



Appeal Decision

Site visit made on 5 November 2024

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th November 2024

Appeal Ref: APP/D0840/W/24/3342593

Land North of Cherry Tree Cottage, Green Lane, St Erth, Hayle, Cornwall, TR27 6HS

- 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 Sharon Cann against the decision of Cornwall Council.
- The application Ref PA22/00517 was approved on 28 February 2024 and planning permission was granted subject to conditions.
- The development permitted is use of field for dog agility training.
- The conditions in dispute are 1, 3, 4 and 5 which state, with the reasons given, that:

Condition 1 - The development hereby permitted shall cease on or before the 28th of February 2025. Unless planning permission has been granted for a continuation of operations, on or before that date, all associated equipment shall be removed from the site and the land shall be reinstated to its original use as an agricultural field.

Reason: Owing to the specific circumstances of this particular case on a site which would not ordinarily be suitable for the proposed development, and in accordance with the aims and intentions of policies 5 and 23 of the Cornwall Local Plan Strategic Policies 2010-2030; and paragraphs 88, 89 and 180 of the National Planning Policy Framework 2023.

Condition 3 - The development hereby permitted shall be available for customers between the hours of 1200 and 1900hrs Monday to Saturdays inclusive during daylight hours only. There shall be no use of the site on Sundays. All customers must have booked in advance of any training visit. A booking slot shall last 60 minutes, and a 15 minute gap must be left between booking slots. No more than five vehicles and six dogs shall be on the site at any time.

Reason - In the interests of residential amenity and in accordance with saved policies 2 and 12 of the Cornwall Local Plan Strategic Policies 2010-2030; and paragraph 135 of the National Planning Policy Framework 2023.

Condition 4 - All equipment used during operational hours shall be completely removed from the site or stored in the container hereby permitted outside of the allowed operational hours.

Reason - In the interests of visual amenities of the area and in accordance with policies 2, 12 and 23 of the Cornwall Local Plan Strategic Policies 2010-2030; and paragraphs 135 and 180 of the National Planning Policy Framework 2023.

Condition 5 - Prior to first use of the development hereby permitted the parking area shown on PLAN 02A shall be finished with Grasscrete (or similar product) and retained as such during the lifetime of the development.

Reason - In the interests of visual amenities of the area and to ensure there is no surface water run-off in accordance with policies 2, 12, 23 and 26 of the Cornwall Local Plan Strategic Policies 2010-2030; and paragraphs 135 and 180 of the National Planning Policy Framework 2023.

Decision

1. The appeal is allowed and the planning permission Ref PA22/00517 for use of field for dog agility training at Land North of Cherry Tree Cottage, Green Lane, St Erth, Hayle, Cornwall, TR27 6HS, granted on 28 February 2024 by Cornwall Council, is varied by deleting condition 4 and substituting conditions 1, 3 and 5 for the following conditions:

Condition 1 - *The development hereby permitted shall be begun before the expiration of three years from the date of this permission.*

Condition 3 - *The development hereby permitted shall be available for customers between the hours of 1200 and 2100hrs Monday to Fridays and between the hours of 1200 and 1700hrs on Saturdays and Sundays. No more than six vehicles and six dogs shall be on the site at any one time.*

Condition 5 - *Prior to the first use of the development hereby permitted the parking area shown on PLAN 02A shall be finished with Grasscrete (or similar product) or gravel or stone chippings, and retained as such during the lifetime of the development.*

Main Issue

2. The main issue is whether the conditions are reasonable and necessary in the interests of protecting residential and visual amenities, and site drainage.

Reasons

3. The appeal site comprises a sloping grassed field to the south of the village of St Erth, on the eastern side of Green Lane. The site boundary to Green Lane is formed by a combination of Cornish hedge, mature planting and trees. Access to the site is provided by an existing five bar metal gate located in the north western corner of the site. The land rises eastwards from the Lane up to the boundary with a public right of way (PROW) that runs in a north – south direction. The PROW is enclosed by a timber post and metal mesh fence. The land to the north of the appeal site comprises open fields, with a fish farm located to the west on the opposite side of Green Lane.
4. The southern boundary of the appeal site abuts a residential property known as The Cottage, which fronts onto Green Lane. To the south of this is the Appellants property, Cherry Tree Cottage and a further property adjoining this known as Yew Tree Cottage. The remainder of the southern boundary to the appeal site abuts an open field, which is also owned by the Appellant (outlined in blue). As I observed on my site visit, the southern boundary to the appeal site largely comprises mature hedging and trees and this extends along the common (side) boundary with The Cottage.
5. The approved layout for the use of the appeal site for dog agility training includes a hardstanding area for parking, accessed from the existing gate and located immediately behind the mature boundary to Green Lane. The training area is shown as a square broadly in the centre of the appeal site, where there is also an existing ship container. A second training area is shown further to the east which would be used, if needed, when ground conditions dictate. None of the proposed works have been implemented and neither has the approved use commenced on site.

6. Paragraph 55 of the National Planning Policy Framework (December 2023) (NPPF) states that "*Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions.*" Paragraph 56 continues by stating that "*Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects.*" This policy approach is repeated in the Planning Practice Guidance chapter on the 'Use of planning conditions' (updated 2019) (PPG).

Condition 1

7. This condition grants planning permission for a temporary period of one year. The PPG advises that a temporary permission may be appropriate where a trial run is needed in order to assess the effect of the development on the area. The Statement of Cornwall Council (SofCC) indicates that the condition was imposed on the advice it received from its Environmental Protection team (EPT) over the potential for noise disturbance from dogs barking or loud voices where instructions are directed at dogs.
8. The copy of the 'Consultation Response – Consultee Access' included with the Council's questionnaire refers to comments headed 'Public Protection Noise And Odour Planning Consultations', which I have assumed is the advice from EPT. The comments are brief and recognises that the use is intended for set days and times and then states that "*potentially the nearby residents could be subjected to barking dogs from midday to 2100hrs on at least four days a week.*"
9. It appears from EPT's comments that they were aware, from the references in the planning application, to the Appellants existing dog training facilities at Angarrack and Scorrier. Notwithstanding any queries over the lawfulness of those facilities, there is no suggestion from EPT that these other locations have led to any noise complaints to the Council. The Appellants Appeal Statement (AAS) indicates that these training facilities are located on similar sites and have operated for a number of years, in the case of Angarrack for some 10 years, without any complaints, a statement that has not been challenged by the Council.
10. It's possible that a factor for there not being any complaints from the existing training facilities is the scale and nature of the use. The approved use on the appeal site would, in my view, be low key and on a small scale. It would not involve an intensive use of the site given that it would be restricted to a small part of the large field that comprises the appeal site, for only part of the day and for at least four days. Also, as it would involve a maximum of 6 dogs and potentially 6 owners during any one specific training slot. As I observed on site, the proposed training area would be located a reasonable distance away from the nearest residential property, The Cottage. The latter is also well screened from the appeal site by mature hedging and trees.
11. As the Appellant points out there have been no objections from the occupiers of The Cottage or any other nearby residents, and some 19 comments in support of the application were received. In further support of their case the Appellant has drawn attention to a dog training facility approved by the Council on a field at 2 Stephenville in Polladras (granted on 18 October 2021 Ref PA21/07538) (Polladras Permission). A copy of that permission, the Delegated Report and

approved plans were included in the AAS. The Appellant contends that the Polladras site is comparable to the appeal site albeit on the former a trial run was not considered necessary. The Council contend that the Polladras site differs in a number of ways. Having visited the Polladras site and reviewed the approved plans for that use, I do not agree with the Council.

12. I agree that the size of the Polladras site, denoted by the red line, is smaller than the appeal site, but the main dog training areas appear to be the same size. The Polladras Permission differs in that it does not include any restrictions on dog or car numbers, whereas the appeal site does. Both sites are located in similar positions on narrow country lanes. Also, the distance between the dog training area at Polladras and the nearest residential property/curtilage (to the south – 3 Stephenville (No.3)) is broadly the same as that between the training area on the appeal site and The Cottage. Whilst the Council also indicate that Polladras is screened by substantial hedging, so is the appeal site. However, as I observed on site some of the curtilage to No.3, which faces the dog training area, has a lower boundary treatment. The only difference appears to be that there is a PROW bordering the appeal site.
13. Based on the above, the Polladras site is, in my judgement, comparable to the appeal site and there are specific similarities in terms of the relationship to nearby residents, location within the open countryside, size of dog training areas and boundary treatment.
14. I accept that each application should be considered on its individual merits having regard to local circumstances and relevant development plan policies. However, in terms of policies, the Delegated Report that accompanies the Polladras Permission confirms that in determining that application the Council had regard, amongst others, to policy 5 (Business and Tourism) and policy 23 (Natural Environment) of the Cornwall Local Plan Strategic Policies 2010-2030 (November 2016) (CLP). These same policies form the 'Reason' to condition 1.
15. Moreover, on the suitability of the location, the Polladras Delegated Report confirms that: the use is similar in nature to that of a horse paddock with small jumps; the use of the field for dog training does not conflict with the NPPF (even though the site was located within a World Heritage Site); the type of use was something that requires a rural setting and a field for training; and the rural location meant it was unlikely to have an impact on large numbers of residents.
16. In relation to noise, the Polladras Delegated Report found that: it is expected that there will be some noise from barking; that the purpose is to train dogs such that any barking can be controlled by the operator; that any disruption will be limited to the classes operating on site and the number of participants, and as such the level of harm will be limited (even though the permission does not restrict class sizes or dog numbers); that the field to be used was positioned away from neighbouring dwellings; and that any noise nuisance could be covered under environmental health legislation.
17. All of the above consideration and factors equally apply, in my judgement, to the dog training use on the appeal site. The Polladras Permission is, therefore, an important material consideration in determining this appeal.
18. For the above reasons, I find that condition 1, as currently worded, is not necessary or reasonable. Neither the specific circumstances of this case nor

the evidence before me justify a temporary permission being imposed. The presence of the PROW on the eastern boundary of the appeal site does not affect that finding. I have, therefore, substituted this condition with the standard time limit condition for implementing the development.

Condition 3

19. Even though the location and use of the appeal site has a number of similarities with the Polladras Permission, the latter has a more standard and flexible hours of use condition imposed on it. Its wording includes the type of controls I would expect to see on a use of this nature.
20. On the appeal site, the 'Reason' for condition 3 is said to be in the interests of residential amenity. However, for the reasons outlined above (in relation to condition 1), I am not satisfied that the extent of the controls set out within condition 3 are necessary or reasonable. I see no reason as to why the hours of use should not extend to the current operating hours of the business on the Angarrack site, as sought by the Appellant in their application. As the Appellant indicates evening classes are very popular with those clients who work during the day and presumably have to travel home to collect their dogs before then traveling onto the site.
21. It appears from the Council's Delegated Report for the appeal site that the evening restriction was imposed to overcome the need for lighting. But that control would only largely be necessary in Winter, when, as the Appellant states, the field will be used less and they rent an indoor sand school to cover that period and/or when the weather is poor. More importantly, condition 7 already prevents any lighting from being installed on the appeal site unless details have first been submitted to and approved by the Council.
22. In relation to the need to book a session in advance, for each session to then last one hour with 15 minute gaps, such a restriction places, in my view, an unjustifiable and disproportionate burden on the Appellant and their small business. I am also unclear as to the planning reasons for this and the desired objective of such detailed controls over the operation of the use. The SofCC suggests it is based on ECT's comments but they simply refer to the hours of use sought by the Applicant and do not offer any advice as to whether there is a need to control the timing of individual sessions and gaps. A session may, for various reasons, extend beyond an hour or a client might request more training. In those circumstances, I am not convinced that any harm would arise. Moreover, if those controls were not in place there is no evidence before me to suggest that the use would otherwise be considered unacceptable.
23. In relation to the level of activity on site, that is adequately controlled by the final sentence to condition 3. I note, in this respect, that the SofCC confirms that the number of dogs and vehicles should be the same, namely 6.
24. For the above reasons, I find that parts of condition 3, as currently worded, are not necessary or reasonable and that the controls imposed do not appear to serve any planning reason or desired objective. There is also no substantive evidence before me to suggest that any harm would arise if the use operated without these controls. I have, therefore, substituted this condition with a more standard condition to control the hours of use. In doing so, I have had regard to the Appellants hours of use as outlined in their submitted Planning Statement (PS). This suggests that there will be only occasional use of the site

on a Friday, Saturday and Sunday. I have reflected this in the wording, but as the PS does not refer to any hours for Saturdays and Sundays, I have limited the use on these days to between 1200 and 1700 hours. The revised condition would continue, in my view, to provide robust protection for residential amenities in accord with policies 2 and 12 of the CLP and the corresponding policies of the NPPF

Condition 4

25. The equipment used for dog agility training is not dissimilar to that used on equestrian sites within the open countryside, but on a smaller scale. As well as the examples of equipment shown on the photographs within the Appellants PS, an item of equipment was being stored on the appeal site the day I visited. As I observed, the equipment is of a high quality, small scale and the type of item you sometimes see in rural locations.
26. I accept that the equipment would be visible from the PROW, on the eastern boundary of the appeal site. However, as I observed in walking along that path those views would be of a modest training area with a limited number of items. These items would also sit at a lower level to the PROW and would not harm walkers enjoyment of the route or the long range views of the woodland and valley/hills beyond Green Lane. Whilst there would be some change to views from the PROW, the impact would, in my view, be modest.
27. In relation to Green Lane the appeal site is well screened by mature hedging and trees, with only glimpsed views into the site possible via the existing gate. As the Appellant also points out, no objection was received from the Ramblers Association. I also note that no comments were received from the Cornwall Wildlife Trust or the Countryside Access Officer (acting as Highway Officer to the PROW).
28. As worded condition 4 requires the equipment to be removed off site or stored in the ship container, outside operational hours. Those periods are likely to largely include dusk or nighttime, when the presence of the items would not impact on visual amenities. The Council suggest that the equipment can easily be moved. I do not agree. The Appellants submissions indicate that some of the equipment is of an awkward shape and heavy ('A frame' some 74kg and 'Dog walk' some 75kg).
29. For the above reasons, I find that condition 4 is not necessary or reasonable. It would place an unjustifiable and disproportionate burden on the Appellant and the operation of their business. The harm that would arise from the dog equipment remaining on site is modest and its removal is not, in my view, required in "*the interests of visual amenities of the area*". In reaching that finding, I have had regard to the Appellants statement that most of the equipment, when the site is not being used or in bad weather, is stored away I presume in the ship container. I have, therefore, deleted condition 4.

Condition 5

30. The approved layout plan refers to the proposed parking area as comprising hardstanding. The Appellant suggest that this could comprise gravel, as has been used in the example of the Polladras Permission (the approved plans for that site also refer to hardstanding and there is no specific condition concerning the surfacing of the parking areas/driveway). As I observed when visiting the

Polladras site, the use of gravel fits in well with its local context and has not resulted in any visual harm.

31. The approved parking area for the appeal site is well screened from Green Lane, with only long range views possible from the PROW. As such, the impact of the parking area on the visual amenities of the area is limited. Whilst I accept the Council's position in securing a surface that prevents surface water run-off, there are other options (products), as the condition itself implies, that could achieve the same aims and objectives as Grasscrete. These include the use of gravel or stone chippings (in particular limestone) which are both porous or permeable materials and would assist with run-off.
32. For the above reasons, I have amended the wording of the condition to include other options that would, in my view, satisfy the requirements of policies 2, 12, 23 and 26 of the CLP and the corresponding policies of the NPPF.

Other Matters

33. Concerns have been raised by the Parish Council in relation to highway safety and flooding. However, there is no evidence before me to suggest that any of these concerns would result in material harm. I note they are not matters that the Council have raised. In terms of highway safety, no objection was received from the Local Highway Authority, other than a requirement for visibility splays which are secured by condition 6.
34. The Council's Questionnaire indicates that the appeal site lies adjacent to the St Erth Conservation Area (SECA). As such, paragraph 201 of the NPPF requires consideration to be given to the impact of the development on the setting of this heritage asset. I have only been provided with a plan of the conservation area but this clearly shows that the appeal site is visually and physically remote from the boundary to the SECA. In view of this, the appeal proposal would not have any impact on the setting of the SECA.

Conclusion

35. For the reasons given above and having taken into account all other matters raised, I conclude that the appeal should be allowed.

G Roberts

INSPECTOR