



An
Bord
Pleanála

Inspector's Report ABP-308773-20

Development	Retention planning permission for a horse shelter, continuation of dog kennel and cattery use, single storey building for housing dogs and cats, outdoor play area, dog run, signage and site development works.
Location	Baybush, Straffan, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	20/533
Applicant(s)	Anthony Travers
Type of Application	Retention permission
Planning Authority Decision	Grant retention permission
Type of Appeal	First and Third Party(s)
Appellant(s)	(1) Anthony Travers v conditions (2) Caroline & Declan Looby v Decision (3) Arlene Higgins v Decision
Observer(s)	None

Date of Site Inspection

19th February 2021

Inspector

Fergal Ó Bric

1.0 Site Location and Description

- 1.1. The appeal site is located in the rural townland of Baybush, Straffan, County Kildare, approximately 1.8 kilometres north-west of Straffan village and 6.5 kilometres south-west of Celbridge. The surrounding area is primarily agricultural in character with a dispersed settlement pattern of individual dwelling houses. Immediately east of the site is a commercial premises, the Geraldine Inn. To the south is the site access is off the R403 Regional Road, a road that links Clane with Celbridge. The north and west of the site are agricultural lands.
- 1.2. The appeal site has a stated site area of 3.21 hectares and comprises a two-storey detached residence with a series of outbuildings located to the side and rear. Whilst some of these outbuildings are used for domestic purposes they are primarily utilised as dog/cat-boarding kennels with associated exercise areas and a number of farm buildings used for housing horses and storing animal feed/bedding.

2.0 Development

- 2.1. The development proposal is seeking retention planning permission for the following elements:
 - Retention of a canopied open sided horse shelter.
 - Retention and continuation of established use of dog kennels and cattery.
 - Retention of single storey building as dog kennels and cattery including outdoor play area. Timber fencing and dog run with boundary fence.
 - Retention of signage at roadside entrance gate.
 - New wastewater treatment system.
 - Associated site works.

The dog kennels and cattery are contained within out-sheds which have been converted, as well as some ancillary facilities including an outdoor dog play area and dog run. Retention planning permission is also being sought for an open sided canopy structure for sheltering horses. The converted buildings provide for dog/cat-

boarding facilities providing a total of 15 individual kennels for dogs and 9 caged areas for cats. There is also further kennelling on site, north of the boarding kennels which are stated as being used for dog breeding/isolation purposes (twenty in number), associated kitchenette, stores, veterinary supplies and delivery rooms as well as fenced outdoor play areas and a dog run/walking area. It is stated that the facility would house a maximum of 10 dogs on a daily basis, depending on business and the time of year and that clients spend approximately five minutes on site dropping off their animals, as all business is completed online in advance and drop-off/collection is by prior appointment only.

- 2.2. The cumulative kennels and cattery structures have a stated floor area of 395 square metres (sq. m.) and is based on an E-shaped plan with a low-level mono-pitch roof for the kennels and a pitched roof for the cattery extending to a maximum ridge height of 4.23 metres. A dog run facility which is approximately 126 metres long and 7.5 metres wide and is located immediately north of the isolation/breeding kennel structures and is fenced off from the field to its west. There is a hedgerow along the eastern boundary of the dog run. The site is enclosed by a combination of fencing and hedgerows.
- 2.3. An open sided horse canopy supported by timber posts providing shelter for horses has been constructed to the rear of an existing horse stable. It has a floor area of 52 sq. m. and a mono-pitch roof with a maximum ridge height of 3.85 metres.
- 2.4. Wastewater from the kennels and wash area would be disposed of to a proposed wastewater treatment system whilst water supply is available from the public water mains. Access to the site is via the existing domestic entrance from the adjoining roadway with a car parking area to be provided to facilitate collections / deliveries to/from the kennels, although the applicant has stated most of the time, he collects the dogs/cats at the client's homes and drops them back and that a client dropping off a dog/cat at the facility can only happen by prior appointment only.
- 2.5. Further information was submitted in relation to: Details of traffic volumes generated by the development; Car parking to serve the development; Alternative signage proposals; The submission of wastewater treatment proposals to serve the kennelling facilities. Location of septic tanks/wastewater treatment facilities on the site or adjoining the site as well as details of streams/ditches on or adjacent to the

site and commentary on third party submissions in relation to noise and proposals to address noise issues on site.

3.0 Planning Authority Decision

- 3.1. Notification of a decision to grant permission for the proposed development was issued by the Planning Authority subject to fifteen conditions. Several of these conditions are of a standard nature and relate to matters including waste management, wastewater treatment, noise mitigation, services, landscaping and development contributions. However, the following conditions are of particular note:

Condition number 2: Retention permission is for a temporary period of five years.

Condition number 3: Photographic evidence of the putting in place of the noise mitigation measures as outlined within the planning documentation.

Condition number 4: All boundary fences to be maintained to prevent the egress of animals.

Condition number 5: All boarding dogs to be housed and not in the open air between the hours of 21.00 and 07.00 hours.

Condition 10 (a) all foul waste and soiled water shall discharge to the wastewater treatment system.

Condition 15: Development contributions.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports-The Planning Authority were satisfied that the retention of the kennel development was acceptable for a period of five years. An Appropriate Assessment (AA) screening exercise concluded that by virtue of the separation distance from the nearest Natura 2000 site and the modest extent of the works, that it is not considered that there are any potential significant direct or indirect impacts

on the qualifying features of any Natura 2000 site and therefore, that an AA is not required in this instance.

3.2.2. Other Technical Reports

Transportation Department: Following the receipt of the further information response, in relation to traffic volumes and on-site car parking provision, no objections were raised subject to a number of conditions.

Maynooth MD Office: No objections, subject to conditions.

Chief Fire Officer: No objections, subject to condition.

Environment: Following the receipt of the further information response, in relation to wastewater management within the dog kennels and cattery, no objections were raised subject to a number of conditions.

3.3. Prescribed Bodies

Irish Water: No objection, subject to conditions.

3.4. Submissions

Two third party submissions were received from residents who reside further east of the appeal site and the issues raised are similar to those raised within the appeal submissions.

4.0 Planning History

4.1. I am not aware of any relevant planning history pertaining to the appeal site.

5.0 Policy and Context

5.1. Development Plan

Kildare County Development Plan 2017-2023.

There are no policies/objectives specifically pertaining to dog kennels or catteries. However, there are a number of policies and objectives which are pertinent to the development as follows:

Section 10.4-Rural Enterprise

Section 10.4.10: One-off enterprises in the rural area may be located in the open countryside only where the Council is satisfied that the enterprise is suitable for that location in the first place

Section 10.5.6 Rural Enterprise Policies

RLE 2: Encourage the sustainable and suitable re-use of farm buildings in the county and to ensure that such works, where relevant have regard to re-using farm buildings-A Kildare perspective produced by Kildare County Council in 2006.

RLE 4: Encourage the re-development of alternative rural based small-scale enterprises. The Council will consider the use, nature and scale of developments when assessing such applications. In addition, the Council will also consider the requirement to locate such developments in rural areas.

5.2. Kildare County Council Development Contributions Scheme 2015-2022

5.2.1. Section 12 refers to Exemptions and Reduced Contributions.

Subsection (n) Agriculture states.

“The first 600 square metres of non-residential development on any agricultural landholding will be exempt. Thereafter a rate of €10.00 per sqm shall apply. This exemption is cumulative and will only be granted once on any landholding.

The exemption will only apply to buildings for the landowner’s own use in connection with the agricultural operation of his/her farm enterprise.

5.3. Natural Heritage Designations

None relevant.

5.4. Environmental Impact Assessment-Preliminary Screening

Having regard to the nature and scale of the development and the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination stage, and a screening determination is not required

6.0 The Appeal

6.1. Grounds of First party appeal

The applicants have submitted an appeal against two of the planning conditions as follows:

- Condition number 2 sets out that the development be permitted for a period of five years, from the date of the order.
- The applicants have submitted a letter from a previous operator on the site who states that he operated a dog kennelling facility on the site between the years of 1990 and 2006.
- The applicant states that he has operated a dog kennel facility on the site since 2006 and invested significant funds into it and that banks would not support a business with just a five-year life span.
- The five-year planning permission condition is unjust given the business has been in existence on site for a number of decades.
- Condition number 15 pertains to the submission of a development contribution of €19,773.
- The applicant states that that under Section 12 (n) of the Kildare Development Contributions Scheme 2015-2022, there are exemptions for the first 600 square metres of non-residential development on any agricultural landholding.

6.2. Grounds of third-party appeal

The issues raised within the third-party appeal submissions, received from two residents who state that they reside approximately 150 metres and 200 metres to the east of the appeal site, off a cul-de-sac on the northern side of the R403 relate to the following:

Residential Amenity:

- The quality of life of the appellants is severely impacted upon by the constant barking during the day and night from the emanating from the kennels
- The extent of noise is so intense that it inhibits the enjoyment of sitting in their garden or sunroom.
- On occasion they have been awoken during the night due to the extent of dog barking.

Noise:

- The kennels seem to cater for a large number of dogs, based on the intensity of barking.
- The noise levels from the development needs to be monitored and recorded.
- How can the appellants be sure that the noise mitigation measures will be put in place by the applicants, if only photographic evidence is required to be submitted to the Planning Authority?
- A professional independent noise assessment should be carried from the site.

Other Issues:

- The kennels operate day and night during weekends, holidays and bank holidays and barking and howling noises can be heard at all times.
- The kennels have not been built for purpose.
- There is no record of dog kennels operating from the site prior to 2006.
- The site notices were concealed behind a bin.

6.3. Applicant Response to third party appeal submissions

The applicant has issued a response to the issues raised within the third-party appeal as follows:

- There is a long-established business on site dating back to 1990 when boarding kennels became established along with farm activities.
- The applicant has boarded dogs on the site since 2006 and complemented this activity with horse breeding.
- He employs three part-time staff and is registered with the Irish Breeders Kennels and the Irish Board of Dog Breeders Association as well as the Cattery Association.
- A number of letters from neighbouring residents have been submitted stating that they have not experienced disturbance or noise from the kennel facility.
- The applicant has stated his willingness to carry out a noise assessment should the Board deem necessary.
- The site notice was placed on site in a position that was both visible and legible by persons using the adjoining public road and was not obscured or concealed at any time.
- The applicant has never been made aware of the nuisance from dog barking prior to the submission of the current planning application.
- There are a number of families in the vicinity of the appeal site that also have dogs.

6.4. Planning Authority Response

The Planning Authority state that they have assessed the development proposals with regard to the policies and standards as set out within the Kildare Development Plan 2017-2023, the internal and external reports received and the proper planning and sustainable development of the area and recommend that the Board uphold the decision to grant planning permission for the development.

6.5. Observations

None received.

7.0 Assessment

7.1. I note that the issues of traffic and access, design and layout, signage and waste management have been addressed satisfactorily within the application. Therefore, I consider that the key issues raised within the appeal are as follows:

- Principle of development
- Residential Amenity
- Planning Conditions
- Other Issues

7.2. Principle of Development:

7.2.1. The appeal site is located within a rural area as set out within the Kildare County Development Plan and whilst the development is commercial in nature, the boarding kennels/cattery are considered to be an acceptable use in principle given the rural character of the area and the proximity of agricultural uses. In this respect, it is of relevance to note that the site is somewhat isolated from surrounding properties. The neighbouring dwelling houses are generally located in excess of 100 metres away from the kennels structures, with those residences located further east (including the appellants) being in excess of 150 metres from the site.

7.2.2. The development is considered to comply with a number of policy statements within the County Development Plan, in particular Section 10.4.6 pertaining to Rural Enterprise where the Council may consider “permitting a one-off enterprise in the open countryside where it is satisfied that the enterprise is suitable for that location” and specific policy RE2 which “encourages the sustainable and suitable re-use of farm buildings”.

7.3. Residential Amenity:

7.3.1. Given the nature of the proposed development, it is clear that perhaps the most significant cause of concern for local residents arises in respect of impacting on the

residential amenity of surrounding properties through excessive noise levels from dogs barking and howling etc. and the overall nuisance factor associated with same. Whilst I would acknowledge the appellants concerns in this regard and their submissions that the existing kennel operations conducted from the site disrupts the enjoyment of their dwelling houses and their gardens, it is of relevance to note the separation distance between the appeal site and the appellants properties (being in excess of 150 metres), the existence of hedgerow screening around the perimeter of the appeal site and that the proposals would provide for a number of noise abatement measures in order to reduce the noise levels emanating from the kennels. These abatement measures would include the use of sound proofing materials to the rear (east) of the kennels to reduce the extent of noise, the fitting of hydraulic stoppers on the doors of the kennels and the use of noise reduction blankets and/or sound absorption sheets.

- 7.3.2. On the basis of the foregoing, I am satisfied that subject to the inclusion of conditions in relation to the implementation of the noise mitigation measures, the development would not excessively impact on the amenities of the area.

7.4. Planning Conditions

- 7.4.1. The appellants have appealed two of the planning conditions included by the Planning Authority within its decision, order dated the 6th day of November 2020. Condition number 2 states that a temporary five-year planning permission is being granted for the development in this instance. The Planning Authority set out within their appeal submission, that as retention planning permission is being sought, that a five-year planning permission is appropriate and the reason given for the condition, is to enable the Planning Authority to reassess the impact of the development. However, I am satisfied that once all the planning conditions are adhered to, in terms of a maximum of ten dogs being housed in the kennels on any given night and that the noise mitigation measures are fully implemented and that the dogs are kept indoors after 9pm and before 7am, that the adverse impact upon the local environment would be reduced significantly and therefore, there would be no need to restrict the permission to a five-year period. The appeal site is located within a rural

area, where kennelling facilities are best located, and the business provides for an appropriate re-use of out/farm buildings.

7.4.2. In terms of condition number 15, I note that the applicant makes reference to Section 12 (n) of the Kildare County Council Development Contributions Scheme (DCS).

This particular section of the DCS clearly states: The exemption will only apply to buildings for the landowner's own use in connection with the agricultural operation of his/her farm enterprise. The kennels and cattery could not be considered to be part of an agricultural operation on site and are commercial in nature. As per the Kildare DCS, there are no exemptions or reductions for contributions pertaining to a dog kennelling facility and therefore, development contributions are applicable in this instance.

7.4.3. I note the provisions of Section 12 (q) of the DCS which pertains to retention permission where the following is set out: "No exemptions or waivers shall apply to any developments subject to retention permission save where it applies to a previously permitted development". Therefore, as per the provisions of the Kildare DCS, development contributions are applicable for the retention of the dog kenneling facility.

7.5. **Other Issues**

7.5.1. In terms of the site notices, it is clear from photographs submitted by an appellant that the site notice was in place and visible from the adjoining public road, the R403. I also note that the Planning Authority did not raise any issue with regard to the site notices being in place. Therefore, I am satisfied that the development was suitably advertised as per the requirements set out within Article 19 of the Planning and Development Regulations. 2001, (as amended).

8.0 **Recommendation**

8.1. I recommend that retention planning permission be granted:

9.0 **Reasons and Considerations**

9.1. Having regard to the rural location, the scale of the activity and its distance from neighbouring residential properties, the policies and objectives of the Kildare County

Development Plan 2017-2023, it is considered that, subject to compliance with the conditions set out below, the development does not seriously injure the amenities of the area or of property in the vicinity, is acceptable in terms of traffic safety and convenience, and is, therefore, in accordance with the proper planning and sustainable development of the area

10.0 Conditions.

- 1 The development shall be retained and carried out in accordance with the plans and particulars lodged with the application, as amended by the further plans submitted on the 2nd day of October 2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the Planning Authority, the developer shall agree such details in writing with the Planning Authority prior to the commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

- 2 The total number of dogs to be housed at any given time shall not exceed 10 as per the details submitted to the Planning Authority on the 2nd day of October 2020.

Reason: In the interest of clarity.

- 3 All dogs shall be housed and shall not be in the open air after 21.00 hours or before 07.00 hours on any day.

Reason: To safeguard the amenities of the area.

- 4 The existing house and the kennel/cattery development shall be jointly occupied as a single unit and shall not be sold, let or otherwise transferred or conveyed save as part of an overall development.

Reason: To restrict the use of this development in the interest of residential amenity.

- 5 Activities at the site shall not give rise to noise levels off-site at noise sensitive locations, which exceed 55dB(A) rated sound level. Prior to commencement of development, the applicant shall agree with the planning authority procedures for the purposes of determining compliance with this limit.

Reason: In the interest of the residential amenities of the area.

- 6 (a) All noise mitigation measures as set out within the planning documentation submitted to the Planning Authority on the 2nd day of October 2020, shall be fully implemented within three months of this grant of planning permission. Written and photographic confirmation of the implementation of these measures shall be submitted for the written agreement of the Planning Authority.

Reason: In the interest of residential amenity and the proper planning and sustainable development of the area.

- 7 Water supply and drainage arrangements, including the disposal of uncontaminated surface water and solid waste, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

- 8 The wastewater treatment system and percolation area shall be designed, constructed and maintained in accordance with the requirements of the

planning authority. Details shall be agreed with the planning authority prior to commencement of development.

Reason: In the interest of public health.

- 9 All soiled water / foul drainage from the kennels area and yards used by the dogs shall be discharged to the proposed wastewater treatment plant as shall foul drainage from toilets and washing areas. The developer shall provide a sampling manhole to the requirements of the planning authority for the sampling of the effluent from the wastewater treatment plant.

Reason: To prevent pollution of watercourses, ground water and all other waters and to safeguard the amenities of the area.

- 10 Waste sent off site for recovery or disposal shall only be conveyed by an authorised and licensed waste contractor and transported from the proposed development site to an authorised and licensed site of recovery/disposal in a manner which will not adversely affect the environment.

Reason: To provide for the recovery/disposal of waste and the protection of the environment.

- 11 The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the

Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Fergal Ó Bric
Planning Inspectorate

4th March 2021