The Planning Inspectorate

Appeal Decision

Site visit made on 4 July 2023

by Ms S Watson BA(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 September 2023

Appeal Ref: APP/V0510/C/22/3294896
Land known as Unit 12 Oak Lane Business Park, 17 Oak Lane, Littleport, Ely, Cambridgeshire, CB6 1RS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Oak Lane Business Park Limited against an enforcement notice issued by East Cambridgeshire District Council.
- The notice, numbered USE/18/00006ENU12, was issued on 9 February 2022.
- The breach of planning control as alleged in the notice is: without planning permission, the change of use of the unit known as Unit 12 from class E(g) (formerly B1) or B8 use as defined in The Town and Country Planning (Use Classes) Order 1987 (as amended) to a sui generis use providing professional therapy for dogs and in breach of condition 10 of the decision notice for 18/01514/FUM.
- The requirements of the notice are to: Cease the use of Unit 12 for professional dog therapy, and permanently remove the pool, and all equipment and other items relating to the professional dog therapy use from the site.
- The period for compliance with the requirement is: Nine months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f), (g) of the Town and Country Planning Act 1990 as amended. 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.

Decision

1. It is directed that the enforcement notice is corrected by: removal of the words "and (b)" from paragraph 1 and the removal of "from class E(g) (formerly B1) or B8 use as defined in The Town and Country Planning (Use Classes) Order 1987 (as amended)" and "sui generis" and "in breach of condition 10 of the decision notice for 18/01514/FUM" from the alleged breach of planning control in paragraph 2.

2. Subject to the corrections, 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 1990 Act as amended for the development already carried out, namely professional dog therapy use at Unit 12 Oak Lane Business Park, 17 Oak Lane, Littleport, Ely, Cambridgeshire, CB6 1RS as shown on the plan attached to the notice and subject to the conditions in the attached schedule.

Preliminary Matters

3. The notice states there has been a breach of planning control within paragraphs (a) and (b) of Section 171A(1) of the Act. The previous use of the unit is not entirely clear, however, after reverting back to the parties, I understand from the appellant that the last use of the unit was for storage. There is no evidence that the previous use fell within Class E. Therefore, the use of the unit for dog therapy is materially different to the previous use.

4. Therefore, for the purposes of dealing with the ground (a) appeal, I have dealt with the breach as the carrying out of development without planning permission. I will correct the notice to remove references to a breach of condition. I will also remove references to the previous use classes in the allegation as these do not appear to be correct. There is no injustice to either party as I have considered the planning merits of the case under ground (a).

The appeal on ground (c)

5. Planning permission has been granted under 18/01514/FUM for the change of use of existing agricultural buildings (Units 1,2,3,4,5,6,7,8,9,10, 11 and 12) to B1, B2 and B8. Condition 10 of this permission restricts the use of the unit to "purposes within the B1 and B8 use of the Town and Country Planning (Use Classes) Order 2015 (*sic*), as amended, and for no other purpose or class usually permitted by the Order."

6. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 has taken away Use Class B1 from the 1987 Order. B1 uses now fall within Use Class E(g) which is for—

   (i)an office to carry out any operational or administrative functions,

   (ii)the research and development of products or processes, or

   (iii)any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

7. The appellant's argument is that a dog therapy use is Class E (c) (iii) which allows for the provision of any other services, principally to visiting members of the public, which it is appropriate to provide in a commercial, business or service locality. Moving between categories within a Use Class does not normally constitute development. Therefore, the appellant's argument is that as what was previously classed as B1 is now subsumed into Class E as E(g) and "any other services" are also allowed by Class E as E(c) (iii), the condition can no longer restrict the use to what was previously described as a B1 Use Class.

8. Firstly, I will deal with whether the alleged use falls within Class E. The unit has a dog pool, dog showers, dog exercise machines and a dog exercise area. It is for visiting members of the public to obtain services for their pet dogs. I clarified with the parties whether the premises was also used for seminars workshops and classes, but the Council says that there is no evidence that it is used for such purposes and the appellant has confirmed that it is not. I agree with the appellant, therefore, that the dog therapy use falls into Schedule 2 Part A Class E of the Town and Country Planning (Use Classes) Order 1987 under (c)(iii) which is essentially for the provision of services principally to visiting members of the public, specifically, "any other services which it is appropriate to provide in a commercial, business or service locality."

9. Therefore, the allegation in the Notice is incorrect as it is not a *sui generis* use as stated. I will correct the Notice by removing the words "sui generis".

10. Secondly, I must determine whether this use is permitted by the planning permission. The condition restricts the use to "B1 or B8" and the unit is to be used "for no other purpose or class usually permitted by the Order." Therefore, this prevents any changes permitted by the Use Classes Order.

11. Effectively, the condition restricts the use to Classes E(g) and B8. Therefore, the use of the unit as dog therapy (Class E(c)) constitutes a breach of planning control.

12. The appeal therefore fails on ground (c).

The appeal on ground (a)

13. The main issues are the effect of the dog therapy use on highway and pedestrian safety; the effect upon the living conditions of the occupiers of nearby dwellings; and whether the location of the use promotes sustainable travel choices.

14. The unit has planning permission for Class B1 (now E(g)) and Class B8 Use. The approved uses would obviously attract vehicular movements. The Council has expressed concerns in relation to traffic but it does not claim that the dog therapy use results in more vehicular activity than the approved uses. At my visit I saw that there were some 2 dogs and 2 staff in the building. This level of use would not attract much traffic. However, the size of the building would allow more than two dogs to be present, nevertheless, there is no evidence that a dog therapy use would attract more traffic than a Class E(g) or Class B8 Use. Furthermore, it is unlikely to generate movements of heavy goods vehicles (HGVs) in the way that a B8 Use might do. There is no reason for me to believe that the use would result in a worse traffic situation than the approved uses.

15. At the time of my visit, there was a shared car park at the front of the site with multiple unoccupied parking bays. There was no shortage of off-street places to park a car near the premises. There is no reason for me to believe that it would generate a car parking demand in excess of E(g) or B8 Uses. The unit was in use at the time of my visit and there was no evidence of it causing a parking problem.

16. The site is located off a fairly quiet and narrow lane which is unlit and has no footpath. The Council mentions that other uses within Use Class E might need to operate longer hours than the approved use and it is concerned about pedestrian safety in the dark. However, the approved use already allows for use in the dark during the winter months. I find no harmful difference between the proposed and the approved use in terms of highway safety.

17. The Council is also concerned about the impact of the use on residential amenity. The nearest dwelling, Oak Lodge, is detached from the site by about 90m. There are no dwellings adjoining Unit 12 as it is amongst other commercial uses with fields beyond. Nevertheless, cars would be going past dwellings on the approach to the site. However, I have already found that the use would not attract more traffic than the permitted uses. Therefore, traffic associated with the use does not harm living conditions.

18. The unit is only a short distance from what appears to be the built edge of the settlement of Littleport. Whilst I acknowledge the lack of footpaths and lighting on the route, the short distance makes it accessible by foot or cycle from the settlement. Furthermore, I have no evidence that it would generate more trips than the approved B8 and B1 Uses. Notably, Condition 8 of Planning Permission 18/01514/FUM required travel packs to encourage employees to travel using sustainable modes of transport or provide a car share scheme. Therefore, the

Council must have considered that the site is accessible by sustainable modes of transport to some degree. In any event, people would have to travel to the unit even if it changed to its permitted use.

19. For the above reasons, I conclude that the use of the unit for dog therapy does not harm highway and pedestrian safety; there is no harm to the living conditions of the occupiers of nearby dwellings and there is no harm in respect of sustainable travel choices. For these reasons I find no conflict with East Cambridgeshire Local Plan (LP) Policies COM 7; COM 8; ENV2 and EMP 4 which, in combination and amongst other matters, seek to ensure that development provides adequate levels of car parking provision, protects residential amenity and promotes sustainable travel choices; and that there is no significant adverse impact in terms of the amount or nature of traffic generated. Neither do I find conflict with LP Policy GROWTH 2 which supports the re-use of buildings in the countryside and small-scale employment development.

Conditions

20. The Council has suggested conditions in relation to operational hours, hours of delivery, the completion of a passing bay, external lighting, site based mobile plant, travel packs, cycle parking details, a flood evacuation plan, and the removal of permitted development rights to restrict the use to dog therapy or Class E(g) of the Use Classes Order.

21. In respect of operational hours, there could be a small element of disturbance to neighbours from the traffic accessing the business park if hours were not controlled. However, I consider that those suggested by the Council are too restrictive, especially in relation to a Saturday which is generally not a particularly quiet day. Therefore, I have allowed longer opening hours than those suggested by the Council. For the same reasons, I have allowed longer delivery hours.

22. Since the appeal was submitted, the passing bay has been provided and the Council, in its statement says that "the Council would agree that the appellants have installed the passing bay in accordance with drawings agreed by the Local Highway Authority". Therefore, such a condition is not necessary. A condition is necessary to secure details of external lighting to protect ecology. The suggested condition in respect of mobile plant is not necessary as I have no evidence that the dog therapy requires mobile plant. I have imposed conditions requiring a travel pack and cycle parking in the interests of sustainable travel choices. I have imposed a condition requiring a flood evacuation plan in the interest of safety.

23. In respect of restricting the use of the building, the National Planning Practice Guidance[1] says that conditions restricting changes of use may not pass the test of reasonableness or necessity. I consider that the scope of such conditions needs to be precisely defined. I have already found that the change of use falls within Class E (c) (iii). Moving between uses defined within a Use Class does not constitute development. I am unconvinced that restricting the permission to dog therapy and Class E(g) is necessary. Nevertheless, whilst not specifically referred to in the notice, I note the general concerns expressed by the Council in respect of the vitality and viability of town centres in their appeal statement, and for this reason, I have prevented the use of the premises being used for

[1] Paragraph: 017 Reference ID: 21a-017-20190723

the display or retail sale of goods, principally to visiting members of the public (Class E (a)) and for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises. (Class E (b)). This restriction will enable the Council to consider any such proposed uses on their merits, depending upon the information available at the time.

Conclusion

24. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the use of the unit for professional therapy for dogs as described in the notice, as corrected.

25. The appeals on grounds (f) and (g) do not fall to be considered.

Ms S Watson

INSPECTOR

Schedule of Conditions

1) The premises shall only be open for customers between the following hours:
0730 - 1900 Monday – Saturday and at no time on a Sunday or on Bank or Public Holidays.

2) Deliveries shall be taken at or despatched from the site only between 0700 – 1930 Monday to Saturday and not at any time on Sundays or on Bank or Public Holidays.

3) No external lighting shall be installed until details of it (including luminance levels) have been submitted to and approved in writing by the local planning authority. The lighting shall be installed and operated thereafter in accordance with the approved details.

4) Within 3 months of the date of this decision, details of Travel Packs to be issued to the employees of the unit shall be submitted to and agreed in writing with the Local Planning Authority. The Packs will include details of how to travel using sustainable modes of transport, including car sharing. The Packs shall be issued in accordance with the agreed details.

5) Within 3 months of the date of this decision, details of cycle parking shall be submitted to and agreed in writing with the Local Planning Authority. The cycle parking shall be provided in accordance with the agreed details and retained thereafter.

6) Within 3 months of the date of this decision, details of a Flood Evacuation Plan to serve the building shall be submitted to and approved in writing by the Local Planning Authority. The Flood Evacuation Plan shall be implemented in accordance with the approved details.

7) The premises shall be used for Use Class E(c), (d), (e), (f), (g) and for no other purpose (including Use Class E(a) and (b) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).