



Appeal Decision

Site visit made on 29 November 2021

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 11 May 2022

Appeal Ref: APP/E2530/W/20/3260950

17 Eastgate, Deeping St James, PE6 8HH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Sue Russell against the decision of South Kesteven District Council.
 - The application Ref: S20/0632 is dated 17 April 2020.
 - The development proposed is the use of land for dog exercising and provision of dog training classes.
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. Since the Council determined the application the Deepings Neighbourhood Plan (NP) has been adopted on the 29 June 2021. As part of this appeal the parties have provided their comments in relation to emerging policy DPN12. Adopted policy DPN12 of the NP is largely unaltered from that of the emerging policy and therefore it has not been necessary to seek further comments of the parties. In reaching a decision I have had regard to the adopted NP.
3. A revised National Planning Policy Framework (the Framework) was published on the 20 July 2021 and the parties have been provided an opportunity to comment on the implications of this for their case.

Procedural Matters

4. The appeal results from the Council's failure to reach a decision on the information submitted by the appellant. There is no formal decision, as jurisdiction over it was taken away when the appeal was lodged. After the appeal was lodged, the Council considered the application at its Planning Committee and resolved that it would have refused the application. To this effect, the Council has suggested the wording it would have used had it made a formal decision. I have taken this into account, together with the assessment and conclusions submitted in the statement of the Council, which sets out its concerns regarding the proposed development.

Main Issues

5. The main issues are:-

- i) whether the appeal scheme would provide adequate living conditions for the occupiers of neighbouring properties with regards to noise and disturbance;
- ii) whether other policies of the development plan provide support for, or would be conflicted by the appeal proposal; and
- iii) the effect of the appeal proposal on the character and appearance of the area.

Reasons

Living conditions

- 6. The appeal site comprises a largely undeveloped, long, narrow and slightly curved parcel of paddock land mostly enclosed by mesh fencing with wooden supports. It is predominantly located to the rear of 17 Eastgate from where there is a pedestrian access into the site. At its furthest point, the appeal site adjoins Back Lane, from where there is an existing vehicular access.
- 7. The appeal site shares a boundary with a number of existing residential properties and their rear gardens positioned along Eastgate. Beyond a narrow field paddock at a distance of some 25 metres away are additional dwellings and their rear gardens positioned along Stephens Way. Both of these roads are lightly trafficked residential roads, particularly Stephens Way, and I observed there to be low ambient noise levels at the time of my site visit. The appeal site contributes to the pleasant tranquillity of the area and whilst I accept that my site visit provided only a snapshot of the conditions within the area, I have seen nothing, nor is there any evidence before me to suggest that what I saw and heard was untypical.
- 8. The proposed use would cater for the training of dogs and classes. The hours of use would be for 7 days a week, from 09:00 to 20:00 on Mondays to Saturdays during the summer months and from 09:00-18:00 Mondays to Saturdays during the winter. On Sundays throughout the year, classes would operate from 10:00-16:00. In addition, the dog exercise area would be used between 07:00-19:00 on every day of the week. There is no suggestion that the use would cease on bank holidays. A class would likely include no more than six dogs and their owners, although some classes would accommodate larger group sizes of up to twenty dogs at any one time.
- 9. The proposed use has the potential to create noise through barking dogs, the general comings and goings of people arriving and leaving the site, including vehicular noise and the noise of people congregating in groups. I also anticipate there would be noise of repetitious commands and whistles during training classes.
- 10. Although the site entrance, parking areas and main training area would be located towards the end of the site closest to Back Lane, in a position away from the dwellings of Eastgate, those areas would remain in close proximity to other residential dwellings including Tall Trees and those positioned at the end of Stephens Way. Notwithstanding the presence of existing vegetation

positioned between these dwellings and the appeal site, there is no evidence to suggest that this would provide any beneficial respite from the noise and disturbance emanating from the site. Based upon my own observations, the vegetation is not so comprehensive as to provide adequate mitigation from the impact of noise which is likely to be readily apparent whilst the neighbouring occupiers are using their private outdoor amenity areas, or from within their dwellings during the summer months when the weather is likely to cause residents to open their windows for prolonged periods.

11. Although it is the appellant's intention that a qualified dog handler/trainer would provide supervision and restrict the use of the facility to well behaved dogs only, this is not something that could be controlled by way of a planning condition. There would be no way of ensuring that only good animal behaviour would be allowed on the site. Given the outdoor use of the site and taking account of not being able to control a dog barking in the same manner that you could control, for instance, a machine, I am not persuaded that this provides a satisfactory safeguard. Whilst persistent noisy behaviour of any animal would result in exclusion from a class, by that point, a neighbouring occupier would be likely to have already been subjected to an unacceptable level of noise and disturbance.
12. For similar reasons, whilst a temporary planning permission permitting the use for the period of a year would enable the use to be tested, this does not preclude the neighbouring occupiers from being subjected to unacceptable levels of noise and disturbance during any temporary period of operation and to my mind does not represent an appropriate solution in this instance.
13. Whilst the present use of the site by the appellant for exercise and training of her own dogs is noted, the scale of the operation would result in a considerably greater number of dogs being present within a relatively confined space. There is potential for a significantly greater level of noise and disturbance particularly given the proposed hours of operation would be for a significant part of each day and for the entirety of the week including at weekends.
14. The appellant's suggestion that the actual working hours would be less than the operating hours applied for is noted. However, there would be nothing to preclude the operation of the use for the entirety of the hours applied for if the circumstances of the owner were to change in the future, or additional staff were to be employed. Moreover, even if classes were to be more limited in terms of the number of classes within any specific day, or a reduction in the number of days of operation during the week, there is no compelling evidence before me to demonstrate that undue adverse harm would not be experienced by neighbouring occupiers during the operation of the remaining sessions.
15. It is stated that 'Open Days' would be arranged on an infrequent basis. However, there is little information before me as to the frequency of these, the numbers of persons and dogs likely to be in attendance nor how parking will be controlled. As such, in the absence of any control, this type of event could attract large numbers of visitors and their dogs to the site and this would result in a further worsening of the impact experienced by neighbouring occupiers. The provision of advance notification of such an event to neighbouring occupiers does not in my view provide adequate justification.
16. In the absence of any technical evidence, I consider that it has not been demonstrated that the levels of noise that would be generated by the appeal

scheme when set against existing background noise levels, would not have a significant effect on the quality of life of neighbouring occupants.

17. Notwithstanding the submitted noise management plan, by reason of the open-air nature of the site, its siting in close proximity of noise sensitive receptors of neighbouring dwellings, the unpredictability of animals and the inability to control noise levels satisfactorily by condition, I find that the noise and disturbance as a consequence of the proposed use of the appeal site would be harmful to the living conditions of neighbouring occupiers, and materially compromise their living conditions.
18. Accordingly, I find that the appeal scheme would be unduly harmful to the living conditions of neighbouring occupiers with regards to noise and disturbance. There would be conflict with Policy E7 of the South Kesteven Local Plan (2020)(LP) insofar as it requires development not to negatively impact on existing neighbouring uses through noise.
19. Similarly, it would be contrary to the aims of the Framework¹ insofar as it seeks to ensure developments are appropriate for their location taking into account the likely effects of pollution on health and living conditions and create places with a high standard of amenity for existing and future users.

Support from, or conflict with other policies of the development plan

20. LP Policy SP4 concerns development on the edge of settlements and is permissive of such development where it meets a list of defined criteria. One such criteria requires a development to demonstrate clear evidence of substantial support from the local community. Where support cannot be demonstrated in accordance with the policy, support should be sought from the Town or Parish Council or Neighbourhood Plan Group or Forum.
21. Notwithstanding some limited support for the appeal scheme, the vast majority of representations made by third parties together with the Parish Council were in objection to the scheme and concerned material planning considerations including, among other things, the impact of noise.
22. Dispute exists between the parties as to whether the appeal site should be regarded as an 'edge of settlement' location. However, based upon the existing pattern of built form with neighbouring properties to three sides of the appeal site and taking account of the appeal site abutting the rear gardens of a number of dwellings along Eastgate, I take the view that the appeal site can be properly regarded as an edge of settlement location. In reaching this view, I have taken account of the presence of at least a single field gap between the site and properties to the north and south, however, this together with the length of the appeal site and an access from Back Lane does not lead me to a different view.
23. It has been put to me that LP Policy SP4 is concerned with built development rather than a change of use. However, I disagree. The policy wording clearly refers to 'development'. No party has referred me to a definition of 'development' within the policy or elsewhere within the development plan which seeks to restrict the operation of this term. In the absence of such, I rely upon the definition of 'development' set out within section 55 of the Town and

¹ National Planning Policy Framework paragraphs 130(f) and 185(a)

Country Planning Act 1990 which specifically includes material changes of use of land and buildings.

24. Consequently, I find that the appeal scheme fails to satisfy the requirements of LP Policy SP4, the requirements of which I have set out above.

Character and appearance

25. Policy DPN12 of The Deepings Neighbourhood Plan (2021)(NP) requires new development to, among other things, preserve the existing local green infrastructure network, including Green Lanes, as identified on Map 17. Back Lane is identified as a Green Lane, where the policy requirements state that development proposals on land adjoining Green Lanes should be designed and arranged to take account of rural character and appearance.
26. At the time of my site visit I observed Back Lane to be an attractive, narrow and mostly single track rural lane consisting of grass verges with drainage ditches, hedgerows and woodland trees. Large areas of agricultural land, paddocks and open countryside are positioned to both sides of the lane and are punctuated with intermittent residential properties and large commercial uses. The route was very lightly trafficked by motor vehicles and more frequently used by those on foot. Whilst I appreciate that my site visit provided only a snapshot of highway conditions, there is little evidence before me to suggest that what I saw was not typical of everyday conditions.
27. The appeal proposal would introduce little built form other than mesh fencing with timber supports, gates and an area for the parking of customer cars. Existing vegetation would largely remain unaltered due to the use of an existing access. Equipment used during training would be temporary and capable of being removed from the site when activities were not taking place. Whilst there would likely be a number of cars parked on site at any one time and a moderate flow of traffic accessing and egressing the site by using Back Lane, the level of traffic likely to be generated would not, in my view, be at a level that would have an unduly harmful impact on the rural character and appearance of the lane. In addition, notwithstanding the absence of a pedestrian access from Eastgate, some trips to the site on foot would be possible, thus reducing the overall number of vehicular trips.
28. Accordingly, I find that the appeal scheme would preserve the rural character and appearance of Back Lane and therefore the appeal proposal would accord with the provisions of NP Policy DPN12, the requirements of which are set out above.

Other Matters

29. My attention has been drawn to there being a number of similar schemes in the locality including at Spalding Road, Bourne. However, there is little information relating to the particular circumstances of these developments and whether the circumstances are therefore comparable to the appeal scheme. As such, a comparison is of limited relevance in this instance and I have considered the appeal before me on its individual planning merits.
30. Adequate provision would be made for the storage and collection of waste and litter and safety and security through the provision of fencing and lockable gates to prevent the unintended escape of dogs. No adverse harm has been identified by the Council with regards to highway safety, parking, ecological

impacts, flood risk and heritage. Similarly, the appeal scheme would not cause unacceptable impacts on living conditions with regards to privacy and outlook. However, the absence of harm is a neutral matter that weighs neither for nor against a proposal.

31. The appeal scheme would satisfy the economic objective of the Framework through the generation of local employment opportunities within a rural location. However, given the scale of the proposal and the likely number of jobs to be created, the resultant benefit to supporting a strong rural economy would be modest.
32. Dog exercise and training classes are stated to be popular and the appeal site would be accessible to a large population within the Deepings area. Therefore, the appeal scheme would contribute to the range of services available within the locality and help to support community vitality. There would be support for the scheme within LP Policy SP5 which is permissive of certain types of development within the countryside, including rural diversification projects.

Conclusion

33. In accordance with s.38(6) of the Planning and Compulsory Purchase Act, applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. Where a proposal conflicts with an up to date development plan, planning permission should not usually be granted.
34. Although I have found that there would not be any undue harm to character and appearance, the proposed development would be contrary to LP Policies E7 and SP4. The consequent harm that would arise, in particular with regards to the unduly harmful effect on the living conditions of neighbouring occupiers is a matter to which I attribute significant weight.
35. Whilst a number of benefits would arise as a consequence of the appeal scheme these would be limited and insufficient, individually and cumulatively, to outweigh the appeal scheme's conflict with the development plan. For the reasons given above, I therefore conclude that the appeal is dismissed.

E Brownless

INSPECTOR