



Appeal Decision

Site visit made on 26 March 2024

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 April 2024

Appeal Ref: APP/E3335/W/23/3325216

Land at Waldrons Lane, Wembdon, Bridgwater TA5 2BA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Mark Watkins against the decision of Somerset Council.
 - The application Ref 51/22/00035 was approved on 19 May 2023 and planning permission was granted subject to conditions.
 - The development permitted is change of use of agricultural land to dog training, including the erection of training shed, equipment store, fencing, parking provisions and landscaping.
 - The condition in dispute is No 9 which states that:
The vehicle movements to and from the site in connection with the use hereby approved for dog training shall not exceed the daily maximums set out in the 'Vehicle Movements' section of the applicant's letter submitted by email dated 20 March 2023, namely:-
 - 18 client vehicle movements per day on Wednesday, Thursday, Friday and Saturday
 - 48 client vehicle movements on Sunday
 - With the exception of visits for maintenance purposes, there shall be no vehicle movements to or from the site in connection with the use hereby approved for dog training on Monday and Tuesday*The operator of the site shall maintain a record of all vehicle movements to and from the site, which shall include the date of the movement and the purpose of the visit, and shall make this record available to the Council upon request.*
 - The reason given for the condition is:
To ensure the approved use, accessed by narrow rural lanes with few parking spaces, operates at the level assessed and in the interests of highways safety in accordance with policy D14 of the Sedgemoor Local Plan 2011-2032.
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Decision

1. The appeal is allowed and the planning permission Ref 51/22/00035 for change of use of agricultural land to dog training, including the erection of training shed, equipment store, fencing, parking provisions and landscaping at land at Waldrons Lane, Wembdon, Bridgwater TA5 2BA granted on 19 May 2023 by Somerset Council, is varied by deleting condition 9.

Background and Main Issue

2. Planning permission has been granted for the use of the land, including buildings and works, as described in bullet four of the banner heading. The appeal seeks permission to carry out the development without complying with condition 9. This limits the number of vehicle movements to and from the site in connection with the permitted use. The main issue is whether the condition is necessary and reasonable having regard to the safety and function of the local road network.

Reasons

3. The appeal site lies in open countryside, approximately 2.5km to the north of Wembdon. It is served by Waldrons Lane, which becomes a footpath with no access for motor vehicles just north of the site access. About 1.5km to the southwest of the site, Waldrons Lane divides into two, with one arm continuing southwards, through Perry Green to meet the A39. The other arm heads eastwards to join Moore's Lane. Both arms of the road, and Waldrons Lane, are narrow and winding, with no lighting or footways, and so are unsuitable for high volumes of traffic.
4. The use of the site for dog training will, in all likelihood, result in an increase in traffic using the lanes compared with the previous agricultural use. However, the Highway Authority was consulted on the application, and concluded that the level of traffic generated by the proposal would not have a severe impact on the local highway network. Consequently, subject to conditions relating to the layout of the access, and maintenance of the car-parking area, no objections were raised to the proposal.
5. It is contended that the disputed condition is necessary to ensure that the level of traffic movements generated by the use does not exceed those that were presented as part of the planning application, and that persuaded the Highway Authority to raise no objections. However, the information supplied by the appellant, which is referred to in Condition 9, was supplied after the Highway Authority's consultation reply. It is therefore evident that the expert advice of the Highway Authority was based on the likely traffic generation arising from the nature and scale of the proposed use, rather than the appellant's illustration of the likely breakdown of daily traffic movements. The highly prescriptive daily traffic movements specified by the condition, which would significantly hinder the flexibility of the business, are not, therefore, necessary to comply with the Highway Authority's advice.
6. The Council states that the information submitted with the appeal indicates that traffic could be generated on additional days. Whilst this may be the case, the appellant's evidence does make it clear that the figures given were an illustration, and that the maximum daily training movements would not necessarily apply for every day. Furthermore, it was made clear that there would be extended periods when numbers attending would be reduced, or no activities would take place at all. The removal of the condition would allow vehicle movements on Mondays and Tuesdays, and would not restrict traffic movements on other days. However, the greater flexibility would allow for scheduling of training and events so that traffic movements may not occur, or reach the maximum permitted level, on other days. As a result, the actual total traffic movements over the year would not, necessarily, be any higher than would already be permitted by the condition. The condition therefore unreasonably constricts the business to specific traffic movements that were only provided for illustrative purposes.
7. It is also contended that, without the condition, client numbers may rise, leading to an increase in traffic movements along the narrow lanes, with resultant harm to the safety of other road users. I saw that the lanes leading to the site are single track, with limited passing places. However, Waldrons Lane, for the most part, is not enclosed by high hedges. Consequently, drivers have good forward visibility of oncoming traffic, bicycles, horses, or pedestrians.

Consequently, all road users have time to make appropriate decisions about how best to pass each other. I saw very few vehicles in the lanes during my visit, and observed that the nature and condition of the roads dictates that traffic moves slowly. In view of all of these considerations, the traffic generated by the use would not result in harm to highway safety, and the condition is not necessary in this regard.

8. Nevertheless, the lanes are not suitable for high volumes of traffic. Policy D14 of the Sedgemoor Local Plan 2011-2032 (the Local Plan) seeks, amongst other things, to ensure that the expected volume of traffic generated by development does not compromise the function of the local road network. In this case, the nature of the permitted use, for pre-booked dog training on a one-to-one basis, or for small groups, dictates that traffic generation will be limited. The illustrative figures provided by the appellant indicate that in a worst-case scenario, a full day of group sessions would result in 48 traffic movements over the course of an eight-hour day, and the disputed condition allows for this number of movements on a Sunday. There is no evidence to suggest that the local road network has insufficient capacity to accommodate the same level of traffic on other days without compromising its function. The prohibition of any traffic movements on Mondays and Tuesdays, and the limitation to 18 movements on other days, is therefore not necessary, and places an unreasonable limitation on the operation of the business.
9. I therefore find that the condition is not necessary in the interests of highway safety, or to preserve the function of the local road network, and that it would unreasonably limit the flexible operation of the business. Consequently, it fails the tests of necessity and reasonableness set out in the Planning Practice Guidance (the PPG)¹.
10. The PPG also advises that planning conditions should be enforceable. In this regard, the Council contends that the requirement to keep a record of vehicle movements would enable compliance with the condition to be monitored. However, it is uncertain how these records could be reconciled in the event of a complaint, or a dispute regarding the rigour of the recording. Furthermore, the condition places a limitation on vehicle movements, rather than the number of bookings or classes. The way in which participants access the site is not within the control of the appellant. Some may choose to share transport (thus reducing vehicle movements), whilst others may choose to be dropped off and picked up (thereby increasing traffic movements). Moreover, the appellants would have no control over potential clients who choose to arrive, via the public highway, without an appointment. It is unclear how the condition could be enforced in these circumstances.
11. Paragraph 56 of the National Planning Policy Framework advises that planning conditions should be kept to a minimum, and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects. I have found that the disputed condition is not necessary in the interests of highway safety or convenience, and places unreasonable restrictions on the permitted use. The development without the disputed condition would comply with Policy D14 of the Local Plan. The disputed condition also fails the test of enforceability.

¹ Paragraph: 003 Reference ID: 21a-003-20190723

Conclusion

12. For the reasons given above, I conclude that the appeal should be allowed. I will vary the planning permission by deleting the disputed condition.

Nick Davies

INSPECTOR