



Appeal Decision

Site visit made on 13 September 2019

by Jamie Reed DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2019

Appeal Ref: APP/E2001/W/19/3232261

The Acorns, Rossmoor, Melbourne, York, East Yorkshire YO42 4SX

- 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 Abbey Huxtable against the decision of East Riding of Yorkshire Council.
 - The application Ref 19/00977/PLF, dated 15 March 2019, was refused by notice dated 12 June 2019.
 - The development proposed is described as 'change of use of land to provide a dog exercise area, to include provision of 2.00 m high timber post/rail and wire mesh security fence to perimeter'.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of the occupiers of neighbouring residential properties with particular regard to noise.

Reasons

3. The appeal site comprises a large paddock and former agricultural smallholding situated to the west of the village of Melbourne in the open countryside. The site lies within the grounds of a dwelling known as The Acorns and is located amongst a small cluster of dwellings that are spaced along the southern side of a quiet section of the B1228. All these properties feature substantial garden/paddock areas, some of which adjoin the appeal site. Due to its isolated location, the site and its surrounding area is quiet and tranquil in nature. Other than the sound of the occasional passing vehicle, very little background noise was experienced during the course of my visit, which took place in the afternoon.
4. As part of the proposal, a new parking area would be formed using crushed stone, just within the entrance to the site, close to its access onto the B1228 and the access of an adjoining dwelling. Users of the proposed dog exercise facility would park their vehicles here and then walk their dogs past a small number of vacant agricultural buildings to the proposed dog exercise area. This would be located about 60 m further to the south. The exercise area itself would be enclosed by a post and wire fence about 2 m in height, which was partially erected at the time of my visit.
5. Visitors would be given an access code to gain entry to the site. It is proposed that the facility would be used by up to 2 persons and 8 dogs in 30 – 60 minute time slots between the hours of 08:00 – 20:00, 7 days a week during summer

months. These operating hours would reduce to between the hours of 09:00 – 15:00 during the darker winter months.

6. Whilst it is acknowledged that the occupier of The Acorns would maintain a presence on site and may be able to attend to any matters if need be, this person would not be directly involved with the operation of the dog exercise facility itself, which would be unsupervised. Consequently, there is no guarantee that they would become involved with addressing any particular matters arising from the proposal.
7. It is also reasonable to expect that there would be many periods when the occupier of The Acorns would be absent, as they went around their daily business. The appellant has queried the need for supervision and has stated that she is aware of similar facilities where there are no such measures in place. Given the sites positioning within a small group of dwellings in a quiet location in the open countryside, I consider such measures would be appropriate in this instance, in order to control the numbers of visitors to the site and addresses any instances of unacceptable noise generation, which a supervisor would be best placed to do.
8. No noise assessment has been submitted to support the proposal. However, any noise arising as a result would not just be contained to the exercise area itself. Rather, this would also occur at the parking area, with vehicles driving across the crushed stone parking area, followed by doors being opened and closed as the visitors and their dogs get in and out. The dogs would then be walked to the exercise area about 60 m away. It is likely that the dogs would be excited upon exiting the vehicles and in all probability would bark at this time, as well as at various times throughout the course of their visit. This would be interjected with the sounds of the dog walkers themselves, who would be issuing words of encouragement/praise/discipline to the dogs at the appropriate times, which is an inherent part of exercising dogs.
9. By comparison with more populated areas, any sounds arising as a result of the proposal would be likely to have a greater effect upon the occupiers of the nearby dwellings. This would be particularly true when the neighbouring occupiers are outdoors in their garden areas. This greater effect would be due to the very quiet and tranquil nature of the area. It therefore follows that any noise that would be generated by the proposal would be unreasonably loud and disturbing and would be likely to occur at regular periods throughout much of the day, seven days a week. Furthermore, if any such noise did occur, there would be no guarantee that there would be anybody on site to address this.
10. A number of objections have been received, raising concerns regarding the potential for noise to be generated as a result of the recreational nature of the activities that would occur, amongst other matters. The appellant has suggested that there is already significant noise in the area however, arising from an existing dog/kennel business around the corner to the south west on General Lane.
11. I observed that the location of this other facility is actually quite different to the appeal site. It stands alone and is separated from the appeal site and its neighbouring dwellings by Generals Lane itself. There are no dwellings in close proximity in the way that there is with the proposal. As a result, this other facility cannot be directly compared to the appeal site and as such, I attach little weight to this argument.

12. The appellant has also referred to another dog exercise area that the Council has granted planning permission for, known as Market Weighton, which the appellant understands has not received any complaints regarding noise. The Council describe the Market Weighton site as being very different to the appeal site however, with higher levels of background noise as a result of its location. As a result, any sounds produced by the Market Weighton site itself would therefore not be as noticeable, prominent or harmful in the context of their surroundings. Consequently, the Market Weighton site cannot be directly compared to the appeal site and as such, I attach little weight to this argument.
13. The appellant has suggested that she would be prepared to only let the facility be operated as single use in order to minimise the amount of any noise that would be generated. Whilst it is unclear exactly what this would entail, it is accepted that the intention would be to minimise the amount of activity and noise on site. However, in any event, it is inevitable that some barking would still occur, along with the sounds of interaction with the dogs' walkers, given the recreational nature in which dogs exercise. It would also still be possible for walkers to bring more than one dog at a time, so such an arrangement might not actually result in any significant reduction in the number of dogs present at the facility at any one time or a reduction in noise.
14. In addition, such a restriction would not overcome those sounds associated with the vehicles visiting the site and the resultant comings and goings of each set of visitors from occurring frequently throughout the day. Whilst I acknowledge the appellant's positive intention, such limitations over the operation of the facility would also be unreasonable and difficult to control or enforce against in the event that planning permission were to be granted, particularly in the absence of any on-site management. As such, I can afford little weight to their suggestion.
15. It is clear that the very nature of the proposal would inherently result in the creation of noise and that due to the low levels of background noise in this very quiet location would be particularly noticeable and disturbing to those that live nearby. The activities associated with the proposal, including those related to the comings and goings of vehicles, dogs and their walkers to and from the site throughout much of the course of the day, 7 days a week, would therefore result in an unacceptable level of noise being generated in this location. In addition, there would be no guarantee of any on site supervision, to be able to try and control any noise or to assist in any other matters that could arise as a result of the proposal.
16. For these reasons, the proposal would be harmful to the living conditions of the occupiers of neighbouring residential properties with particular regard to noise and disturbance. Consequently, the proposal would be contrary to Policy ENV1 of the East Riding of Yorkshire Local Plan Strategy Document (LP) (2016). This policy requires proposals to achieve a high quality of design that contributes to a sense of place whilst paying due regard to the amenity and living conditions of the occupiers of existing properties.

Other Matters

17. I note that a number of letters of support have been received in respect of the proposal. These suggest a number of potential benefits that the proposal could bring, including the accessibility of the location and that the facility would ease

pressure on similar facilities elsewhere, amongst other things. Whilst it may be the case that the facility could be more convenient for potential users than other exercise areas, neither this nor any of the other suggested benefits forwarded would overcome the harm that I have identified that would arise from the proposal.

18. The appellant has questioned whether the area is, in fact a quiet rural location, and has explained that three out of the four surrounding properties have businesses running from them. She also adds that she does not consider the proposal would have any impact upon these businesses. Whilst I have little information regarding these businesses, it was clear at my visit that there are a number of dwellings in close proximity to the appeal site and that the prevailing character of the area was that of a quiet residential nature, with very little background noise evident. With this in mind, even if it may be the case that the proposal would not have a harmful effect upon any commercial activity that may be occurring, it would still nonetheless have a harmful effect upon the living conditions of the occupiers of those houses that are nearby in this isolated location.
19. In addition to the sites at Generals Lane and Market Weighton, the appellant has stated that she is aware of a number of other dog exercise facilities that have been approved in the area using the same principles that she has proposed. However, it is not simply a case of what's acceptable on one site being acceptable on another. Every site has its own site-specific circumstances and merits upon which it is considered. I have identified clear harm in this case that cannot be reasonably mitigated against and as such, I have found that the proposal would be unacceptable.
20. I acknowledge the appellant's assertion that they do not intend to make the proposal into a large business and understand that they want to make use of the land in a way that will supplement the income of an existing small business. Whilst the proposal could indeed help assist in such matters, there would be clear harm arising as a direct result, which I cannot ignore in making my decision.
21. The appellant has suggested that there is nothing to stop her from letting her friends and family from using her land and that she could do so with no restrictions on dog numbers or the hours of operation. Whilst this may be the case, my decision is only concerned about the proposal which is before me.
22. In addition to matters relating to noise, objectors have also raised a number of other concerns, including the possible threat to wildlife and children, should any of the dogs ever escape. Whilst I acknowledge their concerns, the appeal is being dismissed for other reasons and as such, these matters would not alter my decision.

Conclusion

23. For the reasons given above, I conclude that the appeal is dismissed.

Jamie Reed

INSPECTOR