

**Allerdale Borough Council**

**Planning Application HOU/2021/0004**

**Development Panel Report**

**Reference Number:** HOU/2021/0004  
**Valid Date:** 9th March 2021  
**Location:** 44 St. Helen's Street, Cockermouth, CA13 9HX  
**Applicant:** Mrs S Read  
**Proposal:** Retrospective application to replace two dog kennels in rear garden

**RECOMMENDATION**

**Refuse permission**

**1.0 Summary**

<b><u>Issue</u></b>	<b><u>Conclusion</u></b>
Noise and Disturbance	The location of the kennels within an urban area close to neighbouring properties has the potential to cause significant problems to the living conditions of neighbouring residents, by reason of noise and disturbance.
Impact on Conservation Area.	The proposal would be harmful to the character and appearance of the conservation area and that harm would be less than substantial. The harm would outweigh the public benefits of the proposal..

**2.0 Proposal**

- 2.1 The proposal is for retrospective permission for the erection of two kennel blocks each measuring 6.7m (length) x 4.24m (width) x 2.2m (height) and 6.16m (length) x 4.27m (width) x 2.48m (height)
- 2.2 The proposal includes the erection of a 1.8m high garden fence and engineering works to the steps which lead from the lower courtyard to the upper garden.

- 2.3 At the time of the site visit there was a further half built kennel, however this is proposed to be removed and members are advised that this is not to be considered as part of the proposal.
- 2.4 The application was submitted as a householder planning application. However, during the determination period it has transpired that some of the land is within the ownership of the Council, outside the control of the applicant. Therefore, given part of the application site is outside the curtilage of the dwelling, it is considered that this application cannot be dealt with as a householder application and it is determined as a full planning application. The land ownership issue is discussed further in the main body of the report.

### **3.0 Site**

- 3.1 The site comprises an area of land to the rear of 44 St Helen's Street, Cockermouth. The host dwelling is an end terraced property. The curtilage consists of the dwelling fronting onto the road, the rear garden area and elevated area of land (the application site).
- 3.2 To the east of the site is a road which serves the sports centre which is located to the rear and north of the site. To the west of the site is a neighbouring dwelling and their rear garden which abuts the application site.
- 3.3 The site is located within Cockermouth Conservation Area and although the dwelling and its immediate rear garden is subject to an Article 4 direction, the application site is outside this area.

### **4.0 Relevant Planning History**

- 4.1 None

### **5.0 Representations**

#### **Town Council**

- 5.1 Cockermouth Town Council recommend approval.

#### **ABC Environmental Health**

- 5.2 There have been complaints about this development that have been partially substantiated and therefore we wish to impose a retrospective assessment of the possible noise emanating from this development. We suggest conditions requiring a noise assessment with mitigation measures as follows:-
- a) The use hereby approved shall not be fully permitted until an assessment has been submitted for written approval to the Local Planning Authority which details the potential for noise emanating as a result of the use of the

development, and any mitigation measures required to protect the amenity of occupiers of nearby noise sensitive properties. Proposed hours of operation shall be included within the assessment.

- b) Any approved noise mitigation measures shall be implemented prior to the start of the proposed use and retained thereafter. These measure may include the addition of an acoustic fence or barrier.
- c) All site operations shall be mitigated to ensure that the daytime BS4142 rated levels are no more than 5 dB above background noise level and at night time the rated noise level does not increase above background noise level. An on site verification test and report should be provided to Allerdale within one month of the use of the premises. This noise level shall be adhered to for the lifetime of the development.

### **Cumbria County Highways and Lead Local Flood Authority**

- 5.3 Confirm no objection as it is considered that the proposal will not have a material effect on existing highway conditions nor does it increase the flood risk on the site or elsewhere. The LLFA surface water maps show that the site is very close to an area of flooding and indicates that a 1 in 30 chance of flooding occurring close to the site each year.

### **Other representations**

- 5.4 The application has been advertised by a site notice which was posted on 19<sup>th</sup> March 2021 and neighbour letters.
- 5.5 The Council have received one objection and eleven letters of support. The Council have also received one anonymous letter on the grounds that half the proposed development is on land owned by Allerdale Council (Cockermouth Leisure Centre).
- 5.6 The eleven supporting letters state that:-
  - a) The proposal is an improvement on the wooden kennels and the fence around them will also look better.
  - b) The kennels will accommodate hound trailers, who annually raise a lot of money for local charities.
  - c) The supporters pass the property many times daily and they never hear the dogs bark.
  - d) They will not deteriorate over time in the way that the wooden kennels have done.
  - e) Since the new kennels have been built we have not noticed any increase in the noise levels or the frequency of barking or howling; the current sound levels are perfectly acceptable to us.
  - f) The dogs at No. 44 are well looked after; they seem to bark when they are excited to go for exercise or to be fed and otherwise bark or howl only occasionally, probably when other dogs are walked nearby.

- g) The owners of the dogs at No. 44 can be heard calling for the dogs to be quiet on these occasions, which the dogs do straight away; they are well-trained.

5.7 The Council have also received a letter of objection from a resident who also lives in close proximity to the site:-

- a) We watched with growing horror during last Summer as not just one, but two large, ugly, block-built structures were erected on the back garden of 44 St Helen's Street, work which included felling a tree on the boundary with no 42.
- b) When we moved into our property in 2013, there was one wooden dog kennel on the site which housed either one or two dogs. We had no issues with this, although the site was somewhat untidy looking, as evidenced by the photographs submitted with this application.
- c) The two block-built structures are large enough to house four dogs each and have metal grilles at the front. They are unsightly and the dogs kept in them are extremely noisy, during the day and the night.
- d) No plausible explanation has been given as to why so many block-built structures were required, which would, we assume, house up to 12 dogs, far too many to be kept in one residence, in our view.

Our concern is the significant amount of noise emanating from the site. This is not the occasional yap, whine or bark: it is loud and continuous barking and/or howling for stretches of 10 minutes or so, many times a day. We accept that, when the dogs have been taken out for exercise, there is no noise because they are not there, but there is significant noise in the run-up to them being taken out for exercise and at other times.

- e) Whilst we accept that the owners of the dogs have a right to keep their pets, that right has to be balanced against the rights of the neighbouring owners/occupiers of properties to peaceful enjoyment of their properties.

## **6.0 Environmental Impact Assessment**

6.1 With regards to The Town and Country Planning (Environmental Impact Assessment) Regulations 2017, the development does not fall within Schedule 1 nor 2 and, as such, is not EIA development.

## **7.0 Duties**

7.1 The site is within Cockermouth's conservation. Section 72(1) of the Listed Buildings Act 1990 states that, with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

## **8.0 Development Plan Policies**

### **Allerdale Local Plan (Part 1)**

8.1 The following policies are considered relevant:-

Policy S1 Presumption in Favour of Development  
Policy S2 Sustainable Development  
Policy S3 Spatial Strategy and Growth  
Policy S4 Design Principles  
Policy S27 Heritage Assets  
Policy S32 Safeguarding Amenity

### **Allerdale Local Plan (Part 2)**

8.2 There are no policies in this part relevant to the application.

## **9.0 Other material considerations**

### **National Planning Policy Framework (NPPF) (2019)**

9.1 Paragraph 212 advises that the policies in this Framework are material considerations which should be taken into account in dealing with applications from the day of its publication. Paragraph 213 advises that existing development plan policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the NPPF. Due weight should be given to them, according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

## **10.0 Policy weighting**

10.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise. This means that the Allerdale Local Plan (Part 1) 2014 and Allerdale Local Plan (Part 2) policies have primacy.

10.2 There are no material considerations in this instance which would result in a decision being made contrary to the development plan. The NPPF is afforded weight as a material consideration but policy S27 in particular is considered to have a high degree of consistency with the NPPF.

## **11.0 Assessment**

### **Background**

- 11.1 The proposal is for two kennels blocks which replaces the existing wooden kennels and pigeon lofts, which the applicant states have been on the site since 1962. The applicant further states the original kennel blocks had a greater footprint than the new kennel blocks, thereby there has been a significant reduction of overall footprint size to the original which have been on site for 59 years.
- 11.2 The applicant states the original kennels and pigeon lofts were in a dilapidated state and leaking hence the need for these to be replaced. They also state that the kennel blocks provide housing for two separate packs of hounds. The applicant's sons each have their own dogs. The kennels have been designed for the needs of the hobby of the brothers as they are both keen hound trailers. They advise that hound trailing is a sport unique to Cumbria and part of Cumbria's Heritage, it can be witnessed in all four corners of the County over the summer months (April to October). Trail hounds are a working dog but they are not a business like professional greyhounds, they are a hobby. The applicant's advise that, during a recent visit by the RSPCA it was established that kennels were fit for purpose and provided high end accommodation for the dogs. Council officers have no evidence to suggest this is not the case.
- 11.3 The two main issues relating to the proposal are:-
- a) the potential noise generated by the use of the site and whether it is harmful to the living conditions of neighbouring residents; and
  - b) the visual impact of the development and whether it preserves or enhances the character and appearance of the character and appearance of the Conservation Area.

### **Noise and disturbance**

- 11.4 Policy S32 refers to safeguarding amenity. The policy states that the development of new housing or other environmentally sensitive development will normally be resisted in locations where there is potential to incur statutory nuisance or poor standards of residential amenity by virtue of impacts such as air pollution, noise, smell, dust, vibration, light or other pollution. The proposal is considered to be an environmentally sensitive development and therefore the policy is of relevance. The proposal is therefore required to be assessed against Policy S32 in respect of noise.
- 11.5 The applicant considers that the new kennels have reduced noise exposure to the dogs as they can hear less traffic and street noise (i.e. people talking, use of machinery). Hounds usually only bark at meal times or when they know they are going in a vehicle and this is restricted to a short time period of less than 5 minutes. Noise in the area can at times be quite loud particularly when people are attending the leisure centre which is immediately behind 44 St Helen's Street. The area is used by a lot of dog walkers who allow their dogs to run loose and

play around the playing fields and have been known to tie their dogs to the bike racks while they attend the leisure centre leaving the dog's to bark constantly for the duration of their visit.

- 11.6 The site currently contains two kennels occupied by dogs and one half built kennel which is proposed to be removed. The number of dogs being kept at the kennels has not been specifically mentioned by the applicant, however in answer to the questions raised by the Council in the Planning Contravention Notice issued in February 2020, the applicant responded 12 dogs. However this was based on each kennel block accommodating four dogs. Therefore given one kennel block is to be removed it is assumed the remaining two kennels could accommodate eight dogs.
- 11.7 The supporting letters and applicant's Design and Access Statement refers to the applicant using the dogs for hound trailing and that this activity raises money for charity. However in the absence of a personal condition, which would be imposed only in exceptional circumstances, the kennels if approved could accommodate any type of dogs and could be run as a business, rather than it appears at present as a hobby. The Council could only reasonably impose a condition restricting the number of dogs being accommodated on site.
- 11.8 To assist the assessment of whether the proposal is acceptable from a noise and disturbance aspect, it is important to consider previous appeal decisions for similar proposals. An appeal decision in Darlington is of relevance APP/N1350/W/18/3219041. The proposal was for a change of use of a domestic garage to a commercial kennel for up to 8 dogs. The inspector identified that the main issue was the effect of the proposal on the living conditions of the residents in the area with regard to noise and disturbance. The appeal was allowed, however, the site was located in a rural area and the dogs were kept within a building during the day, but not kept overnight. The appellant commissioned a noise impact assessment to consider the noise issues. The inspector considered that, as there was no standard method of assessing noise from dog kennels in England, it was appropriate to use the noise limit criteria used by the Ireland Planning Appeals Board for dog kennels which identifies a day time noise level limit of 55db. No limit was given for night time use as the proposal was for purely daytime use. Further research suggests a limit of 45db is used for night time noise. The inspector allowed the appeal on the basis the noise impact assessment met the criteria.
- 11.9 In this case the site is located within a tight knit urban area where there are a number of dwellings in close proximity to the site. The proposal is for an outdoor use, the dogs would not be contained within a building, aside from the kennel buildings, the proposal is for day and night use and, more significantly, the applicant has not carried out a noise impact assessment to demonstrate the use of the site would not lead to noise and disturbance which could affect the living conditions of neighbouring residents.
- 11.10 Members will note that the Council's Environmental Health officer has suggested a condition requiring a noise assessment be submitted before the development is fully permitted. However, your planning officer's advice is that the issue of noise

goes to the heart of the matter and there is a probability that the noise levels could be evidenced as being unacceptable. This would result in the unacceptable and indefensible position of permitting a use that shouldn't have been granted due to unacceptable noise levels being experienced at residential receptors even after attenuation measures has been agreed. The probabilities of this happening are affected by the proximity of residential receptors in this densely populated area. In the absence of pre-determination evidence to suggest noise levels are acceptable, the proposal is considered contrary to policy S32 of the Local Plan Part 1.

### **Landscape and visual impact**

- 11.11 The site is located within the development boundary of Cockermouth and within a conservation area. It is in an elevated location above the house and the rear yard and is, therefore, located in a prominent position particularly when viewed from the east. Policy S4 of the Local Plan Part 1 requires that proposals for all new development demonstrate high standards of design and must be visually attractive, of appropriate scale and appearance and respond positively to the character of the area.
- 11.12 Policy S27 is also engaged given the setting within the conservation area and reflects the bar set by section 72 of the Listed Buildings Act 1990. Proposals should only be accepted if they preserve or enhance the character and appearance of the conservation area. Proposals which do not harm any positive qualities of this heritage asset will be approved. Proposals where this less than substantial harm can be supported where there is a clear and convincing public benefit to the proposal that will outweigh the harm
- 11.13 The applicant accepts the kennels do form prominent buildings but note that they have replaced old wooden built buildings in a desperate need of repair and which have been on site since the owners took ownership of the property in 1962. The applicant further states the kennels have been sympathetically constructed of breeze block and rendered, which over the course of time, will weather. A 1.8m high fence is proposed around the garden which will further reduce the impact of the kennels as the eye line, whilst walking along St. Helen's Street, will only view the fence. It is also proposed to place some landscaping which would further help reduce this impact and make it more in keeping with the surrounding landscape.
- 11.14 Officers accept that the kennels replace a number of wooden dilapidated structures which were considered to look unsightly. The baseline character and appearance of the conservation area therefore included the old, now removed structures and the state had never been deemed to be "untidy land" by the Council under s215 of the Planning Act 1990.
- 11.15 The conservation area extends across much of Cockermouth centre (the historic core) and it is accepted that the impact arising from the changes applied for in this application will be nil to negligible for much of the designated area. Nevertheless, given the prominent position visible from a main thoroughfare into the town from the east and alongside a pedestrian access to the town's leisure centre, it still means that the magnitude of impact has the potential to be high.

- 11.16 The proposed kennels are to be constructed in blockwork and render. At present the two kennels are constructed just in blockwork and appear occupied by dogs. A condition could be imposed to ensure the kennels are finished in render. To the east of these blocks is a partly constructed kennel which is proposed to be removed. Along the eastern boundary there is a beech hedge which is approximately 1.2 metres high. The hedge forms part of the boundary. To the north there is a gap and to the south there is also a gap between the hedge and the garage which is set at a lower level. The proposal is to erect 1.85 metre high close boarded fence from the garage running behind the hedge and extending to the northern boundary. When viewed from the road on the approach to the site from the east the fence would be visible and also the top part of the kennels. The height of the kennels are 2.4 metres and 2.2 metres and sit at a higher level than the eastern boundary.
- 11.17 The site comes into view approximately 50 metres to the east and remains visible until the host dwelling is passed. This entire transient viewpoint is within the conservation area which extends to the east of the site. From these view points the proposed fence would be highly visible, apart from the element to the rear of the hedge and the upper part of the kennels would also be visible above the fence.
- 11.18 The design and siting is rather incongruous and jars when viewed in the context of the traditional gabled forms set along the St. Helen's street sides. This is a rather intimate street with the buildings hugging this relatively narrow valley floor. It is acknowledged that render is employed a lot and the kennels are to be rendered too. However, their stark and non-vernacular form and elevation high above the street is at odds with the traditional grain and siting of buildings that predominates. As a result the proposal would be harmful to the character and appearance of the conservation area and that harm would be less than substantial. This officer's opinion is based on the application before members fully acknowledging the previous character and appearance of the site.
- 11.19 The proposal is to keep dogs for a hobby to participate in hound trailing and it is acknowledged by neighbours that the applicant raises money for charity. Therefore, the proposal does provide some public benefit. Nevertheless, on balance, these benefits are not considered to outweigh the less than substantial harm to the significance of the conservation area. The character and appearance of this area is not preserved or enhanced and although the proposal does have some public benefit it is not considered sufficient to outweigh the harm to the conservation area. The proposal is therefore contrary to Policies S4 and S27 and Paragraph 196 of the Planning Framework.

### **Other matters**

- 11.20 In examining the land ownership records it is clear that the Council owns part of the site. In particular the northern part of the site, where part of dog pen 1 is situated and the eastern area where the proposed fencing is to be located. The applicant has responded stating that she has owned the property since 1962 and has used the piece of land since then and has previously had kennels on this land unchallenged by the Council. They have also maintained the land and built a

retaining wall up to prevent the land collapsing onto the access road serving the adjacent leisure centre.

- 11.21 Although land ownership has been raised as an issue, it is not a material consideration to the determination of the application and, if members were minded to approve the application, the issue of the ownership of the land would have to be dealt with between the applicant and the Council's legal/estates officers.

## **12.0 Balance and Conclusions**

- 12.1 The application has been considered against the development plan as a whole. There is overriding conflict with this plan not outweighed by any material considerations that would outweigh this conflict.

## **RECOMMENDATION**

Permission be refused for the following reasons:-

1. The proposed development due to its location within an urban area and close to neighbouring residential properties would give rise to significant noise and disturbance by dogs barking, which would be harmful to the living conditions of neighbouring residents. The lack of a noise assessment and any noise mitigation measures to evidence that the impact would be otherwise results in conflict with policy S32 of the Allerdale Local Plan.
2. The proposed development would cause less than substantial harm to the significance of Cockermouth Conservation Area by reason of the incongruous design of the development and the site's elevated nature and prominence when viewed from St Helen's Street to the east of the site and also within the Conservation Area. The character and appearance of this designated area would neither be preserved nor enhanced. The harm caused to the Conservation Area would not be outweighed by the limited public benefits of the proposal and would therefore be contrary to Policies S4 and S27 of the Allerdale Local Plan and Paragraph 196 of the National Planning Policy Framework.

