



Appeal Decision

Site visit made on 17 August 2023

by Elaine Gray MA, MSc, IHBC

an Inspector appointed by the Secretary of State

Decision date: 06 September 2023

Appeal Ref: APP/N4205/C/22/3308619

277 Manchester Road, Blackrod, BOLTON, BL6 5BD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Derek Lee against an enforcement notice issued by Bolton Metropolitan Borough Council.
 - The notice was issued on 12 September 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the land from residential to a mixed use as residential and use as a commercial dog grooming facility.
 - The requirements of the notice are: i Cease the use of the land as a commercial dog grooming facility; and ii Remove from the land those items which facilitate the unauthorised commercial dog grooming facility to include two grooming tables, the sink, the blow dryers and the roller drawers with utensils.
 - The period for compliance with the requirement is: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (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.
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Decision

1. It is directed that the enforcement notice be amended by the deletion of the text of the requirements paragraph in full and its substitution with the text: 'Cease the use of the land as a commercial dog grooming facility.'
2. The appeal is dismissed, the deemed planning application is refused, and the enforcement notice, as amended, is upheld.

The appeal on ground (a)

Main Issue

3. The main issue is the effect of the development on the living conditions of neighbouring residents, with particular regard to noise and disturbance.

Reasons

4. No 227 Manchester Road is a terraced dwelling in a predominantly residential area. To the rear is a detached outbuilding which can be accessed from Castlecroft Avenue by a lane running to the rear of the terrace. The outbuilding was constructed within the permitted development rights for the property.
5. Policy CG4 of Bolton's Core Strategy (BCS) requires that new development should be compatible with surrounding land uses and occupiers. Development should not generate, amongst other things, unacceptable nuisance or noise.

The National Planning Policy Framework (NPPF), at paragraph 174 (e), states that development should not contribute to unacceptable levels of noise pollution. At paragraph 185, the NPPF directs that development should 'mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life'.

6. The appellant states that the business employs one person who works on four weekdays between 10am and 3pm. Each working day comprises three or four appointments with only one dog at a time. There is a minimum gap of 20 minutes between appointments.
7. In response to the Council's concerns over amenity, the appellant has submitted a Noise Impact Assessment (NIA, 12 October 2022). The NIA includes a consideration of the potential impact of noise from the equipment associated with the dog grooming activities, specifically, hot air blowers for drying the dogs and hair clippers to trim the dogs. This document concludes that noise generated within the building would meet acceptable levels.
8. The Council confirm that they have no concerns about noise from within the building, providing the windows are kept shut during appointments. The appellant states that this is the case, and I am satisfied that this factor could be controlled by the Council's suggested condition.
9. However, other sources of noise are omitted from the NIA, primarily from the comings and goings of customers and their vehicles, and noise from dogs outside the building and in the lane. This is because BS4142 specifically excludes the assessment of domestic animals and people from its applicable scope.
10. The appellant argues that, given the small scale of the business, and the fact that some customers walk to the salon, the number of vehicular movements is 'extremely limited'. Deliveries to the business are confirmed to occur once every couple of months. However, the business has been operating since prior to the validation of the related Certificate of Lawful Development application, ref: 14015/22, on 21 June 2022. It would therefore be expected that the appellant could have gathered quantitative data on the number of vehicle movements the business typically generates, to assist the decision-making process. However, no such information has been made available.
11. Nonetheless, a Noise Management Plan (NMP) has been drawn up to address noise generated by sources outside the scope of BS4142. The NMP suggests a number of measures whereby potential noise and disturbance might be controlled. These include encouraging customers to, for example, switch engines off when cars are not moving, close car doors and boots with care, and minimise noise from conversations outside the salon. Unfortunately, however, these measures rely on the co-operation of customers, and could not practicably be enforced.
12. Furthermore, the character of the noise needs to be considered. The noise from customers, vehicles and dogs has the potential to be highly variable and unpredictable. Such noise characteristics are inherently more intrusive and more difficult to ignore, and are therefore more likely to cause significant disturbance to nearby receptors.

13. The NMP itself highlights the inherent difficulties in managing the behaviour of the dogs. At paragraph 4.3, it says: 'It is thought that the barking and crying of dogs is likely to be unavoidable regardless of any management plan.'
Notwithstanding the operator's abilities, the handover of pets to a stranger in unfamiliar surroundings is likely to elevate levels of anxiety in dogs on certain occasions. Even dogs who are brought regularly for grooming may be excitable, depending on their individual nature. I am therefore not convinced that noise from the dogs can meaningfully be controlled.
14. In support of his case, the appellant refers to the judgement arising from *Wallington v SSW & Montgomeryshire DC* [1990] JPL 112; [1991] JPL 942, where the Court of Appeal decided that the keeping of 44 dogs as a hobby materially changed the character of a domestic dwelling. In that instance, the enforcement notice required the keeping of no more than six dogs. However, this number related specifically to the site in question, reinforcing the principle that each case is to be considered on its individual merits. Crucially, there is a clear difference in circumstances between the keeping of dogs at home and dogs being brought to a business.
15. The appellant argues that the operational hours of 10am to 3pm are not anti-social times. Whilst that is so, living conditions can be adversely affected at any time of day, and there is nothing in the wording of the policies that restricts their application to anti-social hours. On my visit, I saw that the lane behind No 277 is a small, intimate space. The rear plots are the only private outdoor spaces available to neighbouring residents. The plots are limited in size, and the rear elevations of the neighbouring houses sit in close proximity to the appeal site. As a result, any noise over and above what would normally be experienced in this relatively quiet residential area is likely to be noticeable.
16. Drawing these threads together, I conclude that it has not convincingly been demonstrated that the development has, or can be made to have, an acceptable impact on the living conditions of nearby residents. Conflict thus arises with BCS Policy CG4, the NPPF, and with the development plan as a whole.

Other Matters

17. I note from the representations that concerns have been raised over customers blocking the lane whilst accessing the salon, and the general increase in traffic congestion on Castlecroft Road. However, the Council have raised no concerns on traffic safety grounds, and there is little detailed evidence before me relating to the problems that have been alluded to. In any event, due to the harm I have identified above, this matter is not determinative.
18. I have taken into account the representations of support for the development. However, these have not led me to a different conclusion on the main issue of the appeal.

Conclusion on ground (a)

19. For those reasons, the appeal on ground (a) fails, and the deemed planning application is refused.

The appeal on ground (f)

20. Ground (f) is that the steps required to comply with the requirements of the notice are excessive.
21. The appellant argues that the second requirement to remove the equipment from the premises would preclude the use of the grooming equipment by the household. I agree that such an activity would be incidental to the primary residential use of the main house.
22. The Council agree that the private use of the outbuilding for dog grooming would be acceptable. They have therefore agreed to the lesser steps suggested by the appellant. I have no basis on which to take a different view, and so I am satisfied that the cessation of the unauthorised use is sufficient to remedy the breach.
23. To that extent, the appeal on ground (f) succeeds.

The appeal on ground (g)

24. Ground (g) is that the time given to comply with the notice, in this case three months, is too short.
25. The appellant argues that the dog grooming business is now established with loyal customers. In the event that the enforcement notice is upheld, he will need to find an alternative premises to enable the business to continue trading. He states that it will take longer than three months to find alternative premises, agree terms, get the necessary planning approvals and fit the premises out with equipment. He considers that a six month time frame would be more appropriate.
26. Under ground (g), it is essential to balance the public interest in the notice being complied with expeditiously against the private interests bound up in the development that is the subject of the notice. In this case, the effect on the business needs to be balanced against the ongoing harm to the living conditions of neighbours.
27. I appreciate the difficulties involved in relocating an operational business. However, the appellant has not provided any evidence to support the claim that suitable alternative sites are unlikely to be available within the timescale. In the absence of information on the types of premises that exist in the vicinity, I cannot be certain that the need for planning permission is inevitable. However, I am mindful that the Council has discretionary powers to extend the compliance period should this be shown to be necessary.
28. Taking all of this into account, I consider that the three month period for compliance specified in the notice is reasonable. I therefore conclude that the appeal under ground (g) should fail.

Conclusion

29. The appeal is dismissed, the deemed planning application is refused, and the enforcement notice, as amended, is upheld.

Elaine Gray

INSPECTOR