
Appeal Decision

Site visit made on 17 January 2017

by Paul Jackson B Arch (Hons) RIBA

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

Decision date: 09 February 2017

Appeal Ref: APP/G2245/W/16/3158860

Land south of Tudor House, Rushmore Hill, Knockholt, KENT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Lisa Cutting against the decision of Sevenoaks District Council.
 - The application Ref SE/15/03813/FUL, dated 12 May 2016, was refused by notice dated 2 March 2016.
 - The development proposed is change of use of land to dog exercise field.
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Preliminary matters

1. No site address is provided on the application form. I have used the site address provided on the decision notice and the appeal form.
2. The activity is already taking place. At the site visit on 17 January, dogs were delivered to the site later than anticipated due to traffic conditions. Additional unaccompanied visits were agreed with the appellant's representative and were carried out on 19 and 23 January at various times.

Decision

3. The appeal is dismissed.

Reasons

4. The appeal site is a field located in open countryside adjacent to the unclassified Rushmore Hill road which links the village of Knockholt to the A21. The character of the area is essentially rural though there is a row of dwellings, generally in large plots, on the opposite side of the road and a garden centre further to the north. Tudor House immediately adjoins the field to the north.
 5. The field is being used for exercising up to 25 dogs on Mondays to Fridays for around 3 hours between about 1100 to 1500. The dogs are brought from London in a van and allowed to run around whilst being supervised by staff. A shed on the field is used as a store for various ancillary equipment and for staff facilities. The appeal has come about after local occupiers complained about the level of noise due to barking, shouting, clapping and general disturbance. The main issue is therefore the effect on the living conditions of local occupiers in respect of noise.
 6. The general level of noise in the area is fairly low, consisting mainly of passing cars and the occasional commercial vehicle on Rushmore Hill. I did not notice any other dogs barking on any of the other properties nearby, though that may
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occur from time to time. It is also relevant that in warmer months, it is likely that there would be more background noise due to garden use, mowers and outdoor recreational activity generally. This is confirmed by the noise survey carried out by consultants on behalf of the appellant, which shows background noise levels that would be expected in a rural area where traffic is a feature. The survey (which had not been carried out in accordance with any methodology agreed with the Council¹) indicated only brief moments when the dogs (which as far as can be ascertained were not fitted with bark suppressant collars on that day) produced noticeable levels of additional noise. This happened when the dogs became agitated by horses or people. However, as the acoustic report recognises, there may be occasions when vocalisations are more common or higher in magnitude because of different groups of dogs or different or more frequent stimuli. As objectors point out, there is also the likelihood that barking is likely to encourage vocalisations among neighbouring domestic animals.

7. At the site visits, all the dogs were fitted with bark suppressant collars and apart from the occasional initial bark, further vocalisation was quickly curtailed. It was apparent that the particular collars used are effective. I leave aside the issue of whether bark suppressant collars are a reasonable means of preventing barking, which is a matter for the dog owners and not a planning matter. The only significant noise that I noticed was a petrol generator running on a cold day, on 23 January. This was clearly ancillary to the dog walking activity. The noise from the generator was very intrusive on the day.
8. The acoustic survey draws the conclusion that the additional level of noise due to the activity is only marginally above background, happens at limited times and even if objectionable, could be mitigated with an acoustic barrier such as straw bales.
9. Dealing with the bark suppressant collars first, I give little weight to their effectiveness in planning terms. The fact that the appellant thought them necessary as an additional precaution following the acoustic survey indicates that it must be recognised that the dogs do bark loudly from time to time and that this could be a nuisance to neighbouring occupiers. If I was minded to grant planning permission, there is no planning condition that could be imposed that would be reasonable or effective. No specific brand or model of collar could be included in any condition and its continued effectiveness could not be guaranteed. Moreover, dogs may or may not always react correctly to the collar, depending on whether they were used to it.
10. With regard to the level of noise, this is not as important as its character. As noted by the objectors and acknowledged by the appellant, barking dogs are intrusive by nature. A single bark or howl may well lead to a very small or insignificant increase in measured background noise, but be very noticeable and intrusive. It would be heard by any receptor in a more subjective way. The rural environment around the appeal site is intrinsically sensitive, especially as experienced at the closest dwellings, such as Tudor House. If barking cannot be effectively controlled by condition, following stimulus or not, then the nuisance caused by 25 dogs barking could be very significantly greater than as suggested by the consultant 'no more than a pair of dogs in a domestic house'. In addition, the staff need to control the dogs and this is done

¹ Efforts were made to agree an approach, without success

with a combination of shouting, gestures, verbal cajoling and whistles. The character of the noise produced, combined with the associated control activities and a generator from time to time, would attract a great deal of attention. In my view, it would unreasonably diminish the quality of the domestic environment for nearby occupiers, particularly when expecting peaceful enjoyment of their gardens. Traffic noise may be the most commonly experienced noise, but that is gradual and consistent in character and is a recognised consequence of living by a road.

11. An acoustic barrier made with straw bales might help in reducing the level of noise but to have any effect, would have to extend around at least 2 sides of the field and be over 2 metres high. No firm details of any such barrier have been provided and although piles of straw bales might not be uncharacteristic of agricultural land in general, an effective barrier made out of straw is likely to appear out of keeping and would block views across the field. The Council considered such a proposal would be likely to have an unacceptable visual impact and I agree.
12. Taking all the acoustic implications into account, the noise impact of the activity that the proposed change of use would bring about imposes an unacceptably intrusive burden on nearby domestic occupiers, conflicting with the amenity protection aims of policy EN2 of the Sevenoaks Allocations and Development Management Plan of 2015 and with the relevant aims of the National Planning Policy Framework, which indicates that noise should not give rise to significant adverse impacts on health and quality of life.

Other matters

13. Whilst the aroma from dog excrement is of concern to local occupiers, alternative agricultural uses would also be likely to lead to smells. I have no reason to doubt the observations of objectors, but this matter carries very little weight.
14. It has been suggested that excessive noise could be controlled under Environmental Health legislation. However a change of use application has been made and I have assessed it under current planning legislation.
15. The addition of small barriers, temporary pools and drinking containers are very similar to the kinds of items used in equestrian activity, which I understand is accepted on the site. The Council has no objection to these in visual terms and I do not disagree.

Conclusion

16. The number of complaints has been relatively few given the length of time that dogs have been present, but that does not necessarily correspond with the magnitude of the nuisance actually caused. The use of the land is carried out in close proximity to one house and about nine others on the opposite side of the road. The noise of barking from this commercial dog exercise activity cannot be controlled effectively under planning legislation and would be unacceptably intrusive. The appeal should be dismissed.

Paul Jackson

INSPECTOR