



Appeal Decisions

Site visit made on 19 June 2024

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 05 July 2024

Appeal Ref: APP/M3645/W/24/3339155

Carewell Farm, St Piers Lane, Lingfield RH7 6PN

- 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 Ms C Holgate against the decision of Tandridge District Council.
- The application Ref is TA/2022/61.
- The application sought planning permission for change of use of two fields from paddock and grazing to secure Dog Walking Fields (sui generis use class) with associated vehicular access, parking provision, erection of fencing and gates up to 1.8m in height, erection of mobile shelter and associated landscaping including hedging (Part Retrospective) without complying with a condition attached to planning permission Ref TA/2020/2130, dated 22 April 2021.
- The condition in dispute is No 6 which states that: *"The Strawberry Field, as identified on the site plan (drawing number 2073.02D scanned 12 April 2021), shall not be used for the commercial business of dog exercising other than between the hours of: Monday – Sunday (including Bank Holidays) 05:30-19:30. The Tea Room Field, as identified on the site plan (drawing number 2073.02D scanned 12 April 2021), shall not be used for the commercial business of dog exercising other than between the hours of: Monday – Sunday (including Bank Holidays) 06:00-19:00. Each field shall be limited to no more than 4 dogs at any one time (maximum of 8 dogs on site at any one time)."*
- The reason given for the condition is : *"To safeguard the amenities of nearby residents in accordance with Policy CSP18 of the Tandridge District Core Strategy 2008 and Policy DP7 of the Tandridge Local Plan: Part 2 – Detailed Policies 2014."*

Decision

1. The appeal is allowed and planning permission is granted for the change of use of two fields from paddock and grazing to secure Dog Walking Fields (sui generis use class) with associated vehicular access, parking provision, erection of fencing and gates up to 1.8m in height, erection of mobile shelter and associated landscaping including hedging (Part Retrospective) at Carewell Farm, St Piers Lane, Lingfield RH7 6PN in accordance with the application Ref TA/2022/61, without compliance with condition number 6 previously imposed on planning permission Ref TA/2020/2130 and subject to the following condition:
 - 1) The Strawberry Field, as identified on the Site Plan (drawing No. 2073.02D), shall not be used for the commercial business of dog exercising other than between the hours of: Monday to Sunday (including bank holidays) 0630 – 2030. The Tea Room Field, as identified on the Site Plan (drawing No. 2073.02D), shall not be used for the commercial business of dog exercising other than between the hours of: Monday to

Sunday (including bank holidays) 0600-2000. Each field shall be limited to no more than 4 dogs at any one time.

Application for costs

2. An application for costs was made by Ms C Holgate of Carewell Canines against Tandridge District Council. The cost application is the subject of a separate decision.

Preliminary Matters and Main Issue

3. I have determined another appeal¹ at the same site. That appeal proposal sought permission for a change of use of land for an additional secure dog walking field and retrospective permission for a dog agility training area. That appeal is subject to a separate decision.
4. It has been confirmed in writing with the Council that there is a typographical error on the Decision Notice. The reason for refusal indicates that the proposal would be contrary to Policy DM7 of the Tandridge Local Plan, Part 2: Detailed Policies, 2014-2029, July 2014 (LPP2). This should read Policy DP7. Given the appellant has referred to the correct policy in their representations and the detail of the responses received by interested parties, I am satisfied that no party needs to be reconsulted on the correcting of the policy reference.
5. Planning permission² was granted for the change of use of two fields from paddock and grazing to secure dog walking fields, with associated development. Condition No 6 attached to the planning permission specified the operating hours for each of the fields and restricted the use of the fields to up to 4 dogs at one time. The reason given for the condition was to safeguard the amenities of nearby residents.
6. Interested parties and the Council have submitted evidence to indicate that Condition 6 is not being complied with. There is conflicting evidence as to whether enforcement action is ongoing in relation to the use of the site not complying with Condition No 6. For clarity, the appellant does not acknowledge that the ongoing use of the site is not in accordance with Condition No 6. Instead, they have applied to amend the condition to allow an extended use of the site. Therefore, my assessment is based upon the planning merits of the appeal proposal only and is without prejudice to any ongoing enforcement action.
7. Taking the above background into account, the main issue is whether Condition No. 6 is reasonable and necessary in the interest of protecting the living conditions of occupants of 1 and 2 Carewell Farm Cottages (Nos 1 and 2), with regard to noise and disturbance.

Reasons

8. The appeal site is in a semi-rural area on the edge of Lingfield. The entrance to the site is in proximity to Nos 1 and 2 and commercial uses including a veterinary practice, a self-storage business, and an equestrian store. Three fields, within the wider site, are used as secure dog walking fields, two of which are the subject of this appeal. During my site visit I observed a wood processing area within the rear garden of No 2. Also, the appeal site is located

¹ Appeal Ref. APP/M3645/W/23/3331071

² Planning permission Ref. TA/2020/2130

- under a flight path. Therefore, there are several activities close to the appeal site which contribute to the amount of noise experienced in the area.
9. The proposal seeks to amend the operating hours of the fields and increase the number of dogs allowed in each field at any one time from 4 to 8, subject to specific authorisation granted by the appellant.
 10. The secure dog walking fields would not be used at full capacity, all of the time. However, it is important to assess the lawful capacity of both the existing use and proposed use of the fields, and the amount of noise that would generate. The proposed condition wording would double the lawful capacity of these two fields. This would significantly increase the amount of activity being undertaken within the appeal site.
 11. Notwithstanding the lack of objection from the Council's environmental health department and the local highway authority, the increased activity would generate more noise through additional car movements, the opening and closing of vehicle doors, and increase occurrences of dogs barking. The surrounding area is already noisy. Therefore, the additional noise would be particularly harmful.
 12. The proposed use of the fields by up to 8 dogs would only be granted with specific authorisation by the appellant, for trained and insured dog walkers. This would reduce the number of vehicle journeys, compared to 8 dogs being brought to the site by their separate owners. I also acknowledge that the appellant has a vested interest in the safe operation of the premises and is subjected to other non-planning licensing regimes. Nonetheless, the criteria for granting access to the site for larger groups of dogs has not been specified, and it is not clear how this would minimise the noise generated by the dogs. Moreover, it would be unreasonable to attach the condition, as it is specific to the appellant and not related to the use of the land, which would persist even if the appellant no longer had an interest in it.
 13. Following the refusal of the application, the appellant has commissioned a Noise Assessment. I acknowledge that the Assessment has been produced by a suitably qualified acoustician. However, it relates to the change of use of another parcel of land and the construction of the dog agility training area. Therefore, I ascribe very limited weight to its findings as it does not assess the increase in activity that would occur as a result of this appeal proposal.
 14. Notwithstanding the above, the proposed amended hours of operation would alter the use of the Strawberry Field to one hour later and would extend the use of the Tea Room Field by one hour into the evening. The hours of operation of the wider site would start at 0600, rather than 0530, and finish at 2030, rather than 2015. As such, the proposed operation hours would lead to a minimal increase in the amount of activity but would reduce the overall operating hours of the wider site. Therefore, the proposed operating hours would not have a materially harmful effect on the living conditions of neighbouring residents.
 15. There is conflicting evidence on whether No 1 is currently occupied. However, this does not alter my assessment of the proposal. No 1 could be lawfully occupied in the future if it is not already. The proposal would affect both existing and/or future residents.

16. The appeal proposal has received many letters of support from the local community and from customers of the facility. There is a high demand for the facility and a desire for it to be extended. I also note that the facility provides a vital service for people whose dogs are not comfortable with walking in public areas and a safe place for lone dog walkers. Furthermore, the appeal proposal represents a sustainable expansion of a rural business and would represent an increase in investment. Whilst these factors weigh in favour of the proposal, they do not outweigh the identified harm.
17. I conclude that the original wording of Condition No 6 was not reasonable or necessary, in relation to the hours of operation. However, the original wording, in relation to the limit on the number of dogs permitted to use the fields at one time, and the imposition of wording specifying operating hours is reasonable and necessary to protect the living conditions of residents of Nos 1 and 2, with regard to noise and disturbance.
18. Overall, the proposed condition wording would be contrary to Policy CSP18 of the Tandridge District Core Strategy, October 2008 and LPP2 Policy DP7. These policies indicate that development must not significantly harm the amenities of neighbouring properties.

Other Matters

19. I acknowledge that the proposed condition was considered acceptable in relation to its effect on character and appearance, Green Belt, trees, parking and highways safety and it does not relate to built development. Nonetheless, it does not alter my conclusions on the appeal proposal.
20. Whether objectors to the proposal live in proximity to the site, or not, does not alter my assessment. All representations are assessed on their planning merit.
21. The advice in the Planning Practice Guidance³ makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

Conditions

22. A condition specifying operating hours of the fields and limit their use to four dogs is necessary to protect the living conditions of neighbouring residents.

Conclusion

23. For the reasons given above I conclude that the appeal should partly succeed. I will grant a new planning permission without the disputed conditions but substituting it with a new condition and restating those undisputed conditions that are still subsisting and capable of taking effect.

J Hobbs

INSPECTOR

³ Planning Practice Guidance – Use of Planning Conditions, Paragraph: 040 Reference ID: 21a-040-20190723