
Appeal Decision

Site visit made on 8 February 2023

by David Spencer BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 February 2023

Appeal Ref: APP/Y2620/W/22/3299660

Land at top of Sands Loke, Sands Loke, Edgefield, Norfolk.

- 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 Ms Caroline Sands against the decision of North Norfolk District Council.
 - The application Ref PF/22/0727, dated 15 March 2022, was refused by notice dated 11 May 2022.
 - The development proposed is change of use from agriculture to dog exercise area (sui generis).
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Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issues

2. The application form states that the proposal is retrospective. I observed that a grassed area is fenced off and there are some basic items for dog exercise. Notwithstanding what exists at the site, I have assessed the appeal proposal on the basis of what was applied for, as determined by the Local Planning Authority (LPA). The LPA refused the planning application on highway safety grounds only. Having read third party representations and visiting the location I consider the effect of the proposal on the living conditions of nearby residents is also a main issue for this appeal.
3. The main issues in the appeal are:
 - i) the effect of the proposed access arrangement on highway safety, with particular reference to the visibility at the junction of Sands Loke with the B1149 Holt Road / Norwich Road; and
 - ii) the effect of the proposed dog exercise area on the living conditions of nearby residents, with particular reference to noise and disturbance.

Reasons

4. Sands Loke is a short, narrow, stub of un-made track which extends west from its junction with the B1149, where Norwich Road becomes Holt Road, in the village of Edgefield. The track serves three detached residential properties along its southern boundary, a small grass/ orchard field to the north before opening out to agricultural land including the grassed area of the appeal site to the north, a large arable field to the west and three sizeable chicken shed buildings to the south which are currently in a moribund condition.

5. The planning application form proposes seven parking spaces associated with the use and for the proposal to generate 1 part-time employee. The application form also details proposed potential hours of use as 9am to 6pm seven days a week. The Planning Statement accompanying the application states that the practice would be to use the site for "9 hours" for individual sessions with dogs transported to the site by the employee in a single vehicle. The planning statement also refers to a one-hour group session on a Saturday and a Sunday with five to six customers attending these sessions. The planning statement calculates that the "likely" maximum number of weekly vehicle trips associated with the appeal proposal would not exceed 40. The appellant's appeal statement refers to the site being used for roughly four hours per day.
6. The appellants asserts that there would be a relatively low intensity use of the site and the planning statement says that it is "very unlikely" that the site would be in constant operation over the hours applied for. The low intensity use indicated by the appellant cannot be guaranteed and what has been applied for would allow for or facilitate a potentially higher degree of use at the site. As such I share the Local Highway Authority's (LHAs) concerns that commercial considerations may result in more sessions, more visitors and more vehicle movements than what the appellant suggests. I have therefore assessed the appeal proposal on the basis that the appellant's figure of 40 weekly vehicle movements should be regarded as a floor not a ceiling and that there would be real potential for a successful business, making the most of what has been applied for, generating considerably more vehicle movements than the claimed "likely" maximum of 40 per week.
7. The junction of Sands Loke with the B1149 is reasonably tight between the boundaries of adjoining properties on both corners. Applying the relevant design guidance in Manual for Streets the desired visibility splays for 30mph at the Sands Loke junction would be 2.4 metres x 43 metres. Visibility when egressing out of Sands Loke onto the B1149 to the north, despite the straight alignment of the highway, is compromised by the changes in land levels (land banking up from the footway edge) and the low boundary fence and vegetation to 'Dumella'. It is unclear from the evidence before me that the necessary visibility splay could be achieved without requiring third party land.
8. My main concern, however, is visibility in the right-hand direction to the south. Here visibility when exiting Sands Loke is restricted by the brick wall and tall ever-green vegetation on the boundary to the corner plot. The brick wall is hard to the footway. Consequently, there is not the required full visibility in this direction to exit Sands Loke without vehicles having to precariously manoeuvre forward into the highway. The LHA calculate the immediate visibility in this critical direction to be just 12 metres, and I have no reason to disagree with that figure from what I observed on site.
9. I observed that the highway alignment of the B1149 south of the Sands Loke turn is a sweeping bend towards The Green, although the forward position of buildings and vegetation on the opposite side of the B1149 limits the extent of a long-distance view around the bend. Nonetheless, I accept that it is possible to briefly see highway users approaching in this direction a short distance to the south, close to the turn for The Green. However, the curvature of the highway and the restricted visibility at the Sands Loke junction described above leaves a significant blind spot between the further visible point on the arc of

the bend described above and the Sands Loke junction. Whilst it may be possible when exiting Sands Loke to observe oncoming vehicular traffic at distance and make an allowance for the blind spot this is far from than ideal and potentially dangerous. Furthermore, the extent of the blind spot means that slower moving highway users such as cyclists or footway users may not be seen at the further point to the south before a vehicle seeks to exit the junction.

10. Submissions are made in respect of the highway code and where cyclists and motorcyclists could be expected to be positioned in the highway. Given the function and volume of traffic on the B1149 it would only be the most confident cyclists, motorbike or moped users that would occupy a line closer to the middle of the highway and thus be more visible from the Sands Loke turn. I consider that most cyclists and lower powered motorcyclists / mopeds would hug to the inside of the highway closest to the kerb. Consequently, and having regard to what the appellant says about the latest guidance in Manual for Streets 2, I consider the combination of the blind spot to the south of the Sands Loke junction and the notable increase in the number of vehicles using this junction as a consequence of the appeal proposal, would give rise to unacceptable impacts on highway safety, especially for more vulnerable users.
11. As set out above, due to the modest width of Sands Loke and the boundary wall and vegetation of the corner plot to the south and boundary fence and planting to the corner plot to the north, there is little to announce the presence of the turn when approaching it from either direction along the B1149. This is particularly the case when approaching around the sweeping bend to the south. As such highway users when approaching the location may not readily anticipate vehicles seeking to either exit from the junction or potentially waiting to turn into it. Whilst the speed limit through Edgefield is 30mph the Local Highway Authority (LHA) confirm that the B1149 at this point is designated as a 3A2 Main Distributor Road in the Norfolk Route Hierarchy serving as a 'inter-primary link' route. As such the B1149 is not a lightly trafficked road¹. The appellant submits that vehicles turning, slowing down and manoeuvring is to be expected within village settlements such as Edgefield. That said there is evidence of accidents within the past five years on this part of the B1149 indicating that there are potential highway safety issues in the vicinity of the Sands Loke turn². Consequently, I am concerned that an appreciable intensification of this substandard junction would harmfully interrupt the flow of traffic on a highway intended to serve as an efficient, primary route in this part of the County, giving rise to further potential highway safety implications.
12. In respect of conditions on the narrow Sands Loke itself there would be scope for conflict between traffic movements generated by the appeal proposal and those from the three existing dwellings. At present there are no means for two-way traffic to safely pass. It would be inherently unsafe for any vehicle entering Sands Loke to reverse back out onto the B1149 to enable another vehicle to exit. The appellant proposes a solution involving the construction of a passing place within the grass verge that extends along the north side of the loke. The position shown in the appellant's report³ would not be feasible due to changing land levels and would require relocating an existing utility pole.

¹ Approximately 4,000 daily average vehicle movements in 2011

² Detailed at Appendix 3 to the LHA appeal statement.

³ Parker Planning Services report ref 3535, dated 3 March 2022, Figure 1

However, I see no reason why an alternative layby could not be positioned very close by on the short length of Sands Loke, the details of which could be secured by condition. However, the potential resolution of this aspect of highway safety, does not overcome my principal concern arising from the inadequate and unsafe visibility at the junction of Sands Loke with the B1149.

13. With regards to highway conditions more generally and vehicles turning on the B1149 as a Main Distributor Route, the appellant has referred me to the new housing development at The Limes / Canon Marcon Way, a short distance to the north in Edgefield. I have relatively few details about the circumstances that led to this development, but I observed that in contrast to the situation at Sands Loke, there is good visibility in both directions when exiting the cul-de-sac and that the junction into the development is evident for approaching highway users on the B1149 who can react accordingly. As such, I find the circumstances at The Limes / Canon Marcon Way do not provide a comparable basis that would justify the harm to highway safety at the Sands Loke junction that would arise from the appeal proposal.
14. The appellant submits that the use has been operating since May 2021 without any highway incident. This is a relatively short period of time on which to conclude that the use would be safe in highway terms. As such I do not consider this sufficient to put aside my concerns regarding the poor standard of the Sands Loke junction and the impact of the appeal proposal on increasing vehicle movements using it.
15. The appellant's planning statement suggests that a condition could be attached to any consent requiring the business to maintain a record of all bookings including number of vehicle movements generated and for the logbook to be made available on request to the LPA. I have considered this carefully as a means of keeping the use at the low intensity operating model suggested but such a condition would be difficult to enforce, including accurately logging any change in bookings or customer details. The proposed condition would not meet the tests at paragraph 56 of the NPPF.
16. I therefore conclude that the proposed access arrangement would have a significantly harmful effect on highway safety, with particular reference to the visibility at the junction of Sands Loke with the B1149 Holt Road. Accordingly, the proposal would conflict with Policy CT5 of the North Norfolk Core Strategy 2008 (the NNCS) which requires proposals to be capable of being served by safe access to the highway network and for the volume of traffic generated by the proposal to be accommodated by the existing road network without detriment to highway safety. The proposal would also fail to accord with the National Planning Policy Framework (NPPF) at paragraphs 110 and 111 which state that development proposals should achieve safe and suitable access for all users and to only refuse development on highway grounds if there would be an unacceptable impact on highway safety.

Living Conditions

17. Whilst it did not form part of the LPAs reason for refusal the dog exercise area is reasonably close to existing residential properties, particularly the nearest dwellings on Sands Loke. Whilst I note from the LPA officer report that there have not been any formal noise complaints made to the District Council's Environmental Health service it is unclear as to what scale or intensity the site has been used since May 2021 and how comparable that is to what has

potentially been applied for. There is very little distance, or physical features to muffle noise, between the appeal site and those nearest dwellings on Sands Loke, especially Belmont House. Additionally, the site is only a short distance to the private rear gardens of several dwellings on Holt Road. I am satisfied from what I observed on site that dogs barking at the appeal site would be clearly audible from nearby properties.

18. Whilst the planning statement accompanying the planning application is relatively light on the details of the business, it nonetheless emphasises an “in practice” low intensity use of the site whilst also referring to the need for some flexibility. In practice the flexibility the appellant says would occur would be difficult to control by condition to any planning consent given the application seeks to establish the widest parameters of when the use could potentially occur at the site. Accordingly, a worse-case scenario should be contemplated, and whilst it may well be the case that the use would not be constant, nonetheless, what has been applied for potentially allows for notable numbers of visitors (7 parking spaces) and dogs at any one time and for this to occur over a long day (9am-6pm), seven days a week. Giving significant weight to the fact that this is a commercial venture, it seems illogical that constraint would be applied were there a demand to increase business, particularly for the larger group bookings.
19. Accordingly, the scale and nature of the appeal proposal would give rise to a notable level of noise and disturbance through regular and unconstrained dog barking, close to residential properties in what is generally a quiet, back land area. I am particularly concerned that there would be potentially little respite for neighbouring residences, including at weekends, when ordinarily households should have a reasonable expectation to periods without noise arising from commercial or business activities, such as the type of use proposed here. This adds to my concerns regarding the appeal proposal and so having regard to third party representations, including those of the Parish Council, and from my observations on site, I have come to a different conclusion to that of the LPA on residential amenity.
20. I therefore conclude that the proposed dog exercise area would have a significantly harmful effect on the living conditions of nearby residents, with particular reference to noise and disturbance. The proposal would be contrary to Policies EN4 and EN13 of the NNCS, which, amongst other things, seek to ensure there would be no significantly detrimental effect on the residential amenity of nearby occupiers and no unacceptable impacts on general amenity. The proposal would also fail to accord with paragraph 130 f) of the NPPF which seeks to secure a high standard of amenity for the users of existing development.

Other Matters

21. The appellant refers to a potential fall-back position, in terms of livestock traffic previously generated at the site. There are very few details before me about the use and scale of activity that previously occurred, including number of vehicle movements (compared to the appeal proposal), and how feasible it would be to re-commence the use. Accordingly, I give the asserted fall-back very limited weight. It is not a material consideration that indicates that a decision should be made to allow the appeal contrary to the identified conflicts with up-to-date policies of the development plan. The appeal proposal would

also generate modest economic benefits in terms of employment but, again, this is not a material consideration that outweighs the harms identified including the conflict with the development plan on the main issues in this appeal.

Conclusion

22. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

David Spencer

Inspector.