



Appeal Decision

Site visit made on 10 March 2020

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2020

Appeal Ref: APP/V4250/W/19/3242855

14 Lakeside Avenue, Billinge, Wigan, Lancashire WN5 7BJ

- 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 Mr Michael Peel against the decision of Wigan Metropolitan Borough Council.
 - The application Ref A/19/86602/RET, dated 17 January 2019, was refused by notice dated 18 October 2019.
 - The development proposed is described as: 'Part/material change of use of existing dwelling house to be utilised as a small business for dog breeding/sales'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application sought permission for a part change of use of the host property for the breeding and sale of dogs. However, it is clear from the evidence and from my site visit that the change of use has already occurred and that the use of the premises for the breeding and sale of dogs is ongoing. I have therefore determined the appeal on this basis.
3. The Council have cited 'saved' Policy S1E of the Council's Replacement Unitary Development Plan Remaining Policies 2006 (UDP) in the refusal reason on its decision notice. Whilst protection of neighbour amenity and living conditions are referenced in terms of 'Small Shops and Services', I still find the above policy relevant in the context and determination of this appeal. I note the age of this policy, but I find that it is broadly consistent with the aims and objectives of the National Planning Policy Framework (the Framework).
4. Although, the Highway Authority raises no objections to the proposal, the Council remains concerned about the impact of vehicular movements in terms of noise and disturbance to neighbouring occupiers. I have dealt with the appeal on this basis.

Main Issue

5. The main issue of this appeal is the effect of the development on the living conditions of neighbouring occupiers, with particular regard to noise and disturbance.

Reasons

6. The host property is a semi-detached dormer dwelling that is located at the southern turning head of Lakeside Avenue. When viewing the appeal property

from the front, the adjoining property to the right is No 13 Lakeside Avenue and the adjacent property to the left is No 15 Lakeside Avenue. Due to the layout and pattern of development on Lakeside Avenue, modestly sized dwellings are formed, resulting in the host dwelling and its garden area being close to several other properties in the street.

7. During my visit, it was apparent that dogs were only housed internally on the ground floor of the host property. However, not all of the ground floor rooms were used in connection with the dog breeding business, such as the living room. Additionally, the whelping room identified on the submitted drawings was not in use at the time of my visit. The dog breeding business involves 3no. breeds¹ and the appellant has a license from the Council allowing him to have up to 10no. breeding bitches at any one time. It is common ground between the main parties that the appellant has 8no. breeding bitches. Furthermore, the Council confirms that the appellant breeds 5no. litters per year and may at any one time have 15-22 dogs on site. The Council also indicates a number of activities undertaken at the host property during a working day at 3.3 of its Statement of Case. However, there is nothing before me to indicate that this list is a fully comprehensive account of all of the activities undertaken during a working day.
8. The rear of the property comprises an outside amenity area and a grassed rear garden. A series of outdoor buildings, segregated by concrete post and panel fencing, includes a detached garage that has been sub-divided into a clinic and a store, 5no. kennels and a detached blockwork outbuilding to the rear used for domestic storage. Hardstanding is located directly outside each of these structures, increasing in level towards the rear of the garden, due to changing topography. Metal gates segregate this paved area into 3no. separate sections. Another area of hardstanding is located to the side of the dwelling and to the front of the garage that leads to the vehicle parking area located to the front of the host property.
9. Policies CP 10 of the Wigan Local Plan Core Strategy 2013 (CS) requires development to improve the built environment of the borough and help make it a better place to live, and CS Policy CP 17 requires development to maintain, enhance and protect the environment for the benefit of people, amongst other things. Furthermore, UDP 'saved' Policy S1E requires development not to unduly affect the amenity of nearby residents.
10. In this case, there is evidence before me that the partial change of use has had an adverse effect on the living conditions of neighbouring occupiers. This is in the form of a complaint to Environmental Health. I am aware that the Council has been unable to determine the existence of a statutory nuisance in relation to the barking of dogs at the host property. However, statutory noise nuisances are dealt with under environmental protection legislation, whereas I have a broader duty to consider the living conditions of surrounding residents, having regard to planning policy. In this regard, I note the comments and suggested conditions from the Public Protection Officer² (PPO) on the planning application.
11. The appellant has confirmed that exercise for the dogs is predominantly undertaken off site. I noted during my visit that the public footpath to the rear of the site can be conveniently accessed from the rear garden of the host

¹ Dachshunds, French Bulldogs and Dobermans

² Email dated 8 October 2019

property. Accordingly, I acknowledge the assertion by the appellant that the outside areas are limited to feeding, supervised exercise or sanitary breaks. I also recognise that the areas within the host property used in connection with dog breeding have been located away from party walls. Whilst I note reference to the dogs being housed within the detached garage or inside the host property itself, except for the afore mentioned supervised times, I nonetheless observed occupation of one of the kennels during my visit. Additionally, in the appellant's Noise Impact Assessment³ (NIA) there is reference to a single Doberman kept outside as a guard dog with access to the outdoor area at all times of the day, sleeping in the garage/clinic room at night.

12. The NIA confirms that noise measurements were taken in consecutive fifteen-minute periods between approximately 10:00hrs and 11:30hrs on Tuesday 19th March 2019. Reference is made to British Standards⁴ (the standards) often used in relation to environmental noise, but not specifically to barking dogs. The maximum noise levels recorded from dogs barking were between 70–80 dB L_Amax, and dogs barking was observed 3no. times during the survey, with no periods of continuous barking observed. The predicted level for the nearest neighbouring external amenity space at No 2 Greenslate Road is 50dB, which is within the recommended guidelines in the standards. However, I find that the duration of the survey to be limited and there is little detail on what activities were being undertaken at the host property at the time of the survey. Thus, I am not persuaded that the results within the NIA are entirely representative of a typical day on a day to day basis.
13. There is off-street parking at the host property with 4no. parking spaces accessed from Lakeside Avenue, which I am advised is sufficient for the appellant, leaving at least one space available for his visitors. Whilst this seems reasonably likely, there is nothing before me to demonstrate the likely timing, frequency or duration of visits from customers. I acknowledge visiting is by appointment only and that these are likely to occur during the day time and predominantly during the midweek, but on the evidence before me, I cannot be certain the number of visitors attracted to the site would not exceed the available number of off-street parking spaces at the host property, or how multiple customer arrivals would be controlled, especially during peak visitor times when customers are attracted to the site. Customers are highly likely to visit the site more than once (to view the puppy initially, to visit after committing to buy, and to pick up the purchased puppy). There may also be trips made by potential customers who decide not to purchase a puppy.
14. I appreciate that a domestic dwelling attracts some comings and goings. However, the breeding of dogs and their sale at the host property has intensified the nature of the use of the site and introduces different vehicular movement patterns to that solely of a domestic dwelling. Therefore, in this instance, I give little weight to the residential comparison put forward by the appellant. The residential character of the appeal site has changed to a significant degree and the business attracts numerous customers to the site. Given the number of breeding bitches on site and the subsequent number of litters that are produced, it is inevitable that the number of visitors to the host property will increase during times when puppies are on site.

³ Noise Impact Assessment by Hepworth Acoustics Ltd dated March 2019

⁴ BS4142:2014 and BS8233:2014

15. Whilst, the associated vehicle movements to and from the site are unlikely to cause any highway safety issues, I cannot be certain that the level of associated traffic resulting from the development would not cause any significant harm to the living conditions of neighbouring occupiers. Such vehicle movements would likely take place in close proximity to neighbouring dwellings, which have a very near and direct facing relationship with the road.
16. The National Planning Practice Guidance (PPG) advises that conditions can enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects of the development. I note that the Council suggest that a management plan and an enhanced scheme of sound insulation could be obtained through the imposition of conditions. A restriction on the number of litters per year is also suggested, which is not accepted by the appellant on viability grounds. A temporary permission has been suggested by the PPO, but I am mindful that the dog breeding business has been in operation for a number of years at the site. Therefore, in accordance with the PPG⁵ I do not consider a temporary permission appropriate in this instance.
17. Even if a management plan and additional sound insulation was provided, this would not necessarily prevent noise and disturbance to local residents from the use of the external areas of the host property or from visiting customers generated by the development. The PPG⁶ advises that planning permission usually runs with the land and it is rarely appropriate to provide otherwise. Consequently, given my findings on the details before me, I am not persuaded that otherwise unacceptable development could be made acceptable through the use of planning conditions in this instance.
18. For the reasons given above, I conclude that the development is significantly harmful to the living conditions of neighbouring occupiers, with particular regard to noise and disturbance. Therefore, the proposal fails to accord with the living condition aims of CS Policies CP 10, CP 17, 'saved' UDP Policy S1E and the Framework.

Other Matters

19. I acknowledge a letter from a neighbouring occupier retracting previous objections to the planning application and I note that there has been support from the adjoining neighbour at No 13, and further letters of support have been provided from other residents in the area. However, local support is not sufficient in itself to make the development acceptable and does not outweigh the policy conflict in this instance.
20. I have had regard to no objections being raised from the Local Highway Authority. However, I have considered the development on its own merits and concluded there would be harm to the living conditions of neighbouring occupiers. A lack of harm associated with highways is a neutral factor that weighs neither for nor against the development.
21. I have had regard to various other matters raised by the appellant, including the host property being his own house, having 2no. license inspections and obtaining four-star ratings, not importing puppies from outside the UK and to another dog at a neighbouring property. Additionally, I am sure that the

⁵ Paragraph: 014 Reference ID: 21a-014-20140306

⁶ Paragraph: 015 Reference ID: 21a-015-20140306

appellant provides a 'happy home' for dogs and has respect and consideration for his neighbours. However, on the evidence before me these are not reasons to grant permission in the face of the harm identified. I have also noted his comments about the way the Council handled the application, but this does not go to the planning merits of the case.

Conclusion

22. I have found that the development is contrary to the development plan when taken as a whole, and there are no other considerations which outweigh this finding. It is also at odds with the requirements of the Framework.
23. Taking all matters into consideration, I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR