



An
Bord
Pleanála

Inspector's Report PL26.249061

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| Development | Erection of a dog boarding kennel and associated site works. |
| Location | Arnestown and Knockmullin and Butlerstown, New Ross Rural |
| Planning Authority | Wexford County Council |
| Planning Authority Reg. Ref. | 2017/0713 |
| Applicant(s) | Jonathan St Ledger |
| Type of Application | Permission |
| Planning Authority Decision | Grant, subject to 9 conditions |
| Type of Appeal | Third Parties -v- Decision |
| Appellant(s) | Mary Doyle Seamus Barron & Others |
| Observer(s) | None |
| Date of Site Inspection | 3 rd November 2017 |
| Inspector | Hugh D. Morrison |

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1.0 Site Location and Description

- 1.1. The site is located on the western side of the L4021, some 240m south of the junction between the New Ross Southern By-pass (N25) and this local road, which runs on to the SE to meet with the R734. This site lies beyond the town of New Ross in an area of undulating farmland and woodland that is interspersed with dwelling houses of both recent and older origin.
- 1.2. The site itself is of roughly regular shape. This site extends over an area of 0.882 hectares and it has been regraded to facilitate the construction of a new bungalow (250 sqm), which is centrally sited. The gated access to the site off the L4021 is from the south eastern corner. This local road rises in a southerly direction as it passes by the eastern boundary of the site and so the said access point is elevated above the majority of the site. The accompanying driveway winds down to the dwelling house and it adjoins the elevated southern portion of the site, upon which the proposal would be constructed. A wall and a pair of gates present to the driveway along the north eastern side of this portion of the site. The boundaries to the site are denoted by means of walls, hedgerows, and an earthen mound/timber post and railing fence. Adjoining lands to the south are laid out as fields within which there are agricultural sheds.

2.0 Proposed Development

- 2.1. The proposal would entail the construction of a single storey building comprising 18 dog boarding kennels (132.4 sqm), which would be sited on the elevated southern portion of the site. This building would also comprise an office and store and it would be orientated on a NE/SW axis. The building itself would be of rectangular form under a shallow double pitched roof and it would, variously, be clad in cedar and finished in render.
- 2.2. Each of the kennels would be accompanied by an outside run, which would be enclosed by wire mesh fencing under the lowest reaches of the aforementioned roof. An outer yard would wrap round these runs and the SW end elevation of the building. This yard would be enclosed on its outer sides by means of a 2.1m high two leaf blockwork wall. The walls of the building between the kennels and the runs would be composed of two leaves of blockwork as well and both set of walls would

have their cavities filled with 100 mm of bonded bead and they would have acoustic boarding, with wire mesh to protect it, attached to their inner sides. The roof likewise would be composed of felt and agribuild insulation panels with spray foam in between. The passageway through the centre of the building would be served by a door in the NE elevation and it would be lit by a single window in the SW elevation. This door would be accompanied on either side by a single window to the office and store.

- 2.3. The building would be served by an effluent channel, which would run alongside the front elevation and which would discharge to a collection tank for washings to the north. Four car parking spaces would be laid out between the existing entrance to the overall site and the existing gates and accompanying walls that enclose the site of the proposed building.
- 2.4. The applicant states that the proposed boarding kennels would operate on the basis that all dogs would be locked in their kennels, as distinct from their runs, between 21.00 and 08.00 each night.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted, subject to 9 conditions, which include the following two:

5. Noise emanating from the development shall not cause to be measured at the facing elevation (outside) of any dwelling in the area, during the hours 0700 – 2100 a noise level of 55 dB(A)_(L_{aeq} 1 hour) and during the hours 2100 – 0700 and Sundays and Bank Holidays a noise level of 42 dB(A)_(L_{aeq} 1 hour). The noise is also not to be impulsive in nature or have any tonal element which is 5dB(A) above the adjacent frequencies.

Reason: In the interests of the amenities of adjoining property.

9. Between the hours of 2100 and 0800, all doors, hatches and windows shall be closed and secured so that the dogs are contained within the building with no access to outside areas.

Reason: In order to safeguard the amenities of property in the vicinity.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

See conditions

3.2.2. Other Technical Reports

Environmental Scientist: No objection, subject to conditions.

3.3. **Prescribed Bodies**

None

3.4. **Third Party Observations**

See grounds of appeal

4.0 **Planning History**

- 2014/1049: Erection of a fully serviced dwelling house for the current applicant: Permitted and implemented.
- Pre-application consultation held in February 2016.
- 2016/0411: Erection of dog boarding kennel (77 sqm) and associated site works: Refused for the following reason:

The proposals for mitigation of noise are considered inadequate. Outside dog pens are proposed and trees do not provide adequate screening for noise. Therefore, the proposed development would have a detrimental impact on the residential amenity of the area and is considered contrary to the proper planning and sustainable development of the area.

- Pre-application consultation P2017/0043 was held on 13th February 2017.

5.0 Policy Context

5.1. Development Plan

Map No. 13 of Wexford County Development Plan 2013 – 2019 (CDP) shows the site as lying within the lowlands landscape character area. Section 18.15.3 of the CDP addresses home based economic activities.

5.2. Natural Heritage Designations

To the west of the site at some remove lie the following designated sites:

- River Barrow & River Nore SAC (site code 002162)
- Barrow River Estuary NHA (site code 000698)

6.0 The Appeal

6.1. Grounds of Appeal

(a) Mary Doyle

- The proposal would be constructed adjacent to a shed and yard that are used during the winter months to house thoroughbred horses and within the vicinity of a track that is used between August and April to exercise these horses. Barking and/or the rattling of cages would risk frightening the horses, thereby jeopardising the viability of the shed and yard.
- The proposal would also risk the escape of kennelled dogs and/or the attraction of stray dogs. Either way sheep worrying could ensue.
- The red edge of the application site includes a well that the appellant states lies within lands that are in her ownership. This well would be relied upon as a water source for the proposal.
- The proposal would lead to the devaluation of sites within the appellant's ownership, which she may wish to sell in the future.
- Attention is drawn to the routing of a boundary between the applicant's land and the appellant's. The appellant states that this routing is incorrect.

Attention is also drawn to the absence of a stock proof fence, which the appellant states that the applicant was under obligation to provide. In the light of these matters, the likelihood that the applicant would comply with conditions is questioned.

- The appellant requests an oral hearing.

(b) Seamus Barron & Others

- The appellants request an oral hearing.
- Attention is drawn to the proximity of dwelling houses to the site and the noise and disturbance that would result from barking.

An Acoustic Review of the proposal was undertaken, which examines changes to the acoustic environment that would affect the nearest dwelling house. This dwelling house is elevated on higher ground above the site and so the proposed 2.1m high wall would fail to mitigate noise breakout. Likewise, the kennels themselves would need to be ventilated and so noise mitigation measures incorporated within them would be compromised thereby. Furthermore, the site lies to the SW of the said dwelling house and so the prevailing wind would also feature.

Draft condition 5 is examined by the Acoustic Review, too. Noise data from a comparable kennels is used to demonstrate that the parameters set within this condition would be exceeded, especially with respect to impulsive noise.

- Access to the site is from Gannon's Hill, a stretch of road with a poor accident record. This road is due to become busier in the future, due to changes in the local road network. Traffic generated by the proposal would add to the hazard associated with its existing and projected use, as would dog walking on this road.
- The adverse impact upon residential amenity would be such that the nearest dwelling house and other dwelling houses in the vicinity would suffer a loss of value.
- The siting of the proposed dog boarding kennel on the site would conflict with the likely growth of New Ross southwards in the future.

- The family in one of the nearby dwelling houses fosters children, who could be put at risk if a dog was to escape.
- Waste from the boarding kennel could contaminate the local aquifer upon which the private wells of neighbouring dwelling houses depend.
- Local wildlife would be adversely affected by the noise from the proposal.
- There is widespread opposition to the proposal within the settled local community.

6.2. Applicant Response

The applicant begins by outlining the need for a dog boarding kennel as there is none at present in the New Ross area. As he has always had an interest in dogs and he is keen to work for himself, the current proposal suggested itself. He also critiques the validity of the interest of some of the signatories on the petition submitted at the application stage. He responds to the grounds of appeal as follows:

- Attention is drawn to the specific mitigation measures that would be incorporated within the proposed dog boarding kennel, i.e. acoustic boards to the inside of the walls and the roof, with the former being protected by means of wire mesh, and the construction of a two-leaf blockwork wall to the surrounding yard with pumped acoustic pellets in the cavity and acoustic boards attached to the inward facing elevation. Furthermore, the dogs would be confined to their kennels between 2100 and 0800.

The Acoustic Review is critiqued on the basis that its readings are not specific to the subject site but rather drawn from another boarding kennel site, the identity of which is not disclosed.

- The stretch of road in question has experienced only 3 crashes in the last 18 years that required the attendance of the fire brigade. The bends on this stretch may be the subject of further County Council signage in the future. Customers would be able to park and turn around entirely off the public road.
- The predicted loss to property values is contested.

- The likelihood of New Ross expanding southwards is questioned on the basis that a planning application for a housing estate on the opposite side of the road from the site was refused permission in the past.
- The applicant testifies that his own dogs have not escaped from their run and he expresses confidence that boarding dogs would likewise pose no risk to the safety of neighbours, i.e. they would be accommodated in locked kennels and runs, beyond which would be 2.1m high perimeter wall that would be monitored by CCTV 24/7.
- Elsewhere in the locality residential properties are served by private wells and septic tanks. The proposal would simply continue this pattern of usage.
- Quite how the proposed dog boarding would affect local wildlife is unclear.
- The applicant and his family of origin reside in the locality. He undertakes to run the proposed boarding kennel in a manner that would not cause upset to his neighbours.

6.3. **Planning Authority Response**

Reference is made to the case planner's report. Notwithstanding a Section 132 request that the appellant (b)'s Acoustic Review Report be addressed, no further comments have been forthcoming.

6.4. **Observations**

None

6.5. **Further Responses**

None

7.0 **Assessment**

- 7.1. I have reviewed the proposal in the light of the CDP, relevant planning history, the submissions of the parties, and my own site visit. I, therefore, consider that this application/appeal should be assessed under the following headings:

- (i) Land use,
- (ii) Amenity,
- (iii) Traffic, access, and parking,
- (iv) Water, and
- (v) AA.

(i) Land use

- 7.2. The site is located beyond New Ross town. The New Ross Town and Environs Development Plan 2011 – 2017 shows a development boundary around the town, which follows the line of the N25, some 240m to the north of this site. The site thus lies within a rural area, albeit one that combines farmland and woodland with dwelling houses, particularly at some remove to the east of the site.
- 7.3. Appellant (b) expresses concern that the proposal, if granted and implemented, might have the effect of interrupting any future expansion of the town in a southerly direction. The applicant has responded to this concern by drawing attention to an application for a housing estate nearby, which was refused permission.
- 7.4. I consider that by custom and practise it is well established that the siting of dog boarding kennels in rural areas is appropriate, in principle, from a land use perspective. In this case, the applicant has drawn attention to the absence of such a facility in the New Ross area, an absence which has provided him with the impetus to bring forward the current proposal.
- 7.5. I consider, too, that it would be unreasonable to object to the proposal on the basis that New Ross may expand southwards in the future. The Planning Authority has no adopted or draft plans that would indicate that such expansion is either in prospect or being contemplated. Thus, any objection would be premature and unjustified.
- 7.6. I conclude that the proposal would be appropriate in principle within a rural area.

(ii) Amenity

(a) Noise

- 7.7. The current application was preceded by an earlier one for a dog boarding kennels, too. This application was the subject of a further information requested, which, amongst other things, explored noise mitigation measures. Nevertheless, it was

refused on the grounds that such measures would be inadequate and so the proposal would have a detrimental impact upon residential amenity.

- 7.8. The current application seeks to overcome this reason for refusal. Thus, the proposal would incorporate within the walls and roof of the building and surrounding yard noise insulation and the applicant has undertaken to ensure that dogs would be housed in their kennels, as distinct from their runs, between 2100 and 0800.
- 7.9. This application is not accompanied by a noise survey and so the applicant has not demonstrated to what extent the said noise insulation measures would mitigate the noise of dogs barking, which would inevitably arise from the proposal. Nevertheless, the Planning Authority has been advised by its Environmental Scientist, who requested that condition 5 be attached to the draft permission. For ease of reference this condition is set out below:

Noise emanating from the development shall not cause to be measured at the facing elevation (outside) of any dwelling in the area, during the hours 0700 – 2100 a noise level of 55 dB(A)_(L_{aeq} 1 hour) and during the hours 2100 – 0700 and Sundays and Bank Holidays a noise level of 42 dB(A)_(L_{aeq} 1 hour). The noise is also not to be impulsive in nature or have any tonal element which is 5dB(A) above the adjacent frequencies.

In recommending this condition, I consider that it is reasonable to assume that the Environmental Scientist is of the view that the submitted proposal would, in practise, be capable of complying with its provisions.

- 7.10. Appellant (b) commissioned an Acoustic Review Report of the proposal and condition 5. This Report establishes the ambient day time and night time noise levels for the locality of the site, based on readings taken over a three-day period from the nearest neighbouring dwelling house, i.e. the bungalow on an elevated site on the opposite side of the L4021 from the application site and at a distance of c. 80m to the NE of where the proposed building would be sited. It also draws upon noise recordings obtained from a comparable dog boarding kennels in Dublin. These two sets of data are utilised in calculations which predict the noise that could be anticipated from the barking of dogs in the proposed development.
- 7.11. The aforementioned Report critiques condition 5. Thus, it draws attention to the fact that barking, by its very nature, is an impulsive noise. Insofar as barking may be

intermittent over any 1-hour period, the selected 1-hour LAeq¹ measurement would not reflect the impact of barking as well as a 5-minute LAeq. Nevertheless, even if this measurement is used, day time noise, which is already recorded as being 2 dB(A) above the level set in condition 5, at 57 dB(A), would, on the basis of several dogs barking for only 1 minute, rise to 65 dB(A). Similarly, night time noise would rise from 39 dB(A) to 56 dB(A). Thus, under both scenarios, the cited thresholds in condition 5 would be breached.

- 7.12. The aforementioned Report interacts with the WHO Community Noise Guidelines 2000, which state that “a small number of noise events with a high maximum sound pressure level will affect sleep.” In this respect, the fact that the bark of a dog is likely to be 60 dB LAFmax² is particularly salient. This Report also interacts with BS 4142: 2014 and it concludes that the night time ambient noise in the front garden to the nearest neighbouring dwelling house would, due to loud barking for only 10 seconds in any hour, lead to an increase in 25 dB over the LA90 ambient noise level. Given that an increase of 10 dB would have an adverse impact, the potential thus identified would be significant.
- 7.13. I note that condition 5 is similar to the Board’s standard noise condition designed to safeguard residential amenity. I note, too, the findings of the Acoustic Review Report to the effect that there is little if any prospect of this condition being capable of being complied with. The clear implication is thus that the proposal would be incompatible with the maintenance of the residential amenities of the area.
- 7.14. The Planning Authority was specifically invited to respond to the Acoustic Review Report. However, this Authority has stated that it has no further information to add.
- 7.15. The applicant has responded to this Report by stating that the data employed is not site specific. However, this response fails to acknowledge that this data is partly drawn from a noise survey of the locality of the site and that, short of the proposal being insitu and operational, the only way to establish data with respect to barking is to visit a comparable dog boarding kennels to the one proposed. That said, in the absence of more specific details as to the Dublin dog boarding kennels visited, the exact degree of comparability is not available. Thus, for example, while the applicant

¹ LAeq, T: The equivalent continuous noise level. It is a type of average and it is used to describe fluctuating noise in terms of a single noise level over a sample period (T).

² LAFmax: The highest A weighted noise level recorded during a specified time period.

states that these kennels are the subject of “acoustic treatment and overhangs on the roofing”, whether such acoustic treatment is applied to not only the walls of the kennels but the boundary walls to any accompanying yard has not been stated definitively.

- 7.16. In these circumstances, I consider that the precautionary principle is relevant. Neither the applicant nor the Planning Authority’s Environmental Scientist have rebutted appellant (b)’s critique comprised in the Acoustic Review Report. Furthermore, the applicant has not submitted a comparable report to allay the significant noise concerns that have been raised. Accordingly, notwithstanding the aforementioned outstanding question concerning the extent of comparability, the precautionary principle directs that to proceed with the proposal would, at the very least, be premature.

(b) Other amenity considerations

- 7.17. The appellants have raised several other concerns that fall broadly under the heading of amenity considerations. Thus, they express concern that the proposal would, due to barking, disturb livestock, bloodstock, and local wildlife in neighbouring fields, including sheds therein, and woodlands. Disturbance would also arise if stray dogs were attracted to the locality or if dogs escaped from the boarding kennels leading to the possibility of sheep worrying and even attacks on neighbours. The appellants consider that the resulting loss of amenity would lead to the devaluation of their properties.
- 7.18. The applicant has responded to the aforementioned concerns by drawing attention to the design and layout of the proposal, which would incorporate a 2.1m high perimeter wall. He also draws attention to the proposed use of CCTV on a 24/7 basis. He therefore expresses confidence that the proposed dog boarding kennels would be well managed and that the risk of escape would be minimal.
- 7.19. During my site visit, I observed horses grazing in a field adjoining the site and the proximity of farm buildings to the south. Appellant (a) expresses particular concern that the use of one of these buildings for the stabling of horses would be prejudiced. However, the design of this building would be open sided to the north and east and so it would not lend itself to such stabling as distinct from the storage of fodder and farm machinery.

- 7.20. I consider that the issue of noise with respect to livestock, bloodstock, and local wildlife overlaps with the issue of noise with respect to neighbours discussed above. Insofar as the proposal has not been demonstrated to be compatible with the residential amenities of the area, the risk that local property values may contract cannot be dismissed.
- 7.21. I conclude that, in the light of appellant (b)'s Acoustic Review Report and in the absence of any demonstration by the applicant of the compatibility of the proposal with the residential amenities of the area, the precautionary principle applies and so it would be premature to grant permission to the current application.

(iii) Traffic, access, and parking

- 7.22. The proposal would comprise the provision of 18 dog boarding kennels, which would be introduced to a site that presently accommodates a single dwelling house. Traffic generated by these kennels, especially during busy periods, would lead to a significant increase in vehicular movements to and from the site.
- 7.23. The aforementioned vehicular movements would use the existing access to the site. This access is sited on the outside of a shallow bend in the L4021 and towards the top of a rise in this road in a southerly direction. The L4021 is of mildly meandering alignment on the approach to the access from the north and from the south. The former approach is characterised by a "T" junction and several accesses to residential properties, while the latter is characterised by a carriageway without verges and high hedgerows and trees line either side of it. The L4021 is the subject of an 80 kmph speed limit, although I judge that the design speed could be considered to be less than this, i.e. 60 or 70 kmph.
- 7.24. Appellant (b) expresses concern that the L4021 in the vicinity of the site has a poor accident record and that traffic on it is likely to increase in the future. The applicant responds by stating that the local road has only experienced 3 serious crashes in the last 18 years. He also states that the County Council is due to erect additional signage on this road and he draws attention to the proposed provision of 4 car parking spaces and associated manoeuvring space within the site, which would facilitate off-street parking and exclusively forward gear manoeuvres to and from the access.

- 7.25. The information before me on the accident record of the L4021 does not extend beyond that submitted by the first and third parties. Information available publically with respect to the N25 New Ross By-pass Project does not support the appellant's contention that traffic would increase in the future, i.e. the L4021 would not form part of a junction with this new road.
- 7.26. During my site visit, I walked and drove along this local road. I noted that in places forward visibility is limited and that, for someone unfamiliar with it, this road makes for relatively challenging driving. Given the significant increase in the use of the access to the site that would transpire, I am concerned that the forward visibility available to drivers turning right into this access and the sightlines available to drivers exiting it would be limited. The submitted plans do not depict such sightlines. If it is assumed that the design speed of the L4021 is 60 kmph, then forward visibility of 90m and sightlines with x and y dimensions of 2.4m and 90m would be necessary. I am not confident that 90m would be available in a southerly direction to either drivers turning right into or drivers exiting from the access.
- 7.27. I, therefore, conclude that the proposal would result in a significant increase in traffic movements and that the applicant has not demonstrated that the existing access to the site would be capable of affording a safe means of access and egress to drivers in attendance at the dog boarding kennels.

(iv) Water

- 7.28. The proposal would be served by means of a well in the SW corner of the site. Appellant (a) claims that this well lies within her ownership. Insofar as there may be an ownership dispute in this respect, this would be a civil matter that the Board is not empowered to arbitrate upon.
- 7.29. The proposal would be served by an effluent channel that would run alongside the front of the proposed building before discharging to a washings holding tank, which would be emptied periodically by a contractor.
- 7.30. Appellant (b) expresses concern that foul water may pollute the local aquifer upon which neighbouring dwelling houses depend for their water supply. However, this would not be the case, given the aforementioned drainage arrangements, and the elucidation of these arrangements to show in greater detail how they would work. If

the Board is minded to grant permission, then such elucidation could be the subject of a condition.

- 7.31. Neither the CDP's Strategic Flood Risk Assessment nor the OPW's flood maps website show the site as being at risk of flooding.
- 7.32. I conclude that no objection would be warranted to the proposal on the grounds of water supply, drainage arrangements, or flood risk.

(v) AA

- 7.33. The site is not in a Natura 2000 site. At some remove to the west lies the River Barrow & River Nore SAC. However, due to the proposed drainage arrangements for the proposal, which would not discharge to the ground, I do not consider that it would be likely to have any significant effect upon the Conservation Objectives of this or any other Natura 2000 site.
- 7.34. Having regard to the nature and scale of the proposed development, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. That this proposal be refused.

9.0 Reasons and Considerations

1. Having regard to the ambient noise level of the site within its context and the impulsive character of the noise generated by dogs barking, the applicant has not demonstrated that, the noise mitigation measures that would be incorporated within the proposal, would be sufficient to ensure that the existing residential amenities of the area would be safeguarded. Accordingly, to accede, in these circumstances, to the proposed dog boarding kennels would be premature and thus contrary to the proper planning and sustainable development of the area.

2. Having regard to the significant increase in traffic movements that would be generated by the proposal and the challenging horizontal and vertical alignments of the L4021 in the vicinity of the site, the applicant has not demonstrated that adequate forward visibility would be available to drivers turning right into the existing access or that an adequate southerly sightline would be available to drivers exiting from this access. Accordingly, to accede, in these circumstances, to the proposed dog boarding kennels would be premature and thus contrary to the proper planning and sustainable development of the area.

Hugh D. Morrison
Planning Inspector

20th November 2017