

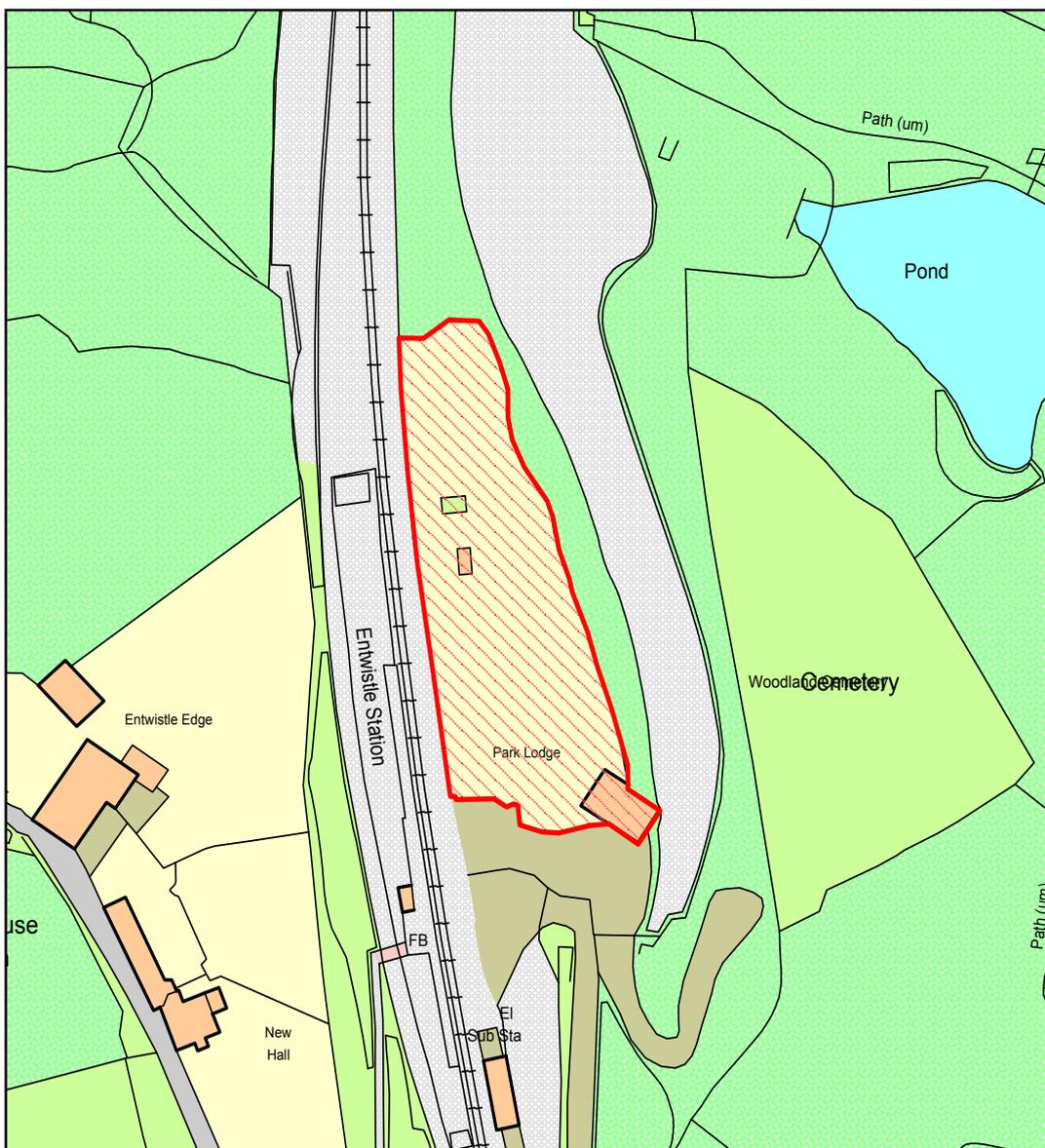
Proposed development: Variation/Removal of Conditions: Removal of Conditions No's 1 (temporary 12 month use) and 6 (prior notification of internment dates), and variation of Condition Nos. 2, 3, 4 & 5 to remove reference to 'temporary'; pursuant to planning application 10/17/1428.

**Site address:
West Pennine Remembrance Park
Park Lodge
Entwistle Hall Lane
Edgworth
Bolton
BL7 0LR**

Applicant: Mr Christopher Gore

Ward: West Pennine

**Councillor Colin Rigby
Councillor Jean Rigby
Councillor Julie Slater**



1.0 SUMMARY OF RECOMMENDATION

1.1 **Approve;** subject to conditions set out in paragraph 4.1 of this report.

2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE

2.1 The application is submitted under Section 73a of the Town and Country Planning Act 1990. It seeks to amend the original permission granted retrospectively for *Additional use of part of Woodland Cemetery for keeping / breeding of dogs. Retention of 3 no. related kennel buildings together with erection of 2 no. additional kennel buildings*, in March 2018 (ref. 10/17/1428), by way of removing the following conditions (nos. 1 & 6):

1. *The use hereby approved shall cease and the dog kennels shall be removed on or before 15th March 2019.*

REASON: In order that the effect of the development upon the amenities of the surrounding area can be assessed during this period, and that any future application can be decided on this assessment, in accordance with the National Planning Policy Framework and Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

6. *Written notification of an interment service shall be provided to the Local Planning Authority no later than 7 days prior to the service.*

REASON: In order to allow the Council the opportunity to assess the impact of the approved use during an interment service, to ensure appropriate safeguarding of the amenity of the surrounding area, in accordance within the National Planning Policy Framework and Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

A variation to the following conditions (nos 2, 3, 4 & 5) is also proposed to remove reference to 'temporary':

2. *Within 2 months of the date of this decision, the acoustic fence hereby approved shall be erected and retained for the duration of the temporary use period.*

REASON: In order to safeguard the amenity of the surrounding area, in accordance within the National Planning Policy Framework and Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

3. *Within 2 months of the date of this decision, the noise mitigation measures identified at paragraph 8.2 of the Supporting Statement shall be incorporated into the dog kennels hereby approved and retained for the duration of the temporary use.*

REASON: In order to safeguard the amenity of the surrounding area, in accordance within the National Planning Policy Framework and Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

4. The visually restrictive netting enclosure between the Paddock Area and the adjacent railway platform shall be retained for the duration of the temporary use hereby approved.

REASON: In order to safeguard the amenity of the surrounding area, in accordance within the National Planning Policy Framework and Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

5. Throughout the duration of the temporary use hereby approved, no more than 6 dogs shall be exercised at any one time within the Paddock Area. Exercise shall, at all times, be under the supervision of the Kennel Operators.

REASON: In order to safeguard the amenity of the surrounding area, in accordance within the National Planning Policy Framework and Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

- 2.2 The dog breeding use was commenced and kennels erected in May 2016 by full-time residents of Park Lodge; a building situated within the wider woodland park cemetery known as West Pennine Remembrance Park. The breeding activity relates to the commercial breeding of German Shepherd dogs which are supplied on an accredited basis to various police forces throughout the country. The dogs are kept exclusively in the kennels and not in the Park Lodge building.
- 2.3 Following the intervention of the Council's Planning Enforcement Team, in response to complaints from local residents alleging disturbance from barking dogs, authorisation was granted to take enforcement action by the Planning and Highway's Committee in July 2017. During the Member's site visit at that time, discussions were held with the applicant about the business. Enforcement action was subsequently held in abeyance pending pre-application advice offered as to the likelihood of regularising the use. The original application was submitted following receipt of the pre-application advice; notwithstanding the acknowledged issues it highlighted, particularly with regard to addressing noise disturbance.
- 2.4 At the time of the original submission, a total of 10 German Shepherd's were kept on site; consisting of 4no breeding bitches (aged 3-5 years), 5no adolescent bitches (aged 1 -2 years) and 1no. stud dog (aged 4).
- 2.5 The dog breeding programme is an accredited scheme certified by The Kennel Club; evidence of which has been provided. The programme requires bitches between the ages of 2 – 8 years. They are restricted to one litter per year – capped at 4 litters in a lifetime. In order to maintain a continuous breeding programme, certain puppies are retained and developed through to adolescence (6 months – 2 years), as part of the progressive breeding stock.
- 2.6 As a general principle, the successfully assessed puppies are taken at the age of 8 weeks by various Police Force Dog Units for further development and specialised training with 'retired' breeding bitches being re-homed in strict accordance with Kennel Club criteria. The specialist dog police dog breeding programme has historically been provided by each Force but recent financial

restraint has led to either the closure or scaling-down of in-house breeding and the resultant reliance on out-sourcing to specialist breeders.

2.7 The 5no. kennels provide for the age cycle development of dogs from puppies through to adolescence to breeding bitches with capacity for both whelping and medical isolation when required.

2.8 The key issues addressed in assessment of the original proposal were:

- Principle of the development, in the context of its Green Belt location
- Noise impact on the Woodland Cemetery and nearby residential uses
- Accessibility and transportation
- Design

2.9 The principle of the proposal was established as acceptable through the original application process; insofar as the development was not considered to be inappropriate development within the Green Belt, on account of the sites brownfield status. The key assessment originally was the noise impact from barking dogs, in recognition of the potentially harmful impact to the surroundings; particularly the tranquillity of the Remembrance Park and nearby dwellings. The proposal was considered in this context and proportionate weight was applied to the likely effectiveness of the proposed noise mitigation. Given the absence of sufficient evidence that noise from the proposal will not prove excessively harmful to the surroundings and evidence to the contrary it was considered reasonable to apply a temporary 12 months permission, to allow the Council the opportunity to monitor the use over this period to establish whether or not generated noise was harmful to the surroundings and whether a permanent permission could, therefore, be supported. A condition requiring prior notification to the Authority of interment services was also applied, to allow an officer presence on site to monitor noise from the kennels during the most noise sensitive times, as a result of heightened nearby presence. Accordingly, a council officer attended on the following dates:

- 9th April 2018
- 18th April 2018
- 26th April 2018
- 27th April 2018
- 19th July 2018
- 31st January 2019
- 12th February 2019
- 28th February 2019

The officer did not encounter excessive noise levels from within the application site on any of these visits. Noise witnessed was deemed to be very minor and barely audible from the nearest noise sensitive uses; considered to be the Remembrance Park and nearest residential properties. Consequently, the proposal is considered evidentially acceptable, in that it will not expose persons attending the Remembrance Park or local residents to excessive noise disturbance from barking dogs.

- 2.10 The proposal is otherwise deemed acceptable in terms of design and accessibility / transport; in accordance with The Framework, the Council's Core Strategy and Local Plan Part 2 policies; as per the original assessment.

3.0 RATIONALE

3.1 Site and Surroundings

- 3.1.1 The application site of 0.25 hectares accommodates an open paddock area and Park Lodge building. It is situated to the east of the Blackburn to Bolton railway line and to the west of the operational woodland cemetery. The confines of the application site and the cemetery are collectively known as the West Pennine Remembrance Park. The Park is privately owned and offers a choice of final resting ground for burial, interment or scattering of ashes. It is recognised as a place offering a scenic environment for remembrance and peaceful reflection.
- 3.1.2 The application site is defined by a mature tree belt along its eastern length, which separates it from the Woodland Cemetery and a tree belt to west, which lines the edge of the railway embankment. The site is accessed from Entwistle Hall Lane, to the east of the railway bridge.
- 3.1.3 The Remembrance Park lies outside of the urban boundary and is located with an area of open countryside designated as Green Belt; in accordance with the Site Allocations Map of the adopted Local Plan Part 2.
- 3.1.4 The application site does not provide for public access and, in this sense, is detached from the Woodland Cemetery. The site is also recognised as former railway goods sidings and, as such, features ground conditions that are stone based and unsuitable for future expansion of the established cemetery area.

3.2 Proposed Development

- 3.2.1 Removal of and variation to conditions applied to the original permission granted retrospectively for the: *Additional use of part of Woodland Cemetery for keeping / breeding of dogs. Retention of 3 no. related kennel buildings together with erection of 2 no. additional kennel buildings* in March 2018 (ref. 10/17/1428); as set out in paragraph 2.1.

3.3 Development Plan

- 3.3.1 In accordance with s.38 (6) Planning and Compulsory Purchase Act (2004), the application is to be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 3.3.2 The Development Plan comprises the Core Strategy, the adopted Local Plan Part 2 – Site Allocations and Development Management Policies and the Darwen Town Centre Conservation Area SPD. In determining the current proposal the following are considered to be the most relevant policies:

3.3.3 Core Strategy

- CS1 – A Targeted Growth Strategy
- CS11 – Facilities and Services
- CS14 – The Green Belt
- CS16 – Form and Design of New Development
- CS18 – The Borough’s Landscapes

3.3.4 Local Plan Part 2

- Policy 3 – The Green Belt
- Policy 7 – Sustainable and Viable Development
- Policy 8 – Development and People
- Policy 9 – Development and the Environment
- Policy 10 – Accessibility and Transport
- Policy 11 – Design
- Policy 41 – Landscape

3.4 Other Material Planning Considerations

3.4.1 National Planning Policy Framework (The Framework).

At the heart of the NPPF is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan making and decision taking. For decision taking, this means approving development proposals that accord with the development plan without delay (paragraph14).

3.4.2 Consistent with Local Plan Part 2 Policy3; Chapter 13 of The Framework sets out the principles of the protection of Green Belt. Paragraph 123 of the superseded Framework, against which the original proposal was assessed, emphasised that decision making should identify and protect areas of tranquillity. The current Framework (February 2019) references tranquillity only in the context of Local Green Space designation, which is not applicable to the current assessment.

3.5 Assessment

3.5.1 Notwithstanding the original full assessment, Members are advised that assessment of this application is limited to the impact of noise generated from barking dogs and the extent of its impact on the Remembrance Park and local residents; in order to consider the merits of supporting a permanent use of the site.

3.5.2 Over a 12 months period, a Council Planning Enforcement officer has attended the site during interment services, on the aforementioned dates set out in paragraph 2.9. Audible noise levels on each occasion were considered to be sufficiently minor so as to considered non impactful on attendees of the Remembrance Park or on residential amenity.

- 3.5.3 The Council's Public Protection consultee has previously visited the site, in response to complaints from local residents. Although insufficient evidence has been obtained to support statutory noise nuisance action, under the provisions of the Environmental Protection Act 1990, the consultation response to this application has expressed concern that the evidence currently available does not support a permanent use. This position is founded on the inability to undertake a full assessment of the proposal, on account that two of the approved kennels are yet to be erected and another is not currently used for housing dogs. The applicant has provided a rebuttal citing that the purpose of the monitoring was based, principally, upon the number of dogs kept at the site, together with the noise mitigations and management conditions set out in paragraph 2.1, rather than the actual number of kennel buildings, since it is the dogs that generate the noise and not the kennels buildings.
- 3.5.4 In this context, the Noise Assessment undertaken at the time of the original application should be acknowledged. The assessment was based on an identified occupancy of 19 dogs. The applicant asserts that occupancy levels of the kennels has been between the range of 17 – 20 dogs throughout the 12 month monitoring period; consistent with the applicants license for 20 dogs. Although dog numbers were lower at the time of an officer site inspection for the purpose of this current application, it is not contested that numbers have generally fallen below the 17 – 20 range during the monitoring period.
- 3.5.5 It should also be recognised that assessment of 'dog noise' is difficult to quantify; in the absence of any definitive guidance on the subject. For this reason, the 12 month monitoring period was considered appropriate.
- 3.5.6 A recent planning appeal decision is also of interest to this assessment. It relates to dog boarding kennels in Hampshire, in which the Inspector commented that, *if 20 dogs bark in unison, they would only be slightly louder than ten dogs barking in unison, not twice as loud as one might assume* (extracted from DCS No. 400-020-838).
- 3.5.7 Taking into account all of the aforementioned and having due regard to the merits of the police dog training programme that was afforded weight in support of the original permission, it is considered, on balance, that a permanent use of the site should be supported, through removal and variation of the stated conditions. It is also considered prudent and reasonable to apply further conditions; limiting occupancy of the kennels to a maximum of 20 dogs and to restrict the use to police dog training only.
- 3.5.8 It should also be reinforced that a permanent planning permission does not affect noise protection rights afforded by the statutory provisions of the Environmental Protection Act 1990.
- 3.5.9 Summary
This report assesses the Section 73a planning application for the removal / variation of the aforementioned conditions applied to the proposed breeding use / kennels. In considering the proposal, the principle material

consideration of noise impact has been taken into proportionate account, to inform a balanced recommendation.

4.0 RECOMMENDATION

4.1 **Approve** – Subject to removal of condition nos. 1 & 6; variation of condition nos. 2, 3, 4 & 5 (as set out above); reinstatement of conditions 7, 8 & 9; as follows:

- The Paddock Area shall not be used for the exercise of dogs at any time during an interment service.
- Exercise of dogs shall only take place within the Paddock Area between the hours of 07:00 hours and 22:30 hours daily.
- This consent relates to the submitted details marked received on 24th November 2017, including the Supporting Written Statement, Noise Assessment and drawings numbered P1738/17/01 and P1738/17/02; and Application of the following additional conditions:
 - Restricting occupancy of the kennels to a maximum of 20 dogs
 - Limiting use of the kennels to police dog breeding.

5.0 PLANNING HISTORY

5.1 The following planning applications relate to the application site:

- 10/99/0123: Change of use to Woodland Cemetery.
- 10/11/1211: Improvements and extension of existing Reception Building.
- 10/14/0731: Change of use of Reception Building to include residential accommodation for park overseers.
- 10/17/1428: Retrospective application for additional use of part of Woodland Cemetery for keeping / breeding of dogs. Retention of 3 no. related kennel buildings together with erection of 2 no. additional kennel buildings.

6.0 CONSULTATIONS

6.1 Public Protection

Concern expressed that the available evidence does not support a permanent use. Recommended conditions in the event of an approval;

- Restricting occupancy of the kennels to a maximum of 20 dogs
- Limiting use of the kennels to police dog breeding.

6.2 Turton Parish Council

Objection to the noise levels and consequential disturbance to the tranquillity of the Remembrance Park.

6.3 Public consultation has taken place, by display of three site notices. One representation was received which is shown within the summary below.

7.0 CONTACT OFFICER: Nick Blackledge, Planner Officer - Development Management.

8.0 DATE PREPARED: 9th May 2019.