



Appeal Decision

Site visit made on 21 May 2024

by **D M Young JP BSc (Hons) MA MRTPI MIHE**

an Inspector appointed by the Secretary of State

Decision date: 19 June 2024

Appeal Ref: APP/X4725/W/24/3336805

Wragby Grange, Doncaster Road, Wragby, Wakefield, West Yorkshire, WF4 1QX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Christopher Beach on behalf of Wragby Grange Dog Daycare against the decision of Wakefield Metropolitan District Council.
- The application Ref is 21/02268/S7301.
- The application sought planning permission for a retrospective change of use of land and buildings for a dog day care facility and dog grooming business and associated works and retrospective change of use of attached barn (part of) to part of existing dwellinghouse without complying with conditions 3, 5, 6 and 8 attached to planning permission Ref 21/02268/FUL, dated 13 January 2021.
- The conditions in dispute are Nos 3, 5, 6 and 8 which state that:
 - 3) *Within three months of the date of this decision, the access improvement works detailed within the submitted Access Improvement Plan (drawing reference 964 01 Revision B, dated April 2015 and received 10/11/2022) shall be completed in strict accordance with the details indicated on drawing reference 964 01 Revision B which shall thereafter be retained; be made available for use by vehicles; and kept free from obstruction throughout the lifetime of the development.*
 - 5) *The dog day care use hereby permitted shall not take place except between the hours of 09:00-18:00 Monday to Friday and at no other times.*
 - 6) *The dog grooming use hereby permitted shall not take place except between the hours of 09:00-18:00 Monday to Saturday and at no other times.*
 - 8) *The dog day care and dog grooming use hereby approved shall be operated strictly in accordance with the details set out at pages 5-6 of the submitted Planning Statement (document reference Revision 1, dated 23/08/2021 and received 09/09/2021) and the Noise Impact Assessment (document reference NIA/9623/21/9662/v4/Dog Day Care, Wragby Grange, dated 09/09/2021 and received 09/09/2021). Such operations shall include occupancy by a maximum of 24no. dogs at any one time, no drop-off or collection by customers outside of the permitted operating hours and shall be operated by the occupier of the host dwelling at Wragby Grange, Doncaster Road, Wragby, Wakefield, WF4 1QX only.*
- The reasons given for the conditions are:
 - 3) *To ensure a suitable access and layout in the interests of highway safety and in accordance with Policy D14 of the Local Development Framework Development Policies Document.*
 - 5) *The dog day care use hereby permitted shall not take place except between the hours of 09:00-18:00 Monday to Friday and at no other times.*
 - 6) *In the interests of the amenity of the occupiers of nearby properties to accord with policies D9 and D20 of the Council's adopted Local Development Framework Development Policies Document and the National Planning Policy Framework.*
 - 8) *In the interests of amenity and highway safety and in accordance with Policy CS10 of the Council's adopted Local Development Framework Core Strategy and policy D9, D14*

and D20 of the Council's adopted Local Development Framework Development Policies Document and the National Planning Policy Framework.

Decision

1. The appeal is allowed and planning permission is granted for a retrospective change of use of land and buildings for a dog daycare facility and dog grooming business and associated works and retrospective change of use of attached barn (part of) to part of existing dwellinghouse at Wragby Grange, Doncaster Road, Wragby, Wakefield, West Yorkshire, WF4 1QX in accordance with the application Ref 21/02268/S7301, without compliance without complying with conditions 3, 5, 6 and 8 previously imposed on planning permission Ref 21/02268/FUL dated 13 January 2021 and subject to the conditions set out in the schedule to this decision.

Applications for costs

2. An application for costs was made by Mr Christopher Beach against Wakefield Metropolitan District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appeal scheme seeks to vary condition 5 (Dog Daycare Hours), 6 (Dog Grooming Hours) and 8 (Use) so that the operating hours and maximum dog occupancy can be extended. The scheme also seeks to remove condition 3 (Highway Works) which requires a scheme of improvements to be carried out to the access.
4. The Wakefield District Local Plan 2036¹ (WLP) was adopted in January 2024. I therefore give full weight to the policies therein. However, a number of the policies cited in the reasons for refusal relate to other matters. For example, the second reason for refusal cites conflict with Policies WLP 54 (protection of trees and woodland) and WLP 64 (designated heritage assets). In terms of the first reason for refusal, only SP13 appears relevant to the issue of highway safety. Given these errors, I have assessed the appeal scheme against Policy LP67 (pollution control)² and SP13 (sustainable transport).

Main Issues

5. The main issues are whether the disputed conditions are necessary in the interests of highway safety and to safeguard the living conditions of neighbouring occupiers.

Reasons

6. The appeal site comprises a former farmstead known as Wragby Grange located on the south side of the A638 Doncaster Road. The site is bounded by open countryside to the west, south and east. To the north are two dwellings known as Longley Edge and Hessle Cottage. All three properties are accessed via a private driveway that forms a priority junction with Doncaster Road.

¹ Full Title: Wakefield District Local Plan 2036 – Volume 1 Development Strategy, Strategic and Local Policies (2024)

² This policy does not refer specifically to noise but does cover pollution control in a general sense.

7. The barn attached to the dwelling has been converted to a reception, washing room and grooming station for a dog daycare and grooming business which has been operating since 2019. As I understand it, the proposed increase from 24 to 32 dogs would bring the planning status into line with the Licence issued by Environmental Health in October 2021³.
8. The proposed variation of condition 5 seeks to change the current opening hours from 09.00-18.00 Mon-Fri to 07.00-18.00 Mon-Fri and from 09.00-17.00 to 08.00-17.00 on Saturdays and 09.00-17.00 on Sundays. The proposed variation to condition 6 would enable the dog grooming element to operate from 07.30-18.00 Mon-Fri and 08.00-17.00 Saturdays and Sundays⁴.

Highway Safety

9. WLP Policy SP13 requires proposals to demonstrate that they can be accessed conveniently and safely. This broadly reflects paragraph 115 of the National Planning Policy Framework (the Framework) which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on safety.
10. Doncaster Road is a well-trafficked A-road subject to a 30mph speed limit. Although some objectors refer to a speeding problem, no substantial evidence is before me to support this. Near the site access there are double white lines which prohibit overtaking, stopping and/or parking of a vehicles on the carriageway. The road is lit and there is no dispute that visibility at the site access accords with the requisite standards. Although the site has been operating as a dog daycare centre since 2019, the Council has not referred me to a history of accidents along Doncaster Road more generally or at the site access.
11. According to the Council, the improvement works sought pursuant to condition 3 envisaged the widening of the access onto Doncaster Road to 4.5m to allow two vehicles to pass without one having to wait on the main road. The scheme also appeared to involve the construction of two passing places along the driveway.
12. To address the Council's concerns about the width of the access, additional information was supplied by the Appellant during the determination period. Among other things, this included a series of spot measurements taken along the driveway demonstrating that the access is over 5m wide for a minimum of 5m back from the carriageway edge of Doncaster Road. Thereafter, the driveway varies in width between 4.1m and 4.5m save for a pinch point adjacent to the tree. A series of photographs showing these measurements was provided with the appeal.
13. I did not observe any worn/muddy grass verges along the access drive despite a bout of wet weather in the weeks and days leading up to my site visit. Even if I had, this would not be sound basis for dismissing the appeal. From my observations, there are several areas along the access driveway where two average sized cars can comfortably pass each other without the need for additional passing places.

³ The most recent Licence issued by the Council (November 2023) permits up to 55 dogs.

⁴ I have taken these hours from the Application Form.

14. While the Council and objectors argue that the width of the access is inadequate, the only set of comprehensive measurements before me are those provided by the Appellant. Accordingly, I am satisfied that the access complies with paragraph 4.5.1 of the Council's Street Design Guide which sets out the appropriate standards for a private driveway.
15. Even if the Appellant's measurements are inaccurate, I noted that right-turning traffic into the site often has to wait for a suitable gap before turning into the access. This occasionally results in vehicles having to slow or sometimes stop behind the turning vehicle. However, given speeds along Doncaster Road and the amount of forward visibility available to a turning vehicle, this did not appear to cause a particular problem in practice.
16. The Council argues that the design standards set out above are applicable to residential rather than commercial developments. I must say I find that line of argument to be distinctly unconvincing not least because there is no evidence before me that the appeal scheme would generate anymore commercial traffic than would reasonably be expected with a private residential drive. It is also reasonable to assume that the historical use of the site as a working farm would have generated considerably more commercial traffic including slower moving vehicles such as tractors.
17. I have reviewed the trip rates provided by the Appellant and consider they are robust. The data indicates that an increase to 32 dogs would result in 7 and 6 additional trips in the AM/PM peak hour respectively. That equates to one additional vehicle movement through the site access every 8.5 minutes in the AM peak and every 10 minutes in the PM peak. Such increases would clearly be immaterial.
18. The Council's Statement of Case refers to a lack of information. However, it appears from the Officer's Report that the trip rate data and access measurements were before the Council when it made its decision. Accordingly, it is not clear what more information the Appellant could have supplied or was sought by the Highway Authority.
19. Manual for Streets advises that carriageway widths should be appropriate for their use taking account of the volume of vehicular traffic and pedestrian activity. In this case, I am satisfied that the existing access is suitable to accommodate the small amount of additional traffic that would be generated by the proposed development. Based on the foregoing, the removal of condition 3 would not harm highway safety and there would be no conflict with the Council's Street Design Guide or Policy SP13 (b) of the LP.

Living conditions

20. The key issue is whether the increase in the number of dogs and the extended opening hours would harm the living conditions of the occupiers of the nearest residential property, Hessle Cottage. The Council's concerns in this regard appear to rely on comments made by the Environmental Health (EH) team.
21. In response to concerns raised by EH, the Appellant submitted a Noise Management Plan and a Noise Impact Assessment during the determination period. The latter was subsequently updated on two occasions following further feedback and included specific noise monitoring adjacent to sensitive receptors in the 07.00-09.00 period on weekdays and weekends. The Council EH team

has not raised any concerns with the methodology employed in the noise report which concluded:

The noise impact assessment presented in Section 4 has determined that the noise criteria was satisfied during the proposed extended operating hours. On this basis, adverse impacts were not determined; therefore, the effect is below the LOAEL with no specific mitigation measures required.

22. I have noted criticisms of the noise reports from the neighbouring occupier. Nonetheless, I consider the report to be robust in terms of its methodology and conclusions notwithstanding that more monitoring could have been carried out,
23. When I visited the site, the dog daycare business was operating at full capacity. The dogs are generally kept in the paddocks on the far side of the site. No noise was heard when I arrived. Only when I approached the paddocks did the dogs begin to bark. However, the paddocks are located some distance away from the nearest residential properties with the existing buildings on the appeal site providing attenuation. I subsequently asked the staff to get the dogs to bark while I stood close to the boundary with Hessle Cottage. Even then, I found that the barking was barely audible from the courtyard given the attenuation provided by the existing buildings and the constant hum of background traffic noise.
24. I accept barking might be more audible when the dogs are kept in the barn, grooming station or when the dogs are picked up and dropped off from the courtyard area. However, such noise would be ephemeral and transitory rather than continuous. I acknowledge that dog barking can be a source of frustration to neighbouring occupiers. However, given the Appellant owns his own dogs, that source of frustration could exist absent the existing or proposed use. I note comments from the next-door neighbour that he moved to the area in 2009 specifically for the rural peace and quiet that it afforded. However, the site at that time was a working farm and as such, it is not unreasonable to assume that noise from farming activities, including animals, would have been commonplace at all times of the day and night.
25. Despite the unequivocal conclusions of the Noise Report, the Council's EH team maintained their objection to the variation of the conditions on the basis that the submitted information was insufficient to address each and all of the proposed changes. However, the Officer's Report again fails to explain what further information was requested and/or not provided. This information may be set out in the formal consultation responses from EH, however, these were not submitted by the Council despite a specific request from the Inspectorate's Case Officer (email dated 19.4.24). The Council also had the opportunity to clarify its position in its Statement of Case but failed to do so.
26. The Council nor any of the objectors have produced any evidence of their own to rebut the findings of the Appellant's Noise Report or provided appropriate evidence to support its concerns either during the determination period or as part of these appeal proceedings. The evidential basis on which the Council concluded the proposed development would unacceptably harm the living conditions of neighbouring occupiers thus remains altogether unclear.
27. The occupiers of Hessle Cottage refer to noise generated by barking dogs being audible within their bedroom and being captured by the Council's monitoring equipment. However, no noise survey or technical evidence has been

submitted by the Council and I note that having investigated previous complaints regarding dog barking since 2021, EH deemed these not to be a statutory nuisance. It is entirely possible that barking before 07.00 or at any other time is from the Appellant's dogs rather than those associated with the business.

28. Based on the unchallenged technical information provided by the Appellant and my own observations, I conclude that the proposed variation to conditions 5, 6 and 8 would not cause unacceptable harm to the living conditions of neighbouring occupiers. Accordingly, the proposal would not conflict with LP Policy LP67.

Other Matters

29. Ownership of the private access drive is not a material planning consideration to which I can ascribe any degree of weight.
30. Other concerns have been raised in relation to bats, trees and the principle of development. However, these matters are not relevant to a s73 application where I am required to only consider the question of the conditions subject to which planning permission should be granted.
31. Other appeal decisions and planning decisions have been provided by those supporting and opposing the proposed development. While I have carefully considered these, each turned on its own individual facts and circumstances. I have therefore determined this appeal on its own merits.
32. The neighbouring occupier argues that the Council failed to weigh up his rights under Article 8 of the European Convention on Human Rights which affirms that everyone has the right to respect for his private and family life, his home and his correspondence. However, as I have found the proposal would not harm the living conditions of neighbouring occupiers, there would be no interference with neighbours' rights under Article 8.

Conditions

33. The effect of allowing an appeal under section 73 is to create a new planning permission which is separate from the original permission. I therefore have the power to impose new conditions provided these do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the original permission.
34. The Council has suggested 8 planning conditions which I have considered against advice in the Planning Practice Guidance (PPG). In some instances, I have amended the suggested conditions in the interests of brevity, to avoid repetition and to ensure compliance with the PPG.
35. I have imposed a plans condition to provide certainty. However, other than the Noise Management Plan and Mitigation Controls which contain various mitigation measures, I do not consider it necessary to specify the technical reports submitted during the determination period as these demonstrate the acceptability of the proposed development rather than specifying how it would operate.

36. I am satisfied that the construction of the driveway and courtyard are appropriate to the intended level of use. I have therefore omitted the suggested surfacing condition.
37. I have imposed conditions specifying the hours of operation for the daycare and grooming elements and in relation to external lighting to provide certainty and to protect the living conditions of neighbouring occupiers. I have however made a small amendment to the hours contained in the Application Form so that the grooming and daycare hours are the same. I note complaints from the neighbouring occupier regarding dogs being dropped off before 07.00. As they are currently, such drops-offs would contravene the consented hours and would be a matter for the Council's.
38. The closure of the grooming room window is covered by measure 6 in the Noise Mitigation Controls document which is captured by the plans condition. I do not therefore consider a separate condition is necessary. The Council's suggested condition 7 is unnecessary as it repeats requirements covered by conditions 1, 2 and 3.
39. The scope of the permission is clearly set out in the application description, which makes no reference to overnight boarding. I have seen nothing in the documentation to suggest the Appellant intends to expand the business in this direction. I note the neighbour has made allegations in this regard but this would be matter to be taken up with the Council's enforcement team. In any event, overnight boarding would likely constitute a material change of use and would therefore require planning permission. The suggested condition is thus unnecessary.

Conclusion

40. For the reasons given above the appeal should be allowed.

D M Young

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: 100022432, BS5112-02 Revision A, BS5112-01 Revision A, the Noise Management Plan (received by the Council 22/03/2023) and the Wragby Grange – Noise Mitigation Controls.

- 2) No artificial lighting shall be installed at the site unless and until a scheme has first been submitted to the Local Planning Authority which details the materials and finish of the lighting, the positioning of the lighting, the luminescence level of the lights and how light pollution will be managed to prevent obtrusive light causing a disturbance. No artificial lighting shall be used other than that approved by the approved scheme which shall thereafter be retained and maintained whilst ever it is in place upon the site.
- 3) The dog daycare use hereby permitted shall not take place except between the hours of 07:00 - 18:00 Monday to Friday, 08:00 - 17:00 Saturdays and 09:00-17:00 on Sundays.
- 4) The dog grooming use hereby permitted shall not take place except between the hours of 07:00 - 18:00 Monday to Friday and 08:00 - 17:00 Saturdays and 09:00-17.00 on Sundays.