

MC/19/0847

Date Received: 28 March 2019

Location: Darnley House Grain Road Lower Stoke Rochester

Proposal: Retrospective application for part change of use from residential to dog breeding business

Applicant Mr Jason Zacharia

Agent Banks Kelly
Mr Dean Carroll 1 King Street
London
EC2V 8AV

Ward: Peninsula Ward

Case Officer: Paul Ives

Contact Number: 01634 331700

Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 18th September 2019.

Recommendation - Approval with Conditions

- 1 The use hereby permitted shall be discontinued and the land restored to its former condition on or before 18 September 2020; in accordance with a scheme of work submitted to and approved in writing by the Local Planning Authority.

Reason: To allow the Local Planning Authority an opportunity to assess the effect of the permitted development on the amenities of the surrounding area in accordance with Policy BNE2 of the Medway Local Plan 2003 and paragraph 127(f) of the National Planning Policy Framework 2019.

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing numbers. Drawings SP 445 P 02; SP 445 P 04 (part amended by email dated 20 August 2019); and SP 445 P 05 received 30 May 2019 and Letter of intent dated 13 May 2019 received 30 May 2019

Reason: For the avoidance of doubt and in the interests of proper planning.

- 3 No more than 14 adult dogs (including 12 bitches and 2 dogs and any owned as pets by the occupants of the property) over the age of four months shall be kept on site at any one time

Reason: In the interests of residential amenity and to comply with Policy BNE2 of the Medway Local Plan 2003 and paragraph 127(f) of the National Planning Policy Framework 2019.

- 4 Only Chihuahuas shall be kept or bred at the property

In the interests of residential amenity in accordance with Policy BNE2 of the Medway Local Plan 2003 and paragraph 127(f) of the National Planning Policy Framework 2019.

- 5 Full details of the siting of the proposed method and means of storage of any waste or materials required in connection with the proposed use shall be submitted to and approved in writing by the Local Planning Authority within three months from the date of this permission. The means of storage and frequency of collections of waste shall thereafter accord with the approved details.

In the interests of residential amenity in accordance with Policy BNE2 of the Medway Local Plan 2003 and paragraph 127(f) of the National Planning Policy Framework 2019.

- 6 No prospective purchasers of the dogs shall visit the property outside of the hours of 11:00; to 16:00 hours Mondays to Fridays inclusive only.

Reason: To ensure that the development does not prejudice the amenities of neighbouring property in accordance with Policy BNE2 of the Medway Local Plan 2003.

For the reasons for this recommendation for approval please see Planning Appraisal Section and Conclusions at the end of this report.

Proposal

This application is for the retrospective part change of use of the dwelling into a dog breeding business (Chihuahuas) comprising 4 outbuildings with external enclosures and 1 side extension (single storey) as 5 kennels; a conservatory for housing dogs in early stages of development as small pups; and an existing study as an office with space to

care for new born pups. All the kennels have external space bounded by approx. 1m high walling. Parking would be provided to the eastern side of the front garden for visitors (5 parking spaces) The remainder of the property is to be retained for residential use including a domestic double garage and two spaces to the front. The parking area would share a single gated access from the highway, managed by an electronic entry system. The property is bounded by walling and railings to the front with security gates and walling/fencing to both sides and rear in the main.

The applicants have provided details of a cleaning routine for daily and weekly care which includes dog welfare management and cleaning practices for the site as a whole including the kennels. The care includes micro chipping the dogs and means of waste management. They also advise of potential predicted dog breeding plans.

Advertising is on line only with customers viewing mainly by internet and social media adverts. Pups are delivered following home checks and most sales are done via photos and videos with payment on delivery. On site viewing accounts for 10% of sales by appointment only made in advance with the applicants and between the hours of 11:00 and 14:00 hrs Monday to Friday. Visitors to the property are low key with 4 visits this year maximum. There is no passing trade. The maximum number of dogs on site is proposed to be 19 with pups under 9 weeks not included. Dogs are delivered due to Kennel Club requirements to check homes prior to sale. Dog feed is delivered once a month and dog waste collected every four to eight weeks having been stored in air tight wheelie bins in scented bags (tied).

The applicants advise that the mothers of the pups clean the urine and faeces of pups up until 6-10 weeks of age by means of eating and licking. Licensing laws restrict the number of dogs that can be breed on site.

Representations

The application has been advertised on site and by individual neighbour notification to the owners and occupiers of neighbouring properties.

Two representations have been received objecting to the proposal on the following grounds:

- Excessive noise; and
- Increased parking competition on the road.

Stoke Parish Council have written in objecting to the proposal on the following grounds:

- Should the plans be passed, the dwelling would more than likely be abused and converted to a puppy farm rather than a dog breeding business due to its location in a rural area and off the beaten track;
- The size of the dogs being breed is a concern;

- Noise pollution from the dogs into all hours of the night where the larger the dog and numbers the louder the noise;
- Odour generation and fly generation combined with a very limited number of waste collections per year; and
- Concern regarding monitoring of dog numbers

Development Plan

The Development Plan for the area comprises the Medway Local Plan 2003 (the Local Plan). The policies referred to within this document and used in the processing of this application have been assessed against the National Planning Policy Framework 2019 and are considered to conform.

Planning Appraisal

Principle

The property will predominantly remain as a dwelling. The applicant's propose to run a side business from home breeding dogs. There is no specific planning policy that relates to the principle of the proposed use Policy H2 does seek to retain housing unless no longer suitable for such a use or the use would be of significant benefit to the immediate community. Whilst the development is business lead, the use of the property would remain principally as a dwelling.

National Planning policy allows businesses to be run from home unless the proposal changes the character of the property to one of a mixed use, dependent on fact and degree. Even when planning permission is required due to fact and degree, the principle is not necessarily unacceptable where the residential use remains as the predominant use such as here, and the determining issues relate to matters of detail, predominantly impact on the amenity of the area and neighbours.

Design

The kennels were built by the previous owner of the property for their pets with the applicants later adding the external enclosures to the side of the dwelling and in front of the four outbuilding kennels. The kennels cannot be seen from the highway and are enclosed within the site. The applicants added the wall enclosures when the business commenced approx. 2 years ago (April 2018). The works respect the appearance of the property. The proposal meets the terms of Policy BNE1 of the Local Plan and paragraphs 124 and 127 of the NPPF.

Amenity

The application property is a large detached 5 bedroomed property, just within the village of Lower Stoke on Grain Road opposite the junction with Shepherds Way. The main property is set off both side boundaries and there is a large area of hardstanding to the

front and a large garden to the rear. The site is bounded by walling, mature planting and fencing with a security wall/railing feature to the front.

A bungalow exists to the west and an agricultural field to the east. To the north a large detached property exists with dense planting on the boundary with the application site. The site is relatively large.

A careful balance has to be made in terms of considering the impact of dogs and the noise and disturbance that may be caused.

Case law in terms of the number of dogs that can be kept as pets at a property without the need for planning permission is a matter of fact and degree and depends on the size and nature of the application property and the size and type of dogs. For instance there is case law that 40 toy dogs (small dogs like Chihuahuas) in a detached dwelling in a rural location did not constitute a material change in the use of the property while the keeping of 6 large dogs (Rottweilers) in a small terraced house in an urban area did require planning permission, albeit that in both instances the dogs were kept as pets and there was no business use.

In this instance the size and type of dog could vary but may be managed by condition. In addition the premises are licensed dogs from their welfare point of view.

It must be acknowledged that noise from barking dogs does have the potential to have a harmful effect on residential amenity. Noise caused by barking dogs is a common concern although normally a particular concern for boarding rather than breeding.

Breeding kennels are less likely to cause disturbance because the dogs are used to being with each other and only one breed tends to be kept at one time, as in this instance. It is not feasible or practical to impose a limit on the level of noise that may be generated but the type of small dog breed could be conditioned to reflect the licence granted by Medway Councils Dog Licensing team.

Odour generation can be mitigated by condition in terms of storage and odour control and frequency of collection. The premises have been operating as a breeding business for a while and provided the terms of use conditions are met, there would be no need to personalise the permission.

A relevant case with some parallels to this proposal was allowed on appeal at 9 Tanglewood Close, Wigmore. The planning inspector allowed the keeping of a maximum of 8 females and a maximum of 5 dogs within a much smaller site with use of kennels, a spare room and conservatory. The property was a small bungalow with small garden and the proposed breed was the same as in this case (Chihuahuas).

In terms of amenity impact with particular reference to noise and odour, the inspector considered that whilst the development would require planning permission (due to the impact on the character), the levels of activity borne out of the use were acceptable. The

inspector deemed that planning conditions could be used to limit dog numbers and the breed of dog to manage levels of disturbance and activity generated.

The Planning inspector also gave weight to the age of pups but directed control towards adult dogs only (due to litter variation). The Planning Inspector felt that onerous restrictions on numbers and litters would be unreasonable. He considered that waste storage and disposal could be managed by condition. The conditions restricted the number of dogs and bitches over four months old to 9 in total at any one time; for the breeding of Chihuahuas only (on account of the small size of the dogs) and set a time limit for reducing the numbers to meet the terms of the permission as the unlawful use at the time exceeded this.

In this instance, the garden size to the side and rear of this property is approximately three and a half times bigger in floor space within a spacious setting with no neighbours to the east. On this basis, whilst the numbers may be higher, the levels of noise generated from the dogs are unlikely to be harmful to residential amenity in consideration of the breed of dog and numbers involved. However, to safeguard amenity and also give the applicants the chance to demonstrate a neighbourly form of development may work, it is recommended that permission be granted on a temporary basis for one year initially.

For information purposes, the applicants currently hold a dog breeding licence issued by Medway Council and visits were made earlier this year (May/June) to assess for this licence. The maximum number of dogs licensed to be kept at the premises for this activity is 14 which includes 2 dogs and 12 bitches. The maximum number of litters at the premises at any one time is 4. They are to notify the Council if they wish to make any amendments to the dogs being kept at the property. It is therefore recommended that planning conditions are imposed on any approval to reflect these agreed licence terms.

In terms of noise, the development will generate levels of activity from dogs when exposed to a person unknown to them but do settle after a while. Generally as the inspector noted above, they tend not to get too excitable if familiar with dogs around them when used for breeding only. With the level of frequency of visitors relatively low and between the hours suggested, this can be managed by condition. No objection is raised on this ground.

In terms of odour, female dogs by nature clean up pup mess in the early weeks. Any further waste is removed by the applicants and whilst it needs to be done, appropriate waste disposal, storage and collection is undertaken. There were no obvious signs of waste being left in the garden on an unannounced visit by the case officer and the applicants operate the site to a good standard.

The development would comply with the objectives of Policy BNE2 of the Local Plan paragraph 127(f) of the NPPF.

Highways

It is considered that the proposed use would not generate an unacceptable increase in the level of traffic generated at the site and accordingly no highway objection is raised. The proposal therefore conforms with T1 and T13 of the Medway Local Plan 2003 and Paragraph 109 of the NPPF 2019.

Local Finance Considerations

There are no local finance considerations

Conclusions and Reasons for Approval

The proposed development would meet with the objectives of Policies H2, BNE1, BNE2, T1 and T13 of the Medway Local Plan 2003 and paragraphs 109, 124 and 127 of the National Planning Policy Framework 2019.

The application would normally be determined under delegated powers but is being referred for Committee determination due to the number of representations received expressing a view contrary to officer's recommendation.

Background Papers

The relevant background papers relating to the individual applications comprise: the applications and all supporting documentation submitted therewith; and items identified in any Relevant History and Representations section within the report.

Any information referred to is available for inspection in the Planning Offices of Medway Council at Gun Wharf, Dock Road, Chatham ME4 4TR and here <http://publicaccess1.medway.gov.uk/online-applications/>