



Appeal Decision

Site visit made on 15 March 2022

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 May 2022

Appeal Ref: APP/J1860/C/21/3287844

Woodlands Barn, Astley Burf, Stourport-on-Severn, DY13 0RX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Philip White against an enforcement notice issued by Malvern Hills District Council.
 - The notice was issued on 27 October 2021.
 - The breach of planning control as alleged in the notice is Without planning permission, the unauthorised change of use of part of a garage building for use as a dog grooming and walking business.
 - The requirements of the notice are to: Cease the use of the part of the garage building for use as a dog grooming and walking business.
 - The period for compliance with the requirements is: Three months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be corrected by the deletion of the breach of planning control alleged in part 2 *'Without planning permission, the unauthorised change of use of part of a garage building for use as a dog grooming and walking business'* and its substitution with the words:

'Without planning permission, the material change of part of a garage building for use as a dog grooming business'.
2. Subject to this correction, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act, for the development already carried out, namely the material change of use of part of a garage building for use as a dog grooming business at Woodlands Barn, Astley Burf, Stourport-on-Severn, DY13 0RX, as shown on the plan attached to the enforcement notice and subject to the following conditions:
 - 1) The dog grooming business shall only be open to customers, and for deliveries, between the following hours: 10.00am to 3.30pm Monday to Friday and 10.00am to 1.00pm on weekends and bank holidays.
 - 2) The use hereby permitted shall cease within seven days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within two months of the date of this decision a travel plan detailing parking, drop-off and collection arrangements for the business users shall have been submitted for the written approval of the local

planning authority and the scheme shall include a timetable for its implementation.

- ii) If within four months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved travel plan shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved travel plan specified in this condition, the arrangements shall thereafter remain in use.

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.

The Notice

- 3. The breach of planning control alleges that a dog walking business operates from the site. However, there is no evidence before me from either party to indicate that such a use is in operation. I note that the application for planning permission¹ which was refused by the council on 22 March 2021 sought to regularise the development described as 'change of use of garage to dog grooming business and household workshop (retrospective)'. Neither the application or the planning officer report refer to a dog walking business.
- 4. The allegation sets the terms of the deemed planning application and planning permission would be granted for what is alleged. However, in the absence of evidence, I am not able to determine the effect of such a use at the appeal site. It is open for me to correct the notice in accordance with my powers under section 176(1)(a) of the Act, subject to the essential test of injustice. In these circumstances, because neither party has referred to the use, I consider it would not cause injustice to delete reference to dog walking from the notice.

The appeal on ground (a) and the deemed planning application

Main Issues

- 5. This is the effect of the development on highway safety regarding parking provision and its effect on the public right of way.

Reasons

- 6. The appeal site, Jack's Groom Room, is owned and run by a friend of the appellant who owns and resides at Woodlands Barn. The business operates from a small outbuilding within the modest curtilage of the dwellinghouse. It occupies half of the outbuilding, the other half providing domestic storage

¹ 20/01152/CU

space for the appellant. The site is surrounded by residential properties. To the front, Woodlands Barn lies parallel with Hampstall Lane and there is an unmade track, which is also a designated bridleway, that provides vehicular access to properties further to the south. Access to the site is from the track close to where it meets Hampstall Lane. The existing driveway within the site provides an area for parking for the property, although the appellant says that generally, this space is not used for such.

7. The appellant provides that the dog grooming business operates between the hours of 10.00am and 3.30pm Monday to Friday, with reduced opening hours on a Saturday and Sunday to meet demand (usually between 10.00am and 1.00pm). The business offers a free collection and delivery service for dogs and welcomes customers who drive or walk to the site. Dogs are dropped off with a wait time of no more than 10 minutes. Base car parking demand is therefore no more than 2 cars with occasional drop off requirements.
8. The restricted floorspace of the appeal building limits the extent of the business to a 1:1 customer service and with time in between appointments required for cleaning, only one dog is on site at any one time. The appellant says that the business has capacity to groom 2 or 3 dogs per day, which could result in a maximum of 8 vehicular movements to and from the site each day, including the business owner's own car journeys to and from the site.
9. The council issued the notice because of the lack of adequate on-site parking provision for the development which it considers has a harmful effect on highway safety. Furthermore, the development is not considered to enhance the adjacent public right of way. The appellant's use of a parking space to the side of the track has caused obvious concern. However, submissions from an interested party indicate that such use has not been agreed, and final comments from the appellant concur with this position. Reliance on the parking space has therefore been removed.
10. Nevertheless, the business has generated additional traffic to the site which has resulted in parking on the bridleway, at times blocking access. The appellant proposes that the site could provide space to park 5 cars clear of the public highway to accommodate the Highway Authority's request, and this is shown on drawing 463 D 01. Although the design of parking areas could provide off road parking, there clearly would not be space to enable vehicles to turn which was a further requirement. Hence vehicles would need to either reverse into the site or onto the highway which could negatively affect the safety of the users of the highway particularly with regard to the restricted visibility around the road junctions. Furthermore, the provision of 5 spaces within the site boundary would likely have an impact on the character and appearance of the site in this rural setting.
11. Notwithstanding the appellant's proposal to provide on-site parking, Hampstall Lane, a no through road, is a wide and open village street with a pavement to one side, sections of grass verge to the other and houses either side. The houses along this section of the road benefit from driveways which provide a good level of off-road parking within their private curtilages. Indeed, at the time of my site visit, there were vehicles parked within driveways and only 2 parked along the highway between the appeal site and where the lane begins to narrow to the east.

12. The council's parking requirements for 2 spaces for a two-bedroom property are prescribed by Worcestershire Streetscape Design Guide and relate to the established residential use of the site. However, limited information is provided to substantiate the Highway Authority's requirement for 3 spaces for the parking and turning of vehicles for the business, except for a desire to contain all parking within the site to ensure free flowing traffic using the adjacent bridleway/track.
13. The traffic generated by the appeal development is low level due to the constricted nature of the site and the scale of the business. In addition to the business operator's own vehicle and the business van being parked at the site, it is likely that most customers will park for a short period to drop off and collect their dogs. Although, some customers may park and wait while their dogs are being groomed, as only one dog can be accommodated on the premises at one time, this is likely to result in only one additional car parking within the vicinity of the business.
14. In the absence of Traffic Regulation Orders preventing parking, and with residential properties that benefit from off road parking in the vicinity, there is space for this level of customers to park along Hampstall Lane without restriction and with minimal interruption to the daily lives of local residents. Overall and taking account of all the available evidence, in these circumstances I consider that a more flexible approach to the council's requirement for on-site parking for the business would be acceptable.
15. In this regard, I consider that the appeal development complies with policies SWDP4 and SWDP 21 of the South Worcester Development Plan (February 2016) which encourages development to minimise the need to travel and requires vehicular traffic from development to be able to access the highway safely and that the road network should have the capacity to accommodate the type and volume of traffic from the development. Furthermore, the appeal development complies with Paragraphs 100 and 110 of the National Planning Policy Framework which seeks to protect and enhance public rights of way and ensure safe and suitable access to the site can be achieved for all users. Paragraph 107 refers to setting local parking standards for residential and non-residential development, which in this case is not relevant.

Conditions

16. As the business is already in operation, I have not attached the standard time condition. To ensure that customer parking is undertaken in a safe and appropriate manner, a travel plan detailing how and where those using the business should park is considered reasonable and necessary and is imposed to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively. The condition will ensure that the development can be enforced against if the requirements are not met.
17. To protect the living conditions of neighbouring residents, a condition limiting the operation of the dog grooming business to the hours set out in the council's submission in accordance with the current hours of operation is considered to be both reasonable and enforceable.

Conclusion

18. For the reasons given above, I conclude that the appeal on ground (a) and the deemed application for planning permission succeed. Consequently, the enforcement notice is quashed, and planning permission is granted on the deemed application.

S A Hanson

INSPECTOR