



Appeal Decision

Site visit made on 3 May 2022

by Katherine Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 June 2022

Appeal Ref: APP/N2739/W/21/3289482

Mill Farm, Mill Lane, South Milford, North Yorkshire LS25 5AG

- 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 Lara Layton on behalf of Mutley's Dog Park against the decision of Selby District Council.
 - The application Ref 2021/0375/COU, dated 23 March 2021, was refused by notice dated 30 September 2021.
 - The development proposed is described as "*Change of use from horticultural plant nursery selling direct to the public, to private off leash dog park. Fenced around entire perimeter to make secure and added a fresh layer of hard core to parking area to tidy up. No building work was carried out*".
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Decision

1. The appeal is allowed, and planning permission is granted for the change of use from horticultural plant nursery to private off leash dog park with fence at Mill Farm, Mill Lane, South Milford, North Yorkshire LS25 5AG in accordance with the terms of the application, Ref 2021/0375/COU, dated 23 March 2021, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The Council altered the description of the development to read "change of use from horticultural plant nursery to private off leash dog park with fence (retrospective)". This description is accurate and reflects the development before me. I have therefore adopted this description in my decision, nevertheless I have omitted the reference to the development being retrospective as this does not constitute an act of development.
3. On my site visit I observed that the change of use had occurred, with fences constructed and the site in use as an off-leash dog park. I have consequently dealt with the appeal on the basis that the development has already occurred and was in operation at the time of my site visit.
4. The site is located within the Green Belt. This is not a matter in dispute. The Council consider that the proposal does not amount to inappropriate development which would affect the openness of the Green Belt and I have no reason to conclude otherwise.

Main Issue

5. The main issue is the effect of the proposed development on the living conditions of neighbouring residents with particular regard to noise.

Reasons

6. The proposal involves the change of use of a former horticultural nursery to an off-leash dog park and the construction of fencing around the perimeter of the site and between two separate dog exercising fields created. The appeal site is located on a parcel of land off Mill Lane, an unmade access track and public right of way serving Mill Farm, a number of residential properties and surrounding agricultural fields.
7. The change of use to an off-leash dog park has the potential to cause noise, principally from dogs barking, which if not controlled could affect the living conditions of nearby residents. The site is close to 3 residential properties and there are residential properties further away on Woodlands Close which are separated from the appeal site by a grassed field. The Council have not specified which properties would be affected by the proposal. However, from my observations, the most affected would be the 3 detached properties adjacent to the appeal site.
8. It is inevitable that some dogs will bark and would likely be heard outside the confines of the site. However, dogs normally bark repeatedly when protecting territory rather than when playing or exercising in a park. Therefore, the proposed use would not be unduly different than having a playing field or park close to residential properties.
9. I acknowledge that there have been times in the past when the facility may have been used by large numbers of unrelated dogs at a single time and this led to a noise abatement notice being served. However, I am satisfied that control measures put forward by both the appellant and the Council would prevent unacceptable levels of noise occurring in the future. Furthermore, other legislation is in place to tackle unabated noise should it occur.
10. Comparisons have been put forward with another site close by. I note that the Council were content to put control measures in place at that location to combat noise from dog barking arising from the use of that site. I acknowledge that background noise levels are higher there due to the prevailing conditions but as dog barking is a very different frequency to that of road traffic noise, it would therefore be distinguishable against it. Consequently, I am content that similar measures would be appropriate in the situation before me.
11. I therefore conclude that the proposal would not be unacceptably harmful to the living conditions of neighbouring residents with regard to noise from dog barking. Accordingly, I find that no conflict with Saved Policies ENV1(1) and ENV2 of the Selby District Local Plan (LP) which amongst other things requires development to take account of the amenity of adjoining occupiers and for development to take preventative measures to be incorporated in proposals to combat unacceptable levels of noise. The proposal would also not conflict with the aims of paragraph 130(f) of the National Planning Policy Framework (the 'Framework') to protect residential amenity.

Other Matters

12. A close boarded fence has been constructed to segregate the site into two areas. From my observations on site, this did not appear out of keeping or incongruous in its surroundings and therefore its replacement with a different type of fencing is not necessary.

13. I note that concern has been raised regarding the condition of the lane, which is heavily potholed and the use of the lane by pedestrians to the nearby secondary school and the railway station could lead to conflict with vehicles accessing the appeal site. I have also had regard to the concerns raised regarding other highway safety matters in relation to the comings and goings from the site. I have taken these comments into account in coming to my decision, but none of these matters raised outweighs the lack harm that I have found.
14. One of the representations questions whether the possible creation of a further pond on the site would require planning permission. I have dealt with the proposal on the basis of the plans before me, which does not include a pond. It is not for me to consider any possible unauthorised development under a Section 78 appeal.
15. I note that the appellant has raised concerns over the handling of the planning application, however, that is also not a matter for me to consider under a Section 78 appeal for which I can only have regard to the planning merits of the case.

Conditions

16. I have considered the Council's suggested conditions in the light of the Framework and Planning Practice Guidance. I agree that a plans condition is necessary and reasonable in the interests of certainty. I note that the plans submitted are not referenced and therefore I have referred to them by their titles. As the change of use has already occurred a time limit condition is not necessary.
17. In order to preserve the amenity of occupants of neighbouring properties, I consider it necessary and reasonable to restrict the hours of operation, the numbers and type of users of the facility and the use of lighting at the site. In order to improve the appearance of the site a landscaping condition is considered necessary. In order to preserve the openness and character of the site I have removed permitted development rights to restrict further development on the site.
18. The Council suggested a condition to restrict the use of the site, however, the permission is granted for a specific purpose contained within the description of development and therefore this condition is not necessary. The suggested condition requiring the boundary treatments to be retained is not necessary. Furthermore, I have not included the suggested condition to replace the close boarded fence with a wire mesh fence as I consider this not to be necessary in order to make the development acceptable.

Conclusion

19. For the reasons given above, having regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be allowed.

Katherine Robbie

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans titled: Location Plan, As Nursery Before; As Dog Field After/Now.
- 2) The site shall only be open for customers between the following hours:
0800 - 1800 Mondays – Fridays
And not at all on Saturdays, Sundays and Bank Holidays.
- 3) No external lighting shall be installed on the site at any time.
- 4) The vehicle access, parking, manoeuvring and turning areas as shown on the plan entitled 'As Dog Field After/Now' shall be maintained clear of any obstruction and retained for their intended purpose at all times.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any order revoking, re-enacting, substituting, amending, extending, consolidating, replacing or modifying that Order), no new structures, boundary treatments, or surfacing shall be erected/constructed/carried out on the application site.
- 6) The number of dogs on the site at any one time shall not exceed 8. There shall be no more than 4 dogs on either the 'Chill Field' or the 'Pond Field' at any one time. The site shall not be used for organised dog training or exercise classes at any time.
- 7) Within 3 months of the date of this permission a scheme of landscaping which shall include boundary hedge planting along all site boundaries and the fence line between the two fields within the site shall be submitted to and approved in writing by the local planning authority. The scheme shall include details of the species, sizes, spacing, protection and a programme of implementation.
- 8) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the approval of the scheme; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

End of Schedule