
Appeal Decision

Site visit made on 18 November 2019

by Andrew Bremford BSc (Hons) MRICS

an Inspector appointed by the Secretary of State

Decision date: 06 December 2019

Appeal Ref: APP/P2114/W/19/3236263

11 St Wilfred Drive, East Cowes PO32 6GQ

- 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 Miss Jade Ferrari against the decision of Isle of Wight Council.
 - The application Ref 19/00417/FUL, dated 13 June 2019, was refused by notice dated 8 August 2019.
 - The development proposed is described as 'retention of outbuilding for use as a dog grooming business'.
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Decision

1. The appeal is allowed and planning permission granted for outbuilding for use as a dog grooming business as 11 St Wilfred Drive, East Cowes PO32 6GQ, in accordance with the terms of the application, Ref 19/00417/FUL, dated 13 June 2019, subject to the conditions set out in the attached schedule.

Procedural Matters

2. Following submission of the application to the Council, the proposal description was revised from '*change of use of the land from residential to a mixed use of residential and dog grooming*' to the description of development set out in the banner heading above, which has been taken from the Council's decision notice and the appellant's appeal form. The Council's officer report and evidence before me confirms that the revised description of development was subject to consultation and publicity. I have considered the appeal on this basis.
3. The appellant's appeal form describes the development as 'retention' of outbuilding for use as a dog grooming business, however 'retention' is not an act of development. Thus, the revised description of development, omitting the word 'retention', is reflected in my formal decision above.
4. As observed during my site visit the outbuilding has been constructed and a dog grooming business is currently operating from it.

Main Issue

5. The main issue is the effect of the dog grooming business on the living conditions of neighbouring residents with respect to noise and disturbance.

Reasons

6. The appeal site is a semi-detached house with a small rear garden located within a modern residential estate. To the rear of the property there are two allocated parking spaces accessed off Waterside Close. These spaces are

- positioned directly adjacent to a gate which affords access to the rear garden of the property.
7. In the rear garden, close to the boundary fence and the gate, is an outbuilding which has the appearance of a domestic shed and has a footprint of approximately 7 square metres. It contains a dog grooming table, a small free-standing air-conditioning unit, a specialist dog hair dryer, clippers and shelving for storage of products and equipment used for the grooming of dogs. The outbuilding has one door and the windows are fixed in the closed position.
 8. Based on the evidence before me and from what I saw on site the dog grooming business is small-scale, with usually two, but sometimes three clients a day and has been operating since February 2019. The length of time each dog grooming session lasts varies dependant on the breed and size of the dog, but typically takes between 1 and 3 hours.
 9. Concern is raised that the business potentially generates noise and disturbance from the dog hair dryer, dogs barking and general pedestrian activity and conversations between the appellant and her clients when they drop off and collect their dogs. Moreover, whilst some of these noises are what can be heard from any domestic property with dogs, the operation of the business has the potential to generate more intense and frequent noise and disturbance.
 10. At my site visit, whilst standing outside the outbuilding with the door closed, I listened to the noise generated from the dog hair dryer and air-conditioning unit operating simultaneously. Although audible the sound emitted from the equipment was not intrusive or indeed particularly noticeable above the general background noises generated from the domestic activities of the surrounding properties and vehicle movements in the vicinity of the site. Thus, I do not consider the noise emitted from the dog hair dryer, even when in use with the air-conditioning unit, so significant to adversely affect the living conditions of neighbouring residents. Furthermore, although the business has been operating since February 2019, I have no evidence before me of any complaints received by the Council from neighbouring residents about noise in connection with the operation of the business.
 11. The clients of the business either walk or drive to the property when dropping off and picking up their dogs. They use the gated access to the rear garden from Waterside Close. I accept that there may be occasional barking when dogs arrive for their grooming session and when they are collected. Furthermore, there is inevitably more pedestrian activity, with associated conversations between the appellant and her clients at the site compared to the usual comings and goings of neighbouring residents. However, taking into account the close proximity of the allocated parking spaces to the gated access I do not consider such activity constitutes significant disturbance in the context of the low number of clients per day and the short period of time clients are at the property to drop off and pick up their dogs. Also, any householder may have one or several dogs of their own, and in the absence of evidence of nuisance from barking, I do not consider this to be a severe issue.
 12. Although not cited as a reason for refusal I note the Council's officer report refers to the impact on neighbouring residents in regard to the potential for smell arising from the business activity. I saw on my site visit that the premises was clean and I do not doubt the appellants' contention that she keeps it clean by immediately removing and disposing of any dog faeces.

Nevertheless, waste storage and collection for dog faeces and hair from grooming could be controlled through a suitable condition requiring the approval of and adherence to a refuse and waste management scheme.

13. In conclusion, conditions to ensure doors and windows are kept closed during the opening hours of the business, only one dog is on the premises at any one time and all dog grooming takes place within the outbuilding, would considerably mitigate any potential for noise to affect neighbours' living conditions. Limiting business hours would also ensure that clients do not arrive at quiet times of the day such as early in the morning or in the evening. Such conditions would also restrict the intensity of the business, thereby ensuring it remains small-scale and limits the additional general pedestrian activity over and above the usual comings and goings of neighbouring residents.
14. For the reasons outlined above, I conclude the outbuilding for use as a dog grooming business is not materially harmful to the living conditions of neighbouring residents in respect of noise and disturbance. Therefore, it accords with Policy DM2 of the Island Plan¹ which, amongst other things, supports proposals for high quality and inclusive design to protect our existing environment.

Other Matters

15. My attention has been drawn to concerns raised by a third party about a possible restrictive covenant covering the appeal site preventing its use for business purposes. This may well be so, and while I have not been provided with any further detail in this regard, this is a private matter that it outside of my role to determine the appeal in accordance with planning law. Even if a restrictive covenant did exist, this would not materially alter my conclusions on the appeal development in accordance with the development plan and other material planning considerations.

Conditions

16. I have considered the Council's suggested planning conditions and where necessary I have amended the wording in the interests of precision and clarity. The appellant was given the opportunity to comment on the Council's suggested planning conditions.
17. As the outbuilding has been constructed and a dog grooming business is currently operating from it the standard three-year time limit condition is not required. A condition specifying the approved plans is necessary for the avoidance of doubt and in the interests of certainty.
18. In the interests of protecting the living conditions of neighbouring residents conditions 2, 3, 4, 5 and 6 are required.
19. The purpose of condition 6 is to require the appellant to comply with a strict timetable for dealing with waste storage and disposal which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to

¹ Full title: Island Plan – Isle of Wight Core Strategy (including Waste and Minerals) and Development Management Development Plan Document. March 2012.

secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The purpose and effect of the condition is therefore to ensure that the use of the outbuilding authorised by the grant of planning permission may only continue if the appellant complies with each one of a series of requirements.

Conclusion

20. For the reasons set out above I conclude that the appeal should be allowed.

Andrew Bremford

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 1:1250 scale Site Location Plan; 1:200 scale Block Plan, and 1:100 scale Site Plan.
- 2) The use hereby permitted shall only take place between the hours of 1000 to 1730 on Mondays to Fridays and 1100 to 1600 on Saturdays and at no time on Sundays or on Bank or Public Holidays.
- 3) The use hereby permitted shall only operate within the outbuilding, annotated as a 'shed', as detailed on the approved plans.
- 4) Doors and windows of the outbuilding shall be kept closed during the periods of use hereby approved.
- 5) There shall be no more than one dog on the premises associated with the business at any one time.
- 6) Unless within one month of the date of this decision a refuse and waste management scheme including details of waste storage and disposal, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within three months of the local planning authority's approval, the use of the site for a dog grooming business shall cease and all equipment and materials brought onto the site for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within six months of the date of this decision, the use of the site as a dog grooming business shall cease and all equipment and materials brought onto the site for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved refuse and waste management scheme specified in this condition, that refuse and waste management scheme shall thereafter be retained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.