



Appeal Decision

Hearing (Virtual) Held on 9 March 2021

Site Visit made on 1 April 2021

by K A TAYLOR MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2021

Appeal Ref: APP/D2320/W/20/3263170

Hallsworth Manor, Long Lane, Heath Charnock, Chorley, PR6 9EG

- 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 Susan Knight against the decision of Chorley Borough Council.
 - The application Ref 20/00848/FUL, dated 10 August 2020, was refused by notice dated 7 October 2020.
 - The development proposed is a change of use from residential dwelling (Use Class C3) and agricultural land to mixed use of residential (Use Class C3) and home dog boarding, sitting and exercise/training area (sui generis).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Prior to the Hearing the appellant submitted late evidence as a technical noise survey. The Council were given the opportunity to make representations of which they did do. I am satisfied that the Council and interested parties have had sufficient time to consider this late technical evidence and that they would not be prejudiced by my determination of the appeal on this basis.
3. At the Hearing, the Council could not be certain if the correct notification of the revised date for the appeal Hearing had been received by all parties. However, following discussions, the receipt of all correspondence and on seeking views from the appellant, interested parties and the Parish Council, I am satisfied from the documentation received that the correct approach had been taken and no parties had been prejudiced from lack of notification of the Hearing.
4. The appellant submitted an additional plan forming part of their statement of case '*Overview of Site Plan C – 2 x Buffer Zone*'. All parties have seen this additional plan. As such, I have taken this plan into account in this decision on the basis that this indicates the locations of proposed buffer zones.
5. The change of use has commenced, and I am therefore considering the appeal as retrospective.

Background and Main Issues

6. The appeal site relates to Hallsworth Manor, a private residential property which is a Grade II Listed building and an adjoining agricultural field to the east. The proposals commenced on the 5 December 2019 and following the Council's enforcement investigation a planning application was forthcoming.

7. The appellant was granted a licence for a home boarding establishment by the Council at the property on 10 December 2019, which runs until 5 December 2022. This allowed a maximum of 5 dogs at any one time, including any resident dogs. The use of the existing agricultural field to the east was used for dog exercise, play and training. The field was also hired out for events, relating to dog breed meets, charities and dog parties.
8. The appeal site lies within the Green Belt, certain forms of development are not inappropriate development provided they preserve its openness and provided they do not conflict with the purposes of including land within it. This includes as set out in Paragraph 146 (e) of the National Planning Policy Framework (the Framework) '*material changes of use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)*'. As the proposals would form a change of use for outdoor recreation purpose it would not be inappropriate development and the visual and spatial elements of the change of use are minimal having little impact on the openness of the Green Belt.
9. Concerns have been raised from interested parties including the nature of consultations from the Highway Authority, with regard to highway safety including visibility, passing places and lack of parking at the appeal site.
10. Therefore, taking account of the background above the main issues are (i) the effect of the proposal on the living conditions of neighbouring occupiers, with particular regard to privacy, noise and disturbance; and (ii) the effect of the change of use upon highway safety.

Reasons

Living Conditions

11. At the Hearing the appellant confirmed that they have surrendered the boarding licence¹ back to the Council. This was partially due to the lack of take up of the facility, particularly with the pandemic. The Council have highlighted that although this maybe the case, the original application and appeal proposal did include the home dog boarding. However, as this element has now ceased the Council stated that it could be questionable as whether such intensification of use at the property in the future for home boarding or sitting would require a change of use. This is not a matter for me to consider whether any future lawful use of the property would be lawful, and this would be a future matter for the Council. I, therefore, will deal with the proposal on this basis on the evidence before me.
12. The appellant advised that the level of activities have declined within the field. The number of days and hours have reduced, and the business now operates, Tuesday, Thursday, Friday and Saturday with no opening on bank holidays. The hours of operation are between 09:00 hours to 18:00 hours during the spring and summer months (April – September) and 09:00 hours to 17:00 hours during the Autumn and Winter months (October – March).
13. The business now operates on the basis of individual bookings of the field for dog walking and exercise for up to six dogs per session. This incorporates either half hourly or a full hour slot. The appellant confirmed there are no third-party dog training taking place on the field, but facilities of training equipment,

¹ Licence No: AWHOME026, 19/01374/AWHOME, granted 10 December 2019

- balls and toys are within the field if a person(s) wish to privately train their dog on the field.
14. Policy BNE1 of the Chorley Local Plan 2012-2026, adopted 2015 (LP) only grants permission for development, amongst other things where it does not cause harm to any neighbouring property by virtue of overlooking, overshadowing, or overbearing; and the proposal would not cause an unacceptable degree of noise disturbance to surrounding land uses.
 15. I acknowledge that the appellant has reduced the scheme, usage and put forward a number of conditions to mitigate the impacts. Nevertheless, I am mindful that the use has already commenced and is continuing to a degree. The appeal site is in close proximity to several residential properties. The field directly adjoins residential gardens belonging to properties at Red Row and Olde Stoneheath Court. Towards the north is Hallsworth Fold Cottages and Hallsworth Fold Farm.
 16. The residential gardens of Olde Stoneheath Court are separated from the appeal site by a continuous stone wall running the length of the field towards the east. The height of the wall varies between gardens and there are subtle but noticeable changes in land levels, particularly when viewing the appeal site from within those gardens positioned at a higher level. The properties at Red Row are direct neighbours with gardens set towards the south east of the appeal site.
 17. As I observed at the time of the site visit, the field was in use by customers including one with six dogs. On viewing the site from within gardens at Olde Stoneheath Court, particularly No.8, 10 and 11 it is clearly evident from these gardens that dog walker(s) using the majority of the field could easily see directly into the gardens of these properties whether intentionally or not. It was also apparent that with the current situation and lack of any suitable boundary treatments residents had clear sight across the field when in use.
 18. To alleviate this the appellant has already planted numerous leylandii trees. These trees are currently small, lack foliage and could take many years to be well established to prevent overlooking. The Council have also raised the issue that these are not native species to the area, although no alternative species is put forward.
 19. At the Hearing the appellant confirmed they propose additional planting by way of a condition and a fence forming two buffer zones. A 10m buffer for Olde Stoneheath Court and a 30m buffer between those gardens at Red Row. I acknowledge that the current occupier for Red Row has support for these, particularly as the one behind their garden ranges to some 30m as a Hawthorn hedgerow. However, I consider these zones would take some time to be clearly established as buffers and as such would not prevent the immediate overlooking that is taking place or alleviate the privacy concerns residents currently have at Olde Stoneheath Court, given that the use has already commenced. Furthermore, I have no substantive evidence of any alternative suitable boundary treatment other than the proposed buffer zone, therefore the mitigation put forward is not precise and lacks sufficient detail.
 20. As such, the change of use results in an unacceptable impact on living conditions of those occupiers who would expect to enjoy privacy within their rear garden areas and experience overlooking to an unacceptable degree from

- visiting members of the public/customers who would use and exercise their dogs within the field, all to the detriment of their privacy.
21. In regard to the noise and disturbance of the use of the site. The Council's Environmental Health Officer (EHO) confirmed at the Hearing that complaints of noise had been received by the Council with the first being on 27 July 2020. The Council has a set procedure for statutory nuisance and as no written evidence was received the complaint was closed. However, following additional complaints in July and August the Council had provided record sheets to the complainants and received one set back. The EHO confirmed that the Council could only set up noise recording equipment in homes and not gardens and due to the pandemic and national lockdown it would not be feasible, if necessary, to carry this out. Therefore, there was no unreasonable approach or action from the Council in regard to noise complaints.
 22. I acknowledge that the main parties disagree on the timing of the requirement for a noise survey to be undertaken prior to the determination of the application and when this should have been conducted. Nonetheless, a noise assessment² (NA) was carried out over two days, being 7 and 8 January 2021 over 30 hours, and forms part of the submission of this appeal. This confirms that the nearest noise sensitive property is to the north and south of the site and that the assessment included a microphone placed within 3m of the boundary wall to the gardens of Olde Stoneheath Court.
 23. The NA is lacking in detail and appears to contain a number of inaccuracies and incorrect labels. The use of estimates is not backed up by substantive supporting technical evidence. Particularly, it estimates that if 20 dogs are disturbed only 9 of them will bark and that an average bark is 80db. There is limited detail of the actual use of the site when the site assessment was carried out, including what were the activities taking place during each session, the exact number of people on the site with dogs or during the periods the total number of dogs per session and in total throughout the whole assessment.
 24. However, the appellant did confirm at the Hearing that the number of dogs of each session were over the two days. In total 22 dogs were present on the 7 January, varying between eight sessions and 17 dogs were present on the 8 January over the seven sessions. Despite this, it is not clear the extent of barking that took place each session and to what extent per dog, per type of activity would result in the conclusion of an average 80db level of bark.
 25. Notwithstanding the above, I accept to some extent this would be particularly difficult to establish baselines as dogs are unpredictable, vary in nature, size and breed and what scenarios could or would disturb them to make them bark. However, the NA fails to determine, the ranges or differences between the proximity of one or more dogs using the field in and around the buffer zone and wider field setting, the type of dog/breed comparison and the nature of various activities, as this would likely increase and decrease the noise and disturbance levels which affect those nearby residents in both their gardens and properties.
 26. The NA concluded that estimates of the data recorded from the site has dog barking at 65db and this was around 4m away from the microphone at the time of the barking. From this, the existing stone wall would provide resistance as a

² Measurement of Environmental Noise, E2 Consultants Ref:-11417-1

barrier and reduce this to 45db, to be commensurate with NOAEL (46-50db) 'no observed effect on health or quality of life'. However, it fails to consider the difference in levels between the wall and residential gardens / properties and that this would differ in resistance and the full extent of distances in the field.

27. Despite other background noise and the site being nearby the motorway, there is no doubt that the concentration of dogs throughout the day per session using the appeal site make a noticeable contribution to noise and disturbance in the area, particularly due to the sites proximity to the adjacent residential gardens. Furthermore, the noise and disturbance is likely to be exacerbated by owners recalling, shouting commands and other vocal activities which would typically be associated with dog walking / exercising.
28. Consequently, the circumstances of the case are such that I am not satisfied that the appellant's evidence is sufficiently precise to conclude that there is /or would be no additional noise and disturbance from dogs barking, including noise generated from people / households using the field to privately walk or if required privately train their dogs. As such, the change of use causes an unacceptable level of noise and disturbance to those nearby / adjoining residential occupiers.
29. Although the appellant has reduced the use of the field it would still be occupied by a substantial number of dogs during those daytime sessions and for continuous periods of up to an hour on the days open. I do not consider that a restrictive condition on the number of dogs to that of six or even three to one household would provide sufficient mitigation to reduce the significant impact on noise and disturbance that adjoining residents endure. Furthermore, I do not have any substantive evidence that a landscaped buffer zone would prevent dogs barking or that the noise generated from the barking would be alleviated by adding planting or fencing zones.
30. Moreover, I am not satisfied that 'one household' could be defined for the purposes of the suggested condition as the potential interpretation has a much broader definition to many, including whether users are immediate or part of a wider household. There is also the potential for confusion for anybody visiting the dwelling with a dog, including whether they are a customer or friend/relative of the appellant with a dog.
31. As such, it would not meet the tests as set out in Paragraph 55 of the Framework, as it would be difficult for the condition to be precise or enforceable to ensure that the users of the field were one household with those dogs using the facility. There is also no substantive evidence that suitable mechanisms are in place that could be classed as being reasonable for a register of bookings to ensure customers formed only one household and those dogs attending, and in my opinion, this would become a tedious task for the appellant.
32. The appellant has referred to a number of conditions from other Councils for dog walking businesses, however I have been provided with limited detail, only wording of conditions. My attention has also been drawn to an allowed appeal decision³, however I do not consider that this case is comparable given that it relates to a new build sports centre and the occupation of a building with people, unlike the proposal before me for a change of use of field and the

³ APP/N4720/W/15/3138176

restricting households with the restriction of numbers of dogs. In any event, the appeal is determined on its own merits on the basis of the evidence before me.

33. For the reasons given above, I conclude that the change of use causes significant harm to the living conditions of neighbouring occupiers, with particular regard to privacy, noise and disturbance. It is contrary to Policy BNE1 of the LP, for the reasons set out above.

Highway Safety

34. The appeal site is accessed via a narrow lane with limited passing places. It appears to be privately owned towards the north and is gated with any lack of turning areas. Therefore, the lane would be unsuitable for any overspill parking that could accumulate from the change of use without causing harm to highway safety and impeding any other users of the lane including existing residents if vehicles were parked along here.
35. Despite this, in terms of the potential for cars to meet along the lane when sessions overlap, this is likely to be only one / two cars at a time. Although this would lead to some inconvenience to road users accessing the appeal site directly, I do not consider it would be significant enough to cause substantial harm to highway safety or impact on nearby residents.
36. Furthermore, the appeal site has its own access point with double gates leading to a long driveway. The appellant confirms that this driveway is utilised for parking of customers including any overspill. The driveway is narrow, and vehicles could only pass one at a time.
37. There appears to have been some confusion from the Highway Authority comments over the proposals, including a reference to a granted planning permission in 2011. Nonetheless, the Council and appellant agree that suitable visibility is provided at the site when leaving from the access towards the south, in the ownership of the appellant. Therefore, I do not consider that a condition would be required or be reasonable to further modify the access when it is not necessary. Particularly as the lane is privately owned towards the north and I have no substantive evidence to suggest that the existing ingress or egress to Hallsworth Manor is dangerous. As I observed at the site visit, the realignment of fencing behind the vegetation at the front of the site has already been carried out.
38. In regard to the second access located further to the north of the appeal site, this is not in the ownership of the appellant and although there is a right of way over this land, this is through private covenants. Interested parties raised concerns over the use of this access and parking in the courtyard area, as it appears that it is accessible from the existing driveway of the appeal site. However, I consider the access to the north falls outside the scope of the appeal as it is not within the red line of the site. Moreover, covenants are private matters and do not fall under planning legislation.
39. Nevertheless, I acknowledge residents' and interested parties concerns that this could become a problem. I observed there is a gateway between the courtyard and the driveway of Hallsworth Manor, therefore I find it reasonable that a suitable worded condition could be agreed by the appellant with the Council preventing users/customers of the business accessing directly the

courtyard beyond this gate from the driveway. This would prevent any access to the courtyard or northern access point for customer vehicles during opening times and sessions.

40. For the reasons given above, I conclude that the change of use does not cause harm to highway safety. The proposal is in accordance with Policy ST4 of the LP. This policy sets out the parking standards required for development and the local circumstances that are justified to be taken into account.

Other Matters

41. The host dwelling at the appeal site, Hallsworth Manor, is a Grade II Listed Building. Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving the special interest of the building and its setting.
42. Given the location of the agricultural field and nature of the proposal, including that there are no works or alterations to the building, car parking and training equipment would be temporary it would have no adverse impact on preserving the heritage asset and the significance of its setting. As such the proposal would accord with the heritage aims of the Framework and Policy BNE8(iii) of the LP.
43. Although, I appreciate that the appellant has sought to engage local residents and invited suggestions of how residents and the business could function next to each other. This matter does not outweigh the concerns I have found on the impact of living conditions for those neighbouring occupiers.
44. My attention was drawn to a recent planning application that had been approved by the Council at Mawdesley for a change of use of agricultural land to walking and exercising of dogs, similar to the appeal proposal before me. However, I have not been provided with the full details of the case, and so cannot be certain they are comparable. However, from the Hearing discussion it appeared that this scheme was not within a residential area unlike the appeal scheme before me. In any case, I must consider the appeal on its own merits on the basis of the evidence.
45. I recognise the appeal proposal would have benefits, including some social aspects where the field provides a safe environment for both the owners and dogs with complex medical conditions. Economic benefits would be the generation of income for the appellant. However, these benefits of the use of the field would be limited as this would only benefit the users, their dogs and the appellant rather than the community as a whole. Neither, am I persuaded by the arguments there are no areas where dogs could be taken for exercise, or walking within nearby localities whether this be on a lead or not.
46. The fact that the change of use has commenced without permission is not a reason in itself to dismiss the appeal. The proposal should be judged against material planning considerations. I have found that the impact on the neighbouring occupiers living conditions is unacceptable. The proposal is not in accordance with development plan policies and there are no other considerations that justify a decision otherwise.

Conclusion

47. For the reasons given above I conclude that the appeal should be dismissed.

K A Taylor

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Susan Knight
Chris Weetman BA (Hons) DMS MRTPI

Appellant
CW Planning Solutions Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Iain Crossland BSc, MPLAN, MRTPI
Adele Hayes DipUrp, MRTPI
Lesley Miller

Principal Planning Officer
Service Lead - Planning
Environmental Health Officer

INTERESTED PARTIES:

Paul Sedgwick DP TP MRTPI
Councillor Kim Snape
David Catherall
Councillor Graham Ashworth
Gordon Rowbottom
Tracey Mollinga
Jason Smalley
Craig Winter
Gail Westwood
Anna King
Geraldine King

Sedgwick Associates
Ward Councillor
Local resident
Parish Councillor
Local resident
Local resident
Local resident
Local resident
Local resident
Local resident
Local resident

DOCUMENTS SUBMITTED AT/AFTER THE HEARING

1. Chorley Local Plan 2012-2016, 2015 Policy ST4 Parking Standards
2. Interested Party letter, Mr Smalley
3. Decision Notice & Approved Site Plan, Reference 10/00362/FUL
4. Email Highways Development Support – Senior Planning Officer, dated 14/01/2021, ref: 20/00848/FUL
5. Lancashire County Council Highway Comments, dated 19/06/2020 Ref: 20/00393/FUL
6. Lancashire County Council Highway Comments, dated 21/07/2020 Ref: 20/00393/FUL
7. Lancashire County Council Highway Comments, dated 04/06/2020 Ref: 20/00393/FUL
8. Lancashire County Council Highway Comments, dated 25/09/2020 Ref: 20/00848/FUL