

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL UNDER SECTION 78

Final Comments prepared for Gillian Nicol against the refusal of application 24/00596/FUL by Hinckley & Bosworth Borough Council for a proposed wooden cattery at 7 Springfield Road, Hinckley, LE10 1AN.

Application 24/00596/FUL was received by the LPA 11th July 2024 and refused by notice dated 30th September 2024.

PINS 3355084

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1. As noted within the Grounds of Appeal, members of the Planning Committee chose to disregard professional officer advice and overturn the recommendation of approval to one of refusal as stated in the printed committee minutes and reflected in the decision notice as below:

“Three objectors and the applicant spoke on this item.

Notwithstanding the officer’s recommendation that permission be granted, members felt that the impact on neighbours and the character of the area would be contrary to policy DM10 of the site allocations and development management policies DPD. It was moved by Councillor Bray and seconded by Councillor Allen that permission be refused. Upon being put to the vote, six members voted for the motion and six voted against the motion to refuse. The chair therefore exercised her right to a casting vote and voted for the motion to refuse. The motion was therefore CARRIED and it was

RESOLVED – permission be refused due to the impact of the proposed cattery on neighbours and upon the character of the area, contrary to policy DM10 of the site allocations and development management policies DPD.”

2. The starting point for the determination of any proposal remains the Development Plan and Section 38(6) of the Planning and Compulsory Purchase Act 2004 confirms this statutory requirement and the NPPF (2024) reiterates the approach where planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Furthermore, LP policy should follow the approach of the presumption in favour of sustainable development where such development should be approved without delay. On this basis the Government is committed to ensuring the planning system supports all sustainable development.

3. It is noteworthy that the LPA statement does not offer any additional substantive material considerations to support the reason of refusal, however instead repeats the reason of refusal offered by members of the planning committee. It is also noteworthy that when put to the vote, six members voted for the motion and six voted against the motion to refuse with the Chair having the casting vote to refuse. This suggests despite three objectors speaking against the proposal in the strongest possible terms, members of the planning committee were equally split, and half of the members agreed with the officer recommendation of approval.

4. The LPA Statement also repeats condition 3 that was included in the original officer report that states:

“No more than a total of 8 cats shall be permitted to be on site, in conjunction with the hereby approved cattery business. The unit and cattery business shall remain ancillary to the dwelling, 7 Springfield Road, Hinckley and shall not be occupied, sold or separately leased or let as an independent business unit.

Reason: To protect the amenities of the occupiers of neighbouring residential properties from unsatisfactory noise and disturbance and to ensure no undue pressure of the local highways network, impacting highway safety in accordance with Policies DM10, DM17 and DM18 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).”

5. The specific wording of this condition makes it explicit that the cattery service will remain ancillary to the main residential C3 use of 7 Springfield Road and would not be occupied, sold or separately leased or let as an independent business unit.

6. As raised in the Grounds of Appeal, with no objection from the relevant statutory consultees, significant weight should be given to the case of **Shadwell Estates v Breckland DC [2013]** that states:

“a decision-maker should give the views of statutory consultees... “great” or “considerable” weight. A departure from those views requires “cogent and compelling reasons.”

7. The wording of suggested condition 3 provides a sufficient safeguard to ensure the service provided by the appellant, remains as an ancillary local service for local people mainly based in or close proximity to Hinckley and the surrounding villages. The service is not to be confused with those offered by doggy daycare centres for example, where animals are dropped off and picked up twice a day by clients. The modest service relates to cat boarding and not daycare, therefore vehicle movements would not be materially different from existing vehicle movements taking place on Springfield Road on any given day. In addition, the local HBBC dog / cat warden raised no objection to the proposed accommodation in terms of animal welfare issues.

8. The six committee members who voted to refuse the scheme claimed the development was considered to be unacceptable due to its detrimental impact on neighbours and neighbouring amenity, alongside the detrimental impacts to the character of the area. However, in doing so, it is considered those members have failed to provide any direct or substantive evidence of how such a modest and ancillary cat minding service would produce such harm within the actual reason of refusal. Indeed, during the debate on the night, six members of the planning committee could also not be convinced the claimed material harm would exist as suggested within the reason of refusal.

9. In such residential streets it is not unusual to find professional baby minders that can operate without obtaining planning permission or indeed a commercial day nursery such as “Bright Sparks” that is a 5 minute walk to the east of the appeal site at 31 Hurst Road, Hinckley, LE10 1AB: <https://brightsparks-daynursery.co.uk/> . In common with doggy daycare centres, day nurseries have drop off and pick up times twice a day and are commonly found on such residential streets as Springfield Road in towns and cities up and down the country with no identified detriment to the amenity of neighbouring residential properties.

10. It is also not unusual to find families with young children and several dogs playing in such residential gardens and this is the type of objective analysis that was lacking when members took the unreasonable decision to overturn the officer recommendation of approval, especially given the suggested imposition of condition 3, provides a perfectly reasonable safeguard to ensure that there would no discernible detrimental impact on the existing neighbours and overall neighbouring amenity.

11. Following the Planning Committee meeting on the 24 September 2024, the appellant lodged a formal complaint over various matters related to the determination of the application, including the conduct and behaviour of those speaking against the proposal on the evening of Tuesday 24th September that is included within the Award for Costs. The seeming lack of objective analysis, detailed debate and logical reasoning behind the reason of refusal, it is considered the professional officer opinion and the manner of the thorough and in depth analysis of the specific material considerations of the appeal scheme the officer conclusion remains correct where it states:

“10.1. The proposal for a wooden cattery, for up to 8 cats at the property is not considered to cause detrimental impact to the character of the area, it is considered not to cause significant detrimental impacts to neighbouring amenities, and it is considered to not have significant adverse impacts on the highway. As such it is considered that the proposal is in general accordance with Policies DM10, DM17 and DM18 of the adopted SADMP (2016)”.

12. Paragraph 2.5 of the LPA statement states:

“An outbuilding of a similar scale could be constructed under permitted development, however, its use would need to remain incidental to the dwelling. That is not the case proposed here, whereby the purpose of the outbuilding is the associated business use and it is the business use which is out of character.”

The above paragraph is wholly contradictory and unreasonable given Condition 3 contained in the officer report and suggested conditions should the appeal be allowed, states no more than a total of 8 cats shall be permitted to be on site specifically so the local cattery minding service remains ancillary to the primary residential use of 7 Springfield Road. An ancillary use is wholly opposite to the nearby commercial business use such as that carried out at “Bright Sparks” at 31 Hurst Road, Hinckley, LE10 1AB that shares an almost identical street scene in terms of residential appearance (<https://brightsparks-daynursery.co.uk/>) .

13. On this basis it is considered members of the planning committee who voted to refuse the proposal, did not apply the claimed independent judgement in reaching their decision, as they have failed to provide cogent or compelling reasons to substantiate the reason of refusal and it is respectfully requested the appeal and cost award is allowed on this basis.