

DOVER DISTRICT COUNCIL

PLANNING COMMITTEE – 10 APRIL 2014

REPORT OF THE HEAD OF REGENERATION AND DEVELOPMENT

- a) **DOV/14/00126 – Retrospective application for the continued use of part of ground floor for day time care and night time boarding of dogs**

Part of Ground Floor, Red Ramblers, Deal Road, Worth, CT14 0BG

Reason for report: The level of public interest in the application.

- b) **Summary of Recommendation**

Planning permission be refused.

- c) **Planning Policy and Guidance**

Dover District Core Strategy (DS)

- Policy DM1 states that development will not be permitted on land outside the urban boundaries and settlement confines unless specifically justified by other development plan policies, or it functionally requires such a location, or it is ancillary to existing development or uses.
- Policy DM3 supports the principle of new commercial development in rural areas and advises that development should be within confines unless it can be demonstrated that no suitable sites exist in which event it should be located adjacent to the settlement unless there is a functional requirement for it to be located elsewhere.
- Policy DM11 states that development that would generate travel will not be permitted outside of the urban boundaries and rural settlement confines unless justified by other development plan policies.
- Policy DM13 requires that the provision of car parking be a design-led approach based upon the characteristics of the site, the locality, the nature of the proposed development and its design objective.
- Policy DM15 aims to protect the countryside through resisting development which would adversely affect its character or appearance or would result in the loss of countryside. Development will only be permitted if it is amongst other things; justified by a need to sustain the rural economy; justified by the needs of agriculture and cannot be accommodated elsewhere.

Dover District Local Plan Saved Policies (DDLPP)

- None applicable

National Planning Policy Framework (NPPF)

- Paragraph 14 of the NPPF states that at its heart is a presumption in favour of sustainable development and that for decision-taking this means approving proposals that accord with the development plan without delay.
- Paragraph 12 confirms that development that conflicts with an up-to-date local plan should be refused unless material considerations indicate otherwise.
- The NPPF has 12 core principles which amongst other things include the need to proactively drive and support sustainable economic development to deliver business needs. They also seek to secure high quality design and a good standard of amenity for all existing and future occupants.
- Section 3 (Supporting a prosperous rural economy) states that planning policies should support the sustainable growth and expansion of all types of business and enterprise in rural areas.
- Section 4 (Promoting sustainable transport) states that decisions should ensure that developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. This does however need to take account of other NPPF policies, particularly in rural areas.
- Section 10 (Meeting the challenge of climate change, flooding and coastal change) states that applications for minor development and changes of use should meet the requirements for site-specific flood risk assessments.
- Paragraph 203 states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

Planning Practice Guidance (PPG)

- On 6th March 2014 the Department for Communities and Local Government launched a planning practice guidance web-based resource. This contains a number of sections to enable users of the planning system to obtain information in a useable and accessible way. It should also be referred to as a material consideration when making decisions as it replaces the previous planning guidance documents which are now cancelled.

d) Relevant Planning History

DOV/12/0248 – Retrospective application for change of use for day care and boarding of dogs. This application was refused in July 2012 after being reported to the Planning Committee in June 2012. The application was refused for two reasons:

1. *The proposed use, if permitted, would generate travel beyond any urban or village confines and by way of its siting in a rural location, would constitute an unsustainable form of development by increasing travel*

demand, particularly of the private car. In the absence of any policy justification for the development, the proposal would be contrary to the policy objectives relating to sustainable development and, in particular, would be contrary to Policies DM1, DM3 and DM11 of the Dover District Core Strategy, policies CC1 and CC6 of the South East Plan and the provisions of the National Planning Policy Framework.

2. *The proposed development would introduce a new business outside any settlement confines and would constitute a new development within the countryside which is unacceptable in principle and for which there is no justification or overriding benefit that would outweigh the harm that would arise from the development. The development would be contrary to Policy DM1 of the Dover District Core Strategy, Policy CC6 of the South East Plan and the provisions of the National Planning Policy Framework.*

An appeal against the decision of the Council to refuse planning permission was then dismissed in September 2013. The Inspector concluded that whilst it was clear that the appellant wished to continue to run the business from home, that the proposal did not accord with relevant development plan policies and that there were no other material considerations that would outweigh this conflict. He determined that the substance of the relevant Core Strategy policies was consistent with the NPPF objectives of promoting sustainable development and that they were afforded considerable weight.

The main harm that the Inspector identified during the consideration of the appeal was twofold. Firstly, he concluded that the proposal would fail to promote sustainable development by locating a business in a rural location outside of existing settlement boundaries without evidence of a functional requirement. Secondly, that the proposal would generate the need to travel by private car outside of settlement boundaries and confines and that there was no evidence that a business operating over a long term period in this location would be more sustainable in terms of reducing the need to travel compared to one within settlement boundaries.

e) **Consultee and Third Party Responses**

DDC Senior Environmental Protection Officer: Refer to their comments in respect of application DOV/12/00248. These were:

I have checked Environmental Health records and note that only one complaint has been received concerning noise from dog barking in June 2008. No nuisance was established at this time. I note from the application that dog faeces waste will be treated chemically at a designated area. In view of the above I do not wish to object to this application.

The premises have been issued with a licence under the Animal Boarding Establishments Act 1963 which limits the number of dogs allowed to remain on the premises overnight to 4 with a maximum of 10 day boarders.

Having checked Environmental Health records since the Environmental Protection Officer confirms that no complaints have been made to them since that time. Environmental Health do not wish to object to this application.

KCC Highways and Transportation: Comment that it is likely that no more than 2 or 3 dogs are dropped off at any one time bearing in mind the

extended opening hours of the site. There is therefore likely to be a demand for up to 3 parking spaces at any one time and this demand is short term.

During a visit to the site customers used the lay-by/service road immediately outside the site for parking and there was sufficient space available for them to do this clear of the A258 Deal Road. Additional space was also available further along the road. The lay-by/service road appears to be regularly used for parking by some residents and visitors. There have been no recorded personal injury crashes related to the use of this lay-by/service road in the last 5 years to the end of September 2013.

Therefore would not recommend refusal on highway grounds.

Worth Parish Council: Object to the application on the same grounds as the former application. There is nothing in the new application to address the planning policy issues and the Parish Council supports the neighbours in their objections.

Public Representation: 86 letters of support for the application have been received from both local residents and addresses further afield in the District. 14 letters of objection have been received from local residents and from Ward Councillor Russell. These raise the following:

Objection:

- The area is residential and not suitable for the use which is very intensive due to the number of dogs.
- The road is very busy and the layby outside is often very congested. Increased traffic cannot be suitably accommodated.
- The latest application does not overcome the previous reasons for refusal.
- The dogs barking and vehicles at the site cause unacceptable noise.
- Neighbouring driveways are blocked when picking up/dropping off.
- The disposal of faeces and urine is a nuisance and unhygienic.
- The business is not unique and there is no justification for its location.
- There are kennels on the site, including a shed for facilitating the dogs.
- The site is unsustainable as people have to drive to it.
- The number of dogs is incompatible in this residential area.
- There are a number of local businesses that provide dog services.
- There are a number of vacant units locally that could accommodate the use.
- There are no special circumstances justifying a personal permission.
- A Management Plan should already be in place on the site.
- If planning permission is granted then the business could grow out of control.
- There have been a number of problems involving the dogs when being walked at Sandwich Bay.
- There is no evidence that the dogs prefer this environment than a kennel.
- There have been a number of incidents involving the dogs on the premises where residents have felt unsafe.
- There have been incidents involving people visiting the business with neighbours.
- The number of dogs on site has previously led to neglect.

Support:

- There are no similar facilities in the area offering a “home from home”.
- Dogs prefer the environment than being in a kennel.
- The business provides a high level of service.
- Whilst outside the confines this is not a rational reason for refusal. Individual circumstances should be taken into account.
- There are a number of businesses on the A258 in the locality and the location is ideal on a main road.
- The road is suitable for the number of vehicle movements associated with the use.
- There is room in the layby for picking up/dropping off.
- Refusal would have a devastating effect on the applicant’s family.
- The dogs on site are well behaved, quiet and happy. Poor behaviour is not tolerated.
- The loss of the service would be detrimental to the village.
- As Delf Farm Shop was granted permission, so should this application.
- The loss of Pfizer has affected the local economy; there should be support for small businesses.
- The applicant is active in the local community. She should not have to move.
- The site is always clean and hygienic.
- The applicant’s husband suffers from ill health and has to work locally.
- The applicant has full control of the dogs.
- The Council should not have advised planning permission was originally not required.
- Noise from the dogs is no greater than that associated with a normal residential use.
- There have been a number of incidents involving neighbours of the business, not those visiting it.

f) **The Site and the Proposal**

- 1.1 The application site is Red Ramblers, a detached, two-storey dwelling, situated on the east side of Deal Road. Adjacent to the dwelling to the north and south are other residential properties and to the rear (north-east) is a working farm. On the opposite side of Deal Road there are agricultural fields. The site is located beyond the rural and urban confines and is therefore considered to be a countryside location for Development Management purposes. The site is also located within an area at risk of flooding falling partly within flood zone 2 and 3.
- 1.2 Deal Road (A258) is a busy road and provides a transport link between Sandwich, Sholden and Deal. Separating the application site from the A258 is a lay-by which allows the occupiers of the residential dwelling to pull off the main road and to access their private driveways, the lay-by also provides on-street car parking for visitors.
- 1.3 Retrospective planning permission is sought for the continued use of part of the ground floor of Red Ramblers for day time care and night time boarding of dogs. The application states that the unauthorised use has been taking place on the site since June 2007. The use is currently licensed under Environmental Health regulations for no more than 10 dogs in the applicant’s care during the day and no more than 4 dogs overnight.

- 1.4 The application confirms that in May 2011 a rear conservatory extension was erected. This extension, along with the rear section of an existing attached garage building to the side of the property are mostly used to accommodate the dogs, however they also have access to most of the ground floor of the property and the garden, along with the applicant's dogs.
- 1.5 The applicant states that the dogs are looked after during the day from the core hours of 0700 hours to 1900 hours. The day care of the dogs is for mostly working owners, which is considered a unique feature of the business. The day care is specified as being the main use, with the boarding use secondary, being used mostly by dog owners who go on holiday. It is stated that the maximum number of dogs staying overnight is only reached during holiday periods.
- 1.6 It is specified that there are no kennels on the site and the dogs are not kept outside. A 1m high metal rail and mesh fence has been erected beyond a concrete area immediately behind the conservatory where the dogs can go out. The remaining garden area is planted and laid to lawn. Reference is also made to the fact that the applicant exercises the dogs every day away from the appeal site, mostly along the sea front at Sandwich Bay.
- 1.7 *Plans will be on display.*

2. **Main issues**

2.1 The main issues in the consideration of this application are:

- The principle of the development
- Impact on residential amenity
- Impact on highway safety; and
- Impact on the countryside

3. **Assessment**

The principle of the development

- 3.1 The application site is located beyond the rural settlement confines of both Sandwich and Worth and is therefore designated as being within the countryside. The settlement confines of Worth are located within 100m to the south of the site. Policy DM1 makes it clear that development will not be permitted in such locations unless specifically justified by other development plan policies, or it is ancillary to existing development or uses.
- 3.2 A business can be operated from a residential property if it is considered to be incidental to the main use as a residential dwelling. The point at which a use departs from being termed incidental is difficult to determine and has to be based on case law. In this case the intensity of the use has changed the character of the dwellings so that it can no longer be regarded as incidental. A change of use has occurred for which planning permission is now required.
- 3.3 Policy DM3 supports new commercial development but states that it should be within the rural settlement confines unless it can be demonstrated that no suitable site exists, in which event it should be located adjacent to the

settlement unless there is a functional requirement for it to be located elsewhere.

- 3.4 The applicant has argued that the nature of this business is unique as it provides a “home from home” facility that offers on a consistent basis the same service and facilities for dogs for customers who wish them to be looked after in a home environment. They state that the need for this form of care and boarding is not provided for in any other location within the District and as such the applicant cannot move to an existing facility (i.e. non-residential/commercial premises) or join with another facility in a town, village or countryside. They consider that alternative suitable sites are not available.
- 3.5 The business taking place at Red Ramblers is one of eight licensed boarding premises in the District although it is unclear exactly how they operate and whether they follow a similar business model to Red Ramblers by providing a “home from home” facility. It cannot therefore be disproven that the nature of the use taking place at Red Ramblers is unique.
- 3.6 Notwithstanding this, in terms of demonstrating whether any alternative suitable sites exist, it is not considered that even if the unique nature of the business is accepted, that this satisfies this requirement as if a residential property is required to carry out the business then it would be an option to provide it in a location within town or village settlement confines as opposed to this location outside of the settlement confines.
- 3.7 Turning to the functional requirement for the business to be located outside of the rural settlement confines, the applicant argues this is because of the particular approach to caring for dogs which requires a home environment, with the applicant living at home with the dogs and being the ‘leader of the pack’. It is argued that dogs function better in packs and follow the leader of the pack who in this case is the applicant. The dogs are therefore quiet and submissive and this type of behaviour could not operate outside a home in kennels for example.
- 3.8 Again, this argument is not considered to be sufficient to demonstrate a functional requirement as there is no evidence to suggest that there are no residential properties within town or village settlement confines that would be available and suitable to provide the use.
- 3.9 Another argument made by the applicant is that should she and her husband have to move house to create a home environment for the dogs, then this would have to be within walking distance of the farm where the applicant’s husband is employed. It is claimed that it would be unsustainable to move house for sustainable location reasons, only for the applicant’s husband to have to journey back to the same location to go to work.
- 3.10 The applicant’s husband works locally but since suffering a stroke he first lost partial vision but then when he regained his vision, lost a lot of his confidence in his ability to drive on his own. A doctor’s letter submitted confirms that it is important that he does not allow his levels of stress to increase as this is an important factor in managing his condition which a commute to work could mean.
- 3.11 Whilst sympathetic to the personal circumstances of the applicant’s husband, it is not considered that this demonstrates a functional need for the business

to be located outside of the settlement confines at this site that would outweigh the Core Strategy policies relating to the location of new commercial development. The proposal is contrary to Policies DM1 and DM3 of the Core Strategy.

- 3.12 It is argued by the applicant that the site does provide the opportunity for travel choices but that in reality the car journey is necessary to transport the dogs and their personal items. However they consider that the site and uses in this section of the A258 is in a sustainable location which best fits the type of use. The applicant states that many clients are identified as using the route in any case to travel to work, and it is argued that alternative uses within settlement confines within more densely populated areas would give rise to the use being more obvious in the locality and potentially more conflicting.
- 3.13 Policy DM11 of the Core Strategy states that development that would generate travel will not be permitted outside the urban boundaries and rural settlement confines unless justified by development plan policies. In this case the business use generates travel by private car, is outside settlement boundaries confines, and as found above, is not justified by other development plan policies.
- 3.14 Whilst clients would be more likely to transport dogs by private car rather than public transport as a result of convenience, and while some clients pass the site, travelling between settlements, it is not considered that a business operating in this location would be more sustainable in terms of reducing the need to travel compared to one within settlement boundaries. Regarding the argument about the applicant's husband having to travel further if located in settlement confines, again there is no evidence to suggest that travel to and from any alternative site to his place of work would be unsustainable, particularly as a wider variety of transport modes could be available from locations within confines. The proposal is considered contrary to Policy DM11.
- 3.15 When considering this application, significant weight should be placed on the recent appeal decision from September 2013 which dismissed the appeal on the grounds that it failed to comply with Policies DM1, DM3 and DM11. The Inspector noted that the group of properties that the site forms part of were distinct and separate from nearby settlements and in a location that has a rural character and appearance due to surrounding open land, some of which is in agricultural use, and the adjacent farm. It is considered that this conclusion is the correct one and that there is no evidence or information put forward with this latest application that allows a different conclusion to be made.
- 3.16 The Inspector considered the nature of the business being different to a boarding kennel and the argument that the type of care needed to be within a residential environment. In addition he considered the argument that it was more suitable in this location than a densely populated urban area because of the potential for noise and disturbance from dogs. He concluded that whilst this concern might have ruled out a similar business at certain locations within settlement confines and boundaries, it does not preclude all such options. He also concluded that as the business use generates travel by private car outside of settlement confines that it would fail to comply with DM11 as it would not be justified by other policies.

- 3.17 The Inspector also concluded that whilst the NPPF promotes sustainable economic growth, proposals must be in accordance with the development plan unless material considerations indicate otherwise. The same approach must be applied here. Whilst there are limited economic and social benefits resulting from the continued use of the business to the applicant and a small section of the community, it is considered that the proposal would fail to comply with the environmental sustainability thread as a result of its location which would increase the need to travel outside of settlement confines in a rural location. It is considered that there are no material considerations that outweigh this harm to justify the proposal.
- 3.18 The application argues that as a result of how the applicant operates the use, the home environment, the need for the applicant to remain in the area and the need for the applicant's husband to remain close to his workplace bring into consideration that a planning permission personal to the applicant would help to justify the use outside the settlement confines, meaning that the permission would not run with the land but rather with the applicant.
- 3.19 National Planning Guidance states that there may be exceptional occasions where granting planning permission for development, that would not normally be permitted, could be justified on planning grounds because of who would benefit from the permission. This includes examples such as agricultural or forestry workers where an exceptional need has been demonstrated. It goes on to state that a condition used to grant planning permission solely on the grounds of an individual's personal circumstances will scarcely ever be justified in the case of permission for the erection of a permanent building, as it could, for example, result from enforcement action which would otherwise cause individual hardship.
- 3.20 It is not considered that the material considerations referred to justify a personal permission in this instance and that if it is deemed suitable for the applicant to carry out the business from the site, then it would be suitable for anybody else to come in and carry it out. In addition it has not been satisfactorily demonstrated that there are no suitable sites elsewhere in the District or a functional need for it to be in this location to justify a personal permission.
- 3.21 On the basis of the above, whilst there is sympathy for the applicant's personal situation, it is considered that the principle of the use in this location is still unacceptable and that there are no new material considerations that should outweigh the conclusions of the Planning Inspector in September 2013 and of the Planning Committee in June 2012.

Residential Amenity

- 3.22 The applicant has a licence for 10 dogs in day care and 4 dogs in boarding. Whilst it is stated that the dogs are generally well behaved, it is reasonable to assume that there would on occasions be noise and barking from them. They do also have use of outside areas which would make noise audible from outside the house. Notwithstanding this, Environmental Health raise no objection, confirming that there has only ever been one complaint relating to dog barking but that no nuisance was established at the time
- 3.23 In addition to this it is also reasonable to assume that there would be a degree of noise and disturbance from customers dropping off and picking

dogs up however the site is located adjacent to a busy road where there is already likely to be large levels of vehicle movements taking place at most of the day and as such any noise from vehicles dropping off and picking up would be likely to blend into this and not be unacceptable.

- 3.24 Concern has been raised over odours from the site however the applicant has confirmed that there is a robust cleaning schedule in place which involves the sweeping and washing of the hard surfaces and that all faeces are disposed of in a chemical toilet. This is considered to be an acceptable arrangement and Environmental Health have previously advised that this would be suitable provided the cleaning routine is robust. Previous investigations found no complaints had been received but that action could be taken if problems arise in the future.
- 3.25 The amount of traffic visiting the property is likely to be in the region of 20 cars per day. A condition can be imposed to control the working hours, not permitting dogs to be dropped off before 7am and to be collected by 6pm, a condition can also be imposed controlling the number of dogs which can reflect the requirements of the licence.
- 3.26 The previous application and subsequent appeal were not based on residential amenity grounds and it is not considered that there is any material change in circumstances that would now warrant a different decision. On balance, the safeguarding conditions proposed would ensure that harm to residential amenities would not arise from noise, disturbance or odours.

Highway Safety

- 3.27 Local residents have expressed concerns regarding highway safety. They state that customers park in an inconsiderate manner and block access to driveways, it is also claimed that the car parking spaces on the applicant's driveway are not used because the access is narrow.
- 3.28 KCC Highways Engineer had advised that it is likely that no more than 2 or 3 dogs are dropped off at any one time bearing in mind the extended opening hours of the site. There is therefore likely to be a demand for up to 3 parking spaces at any one time and this demand is short term.
- 3.29 Further, during a visit to the site customers used the lay-by/service road immediately outside the site for parking and there was sufficient space available for them to do this clear of the A258 Deal Road. Additional space was also available further along the road. The lay-by/service road appears to be regularly used for parking by some residents and visitors. There have been no recorded personal injury crashes related to the use of this lay-by/service road in the last 5 years to the end of September 2013.
- 3.30 As a result of this advice it would not be reasonable to conclude that this application poses a highway safety risk. Again, the previously refused scheme and appeal were not based on highway grounds and it would be unreasonable to introduce them now.

Impact on the Countryside

- 3.31 The property has retained its domestic character and appearance and is still viewed as one of a group of residential properties forming part of this ribbon

development outside Worth. It is therefore considered that the development would not adversely affect the character and appearance of the countryside and is in accordance with Policy DM15 of the Core Strategy.

Other issues

- 3.32 The applicant, supported by a number of the representations submitted, suggests that they sought the advice of the planning department prior to commencing the business 2007. Whilst this is not disputed, there is no written record of this enquiry so the exact nature of the advice given cannot be confirmed.

Conclusion

- 3.33 The NPPF reflects the government's commitment to building a strong and competitive economy, it is also concerned to facilitate sustainable development by reducing the need to travel and giving people a real choice about how they travel. As such, the Council's adopted policies are consistent with national policy, a conclusion that the Inspector made when considering the appeal against the previous refusal of planning permission in 2013.
- 3.34 The NPPF makes it clear that all decisions should be made in conformity with the local plan and equal weight should be given to economic, social and environmental factors. This assessment identifies that the development would be contrary to Core Strategy Policies DM1, DM3 and DM11. These policies aim to protect unjustified development within the countryside and to promote sustainable businesses in locations which are not dependent on private cars.
- 3.35 The applicant has made the case that there are no other suitable sites from within the District from which the use could be carried out and that there is a functional need for the business to be in this location. They have also outlined personal circumstances to warrant planning permission being granted which might justify a personal permission. It is not considered that these material considerations outweigh the harm identified by the conflict with the Development Plan policies specified and that they are not justification for planning permission to be granted in this instance.
- 3.36 In respect of the Public Sector Equality Duty under the Equality Act, the recommendation is not considered to disproportionately affect any particular group.

g) Recommendation

I PERMISSION BE REFUSED on the grounds:-

- 1) The proposed use, if permitted, would generate travel beyond any urban or village confines and by way of its siting in a rural location, would constitute an unsustainable form of development by increasing travel demand, particularly by private modes of transport. In the absence of any overriding policy justification for the development, the proposal would be contrary to the policy objectives relating to sustainable development and would be contrary to Policies DM1, DM3 and DM11 of the Dover District Core Strategy 2006 and the National Planning Policy Framework.

- 2) The proposed development would introduce a new business outside any settlement confines and would constitute a new development within the countryside, which is unacceptable in principle and for which there is no justification or overriding benefit that would outweigh the harm that would arise from the development. The proposal would be contrary to Policy DM1 of the Dover District Core Strategy 2006 and the National Planning Policy Framework.

Case Officer
Ben Young