
Appeal Decision

Site visit made on 31 January 2017

by Philip Major BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9th February 2017

Appeal Ref: APP/A4710/W/16/3163361
199 Elland Road, Brighouse HD6 2RB.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr & Mrs I Roberts against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref: 15/00335/OUT, dated 12 March 2015, was refused by notice dated 4 August 2016.
 - The development proposed is a replacement building to provide a dog kennelling facility.
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Preliminary Matters

1. The application was made in outline with all matters except access and layout reserved for future consideration. I have considered the appeal on that basis.

Decision

2. The appeal is dismissed.

Main Issues

3. The main issues in the appeal are:
 - (a) The impact of the proposed development on the living conditions of the occupants of No 197 Elland Road and nearby commercial premises, with particular reference to noise and disturbance;
 - (b) The impact of the proposal on flood risk.

Reasons

Living Conditions

4. The appeal site is located in an urban area in which there are a number of commercial premises nearby. I understand that the land falls within an area designated as a Primary Employment Area in the development plan (Replacement Calderdale Unitary Development Plan – the UDP). But the dwelling on site and its neighbour at No 197 form an enclave of residential property. The curtilages associated with the dwellings are of good size.
5. The location of the building proposed to house kennels would be on the site of an existing building which forms part of the current residential use of the land. The existing building is smaller than that proposed. The surrounding

commercial buildings, though, are of considerably greater size and scale than the proposed development.

6. The Appellant has provided information on the potential for noise attenuation at the premises. I accept that the kennel building could be insulated in such a manner that noise from barking dogs within the building could be suppressed sufficiently to avoid disturbance to the residents of No 197. Similarly there is nothing to indicate that there would be an unacceptable impact on the users of the adjacent commercial premises from any noise created within the proposed building.
7. Part of the proposal includes an outdoor exercise area for dogs. This would be as far as possible from No 197 and its outdoor amenity area, and at least partially screened by the proposed building. The information submitted indicates a relatively high ambient and background noise environment, and I experienced this at my site visit. The noise environment stems from the urban location and the proximity of the A6025, Elland Road.
8. It seems to me that the fact that the Council has suggested a condition controlling the use of the proposed outdoor exercise area means that the Council is in effect accepting that notwithstanding the existing noise environment the presence of barking dogs in the exercise area could cause disturbance. If that is so it is a position with which I agree. Dog barking takes many forms depending on breed and temperament, and in my judgement loud and persistent barking could readily be discerned above background noise. Barking would be of a very different character to the general hum of the background, and could well include repetitive but irregular noise incidents which would be aurally disturbing.
9. As alluded to above it has been suggested that a condition could be imposed which would restrict the exercising of dogs to a single animal, or animals from the same household, at any one time. Whilst that may have some effect I cannot see how it would control the propensity of a particular dog, or dogs, to bark. In any event such a condition would seem to me to be difficult to enforce, relying on reported incidents after any potential nuisance had been caused. It would also require a significant number of separate exercise periods to be undertaken by the manager of the facility, and that seems to me to be unrealistic. Be that as it may I am not satisfied that the condition would meet the tests for conditions set out in Planning Practice Guidance because of the difficulty surrounding enforcement of the condition. Suffice to say that I am not persuaded that the condition suggested would offer sufficient reassurance that nuisance would not occur at No 197. That property is sufficiently close to the outdoor exercise area that barking incidents would be likely to be readily heard as multiple separate incidents with the potential for disturbance above the existing background noise. In relation to the adjacent commercial premises I have too little information to make a judgement on the likely impact, but given that these are commercial premises it seems likely that any disturbance would be rather less.
10. I also bear in mind here that the proposal seeks to house up to 20 dogs. Some would no doubt be delivered and collected in pairs or groups, but many would generate individual journeys by their owners. The access to the site passes close to No 197, and the parking proposed would be close to that property. Taken together with the potential for excitable dogs at the point of being

reunited with their owners or introduced into the kennels, there seems to be the possibility (at the very least) of additional noise creation during the time when dogs are delivered or collected. I do not suggest that an occasional car arriving and departing, of itself, would cause great disturbance to the occupants of No 197, but the physical act of dealing with dogs is of greater concern.

11. Drawing together the threads of this issue it is clear to me that the appeal site, being situated within a Primary Employment Area may well be suitable for employment generating uses in principle, as set out in the planning officer's report to the planning committee. But that same report makes mention of UDP Policy E1, which includes the criterion that development should not create any unacceptable amenity problems. In addition UDP Policy E17, which deals with dog and cat boarding facilities, also requires that development would not result in unacceptable loss of amenity to surrounding occupiers. For the reasons explained above it is my judgement that this proposal would result in unacceptable disturbance to the living conditions of the occupants of No 197 Elland Road by reason of noise and disturbance. I do not consider that the condition suggested by the Council would meet the tests of Planning Practice Guidance and nor would it be able to mitigate the harm from that noise and disturbance. The proposal is therefore in conflict with Policy E1, but more particularly Policy E17 as cited in the Council's decision notice.

Flood Risk

12. There has been no objection to this development from the Environment Agency, and the Appellant has submitted a flood risk assessment. The evidence before me suggests that the surface water flooding which occurred in recent years was a result of a high water table and heavy rainfall, rather than fluvial flooding from the nearby canal and river. Even so it is clear that the appeal site has some vulnerability to flooding as it lies within flood zone 3 as described by the Environment Agency, and flood zone 2 in the Calderdale Strategic Flood Risk Assessment. In order to overcome any future problems associated with the development it has been recommended that a condition could be imposed requiring the proposed building to be raised by 100mm above ground level.
13. The Appellant has carried out a sequential test on the basis that his proposal falls into the less vulnerable category of development, and is confident that measures can be put in place to deal with any flooding event. In addition it is indicated that the building would be largely on previously developed land and would be unlikely to materially worsen flood risk. It is also indicated that surface water drainage could be adequately dealt with.
14. I am minded to agree with the initial assessment of the Council's professional officers that these matters can be properly addressed by the imposition of suitable conditions in the event of planning permission being granted. As a result I do not find, on the basis of the information before me, that the proposal would be in conflict with UDP Policy EP17. I am satisfied that flood risk is not a matter which should result in the proposal being rejected.

Other Matters

15. A number of other matters have been brought to my attention. These include the right to use the site access for business purposes. However, this is a

private matter and not something which impacts upon my decision. I am satisfied that any use of the site access would be unlikely to generate so much traffic that it would have any implications for highway safety. Although it has been suggested that other more suitable land is available for this development I must make my determination on the basis of the proposed site, and I have noted the comments on alternative land ownership made in the supplementary flood risk sequential test.

Overall Conclusion

16. The proposal would be likely to cause unacceptable harm to the living conditions of adjoining occupants through noise and disturbance as described above. This leads to conflict with the development plan. The objectives of the development plan in this respect accord with the policy of the National Planning Policy Framework which seeks to achieve a good standard of amenity for existing occupants of land. The fact that I have not found unacceptable flood risk does not outweigh this harm. For the reasons given above I conclude that the appeal should be dismissed.

Philip Major

INSPECTOR