



Appeal Decision

Site visit made on 13 February 2024

by Elaine Gray MA, MSc, IHBC

an Inspector appointed by the Secretary of State

Decision date: 27th March 2024

Appeal Ref: APP/Z4718/C/23/3322278

The Coach House, Liley Lane, Grange Moor, Wakefield WF4 4EN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Liam Vickerman against an enforcement notice issued by Kirklees Metropolitan Council.
 - The notice was issued on 6 April 2023.
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission, the material change of use from equestrian to a dog day care facility.
 - The requirements of the notice are to: Cease the use of the site as a dog day care facility, cease all associated ancillary services such as dog walking and remove all client dogs from the site.
 - The period for compliance with the requirement is: 60 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (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 be amended by the deletion of the text '60 days.' from the compliance period paragraph, and its substitution with the text: 'Three months.'
2. The appeal is dismissed, the deemed planning application is refused, and the enforcement notice, as amended, is upheld.

Preliminary Matters

3. Since the enforcement notice was issued, the Government published a revised National Planning Policy Framework (NPPF) on 19 December 2023 and updated it on 20 December 2023. Those parts of the NPPF most relevant to this appeal have not been amended. As a result, I have not sought further submissions on the revised NPPF, and I am satisfied that no party's interests have been prejudiced by taking this approach.

Ground (a) and the deemed planning application

4. Ground (a) is 'that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged'. The allegation in this case is a 'dog day care facility'. The plan attached to the notice identifies the appeal site as a former stable building, a manege area, and the access road connecting these to the main road.

5. Some of the discussion between the parties relates to a dog boarding service offered by the appellant, who confirms that he has a licence to board up to three dogs overnight in his home. The appellant's home falls outside the land that is the subject of the enforcement notice, and so any such activities are beyond the scope of this appeal. That being the case, I have not considered this matter further in my reasoning below.

Main Issues

6. The main issues are the effect of the development on:
- the living conditions of neighbouring residents, with particular regard to noise and disturbance; and
 - highway safety in the area.

Reasons

7. The day care facility is housed in a former stable block, with an adjacent manege area that is used to give the dogs outdoor exercise. The business hosts up to 20 dogs per day. The appellant explains that he collects these dogs from their homes and transports them to the site in a van. He states that the hours of operation are between 9.30am and 2.30pm on Mondays to Fridays. I have noted that a planning application, ref: 2022/62/92368/E, was submitted for this development, but was later withdrawn.

Living conditions

8. The Council are concerned that the development results in unacceptable levels of noise and disturbance to neighbouring residents from barking dogs. Policy LP24 of the Kirklees Local Plan (LP) seeks to ensure that development provides a high standard of amenity for future and neighbouring occupiers. In the case of development that has the potential to increase noise pollution, Policy LP52 requires evidence to show that the impacts have been evaluated and measures incorporated to prevent or reduce the pollution, so as to ensure it does not reduce the quality of life and well-being of people to an unacceptable level.
9. The Council's Environmental Health team were consulted on the previous planning application, and responded as follows: 'KC Environmental Health note that no detailed information has been submitted in regard to how the dogs will be managed on the site (including barking dogs and the maximum number of dogs outside at any one time), which have the potential to create noise, which could result in a loss of amenity to nearby sensitive receptors. Whilst KC Environmental Health do not object to the proposed development, they require detailed information in the form of a noise mitigation scheme and therefore recommend a condition.'
10. Although Environmental Health did not object to the scheme at that time, officers' concerns over noise and disturbance remain. In response, the appellant has produced a Noise Impact Assessment (NIA) by Environmental Noise Solutions Limited, dated 29 June 2023. The noise monitoring was carried out between 9.30am and 2.30pm on Monday 5 June 2023 during favourable weather conditions. The NIA identifies the nearest Noise Sensitive Receptor as Paper Hall Farm, to the north-west of the site. The survey assessed the prevailing ambient and background noise levels in the absence of contributions from the site, and specific noise levels from dog barking.

11. The highest level of noise occurred at the beginning of the opening hours, when the dogs arrived. At this time, six barking events were recorded. Noise levels during the remainder of the survey period were lower. A total of 62 seconds of barking from dogs in the external yard was recorded. From around 1pm onwards, the dogs were moved inside the vans where they were sleeping before being returned to their owners. As a result, no noise from barking occurred on the premises beyond 12.26pm on that day.
12. In summary, the NIA found that noise from barking dogs at the appeal site would be below the existing background noise level in the absence of dog barking. On this basis, noise levels were considered to be below the Lowest Observed Adverse Effect Level, with no specific mitigation measures required.
13. However, some issues arise from this evidence. Firstly, it is not clear from the NIA how representative the behaviour of the dogs was on the day of the survey. For example, it is not stated how long the dogs stayed outside in the yard or the manege, or if they were subject to the usual daily routine at the facility. No dogs were present at the time of my site visit, and so I was unable to make my own observations of their behaviour. Secondly, it is important to consider the character of the noise events at the appeal site. The noise from dogs barking can be highly variable and unpredictable, and can be all the more intrusive to neighbours for that reason, especially in a quiet environment.
14. Thirdly, the survey only relates to noise experienced at Paper Hall Farm. The appellant does not dispute that Raikes Farm is significantly closer to the appeal site than Paper Hall Farm, and yet no investigation of the effect of noise on sound receptors at that address has been carried out.
15. Drawing these threads together, I conclude that it has not been satisfactorily demonstrated that the development meets the requirements of LP Policies LP24 and LP52. Further conflict arises with the need set out in the NPPF to ensure safe and healthy living conditions.

Highway safety

16. LP Policy LP21 states that new development will normally be permitted where safe and suitable access to the site can be achieved for all people and where residual cumulative impacts of the development are not severe. Amongst other things, the safe and efficient flow of traffic within the development and on the surrounding highway network should be ensured.
17. The appeal site has a single point of access taken from the B6118, named as Liley Lane, which runs to the south-west of the appeal site. The road is fairly straight where it passes the appeal site, with a speed limit of 40mph.
18. The mouth of the access leads to a single track lane that serves the appeal site and a small number of dwellings. I saw that a timber fence has been erected at the mouth of the access where it joins the main road, running back for a short distance along the lane. As the fence is not lawful, I shall disregard it for the purposes of my consideration. I have been provided with a photograph of the land as it appeared before the fence went up, and I have taken this information into account.
19. The main question is whether the development that is the subject of the appeal is materially more harmful to highway safety than the previous use at the site. The appellant's Highway Statement (HS), dated July 2023, uses the TRICS

database to estimate the trip generation of the previous use, which is taken to be an equestrian centre.

20. However, I have been provided with a copy of the decision notice from September 1991, permitting application ref: 91/62/02427/C4 for the erection of the stable block and the formation of the manege. Condition 11 stated that the development was to be used for private purposes only, and condition 7 restricted the use of the manege to a maximum of two horses. There is no evidence to suggest that the site was used for anything other than private equestrian use, and little to show that this use generated significant traffic.
21. In terms of current vehicle trips arising from the dog day care business, the appellant says that he uses a van to pick up and drop off dogs in the locality. Because the appellant lives on site, there is no need for him to commute for his work. He does not allude to any other employees of the business travelling to the site. The only servicing requirement is one visit per month from a waste contractor to collect waste in a Luton van.
22. The appellant states that there is no requirement for dog owners to visit the site. The Council dispute this, stating that people who had written in support of the planning application indicated that they had visited the site. However, there is little to indicate the frequency of such visits. Taking all these factors into account, the HS concludes that the level of traffic generated should have no material impact on the operation of the local highway.
23. In terms of the access to the B6118, the Council are concerned that safety and visibility are inadequate. The HS speed survey showed that vehicles travelling in a southerly direction on the B6118 were recorded at 85th percentile wet weather speeds of 39.2mph and in a northerly direction of 38.3mph. These speeds equate to visibility splays of 2.4m x 120m based on TD 42/95 (Geometric Design of Major/Minor Priority Junctions).
24. The Council do not dispute these figures but argue that the appellant cannot maintain adequate visibility splays at the access without the agreement and consent of third parties. The appellant argues that this visibility is achievable north and southbound with the splays contained within his land or within the highway verge, subject to the unauthorised fence being removed.
25. On my visit, I saw that the access is less than optimal. Conversely, it is clear that it has existed and been in use for some considerable time. The accident report shows that one serious incident occurred on the stretch of road north of the appeal site access. There is also a cluster of accidents to the south-west in the village of Grange Moor. However, there is nothing in the analysis to suggest that the site access contributed to any of these incidents.
26. Were I to allow the appeal, the opening times of the business would be restricted by condition to the stated hours of 9.30am-2.30pm, with the consequence that associated vehicle trips would avoid network peak hours. It would also be reasonable to impose a condition restricting access to the site by customers, as this is within the terms of the deemed application.
27. I acknowledge the Council's concerns over enforcing such a condition. However, an unenforceable condition for the purposes of the six tests would be one where it is impossible for the planning authority to detect a breach of the condition. It should not be merely difficult for the authority to monitor

compliance. There are often instances where conditions are imposed to control visits to sites, and these would be no more or less difficult than, for example, monitoring opening hours, or the numbers of dogs permitted on the premises.

28. Drawing these threads together, there is little so show that traffic to and from the development has materially increased so as to cause an unacceptable hazard to highway safety. As a result, no conflict arises with LP Policy LP21, or with the NPPF, which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Conclusion on ground (a)

29. I therefore conclude that it has not been shown that the development is, or can be made, acceptable in terms of living conditions of neighbouring residents. The development conflicts with the development plan as a whole, and so the appeal on ground (a) fails, and the deemed planning application is refused.

The appeal on ground (g)

30. Ground (g) is that the time given to comply with the notice, in this case 60 days, is too short.
31. The appellant states that the business provides a very convenient service for the local community, with all customers located within a relatively close distance. Many of the customers rely on the service in order to work. In his view, 60 days is a short period of time for both the appellant and the customers of the business to try and make alternative arrangements.
32. The appellant therefore suggests that six months would be a reasonable period for compliance, avoiding unnecessary impact on those customers who rely on the service. In response, the Council maintain that 60 days is sufficient, stating that there are many alternative dog services in the area.
33. 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. I am mindful that the appellant is entitled to assume success on ground (a). Any bookings will have been made in good faith by dog owners, who will undoubtedly be disappointed by having to make alternative arrangements at short notice.
34. For those reasons, I conclude that an extension of the compliance period to three months would be reasonable, giving a little more leeway for bookings to be cancelled. In the absence of any detailed explanation from the appellant on the matter, I see no justification to allow six months.
35. To that limited extent, the appeal on ground (g) succeeds.

Conclusion

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

Elaine Gray

INSPECTOR