

Development Control Committee **7 February 2024**

Planning Application DC/23/0783/VAR – Doctors Hall, Bury Lane, Stanton

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|-------------------------|--|------------------------|--|
| Date registered: | 27 July 2023 | Expiry date: | 22 September 2023 EOT 9 February 2024 |
| Case officer: | Connor Vince | Recommendation: | Approve application |
| Parish: | Stanton | Ward: | Stanton |
| Proposal: | Planning application - application to vary conditions 2 (approved plans), 4 (insulation details) and 6 (breeding bitch numbers) of DC/17/1652/FUL for the material change in the use of the land from paddock to the breeding and keeping of dogs comprising the following: (a) 2.1 metre high close boarded timber fence and concrete post; (b) car parking area; (c) 2no. dog kennels and (d) 1no. stable block as amended by plans received 15 November 2023. | | |
| Site: | Doctors Hall, Bury Lane, Stanton | | |
| Applicant: | Wayne Chrzanowski | | |

Synopsis:

Application under the Town and Country Planning Act 1990 and the (Listed Building and Conservation Areas) Act 1990 and associated matters.

Recommendation:

It is recommended that the committee determine the attached application and associated matters.

CONTACT CASE OFFICER:

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Background:

This application was presented before the Development Control Committee in December 2023, with a recommendation for APPROVAL. The matter was deferred, for the completion of a 'Risk Assessment' report, with the Committee having resolved that it was 'minded to refuse' the application due to concerns about the noise implications of this proposal, and the consequential adverse effects upon amenity.

In accordance with the Council's Decision Making Protocol this report now provides a Risk Assessment of the "minded to refuse" resolution.

This application was referred to the Development Control Committee following consideration by the Delegation Panel. Stanton Parish Council object to the application, contrary to the officer recommendation for approval.

Further 'Background' details can be found in the report at Working Paper 1.

Proposal:

1. Please refer to Working Paper 1 for the description of the proposal.

Application supporting material:

2. Please refer to Working Paper 1 for the supporting material.

Site details:

3. Please refer to Working Paper 1 for the site details.

Planning history:

- 4.

| Reference | Proposal | Status | Decision date |
|------------------|--|--------------------------|----------------------|
| DC/21/0688/HH | Householder planning application - first floor side extension with balcony. | Application Granted | 20 May 2021 |
| DC/22/1476/VAR | Application to vary condition 6 of DC/17/1652/FUL to change from 10 breeding bitches on the site to 20 to allow for the material change in the use of the land from paddock to the breeding and keeping of dogs comprising the following: (a) 2.1 metre high close boarded timber fence and concrete post; (b) car parking area; (c) 2no. dog | Application Withdrawn | 18 October 2022 |

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|----------------|--|------------------------|---------------------|
| DC/17/1652/FUL | kennels and (d) 1no. stable block Planning Application - Material Change in the use of the land from paddock to the breeding and keeping of dogs comprising the following: (i) 2.1 metre high close boarded timber fence and concrete post; (ii) car parking area; (iii) 2no. dog kennels and (iv) 1no. stable block (Part Retrospective) | Application Granted | 29 November 2017 |
|----------------|--|------------------------|---------------------|

Consultations:

5. Please refer to Working Paper 1 for the consultation responses.

Representations:

6. Please refer to Working Paper 1 for the representations.

Policy:

7. On 1 April 2019 Forest Heath District Council and St Edmundsbury Borough Council were replaced by a single authority, West Suffolk Council. The development plans for the previous local planning authorities were carried forward to the new Council by regulation. The development plans remain in place for the new West Suffolk Council and, with the exception of the Joint Development Management Policies Document (which had been adopted by both councils), set out policies for defined geographical areas within the new authority. It is therefore necessary to determine this application with reference to policies set out in the plans produced by the now dissolved St Edmundsbury Borough Council.
8. The following policies of the Joint Development Management Policies Document and the St Edmundsbury Core Strategy 2010 & Vision 2031 have been taken into account in the consideration of this application:
9. Rural Vision 2031
 - RV1 Presumption in Favour of Sustainable Development
10. St. Edmundsbury Core Strategy:
 - Core Strategy Policy CS3 - Design and Local Distinctiveness
11. Joint Development Management Policies Document (adopted February 2015):
 - Policy DM1 Presumption in Favour of Sustainable Development
 - Policy DM2 Creating Places Development Principles and Local Distinctiveness
 - Policy DM5 Development in the Countryside
 - Policy DM13 Landscape Features
 - Policy DM14 Protecting and Enhancing Natural Resources, Minimising Pollution and Safeguarding from Hazards

Other planning policy:

12. The NPPF was revised in December 2023 and is a material consideration in decision making from the day of its publication. Paragraph 225 is clear however, that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the revised NPPF. Due weight should be given to them according to their degree of consistency with the Framework; the closer the policies in the plan to the policies in the Framework; the greater weight that may be given. The policies set out within the Joint Development Management Policies are considered sufficiently aligned with the provisions of the 2023 NPPF that full weight can be attached to them in the decision making process.
13. Please refer to Working Paper 1 for the Officer assessment of the proposal.

Officer comment:**Response to Committee's Minded to Refusal Reasons**

18. The application was reported to the Development Control Committee in December 2023. The Committee resolved that it was 'minded to refuse' the application based on the adverse impacts upon amenity on nearby dwellings as a consequence of noise from the premises, which was noted as being principally from barking dogs. At this point, the Decision-Making Protocol was invoked requiring the further reporting of this matter to members of the Development Control Committee in the form of a risk assessment report before a decision can be made.
19. The Committee at points discussed the moral and licensing implications arising from the proposal but, noting the advice of Officers that these were not material, concerns in relation to such matters did not form any part of the Committee's resolution. By way of update for information only, the Council's Licensing team carried out an inspection of the premises in late 2023 and the site was considered to be meeting the terms of its licence.
20. Further discussion at the December Committee had centred on the failure of the site operator to have complied with conditions on the previous application, noting that, in particular, the previously approved acoustic fence had not been installed and neither had the required soft landscaping within the site been planted. Again, the Committee was reminded that such matters are not material, insofar as enforcement action can be taken where expedient against breaches of planning control.
21. The Decision Making Protocol states that "where Development Control Committee wishes to overturn a recommendation and the decision is considered to be significant in terms of overall impact/harm to the planning policy framework, having sought advice from the Assistant Director Planning and Regulatory Services and the Assistant Director for Legal and Democratic Services (or Officers attending Committee on their behalf)
- A final decision on the application will be deferred to allow associated risks to be clarified and conditions/refusal reasons to be properly drafted.

- An additional officer report will be prepared and presented to the next Development Control Committee detailing the likely policy, financial and reputational etc. risks resultant from overturning a recommendation and setting out the likely conditions (with reasons) or refusal reasons. This report should follow the Council's standard risk assessment practice and content.
 - In making a decision to overturn a recommendation, Members will clearly state the material planning reason(s) why an alternative decision is being made, and which will be minuted for clarity."
22. The purpose of this report is to provide a risk assessment for Members in accordance with the Decision Making Protocol, should planning permission be refused for the development contrary to the officer recommendation having regard to its accordance with relevant policies.
23. The resolution of the Development Control Committee was that it was minded to refuse on the basis of the adverse impacts upon amenity. It is understood that this concern related to noise from, in particular, barking dogs.
24. In this regard it is noted that the Public Health and Housing Officer is satisfied that the noise implications arising from this application will be satisfactory. This position, and upon which the recommendation of Officers to approve stands, is on the basis that the fencing at the property is either replaced or modified as an acoustic fence, as per the recommendations in the submitted Noise Survey, the conclusion of which are accepted and agreed by Public Health and Housing Officers. Condition 3 of the recommendation before the Committee in December proposed a time limit for the completion of the outstanding measures. A failure to comply with such being a breach of planning control against which enforcement action could be brought.
25. Following the December meeting further discussion with the applicant indicated their commitment to installing the outstanding measures to upgrade the acoustic fence before the end of January 2024. These works would be to ensure compliance with the outstanding breaches that remain from the failure to properly implement the requirements of the permission granted under DC/17/1652/FUL.
26. It has subsequently been confirmed, and photographic evidence provided, of the installation of the required acoustic fence at the site in accordance with the outstanding details. As a consequence of this, proposed condition three has been amended to ensure the retention of this fencing. At the time of writing this report the applicant has confirmed that plants have been ordered and will be delivered in the last week of January 2024, and planted that week. An update in this regard will be provided within the late paper or verbally as the case may be. In any event, noting the separate ability to enforce against breaches of planning control, and consistent with the officer recommendation before the December Committee, the officer position remains that a failure to have complied with the condition, in the event that remains the position in relation to the soft landscaping at the time of the February meeting, is not in and of itself a reason to refuse planning permission when enforcement controls exist.

27. So, in this respect, officers do not consider that amenity concerns would bear scrutiny and there is no supporting evidence to support refusal on that basis. The clear professional advice of specialist officers within the Public Health and Housing team is that, subject to conditions, the noise implications of increasing the number of breeding dogs at the site will be wholly acceptable.
28. Nonetheless, if Members remain minded to refuse, notwithstanding the advice above, the following reason is suggested. The risk of proceeding for refusal is further assessed below.

1. Policy DM2 requires that development proposals do not adversely affect the amenities of adjacent areas by noise. This is further supported by the provisions of Policy DM14 which requires development to minimise emissions and other forms of pollution, including noise, and development will not be permitted where there are likely to be unacceptable impacts. Furthermore, the requirements of Para. 135 of the NPPF seeks to ensure that development provides a high standard of amenity for existing and future users.

In this regard, the increase in the number of breeding dogs at the site is considered to lead to an intensification of the use of the site with harmful impacts upon the amenities of nearby residents by reason of disturbance created through the barking of dogs. Accordingly, the scheme is considered to conflict with Policies DM2 and DM14 of the Joint Development Management Policies Document 2015, and with the relevant provisions of the NPPF.

Risk Assessment

29. The purpose of this report is to advise Members of the risks associated with the 'minded to' resolution to refuse planning permission for the development proposal, having regard to the relevant planning policies and the lack of evidence to support a refusal on noise grounds. For the reason set out in this report it remains Officers' recommendation that permission be approved. If Members remain minded to refuse the application, they must be satisfied that any risks associated with doing so have been properly considered.
30. Officers remain of the opinion that the development proposed fully accords with policy. Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require decisions to be made in accordance with the development plan unless there are material considerations that indicate otherwise.
31. In the absence of evidence to substantiate a reason for refusal it is highly likely that an appeal would be allowed. The applicants would have the right to recover their appeal costs (in full or in part, depending upon the circumstances) from the Council should the Inspector conclude the Local Planning Authority has acted unreasonably. Advice about what can constitute unreasonable behaviour by a Local Authority at appeal is set out in the National Planning Practice Guidance. Relevant examples of unreasonable behaviour include:

- preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
- failure to produce evidence to substantiate each reason for refusal on appeal, and;
- vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

32. In this case, and for the reasons set out in full in the Officer report attached as Working Paper 1, Officers consider that it would be very difficult to defend the above reason for refusal. There is no technical objection on the grounds of noise impacts from the Public Health and Housing Officer, following their assessment of a professionally prepared noise assessment.

33. In the absence of evidence to substantiate the reason for refusal Officers consider it would be extremely difficult to defend a potential claim for the partial or even full award of costs at appeal. An award of costs (including partial costs) against the Council could have financial and reputational implications for the Council.

34. Whilst it is important to understand these issues as part of the risk assessment process, this section of the report does not form part of the planning assessment of the application. The information does not constitute a material planning consideration. It is included for completeness and should not be relied on or cited as a factor in coming to a decision.

Conclusion:

35. In conclusion, the principle and detail of the development is considered to be acceptable for the reasons outlined above and set out within Working Paper 1. Officers consider that the development should be approved with the conditions contained in working paper 1 and repeated below.

36. The proposal complies with the Development Plan and the National Planning Policy Framework and there are no material planning considerations that indicate that a decision should be taken otherwise than in accordance with the Development Plan. In the absence of any objection from the Public Health and Housing Officer, and noting that enforcement can be taken against any failure to comply with conditions, refusal of the application on the grounds of adverse impact on amenity cannot reasonably be justified.

37. In coming to their decision Members must clearly identify whether they consider the proposal complies with the Development Plan and their reasons for reaching their decision. If it is decided that the proposal does not comply with the policies of the Development Plan members must have clear reasons and evidence to support such a decision.

38. A late paper or verbal update on the day will be provided in relation to any works the applicant has taken in the meantime to comply with the requirements of DC/17/1652/FUL in relation to the acoustic measures and

soft landscaping. Depending on the situation this may have consequential implications for the conditions listed below.

39. Members should have regard to the attached Working Paper 1 in reaching their decision.

Recommendation:

40. It is recommended that planning permission be **APPROVED** subject to the following conditions:

1. The development hereby permitted shall not be carried out except in complete accordance with the details shown on the following approved plans and documents:

| Reference No: | Plan Type | Date Received |
|----------------------|--------------------------------------|----------------------|
| EP727-17-01 Rev A | Location Plan | 18.05.2023 |
| EP727-17-02 REV C | Proposed Site Plan | 15.11.2023 |
| EP727-23-03 REV B | Proposed Elevations & Floor Plans | 15.11.2023 |
| EP727-17-04 REV A | Proposed Elevations & Floor Plans | 15.11.2023 |
| HA/AE338/V2 | Noise Impact Assessment | 18.05.2023 |

Reason: To define the scope and extent of this permission.

2. All planting comprised in the approved details of landscaping (Drawing Number EP727-17-02 Rev C) shall be carried out in the first planting season (March 2024) with evidence submitted to and acknowledged in writing by the Local Planning Authority. Any planting removed, dying or becoming seriously damaged or diseased within five years of planting shall be replaced within the first available planting season thereafter with planting of similar size and species unless the Local Planning Authority gives written consent for any variation.

Reason: To enhance the appearance of the development.

3. All of the noise protection and mitigation works associated with the development as detailed in the Healthy Abode (HA) Acoustics Report '*Noise Impact Assessment of Breeding Kennels Incorporating a 2.1 Metre Acoustic Barrier & Details on Sound Insulation to Support Discharge of Planning Consent Ref DC/17/1652/FUL, Condition 4*' (Reference HA/AE338/V2, Date 17 March 2023) shall be completed and retained in their entirety in accordance with the approved details. There shall be no dogs on site unless all acoustic measures have been completed and retained in accordance with the agreed details.

Reason: To protect the amenity of occupiers of adjacent properties from noise and disturbance, in accordance with policies DM2 and DM14 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 15 of the National Planning Policy Framework and all relevant Core Strategy Policies.

4. Notwithstanding the provisions of the Use Classes Order and the General Permitted Development Order 2015, the site shall be used for the purpose hereby approved, and for no other use.

Reason: In the interests of limiting the scope of this permission, in the interests of sustainable development.

5. No more than a total of 20 breeding bitches shall be kept or kennelled on the site at any one time.

Reason: In the interests of limiting the scope of this permission, in the interests of sustainable development and residential amenity.

6. The use hereby permitted shall only be undertaken by the owner and resident of the dwelling known as 'Doctor's Hall' as shown on the land edged in blue on drawing number EP727-17-01 Rev A.

Reason: Reason: In the interest of residential amenity in accordance with Policy DM2 of the Joint Development Management Policies Local Plan

7. Within 6 months of the date of this approval, the completion of the works shall be verified on site by a specialist noise consultant and the Local Planning Authority shall be notified in writing of the completion and verification of the works. Thereafter the approved works shall be retained.

Reason: To protect the amenity of occupiers of adjacent properties from noise and disturbance, in accordance with policies DM2 and DM14 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 15 of the National Planning Policy Framework and all relevant Core Strategy Policies.

8. Within 4 months of the date of this approval, a Noise Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Management Plan shall identify management practices to mitigate noise emanating from the development, and such practices shall be implemented in accordance with the approved plan at all times.

Reason: To protect the amenities of occupiers of properties in the locality, in accordance with policy DM2 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 15 of the National Planning Policy Framework and all relevant Core Strategy Policies.

Documents:

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online [DC/23/0783/VAR](https://www.westsuffolk.gov.uk/DC/23/0783/VAR)