following key points.

The application is to establish whether the “day time boarding” of dogs would be in compliance with the condition applied to the planning permission which allowed the kennels to be established. The view given to the applicant by officers is that the dogs on site must be kept overnight to comply with the definition of boarding. The view of the applicant is that dogs can be boarded during the day and do not have to be kept overnight in order to comply with the condition.

To support that position a number of points are raised.

The condition does not contain any limitations as to the hours of use.

There has been reference to the Animal Welfare Regulations in the section this refers to the boarding in kennels of dogs and the need for them to have access to a sleeping area. The applicant points to there being nothing in those regulations that dogs kept in the daytime are not boarded and there is no reference to the need for overnight accommodation.

Reference is made to the 2007 consent which looks at the purpose of condition 2 and there is no reasoning behind why dogs would be limited to those staying overnight. To do so would serve no planning purpose.

The applicant indicates that the word boarding was used because that was the commonly used phrase at the time and dog boarding needs of people have moved on and needs have changed.

The applicant indicates that the standard dictionary definition of boarding is “a place where dog owners can pay to have their dogs looked after whilst they are away”.

Material Issues

The planning application which was submitted in 2007 (13/07/0408) was for “Retain use of kennels at rear for dog boarding. The applicant here indicates that there was nothing in the application that would suggest why the condition was put on but the application itself was submitted on the precise basis that it was for the boarding of dogs. The condition therefore went to the heart of that application by ensuring the use could only involve precisely what the application sought and nothing wider.

The intention of the condition was therefore clear in limiting the activities to precisely what was applied for.

In looking at this application the key element is to interpret what the word “boarding” means. That is both the commonly understood use of the word and a closer look at what that is defined as.

The applicant states that a boarding kennel is somewhere that dogs are kept whilst their owners are away. Whilst not definitive in itself most dogs are not sent to kennels whilst their owner is living at home working. There has been an increase in dog walkers and owners having their dogs taken care of during the day but that is a day time care activity not a boarding activity.

To help make an assessment of the wording of the condition, A Collins English Dictionary definition of a ‘boarder’ (noun) is as follows:

1. *A child who lives at school and goes home for the holidays*
- *Boarders and day pupils*
2. *A person who pays money to live in a room in somebody else’s house*

It is the Council’s case that condition 2 limits the type of accommodation to overnight stays for a period of time, rather than day care where an animal would not sleep overnight at the premises. This is because the common view of the interpretation of the word boarder is somebody who lives somewhere other than their home, in the case set out this applies to children at a school. The Council is of the view that this same interpretation can be applied to the type of accommodation provided for the animals at the facility at Robin Hill Cottage.

The dictionary defines a boarding school as a place where some of its pupils have overnight accommodation. That is distinct from an ordinary school where pupils will come during the day, receive appropriate care such as meals, play time etc but then go home at night to sleep.

A boarding house is somewhere a person would go to be provided with accommodation for a period of time, as distinct from going for a meal and then coming away to sleep elsewhere.

Schedule 4, Part 2 of the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018. The section relates to boarding kennels. Schedule 4, Part 2 concerns providing boarding in kennels for dogs. The phrase here is one that needs to be noted. It is also of note that boarding and day care are two different regulated activities under two separate parts of the legislation, within Schedule 4.

It is headed "Provision of Boarding in Kennels for Dogs". The implication here is that kennels can exist but there are situations where kennels also provide boarding. Under part 7 (4) the requirement is that the dogs have their sleeping area. This strongly supports the issue that boarding includes sleeping at the premises. This points to boarding not just being the provision for some facilities during the day but for longer stays.

A comparison could be drawn here between a children's day care nursery and the type of arrangement which the applicant has referred to. Children at a day care nursery could be expected to have a meal and have a nap at some point during their day. However, they would return home each evening to the place where they usually live. They do not live at the nursery. A nursery would not be described as a Boarding Nursery simply because a child has been fed and had a nap at the facility. The difference between day care and boarding is that the child at the nursery would not stay overnight. It follows that the same is true of the dog kennel: if the dogs are not staying overnight, they are not boarding but rather receiving day care.

The onus is on applicants for a certificate of lawful use to demonstrate why the development would be lawful. The term boarding when used both in its literal sense as defined in dictionaries as well as in the commonly understood use of the phrase does not mean care during the day but without any form of overnight stays. Boarding houses and Boarding schools are clearly ones where people stay overnight and do not just provide shelter and meals during the day. It would not follow that a boarding kennels is somehow different and would be understood to mean dogs simply visiting and using the kennels during the day. That is not what any reasonable interpretation of the phrase boarding would mean.

The condition therefore does not allow for the use of the site for dogs during the day only and as such the application should be refused.

Reason for Decision

On the balance of probability, the wording of the condition relating to "a maximum of 14 boarding dogs" relates to overnight accommodation and therefore providing a day care facility for dogs during the day where they return home at night is not a lawful use of the land in accordance with Planning Permission 13/07/0408P.

RECOMMENDATION: Refuse lawful development certificate

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At: Robin Hill Cottage Kennels, Greenhead Lane, Reedley

On Behalf of: Miss Sarah Seed

LIST OF BACKGROUND PAPERS

Planning Applications

NW/MP

Date: 24th June 2022