

Date of Meeting	30 May 2018
Application Number	18/01841/FUL
Site Address	Land adjoining Hatch House, Up Street, Upton Lovell, BA12 0JP
Proposal	Retrospective change of use from agricultural land to a dog exercise area with retention of small paddock for agricultural use
Applicant	Mrs Lorna Street
Town/Parish Council	UPTON LOVELL
Electoral Division and Ward Member	WARMINSTER COPHEAP AND WYLYE – Cllr Christopher Newbury
Grid Ref	394,347 141,070
Type of application	Full Planning
Case Officer	David Cox

Reason for the application being considered by Committee

At the request of the Parish Council Cllr Christopher Newbury has requested that should officers be minded to approve this application, it should be brought before the elected members of the area planning committee for its determination and to consider the relationship with adjoining properties and the environmental and highways impacts of the development.

1. Purpose of Report

Having assessed the merits of the proposed development and tested it against the policies of the development plan and other material considerations, officers recommend that the application should be approved subject to conditions.

2. Report Summary

The main issues discussed in this report are as follows:

- The Principle of the Development
- Impact on Neighbouring Amenity
- Impact on Visual Amenity and the Area of Outstanding Natural Beauty
- Drainage and Flood Risk
- Highway Safety and Parking
- Impact on Ecology
- Impact on Designated Heritage Assets

3. Site Description

The application site is a rectangular piece of land located off Up Street at Upton Lovell – which is a small hamlet without settlement limits located about 0.5km from Corton and 2km south-east of Heytesbury and extends to approximately 0.43 hectares. The site is located in close proximity to the River Wylde, located to the west; and the Prince Leopold Public House and its car park, located to the North. Two dwellings (Hatch House and Vazon House) share a boundary with the site; and six residential properties are located on the north eastern side of Up Street – all of which can be easily identified on the site location context plan which is reproduced below. The application site is located within the Cranbourne Chase Area of Outstanding Natural Beauty and the land is classified as grade 4 agricultural land.



Despite the site's close proximity to the river, the land is not at risk of flooding. The Council's /EA flood risk mapping database reveals that flood zones 2 and 3 (i.e. land that has the highest risk of flooding) do not breach into the red outline of the site, only the blue outline, which is fenced off from the main field. The river Avon is also a SSSI and a Special Area of Conservation.

Flood Zone 2 Extent



Flood Zone 3 Extent



There are two grade II listed buildings within close proximity to the site at No 55 The Trumpeters approximately 45 metres to the north; and listed walls, railings and gate which form the south, west and north boundaries of Lovell House approximately 77 metres to the south. BOYT21 and ULOV11 public rights of way footpath pass Hatch House to the south and in a western direction, although views from the PRoW are limited.

4. Planning History

W/89/00504/OUT – Ten dwellings – refused

W/92/00369/FUL – Two dwellings and garages – refused

5. The Proposal

This application seeks retrospective permission for the change of use of land from agricultural use to a sui generis dog exercise and training area. Part of the landholding/paddock would however remain in agricultural use and the site photograph shown on the previous page illustrates this area that would left for crop growing.

The application seeks to use the site between 9am and 5pm between Mondays and Fridays with no use taking place at the weekends or on bank holidays. The applicant currently only spends a maximum of 4 hours on site on any given day but would like the flexibility of an extended timeframe of 9am-5pm.

It is understood that the applicant runs a dog training/dog day care business from the shared family home at Wellhead Drove in Westbury some 10km away. As dogs need to be exercised and stimulated, they are taken off site and since October 2016, this parcel of land at Upton Lovell has been used for outdoor dog exercise. Similar dog walking/dog day care businesses would usually take dogs for walks but due to the applicant's health and mobility restrictions, long walks are not a viable option for the applicant, and instead requires a dedicated parcel of land that is suitably enclosed and secure where the dogs can be exercised and stimulated without the applicant having to walk long distances.

The dogs are brought to the site via a large family sized car and up to 9 dogs are looked after by the dog trainer at any given time. No kennels are proposed as the dogs are transported from the applicant's home address. For local dog owners, dogs could be brought direct to the site for the applicant to exercise and train, should permission be granted.

When the application was lodged and advertised by site notice and neighbour notification letters posted out, the application description included and sought permission for the “*retrospective siting of ancillary mobile shepherds hut*”. This element has however been withdrawn from the application description proposal.

The hut stands on four wheels and can be moved around the site and off the site without extensive works. Under planning law, the hut is considered to be a ‘Chattel’ as set out by the following case: *Wealden District Council v Secretary of State for Environment and Colin Day (1988) JPL 268*.

The hut is currently unauthorised because it is being used as part of the dog business when the authorised use of the land is agricultural. However, (if and once) the land benefits from planning permission for the dog exercise and training business, the hut would be regarded as a ‘chattel’ and wouldn’t itself require planning permission.

The primary issue with this application relates to the principle of the change of use and its impact on neighbouring amenities. If the Planning Committee approves the application for the change of use, by virtue of the hut not being “*operational development*”, it would not require planning permission and it could continue to be used for ancillary uses by the applicant when on site exercising the dogs and/or be used for storage purposes associated to the remaining agricultural land use. If however, the Planning Committee refuses the application and the land and hut continue to be used in association to dog exercising purposes, it would be unauthorised; and enforcement action could be taken to secure the cessation of its use.

6. Planning Policy

The **Wiltshire Core Strategy (WCS)** - The following Core Policies (CP) are relevant when assessing this application: CP1 (Settlement Strategy), CP2 (Delivery Strategy), CP3 (Infrastructure Requirements), CP31 (Warminster Area Strategy), CP51 (Landscape), CP57 (Ensuring High Quality Design and Place Shaping), CP58 (Ensuring Conservation of the Historic Environment), CP60 (Sustainable Transport), CP61 (Transport and Development), CP62 (Development Impacts on the Transport Network), CP64 (Demand Management), CP67 (Flood Risk).

When adopting the WCS, some policies remain saved from the **West Wiltshire District Local Plan (1st Alteration) (WWDLP)**. There are no saved policies which apply to this application.

The **National Planning Policy Framework (NPPF)**, **National Planning Practice Guidance (NPPG)** and **Noise Policy Statement for England (NPSE)**.

AONB Management Plan

7. Summary of Consultation Responses

Upton Lovell Parish Council – Objects for the following reasons:

- Concerned about noise from barking dogs. The noise this business has created has exceeded that claimed by the applicant and has not been controlled;
- The village does not have high levels of background noise as claimed by applicant;
- The dog business brings no benefit to the Upton Lovell community or its inhabitants whilst introducing a noisy and intrusive commercial activity to the heart of the village;
- The reason for this application is to export the nuisance they create from the business owner’s home to this peaceful village;
- This proposal would threaten the unique aspect of having open un-developed fields interspersed amongst its houses; and,

- The shepherds hut is inappropriate in this agricultural location within an AONB

Wiltshire Council's Environmental Health Officer – No objection subject to condition

Wiltshire Council Ecology Officer – No objection

Wiltshire Council Highways Officer – No objection

Wiltshire Council Drainage Officer – The disposal of the waste from the Shepherds Hut may require a separate licence from the Environment Agency if it is to be disposed into the mains sewer.

AONB Officer – No objection subject to conditions limiting the use to the working day and Monday-Friday

Environment Agency – No comments,

8. Publicity

A site notice was displayed along Up Street and ten individual notification letters were posted to neighbouring residents. Following these notifications, 28 letters of support were received (with 6 letters from two Upton Lovell addresses) and 5 letters of objection were received. 2 letters providing general comments were also received.

Of the 28 received supportive letters, 11 were from separate Upton Lovell addresses and 13 from Westbury, Warminster and Salisbury. The 5 objection letters were all from Upton Lovell, 4 of which share immediate boundaries or are opposite the site.

The 5 letters of objection raised the following points of concern:

- Why wasn't the applicant aware that planning permission was required given that they have a business already?
- The applicant's website boasts that they have access to a large garden and walks along Salisbury Plain are available – so why come to Upton Lovell?; and, why not walk the dogs somewhere else?
- This would generate unnecessary vehicle movements to the site;
- This is an application for convenience and is not essential to the running of the business – if the application is refused, the business would still continue;
- What would happen to other paddocks in the village if this is approved?
- The site is not redundant to agriculture and has previously been used for hay and to graze sheep
- This would introduce an additional business into the village which has serious restricted access and the road is heavily overcommitted and overstretched. The access to the pub is often inaccessible by traffic at the pub, housing and farming. There is often gridlock at this point.
- There is no law preventing 9 dogs being walked by one person – so the applicant cannot claim to be pre-empting this supposed change in the law;
- Dogs bark for long periods uncontrollably;
- The village is not noisy and dog barks are very easily heard;
- Why can the owners of dogs not walk their own dogs?
- The hut is unsightly and inappropriate for an Area of Outstanding Natural Beauty;
- The proposal would cause harm to the SSSI (the river);
- The Council should not allow building on a flood plain;
- Upton Lovell does not want this proposal;

The letters of support can be summarised along the following grounds:

- This proposal would make good use of the existing field;
- Supporting a small business should be applauded and is a good example of a small scale rural economy;
- The dogs are not a nuisance and we are used to a lot of dogs in the village as the pub is a favourite watering hole where dogs are welcome (No 56 Upton Lovell – immediately opposite the site);
- As a local resident who works nearby, the dogs are rarely heard;
- It is ridiculous to say that the hut is harmful to the village;
- It is not true to say that barking dogs are not dealt with by the applicant.

The two general comment letters objected to the location plan being inaccurate as it doesn't show the boundary line between Vazon House and Hatch House.

9. Planning Considerations

Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise. In this case, the Wiltshire Core Strategy, including those policies of the West Wiltshire District Plan that continue to be saved and enshrined within the WCS, constitutes the relevant development plan for the Melksham area.

9.1 Principle of the Development

9.1.1 The Core Strategy does not have a policy that directly relates to this proposal. However, the adopted Core Strategy at its very heart seeks to promote and deliver sustainable forms of development that extends to supporting existing businesses; and at the same time, protect the natural, built and historic environment as well as protecting neighbouring amenity.

9.1.2 The applicant has an existing business which is based in Westbury. It is understood that when the business started, the applicant walked dogs on the Salisbury Plain as duly advertised on the website and as noted by those objecting to the application. However, due to health reasons, walking on such terrain has become difficult for the applicant and solely using the garden ground at the applicant's home address is not ideal. The business is reliant on providing dogs with a stimulated environment where the dogs can experience different sensations which the Upton Lovell site provides. Without the ability to change the dog's environment or to go for walks, the quality of the dog care would ultimately suffer along with the viability of the business.

9.1.3 The applicant owns the land which was retained when the family sold one of the adjacent houses, and the field provides an opportunity for the applicant to provide added experience to the dogs through a change of environment and through exercise which can be provided within the existing secure site parameters and it negates the need to go on long walks; and the applicant who has mobility issues, does not need to do a lot of walking whilst the dogs are on site.

9.1.4 The Council's mapping constraint record indicates that the site is grade 4 agricultural land. The best agricultural land is graded as 1, 2 and 3a, with grade 1 land having the highest productive value. Whilst the field could be used for animal grazing or hay making for example, its productive and practical value given the low quality soil and limitations of the site, would be very limited. It should also be taken into consideration that this application comprises no operational development of the land, which means the field could readily return to agricultural use, should the dog business cease. WCS Core Policies 60 and 61 seek new development to be located in accessible locations and be designed to reduce the need to travel particularly by private car. Whilst there is an option for dog owners to drop dogs off at the site, officers understand that dogs

are generally dropped off at the applicant's home in Westbury by the owners at the start of the working day and the dogs are brought to the site when required. It is a regular activity for dog owners to exercise their dog(s) and it is often the case for dog owners to drive to set locations to walk their dogs, and making use of the private car to take dogs for a walk is part of daily life for many people, and there is an argument that one person taking up to 9 dogs in a car to a set location is better for the environment in terms of private car traffic journeys than all 9 dog owners driving to set locations to walk their dogs. On the basis of the above observations and commentary, the principle of using the field at Upton Lovell is supported by officers.

9.2 Impact on Neighbouring amenity

9.2.1 Officers acknowledge that this is a key issue and it is set out clearly in the representations submitted by the concerned third parties and the Parish Council. Given the sensitivities of the contrasting neighbour responses and the potential for up to 9 dogs to make substantial noise disturbance, the case officer visited the site on two occasions. On the first visit the site was not in use. The case officer was however able to appreciate the site's context and proximity and relationship with neighbouring properties, as well as background noises. The second visit took place on 8 May in the late morning when the applicant had seven dogs to exercise and the case officer was able to appreciate how dogs were kept under control on site and the extent of the noise from dogs barking.

9.2.2 During the second site visit the case officer spent 30 minutes walking up and down Up Street and noted that during that time there were only 3 single isolated barks (1 every 10 minutes). The opportunity was taken to view the dogs from both the existing access from Up Street and from the access from the public house car park, during which time the dogs were being exercised and under the control of the applicant. The case officer proceeded to walk past the site trying to make his presence known to the dogs making audible noises by juggling a set of keys from hand to hand, but the dogs did not react by barking. Members are advised that from this observation period, the case officer's own experience aligns with the testimonies received from the supporting representors that the applicant has very good dog handling capabilities, control and provides excellent interaction to keep the dogs stimulated and that the dogs are very much focused on the activities provided within the site.

9.2.3 During the 30 minute observation period the case officer also met and spoke with a dog walker who had brought their dog to Upton Lovell. As they walked past the site along Up Street, none of the 7 dogs being exercised on the site barked and nor did the dog being walked. Indeed the dog walker was surprised to learn of the presence of seven dogs in the adjoin field when told by the case officer. The case officer, who is not a dog owner, had fully anticipated that other dogs whilst being walked near or past the site would trigger bursts of barking from the site, but this was not the case. It is also important to appreciate that socialised dogs do not tend to bark at other dogs whilst on walks, and through proper training and keeping dogs interested in their localised environment, disobedience and unruly barking can be quickly managed and dealt with. From the case officer's own on site observations, the applicant appears to be a very capable dog handler.

9.2.4 Officers are also fully mindful that the dog exercising use would take place during the set hours of 9am and 5pm on Mondays to Fridays which could be secured by planning condition. There would therefore be no early morning, evening, weekend or bank holiday nuisance to neighbours created by barking dogs. Furthermore, officers have been advised that the applicant tends to spend up to 4 hours a day on the site, splitting the environment and sensory interest for the dogs between the site and the applicant's Westbury home address, which means that the dog exercising use at Upton Lovell would only extend to a limited part of any given weekday.

9.2.5 The third party concerns about barking dogs when people stop at the public house when out walking their dogs at weekends would not be an issue as the site would not be in use then. It is accepted that dogs will bark occasionally, but the case officer's own observations and the

testimony of many local residents indicate that the barking is infrequent. As the dogs are brought there in a business capacity, the dogs are trained and are also used to each other as they see each other on a regular basis - which helps with their training and their overall control and contentment.

9.2.6 Officers are supportive of this application and recommend that permission should be conditionally granted subject to restricted hours of using the site for dog exercising/training purposes and after witnessing the evidenced good dog handling skills of the applicant, officers are not convinced that the use of the field would create an unacceptable adverse impact on neighbouring amenity to warrant a planning refusal.

9.2.7 Through liaising with the Council's public protection team, no noise complaints have been received relative to the use of the Upton Lovell site or the applicant's home address. As previously reported, the Council's Environmental Health Officer has no objection to the proposed development. Following additional liaison with the Council's public protection team, it was decided that a background noise survey was not considered reasonable or necessary in this particular case. It is however worthwhile to note that a background noise survey would pick up all audible noises within any given set parameters including;

- Vehicular traffic noise using local roads or from the A36
- The noise from the weir in the river adjacent to Hatch House
- Train noise on the nearby train line
- Associated noise from the public house, the beer garden and the large car park; and,
- Any barking dogs or from children

From the site observations and liaising with colleagues, officers would anticipate a noise survey completed for Upton Lovell to conclude that the hamlet is generally quiet and tranquil with the occasional traffic noise and the noise of an even more irregular passing train. The use of the site since October 2016 has not resulted in any reported complaint or documented evidence of harm being caused and officers are supportive of the application.

9.2.8 The proposed change of use of land to a dog exercise and training area would not be contrary to WCS CP57 criterion vii or conflict with the Noise Policy Statement for England which aims to avoid "significant" adverse impacts on health and quality of life. Officers acknowledge that dogs barking will be disturbing and a nuisance but it would be limited in its frequency and duration. Not only can the period of using the land be controlled, officers are also minded to recommend that any permission also limits the number of dogs the site can have at any one time to 9 dogs.

9.3 Impact on visual amenity and the Area of Outstanding Natural Beauty

9.3.1. The proposal solely involves the change of use of the land from agriculture to a sui-generis dog exercise and training area. It does not involve any kennel structures or other permanent or fixed buildings or operational development. Officers therefore raise no concern about the visual amenity impacts.

9.3.2 The protections afforded to the AONB seek to safeguard its scenic beauty as well as its tranquillity; although it is appreciated that excessive noise could lead to the tranquillity of the AONB being harmed. However, the AONB officer raises no objection and concurs with the case officer and public protection officer in arguing that imposing a Monday to Friday restriction would "*help avoid any potential clashes with exercising periods and the major, evening use of the public house next door.*"

9.3.3 The Shepherds hut is on wheels and can be easily moved from the site. It is classed as a 'Chattel' under planning law and does not require planning permission.

9.4 Drainage and Flood Risk

9.4.1 The application site is located within flood zone 1. The application site parameters are set about 5-6 metres away from the river to help create a buffer zone between the proposed dog exercising area and the river. The dogs are prevented from entering the river by a post and wire fence, and the proposed development would have no impact on the site's porosity and drainage capabilities.

9.5 Highway Safety and Parking

9.5.1. The Council's highways officer also raises no objection to the proposal as the level of traffic generation would not be significant and there is no evidence that it does or would adversely impact on highway safety interests. During the daytime when the site was visited and when it would be in use, the public house car park and Up Street were more or less free from any traffic. There was certainly no evidence of local roads being virtually impassable. However during any occasion when local roads are congested, the addition of one extra vehicle associated to this development proposal would not lead officers to be concerned and it would warrant a refusal of planning permission.

9.6 Impact on Ecology

9.6.1 The Council's ecologist has no objection. The dogs are fenced off from the river and would not interfere with the SSSI environs. Dog faeces should be regularly collected and be disposed of in an appropriate manner. This is basic site management and as the dogs are to be taken from the site, the applicant would be fully responsible for such a task. The supporting ecological statement states that the faeces would be composited on site well away from the riparian zone of the river and the SSSI. The submitted site plan shows that the compositing site would be immediately adjacent to Up Street and away from the river and SSSI. No ecology based concerns are therefore raised.

9.7 Impact on designated Heritage Assets

9.7.1 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires 'special regard' to be given to the desirability of preserving a listed building or its setting. There are two grade II listed buildings along Up Street within 100m of the site but neither are immediately opposite the site and their respective settings do not extend to the application site. In the absence of any operational development, it is submitted that no harm would be caused to the setting or the historic significance of either listed building.

10. S106 / Developer Contributions

No S106 financial contributions are sought for this site, and CIL would not apply.

11. Conclusion (The Planning Balance)

The proposal is for the change of use of an agricultural field into a dog exercise and training area. It is submitted that the applicant has justified the need to use the site for this purpose and that it is a site the small local business maximises through offering different environments for dogs under the control and training of the applicant. Whilst dogs shall bark from time to time, the incidents as observed by the case officer were not extensive or considered harmful enough to warrant a refusal of planning permission. No complaint has been lodged with the Council's public protection team despite the site being used since 2016 for exercising and training dogs. With the proposed restrictions highlighted above to be imposed by planning conditions, the use of the site should be able to continue in harmony with neighbouring amenities without causing significant levels of nuisance.

RECOMMENDATION: - Approve subject to the following conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans:

Design and Access Statement; Ecological Statement; Location Plan and Site Plan – all received 5 March 2018

REASON: For the avoidance of doubt and in the interests of proper planning.

2. The use hereby permitted shall be restricted to dog exercise and training purposes only taking place between the hours of 0900 - 1700 on Mondays to Fridays. The use shall not take place at any time on Saturdays, Sundays or during Bank or Public Holidays.

REASON: To define the terms of this permission and in order to protect residential and local amenities.

3. No more than 9 dogs shall be brought onto or be exercised at the site at any one time.

REASON: To ensure the creation/retention of an environment free from intrusive levels of noise and activity in the interests of the amenity of the area

4. The dog waste associated to the use hereby approved shall be properly deposited of, binned and composted on the site in the location shown on the approved site plan in perpetuity for as long as the dog exercise/training land use operates.

REASON: In the interests of protecting the nearby SSSI from contaminated waste.

5. No external lighting shall be installed anywhere on site.

REASON: In the interests of preserving the scenic beauty of the Area of Outstanding Natural Beauty and to protect neighbouring amenity.