

Appeal Decision

Site Visit made on 8 June 2021

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th August 2021

Appeal Ref: APP/D1590/W/21/3267124

Unit 5 Carlton Court, Grainger Road, Southend On Sea, SS2 5BZ

- 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 M Hammerton against the decision of Southend-on-Sea Borough Council.
 - The application Ref 20/01123/FUL, dated 14 July 2020, was refused by notice dated 9 September 2020.
 - The development proposed is change of use from light industrial/commercial unit to a sui generis animal boarding establishment.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from light industrial/commercial unit to a sui generis animal boarding establishment at Unit 5 Carlton Court, Grainger Road, Southend On Sea, SS2 5BZ in accordance with the terms of the application, Ref 20/01123/FUL, dated 14 July 2020, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 2020/07/01/UN5CCGR and 2020/07/02/UN5CCGR
 - 2) The premises shall only be open for customers between the following hours:
07:00 – 20:00 Mondays – Fridays
 - 3) No more than 35 dogs shall be accommodated at the premises at any one time.
 - 4) Customer drop off and collections shall be made via the Short Street entrance by prior appointment only.

Preliminary Matters

2. The unit is already in use as an animal boarding establishment. The reference to the proposal being retrospective is superfluous and I have left it out of my decision.
3. The application was submitted prior to the publication on 1 September 2020 of The Town and Country Planning (Use Class) (Amendment) (England) Regulations 2020 (UCR) and under the transitional arrangements in place until 31 July 2021 the use classes were to be read as applied on 31 August 2020.

4. Following the end of the transitional arrangements Classes A1, A2, A3, B1, D1 and D2 are replaced by Class E in Part A of Schedule 2 of the UCR and therefore I have removed the reference to Class B1(c) within the banner heading and my decision.

Main Issue

5. The main issue is whether the sui generis use would be appropriate in respect of its location.

Reasons

6. The appeal site comprises a commercial unit located within the Grainger Road industrial estate, which comprises a mix of older brick built employment units. The wider site comprises a mix of small to medium sized businesses, with a larger building comprising the Royal Mail Delivery Office and Mail Centre opposite.
7. The site is located within the Southend Central Area, as defined by the Southend on Sea Borough Council Core Strategy 2007 (CS) and Grainger Road is identified as an Employment Growth Area under policy DM11 of the Southend on Sea Development Management Document 2015 (DMD). The Southend Central Area Action Plan 2018 (AAP) seeks to provide employment opportunities within the Grainger Road and Short Street Employment Growth Areas by their protection, promotion and maintenance as well as increasing employment floorspace (Policy PA9).
8. The parties agree that the use of the site as a day care facility for dogs (DDC) falls to be considered as sui generis use. Policy DM11 of the DMD states that support will be given to the retention of former Class B uses within the Employment Areas. However, proposals outside of a former Class B employment use will be granted where the development proposal is a 'sui generis' use of a similar employment nature, which is compatible with and will not compromise the operating conditions of the Employment Area. The appellant has confirmed that the DDC provides 5 full time and 5 part time jobs and therefore contributes to employment opportunities within the area.
9. The Council have not raised any concerns about the compatibility of the use in terms of whether it would be compatible with the operating conditions of the Employment Area. However, there is evidence in the form of third party representations that the use has caused increased noise from barking dogs and this noise was evident at the time of my visit. Based on the evidence before me the parties are in agreement that this can be mitigated by controls on the number of dogs. I am also content that having regard to the commercial nature of the surrounding site and the proposed opening hours of the DDC, that adequate mitigation can be secured by condition to ensure that the use, in terms of noise and disturbance, would not compromise the operating conditions of the Employment Area.

10. I have also had regard to the lack of parking available on the site and that on street parking is restricted within Short Street by a TRO. I consider that the siting of the entrance door onto Short Street would encourage vehicles to stop outside when dropping off or collecting dogs and this could lead to unauthorised waiting opposite the service entrance to the Royal Mail building. However, any Class E business operating from the site would also be subject to the same restrictions and it has not been demonstrated that the use as a DDC would lead to an increase in unauthorised parking detrimental to highway safety. As such the use would not unduly compromise the operating conditions of the Employment Area in terms of highway safety.
11. For the reasons outlined above the development accords with policy DM11:2A of the DMD and therefore it is not necessary for the appellant to demonstrate that there is no longer term or reasonable prospect of the site being used for former Class B purposes (or for those now falling under Class E), through the form of a marketing exercise as required by part 2C of the policy.
12. The site also provides work experience for twenty students per week from local colleges, enabling students to complete between 160-300 hours of 'hands-on' dog handling/care. This accords with policy CP1 of the CS which supports development proposals involving the creation of a range of jobs, educational and re-skilling opportunities. The development would also accord with policy DM10 of the DMD which enables development that contributes to economic growth and encourages jobs.
13. The development would also comply with policy KP1 of the CS which sets out the Council's spatial strategy and requires development to be focused on the Southend Town Centre and Central Area by providing additional jobs. It would also accord with policy KP2 of the CS which provides development principles for all new development, and seeks to ensure that sites and buildings are put to best use as the development ensures the continued use of the site for employment purposes.
14. In conclusion, for the reasons outlined above, the sui generis use would be appropriate in respect of its location within a defined employment growth area, in accordance with policies CP1, KP1 and KP2 of the CS and policies DM10 and DM11 of the DMD. It would also accord with policy PA9 of the AAP.

Conditions

15. The Council has suggested conditions which I have considered against the advice in the Framework and Planning Practice Guidance. I have imposed a condition to ensure that the proposal is built in accordance with the approved plans to provide certainty.
16. I have imposed a condition restricting the number of dogs on site to 35 in order to protect the amenity of nearby businesses. Whilst the existing license allows for 55 dogs on site, I have had regard to the concerns raised by third parties about noise and disturbance and therefore I have taken the Council's suggestion of 35 to be more reasonable.

17. I have also imposed a condition to limit the hours of opening to weekdays until 20:00. I note that the original application form indicated opening hours until 18:00 and this was also the Council's suggestion, however the appellant has now expressed a desire to extend the opening hours until 20:00 and the Council have had the opportunity to comment on this. Noting the site's location within a predominately commercial location, it is not unreasonable to allow the site to operate until 20:00.
18. A further condition is necessary to ensure that any dogs dropped off or collected are done so by prior appointment to prevent cars waiting on the highway and impeding the free flow of traffic.

Conclusion

19. For the reasons given I conclude that the appeal should succeed.

G Pannell

INSPECTOR