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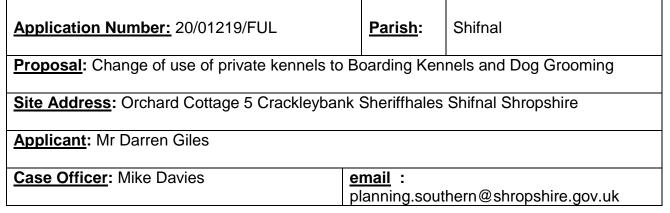
Southern Planning Committee

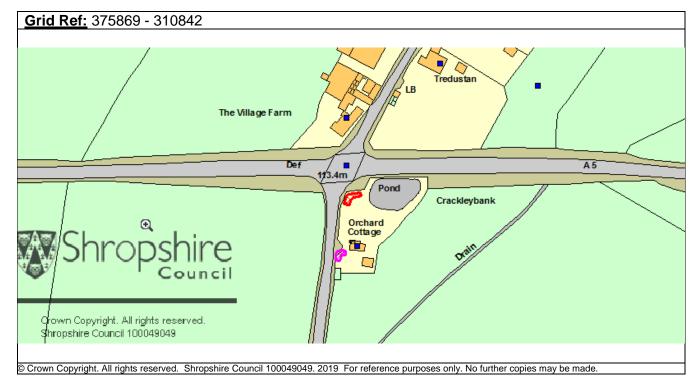
20 October 2020

Development Management Report

Responsible Officer: Tim Rogers email: <u>tim.rogers@shropshire.gov.uk</u> Tel: 01743 258773 Fax: 01743 252619

Summary of Application





Recommendation:- Grant Temporary Permission subject to the conditions set out in Appendix 1.

REPORT

1.0 **THE PROPOSAL**

- 1.1 This is a retrospective application for the change of use of private kennels to a boarding kennels and dog grooming parlour, at Orchard Cottage, Crackleybank, Sheriffhales.
- 1.2 The change of use relates to two outbuildings from what have been private kennels. The application states that the applicant is a certified breeder under the Kennel Club Assured Breeder Scheme and that the premises have been licensed by Shropshire Council under License Ref. 16/01633/Board. The License permits a total of 8 dogs to be boarded on the premises at any one time.
- 1.3 A previous planning application (ref.17/00715/FUL was refused under officer delegated powers in November 2019 for the following reason:

"Because of its proximity of Orchard Cottage to the Crackley Bank crossroads, which is the crossroads of the A5 and the B4379, and because of the close proximity of the entrance of the site to the B4379 and limited space available on the site for car parking and the turning of visiting client's vehicles, there is unacceptably high risk of vehicles parking on or adjacent to the public highway and of pedestrians having to walk along this stretch road. This cannot be controlled by the applicant, and as a result, safe parking and access cannot be achieved and the proposed change of use cannot be considered to acceptable or compliant with Core Strategy Policy CS6 or Paragraphs 84 and 109 of the NPPF (2019)."

This revised application seeks to address this refusal reason by proposing that the business operates in a manner which would not have members of the public calling at the premises. A collection and delivery service by the business operator who resides at the dwelling on the site would ensure dogs are handed over away from the site, thus alleviating the need for dog owners to visit the site and park vehicles outside thus creating a traffic hazard. Dogs would be returned to their owners in a similar manner and would not be collected from the site by them. The opening hours for the dog grooming business are 09.00-17.00 with the collection and delivery service operating to the same hours as the dog grooming business.

1.4 The planning application form advises that there would be one full-time employee.

2.0 SITE LOCATION/DESCRIPTION

2.1 The application site comprises two sets of sheds within the curtilage of the domestic premises at Orchard Cottage, extending in total to approximately 53 sqm. Orchard Cottage is described in the application as an extended detached property with numerous outbuildings and kennels and as being situated on the corner of the A5 and the B4379 between Shifnal and Sherrifhales. Vehicular access is via a remotely controlled gate into a block paved courtyard from the B4379, approximately 45m south of the junction of the

B4379 with the A5. The gates are set back 3.5m from the rear of the carriageway and operated by an intercom system. The property is bounded by hedging along the roadside (the western boundary), and a mature Leylandii hedge and groups of mature trees around the other boundaries.

- 2.2 The B4379 runs to the front of the property (to the west), the A5 is to the side (to the north), there is a plantation of trees to the rear (to the east) and fields beyond rising away to Shifnal Cottage Indian Restaurant which is approximately 275m away. To the south, agricultural land gently slopes down away from the site before rising up towards the neighbouring property at Crackley Bank Cottage, which is situated approximately 120m away.
- 2.3 To the north of the A5 is a residential dwelling, Tredustan and Village Farm and opposite Shifnal Cottage Indian restaurant, is Yew Tree Farm Livery Stables.
- 2.4 There are two blocks of kennels to which this application relates. Block 1 (as it is described in the application), is located in the garden to the north of the dwellinghouse. The kennels are understood to have been built under domestic permitted development rights for the applicant's own dogs, in 2003, and are of brick-built construction with a tiled roof. The block includes five kennels, providing insulated and heated living quarters, each with an individual run enclosed by black painted bow topped metal railings. Each kennel is monitored by a CCTV camera and background music is piped throughout the block which, the application states, is inaudible beyond the site boundary. The building also includes a whelping pen (for the applicant's own use) and a grooming parlour.
- Block 2 is also of brick and tile construction and comprises four kennels and is located to
 the south of the entrance into the site and parking area. These are understood to have been constructed in 2011.
- The application states that whilst the kennels were initially constructed to accommodate the applicants breeding dogs, their use has diversified to provide dog boarding and grooming services, initially, for family and friends, but that through word of mouth and recommendation has gradually became a commercial enterprise which has complimented his dog breeding.
- 2.7 The site is located in the Green Belt and outside any development boundary. There are 2.7 no natural or historic built environment designations that would be affected by the development of the site, which is located in Flood Zone 1 on the Environment Agency's Flood Map. There have been several previous planning applications relating to the Orchard Cottage and the various extensions and outbuildings, but none relating to the kennels or dog grooming parlour. These include the following:
 - BR/APP/FUL/02/0082 for a two-storey rear extension to Orchard Cottage Approved 13/03/2002;
 - BR/APP/FUL/03/0636 for the erection of a first-floor extension to Orchard Cottage - Refused 09/10/2003;
 - BR/APP/FUL/06/0097 for the conversion and extension of existing outbuildings to

form garage with storage facility - Refused 29/03/2006;

• BR/APP/FUL/06/0281 for the conversion and extension of outbuilding to form garage/garden store - Approved 02/06/2006.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

3.1 The Parish Council view is contrary to the Officer recommendation. The Principal Officer and Chair and Vice-Chair of the South Planning Committee consider that the balance of material planning considerations raised in this case warrant determination of the application by Committee.

4.0 **Community Representations**

- Consultee Comments

<u>Shifnal Town Council:</u> Shifnal Town Councillors strongly object to the above planning application as it is detrimental to highway safety, being located so close to a dangerous junction with the A5 and there being inadequate on-site parking and turning space. There has been no change in material circumstances since the refusal last year. Councillors urge that enforcement action be taken quickly against current, unauthorised use.

Local Lead Flood Authority – Have requested the following informative be attached to any consent granted.

A sustainable drainage scheme for the disposal of surface water from the development should be designed and constructed in accordance with the Councils Surface Water Management: Interim Guidance for Developers document. It is available on the councils website at:

https://www.shropshire.gov.uk/media/5929/surface-water-management-interim-guidancefordevelopers.pdf

The provisions of the Planning Practice Guidance, Flood Risk and Coastal Change, should be followed.

Preference should be given to drainage measures which allow rainwater to soakaway naturally.

Soakaways should be designed in accordance with BRE Digest 365. Connection of new surface water drainage systems to existing drains / sewers should only be undertaken as a last resort, if it can be demonstrated that infiltration techniques are not achievable.

<u>Regulatory Services</u> - As with the previous application Regulatory Services have no objection to the proposed development and ask that the full details are submitted up front for any insulation provided. I would like confirmation that the buildings and layout is exactly the same as from the previous application that there are no new kennels or buildings used in relation to dog boarding or similar. I would advise that a condition is placed to ensure that the mitigation measures form part of approved plans. I would like to see a noise

management plan submitted with the measures that will be taken to minimise dog barking. I would advise the applicant to provide this at this stage in the form of a Noise Management Plan. It should note key measures employed to reduce noise from dogs being boarded where necessary etc. If this information is not submitted, a condition to ask for a noise management plan to be submitted for approval in writing no more than three months from the date of any decision notice. Any plan approved shall be carried out in full at all times.

Conditions for noise management plan are recommended to ensure that should the business change hands in future that management of potential noise is given attention in order to satisfy conditions.

<u>Regulatory Services Additional Comments (18.09.2020)</u> - The draft noise management plan appears to be fit for purpose to describe features both physical and operational designed to reduce disturbance of barking to a minimum, if described measures are undertaken. I don't think the dogs would necessarily be inaudible but likely to be significantly reduced. I note that problem dogs will be placed in block 2, and if they still are problematic then returned to owners. Also that liaison with the community, if problems arise, will be undertaken.

Highway Authority - Comment:

The Planning Statement refers to accidents within the vicinity of the A5/B4379 and how the agent expected this data to be provided for free. The agent subsequently used crash map and collision map which are accepted industrywide as robust source of data. The data should be for the proceeding 5 year period (as purportedly requested from the authority) and so this accident study should be resubmitted with 5 years of data for the period up to date. Whilst the agent states that the accidents viewed in their limited study years (2017-2019) do not relate to the application property it is rather accident patterns/trends that can be attributed to a vicinity that the agent should provide a study of, i.e. a study of clusters of accidents could indicate a road safety issue.

It is acknowledged that the traffic signals, in effect, 'meter' the traffic turning onto the B4379 and create bigger gaps for vehicles turning out of the site, as well as potentially slow the speeds of vehicles in the vicinity but the accident study is still required to inform of any highway safety issue.

The site layout plan shows 3 vehicles parking on site and their turning circle to be able to leave the site in a forward gear. Whilst the turning is acceptable the site is still offering no further parking spaces than the application refused under reference 17/00715/FUL, where highways stated there was insufficient parking to serve the development. Confirmation is required as to how many members of staff are employed on site. The Planning Statement indicates that the business will only operate on a collection and delivery basis however further detail is needed as to how this would work in reality; as well as how this could be enforced. Also, is this the case for the dogs in for grooming? As potentially much of the working day could be lost to this collection and delivery service. Confirmation is needed.

In order for the proposed development to be appropriately assessed, from a highways and transport perspective, the following information is required to be submitted, by the applicant:

• A study of accidents at the A5/B4379 junction and on the B4379 adjacent to

Orchard Cottage for the proceeding 5 year period.

- Numbers of Employees
- How the collection and delivery service is working and how it is proposed that this system be enforced, in the interests of highway safety.
- Public Comments:

3 Objection letters have been received which may be viewed in full on the planning file. A summary of the comments made is set out below:

-Noise from barking dogs

-Dangerous access so close to a busy main crossroads with vehicles dropping off and collecting animals

-Not a good or safe place to park

-Still be additional traffic with dogs being collected and delivered

-No mention of additional parking for dog groomers that came to the premises previously -Traffic lights with queueing on other side of road make it more difficult to enter and exit the property; cars will be travelling faster when lights turn green in their favour

-Buildings were not built as private kennels and were built for boarding and grooming -Several outbuildings at this property outside of permitted development which are not suitable considering the age and amenity of the original main property

5.0 THE MAIN ISSUES

Principle of development Highway safety Residential Amenity Amount of Development

6.0 OFFICER APPRAISAL

6.1 **Principle of development**

- 6.1.1 The application does not raise any significant issues in terms of the principle of the change of use proposed. Under the Council's development strategy set out in the Core Strategy Policies CS1, CS3, CS4 and CS5 the focus for new development is to be in Shrewsbury and the county's Market Towns and other Key Centres. Policy CS1 makes clear that in the rural areas development and investment will be located predominantly in Community Hubs and Community Clusters but that outside these settlements, development will be permitted to facilitate rural economic diversification.
- 6.1.2 In support of Policy CS1, Policy CS5, which is the main policy applicable in rural areas, states that new development will be strictly controlled in accordance with national planning policies protecting the countryside and Green Belt. Development proposals on appropriate sites which maintain and enhance countryside vitality and character will be permitted where they improve the sustainability of rural communities by bringing local economic and community benefits, particularly where they relate to small-scale new economic development. Where this is the case applicants are required to demonstrate the need and benefit for the development proposed. Such development is expected to

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take place primarily in recognisable named settlements or be linked to other existing development and business activity. The policy also allows for the retention and appropriate expansion of existing established businesses, unless relocation to a suitable site within a settlement would be more appropriate.

- 6.1.3 In addition Policy CS13 which is concerned with developing and diversifying the Shropshire economy, supporting enterprise, and seeking to deliver sustainable economic growth, by encouraging home-based enterprise, live-work schemes and appropriate use of residential properties for home working and in rural areas, supporting rural enterprise and diversification of the economy, subject to it being in accordance with Policy CS5.
- 6.1.4 In addition, paragraph 83 of the National Planning Policy Framework (NPPF), states that decisions on planning applications should enable the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings.
- 6.1.5 The application in this case is a retrospective application, so on the one hand does relate to an existing business, but not one that has been lawfully established. However, it is business that has grown incrementally, albeit only to a small scale, and has become established, so that whilst the applicant has not submitted details of need or benefit, including any accounts to demonstrate the viability of the business, it is also not inconsistent with the objectives of Core Strategy Policy CS13 which supports home-based enterprise and home working in rural areas, or the NPPF which seeks to enable and encourage the sustainable growth and expansion of all types of business in rural areas, including as in this case, through the conversion of existing buildings.
- Whilst dog kennels are not an unusual insofar as they relate to the use and working
 of the land (as is the case for agricultural and forestry enterprises) on which, they are situated, they are by their nature better suited to rural areas where they can be located, if not actually away from nearby residential properties and other noise sensitive uses, then at least located in a way that they not immediately adjacent to them.

In terms of the principle of the development, to the extent that the business has established
6.1.7 itself, its location and the use site, is not inconsistent with Core Strategy Policies CS5 and can otherwise be considered to be in compliance with Policy CS13 and the NPPF.

6.2 Highway Safety

- 6.2.1 Whilst the principle of the development may be acceptable, the application does raise potentially significant issues in relation to highway safety because of its proximity to the Crackley Bank crossroads, which is the crossroads of the A5 and the B4379, and because of the close proximity of the entrance of the site to the B4379 and limited space available on the site for car parking and the turning visiting vehicles. The matters are closely related and need to be considered as two related aspects of the same issue.
- 6.2.2 Relevant development plan policy includes Core Strategy Policy CS6 which seek to ensure that all development is safe and includes appropriate car parking provision. In addition

paragraph 108 of the NPPF advises Local Planning Authorities that they should ensure that safe and suitable access to the site can be achieved for all users, that any significant impacts from the development on the transport network, in terms of capacity and congestion, or on highway safety, can be cost effectively mitigated to an acceptable degree. Paragraph 109 further advises that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety. Also, of particular relevance. is paragraph 84 of the NPPF, which states that whilst planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, it will be important to ensure that development does not have an unacceptable impact on local roads

- Highway and pedestrian safety in this case is significant consideration due to the need for the 6.2.3 site to be secure and to ensure that any dogs being delivered to, or collected from, the kennels and dog grooming parlour, cannot get loose or escape on to the highway. Because of the location of Orchard Cottage immediately adjacent to the B4379, there is very limited space between the public highway and the entrance gate into the courtyard on the site. The gate is set only 3.5m back from the edge of the highway, so that there is not the full length of a car between the edge of the highway of the gate, although it is possible to stop a smaller car in front of the gate off the highway. The risk is that vehicles may simply attempt to pull in, parking partly on the gate apron and partly on the public highway. There is no other layby or area for visitor's vehicles to safely pull into immediately adjacent to Orchard Cottage, although there is a narrow informal layby approximately 25m south of the entrance into Orchard Cottage, which is not within the control of the applicant. There is no roadside pavement and only a narrow verge on the west side of the B4379. The road is relatively narrow and closed in the by the adjacent hedgerows on both sides and cannot be considered to be safe location for pedestrians or pedestrians with dogs visiting the kennels. Because of the proximity of the junction with the A5, with no visibility around the corner of the junction, the narrowness of the road, and the lack of a layby and pavement, there is a high risk to any pedestrians walking along this stretch road and a consequential risk for vehicles. There is also a risk of parked vehicles causing an obstruction and of collision.
- 6.2.4 The applicant has sought to respond to the previous refusal by instigating a collection and delivery service only thus no personal callers will be received at the premises. The applicant will operate an appointment system to pick up and drop off customers dogs thus alleviating the need for dog owners to visit the site. The applicant will collect and deliver animals to customers using his own vehicle which will be parked on site as now. The site is gated so that dogs cannot get out onto the road and there is sufficient space on site to allow a vehicle to enter turn and leave again in a forward gear. This therefore addresses the previous concerns expressed in relation to customer's vehicles parking up on the highway causing a hazard to pedestrians and the free flow of traffic and concerns about dogs running loose on the highway.
- 6.2.5 Given the reservations previously expressed in relation to the highway safety issue, it is considered appropriate that a temporary consent should be granted in the first instance to allow the effectiveness of the proposed collection and delivery service to be properly evaluated. Assuming that the service proves to work successfully then it may then be appropriate to grant a personal consent to the applicant for the operation of the site.

6.3 Residential Amenity

- 6.3.1 As set out above the Parish Council and objectors have raised concerns about noise from the kennels. The property has no adjoining neighbours; the closest neighbour is located approximately 120m away to south and 60m to the north on the opposite side of the crossroads.
- 6.3.2 Core Strategy Policy CS6 paragraph 127 of the NPPF seek to ensure protection of amenity when determining planning applications.
- 6.3.3 A number of observations of the site have been made, and it is apparent that the background noise levels are relatively high due to the proximity of the site to traffic on the A5 during the daytime, although it is likely that these would be lower at night. For this reason, it is unlikely that the noise from barking dogs would be unduly disturbing for nearby residential properties during the daytime, but it may as a result be an issue at night-time. There is no additional mitigation proposed by the applicant to safeguard undue night-time noise from barking dogs.
- 6.3.4 A noise report was submitted to support the application and Regulatory Services are satisfied with the findings of this report and do not consider the use will unduly impact on the amenities of residents living the vicinity of the site. The change of use can therefore be considered to be acceptable in relation to Core Strategy Policy CS6 and the NPPF. It should be noted that the previous application 17/00715/FUL (See 1.3 above) was not refused in November 2019 for reasons relating to noise.

6.4 **Development on Site**

6.4.1 One final brief point is that the amount of development on the site has been raised as an issue by the Parish Council and objectors. It is the case that there has been a substantial amount of development on the site with the construction of a number of sheds and outbuildings, and to a degree this has contributed to the constraints in the amount of space on the site for access, car parking and turning. However, the application in this case is not for any new operational development, so this is not a directly relevant material consideration.

7.0 CONCLUSION

The change of use of private kennels to a boarding kennels and dog grooming parlour, at Orchard Cottage, Crackleybank, Sheriffhales, is acceptable in terms of the principle of the development, amenity and the issues related to the amount of development on the site, and can therefore considered to be acceptable in relation to relevant development plan policy including Core Strategy Policies, CS1, CS5, CS6 and CS13 and the NPPF (2019).

The location of the site away from other residential properties means that noise from barking dogs will not unduly disturb any nearby residents. The main issue associated with the use of this site for this purpose relates to highway safety issues and this led to the previous planning application being refused.

The proximity of the site the crossroads of the A5 and the B4379, and the entrance of the site on to the B4379 with limited space available on the site for car parking and the turning of visiting client's vehicles, were deemed to pose an unacceptably high risk of vehicles parking on or adjacent to the public highway and of pedestrians having to walk along this

stretch road in the carriageway as a result.

To address the reason for the previous refusal this application proposes to instigate a collection and delivery service with no customers visiting the site. The applicant is prepared to accept a condition should consent be granted which prevents customers visiting the site with dogs being collected from and delivered to customers away from the site. The adoption of this system will help to address the issues raised in relation to safe parking and access which resulted in the previous refusal.

To allow the Council to monitor the success of the collection and delivery service in relation to dissuading personal callers dropping off dogs at the site and causing a traffic hazard, it is considered appropriate that a temporary consent be granted, so that the impact can be properly assessed and if it is successful then a personal consent could then be granted to the applicant at a later date.

- 8.0 Risk Assessment and Opportunities Appraisal
- 8.1 Risk Management

There are two principal risks associated with this recommendation as follows:

- As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.
- The decision may be challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

8.2 Human Rights

Article 8 gives the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the

impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

8.3 Equalities

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in Planning Committee members' minds under section 70(2) of the Town and Country Planning Act 1990.

9.0 Financial Implications

There are likely financial implications if the decision and / or imposition of conditions is challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependent on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – insofar as they are material to the application. The weight given to this issue is a matter for the decision maker.

10. Background

Relevant Planning Policies

Central Government Guidance: National Planning Policy Framework

Shropshire Core Strategy and SAMDev Plan Policies:

CS1 - Strategic Approach

- CS5 Countryside and Greenbelt
- CS6 Sustainable Design and Development Principles
- CS13 Economic Development, Enterprise and Employment
- CS17 Environmental Networks
- CS18 Sustainable Water Management
- MD1 Scale and Distribution of Development
- MD2 Sustainable Design
- MD7B General Management of Development in the Countryside
- MD12 Natural Environment
- Settlement: S15 Shifnal Area

RELEVANT PLANNING HISTORY:

17/00715/FUL Change of use of private kennels to boarding kennels and dog grooming (retrospective) REFUSE 7th November 2019 BR/APP/FUL/03/0636 Erection of a first floor extension REFUSE 9th October 2003

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BR/APP/FUL/02/0082 Erection of a two storey rear extension GRANT 13th March 2002 BR/APP/FUL/06/0281 Conversion and extension of outbuilding to form garage/garden store GRANT 2nd June 2006

BR/APP/FUL/06/0097 Proposed conversion and extension of existing outbuildings to form garage with storage facility REFUSE 29th March 2006

BR/81/0441 The erection of a single private garage GRANT 12th August 1981

11. Additional Information

View details online: https://pa.shropshire.gov.uk/onlineapplications/simpleSearchResults.do?action=firstPage List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information) Noise Management Plan

Cabinet Member (Portfolio Holder) Councillor Gwilym Butler Local Member

Cllr Kevin Turley Appendices APPENDIX 1 - Conditions

APPENDIX 1

Conditions

STANDARD CONDITION(S)

1. The development hereby permitted shall cease before the expiration of one year from the date of this permission.

Reason: To allow the effects of the development to be reviewed in the light of experience of operation of the business operating solely on the basis of a dog collection and delivery service by the operator.

2. The development shall be carried out strictly in accordance with the approved plans and drawings

Reason: For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and details.

3. There shall be no collection or delivery of dogs by members of the public associated with the boarding kennels and dog grooming business.

Reason: To ensure that the number of vehicular movements connected with the business is minimised and to control on-street parking near the site in the interests of highway safely.

4. The development shall be carried out in accordance with the submitted Noise Management Plan dated 27.07.2020.

Reason: In the interests of Residential Amenity.

Informatives

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1. A sustainable drainage scheme for the disposal of surface water from the development should be designed and constructed in accordance with the Councils Surface Water Management: Interim Guidance for Developers document. It is available on the councils website at:

https://www.shropshire.gov.uk/media/5929/surface-water-management-interim-guidance-fordevelopers.pdf

The provisions of the Planning Practice Guidance, Flood Risk and Coastal Change, should be followed.

Preference should be given to drainage measures which allow rainwater to soakaway naturally. Soakaways should be designed in accordance with BRE Digest 365. Connection of new surface water drainage systems to existing drains / sewers should only be undertaken as a last resort, if it can be demonstrated that infiltration techniques are not achievable.