The Planning Inspectorate

Appeal Decision

Site visit made on 13 September 2022

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 October 2022

Appeal Ref: APP/A2525/W/21/3288069
Cloudtenn DTC, Chapel Drove, Holbeach Drove, Lincolnshire PE12 0PT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr and Mrs Robert and Lisa Smith of Cloudtenn against the decision of South Holland District Council.
- The application Ref H09-0447-21, dated 18 April 2021, was refused by notice dated 26 October 2021.
- The development proposed is described as: Change of use to dog training area.

Decision

1. The appeal is allowed and planning permission is granted for change of use to dog training area at Cloudtenn DTC, Holbeach Drove PE12 0PT, in accordance with the terms of the application, Ref H09-0447-21, dated 18 April 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description of the development on the planning application form states "Change of use to dog training area at far end of field. Fully enclosed. Also private allotment to grow own vegetables. This has an associated shed for storing gardening equipment." The Council has not considered the "allotment" aspect of the proposal and this use, of itself, may not require planning permission given the previous agricultural use of the land. This use is, in any event, unrelated to the primary disputed matter and the decision in the appeal does not turn on this point. Consequently, I have not considered this latter aspect further.

3. The Decision Notice issued by the Council describes the development as "Change of Use to dog training area – Retrospective". This amendment to the description does not appear to have been agreed with the appellants, however, I note that the appellants have, nonetheless, adopted this description on the appeal form.

4. The change of use has already occurred, although the site was not in use for dog training at the time of my site visit. It is stated on the planning application form that the use commenced in February 2020. I was, however, able to see the fenced off area that has been used for the purposes of dog training and also the parking area that has been created adjacent to the carriageway of Chapel Grove. Section 55 of the Town and Country Planning Act 1990 (the TCPA) describes development as the carrying out of building operations, or the making of material changes of use, as opposed to their retention or continuation. Section 73A of the TCPA makes allowance for the submission of

a planning application for development which has been carried out before the date of the application and, consequently, I have considered the appeal on that basis. I have also used the Council's description of the development as it accurately and succinctly sets out what is proposed. For the reasons set out above, I have omitted the word "retrospective" from the description.

Main Issue

5. The main issue in this appeal is the effect of the development on the living conditions of the occupiers of nearby residential properties, with particular regard to noise and disturbance.

Reasons

6. The appeal site is a field, approximately 0.7 hectares in area, located just outside the settlement of Holbeach Drove. The site is accessed from Chapel Drove, a long narrow lane, that runs from the main road through the village and past the appeal site before terminating approximately 500m to the south west. The appeal site sits amongst a largely flat landscape of agricultural fields and scattered smallholdings. Although outside the main settlement, there are properties in residential occupation both adjacent to and in proximity to the appeal site.

7. The appeal proposal is to use the south eastern end of the field which has been fenced off for running dog agility training. Car parking for attendees would be provided on a grassed part of the field during the summer months and on a hardstanding area that has been formed adjacent to the carriageway of Chapel Drove during the winter months.

8. The planning application form states that the use would operate for between 4 to 6 hours in total, between Monday to Friday and not at the weekends, in the months of April to September. Other information submitted with the application indicates that the classes would be run in the early evening, between the hours of 17:30 and 19:45. Between October and March, the use would only operate for 1 to 2 hours from 10:00 on both Saturdays and Sundays, but not on weekdays. It is also proposed that there would be two training camps held annually, running from 09:00 to 17:00 over three days, one in May and one in September. It is stated that during these training camps participants could, if they so wished, bring campervans, caravans, or tents that would be accommodated within the wider site.

9. The appellants' Statement of Case sets out that training sessions would be up to 10 hours a week with the addition of the two, three day, training camps per year. This is a slightly greater number of hours than stated in the planning application but would not fundamentally alter the effect of the development.

10. The Councils principal concern, as set out in the reason for refusal, is the potential for harm to the living conditions of nearby residents through noise and disturbance from dogs barking and additional vehicle movements on Chapel Drove. Neither party has submitted any technical evidence with regard to noise.

11. I accept that where a number of dogs are gathered together it is very likely that there will be some barking and from the nature of the proposed use there are also likely to be raised voices. Although there are no dwellings directly adjoining the area that is used for dog training, both barking and raised voices

will carry over some distance and there are a number of dwellings nearby. The surrounding area is very flat and there are no landscape features which would act as barriers to, or would mitigate, noise transmission. As a result, there is potential for additional noise and disturbance arising from the proposed use. I have also noted the Council's point that there has been a noise complaint from one resident where barking and voices were audible at the complainant's property. It is not stated where this property is located in relation to the appeal site.

12. That said, it is proposed that usually the dog training activity would be limited to a small number of hours per week with small numbers of participants at each class, and the training sessions would occur at known and regular times. The exception to this would be the two training camps where there would be longer periods of activity and larger numbers of participants. However, these would also be small in number and of a relatively short duration. The evidence I have been provided with indicates that the use has been occurring for a period of two years and whilst the representations received suggest that there has been audible noise during that time, there has only been one formal noise complaint.

13. It is proposed that the use would occur on only a small number of occasions per week and would be of limited duration. This could be controlled through the use of planning conditions. In the above context, whilst there would be some additional noise and disturbance during those times, from the evidence before me and from what I saw when I visited the site, subject to appropriate conditions to control the operation of the site, I do not find that the degree of disturbance would be so great that it would diminish the overall living conditions of the occupiers of nearby properties.

14. The proposed use would result in more vehicle movements on Chapel Drove than at present. Whilst this has some potential to cause disturbance, given the relatively small number of participants at each training session and the short duration of the sessions, any increase in noise due to vehicle movements would not either of itself, or in combination with the dog training activities, be sufficient to warrant withholding planning permission.

15. I therefore conclude that the proposed development would not cause harm to the living conditions of the occupiers of nearby residential properties, with particular regard to noise and disturbance. It would not conflict with the relevant requirements of Policies 2, 3 and 30 of the South East Lincolnshire Local Plan 2019 (the SELLP) and the National Planning Policy Framework which, when read together, seek to prevent harm to the living conditions of nearby residential properties and to prevent noise pollution.

Other Matters

16. The Council's Statement of Case raises issues relating to the principle of the development and the effect of the development on the character and appearance of the area that are not included in the reason for refusal set out on the Decision Notice.

17. Policy 1 of the SELLP sets out a hierarchy of settlements and identifies in broad terms the type of development that would be appropriate within them. Areas outside of the defined settlement boundaries are considered to be countryside where development will be permitted that is necessary to such a location (*sic*)

and/or where it can be demonstrated that it meets the sustainable development needs of the area. The supporting text to the policy which, although not part of the policy itself sets out how the policy will be implemented, states that other uses, which may diversify from agriculture and forestry e.g. recreation and tourism can meet the broad sustainable objectives of the local plan. Although there is no evidence that the proposed use for dog training necessarily requires a countryside location, it has many characteristics of a recreational use and, consequently, I cannot see any fundamental conflict with Policy 1.

18. With regard to the effect on character and appearance, at the time of my visit equipment was stored neatly in one small area of the site and it had every appearance of being a grassed field similar in appearance to a paddock. Whilst I accept that the training camps would result in the presence of caravans, campervans, and other vehicles in the field, this would be very much transitory and would only have a visual effect for approximately 2 weeks out of the year. At other times, whilst there would be equipment used for training purposes present in the field, from the photographs provided by the appellants, this would be little different in terms of its visual effect from the equipment commonly used in countryside locations for equestrian activities. The parking area that has been formed adjacent to Chapel Drove does not cover a large area and is finished with a stone/gravel surface. It is not dissimilar to other accesses along Chapel Drove. Given the above, I do not find that the proposal would be harmful to the character of the area, or of an intrinsically poor design such that it would conflict with the relevant requirements of SELLP Policies 3 and 30.

19. Concerns have been raised by interested parties in respect of highway safety, although I have also noted that the Highway Authority have not raised any objections to the proposal on highway safety, traffic, or parking grounds. From what I have read and from what I saw when I visited the site, I would concur with the conclusions of the Highway Authority.

Conditions

20. I have had regard to the list of conditions suggested by the Council and the comments made on these by the appellants, which request changes to two of the conditions suggested by the Council.

21. In order to provide certainty with regard to what has been granted planning permission, I have attached a condition specifying the approved drawings.

22. The Council has suggested that a condition is required limiting the hours that the facility could operate to between the hours of 0900 to 1700. The appellants' submissions with the planning application and appeal indicate that the principal group sessions are held in the early to mid-evening to accommodate dog owners who work during the day. The appellant has requested that this be amended to allow operating until 20:00 on three evenings per week. I would agree with the Council that it is necessary to impose a restriction on the operating hours to minimise the potential disturbance to nearby residents and to ensure that the site operates in the way illustrated by the appellants in their submissions.

23. From the evidence before me, the condition as suggested by the Council would preclude the appellants' main activity which occurs in the evenings. The

amended wording suggested by the appellants, however, lacks precision and would make it difficult to determine whether the condition was being breached.

24. The supporting information submitted by the appellants as part of the planning application sets out that classes are held on a Tuesday and Wednesday evening. There is little evidence that would indicate that there is a requirement for a third evening. I have, therefore, amended the wording of the condition to allow evening operation on Tuesdays and Wednesdays, which would both allow the appellants principal operation but also make it clear when later operation of the site is permitted.

25. In order to ensure that the site operates in the manner applied for and to minimise any potential disturbance to nearby residential occupiers, it is necessary to impose a condition restricting the number of hours training sessions can be carried out and the number of dogs that can be present at the site. The planning application form originally states 4 -6 hours which was subsequently amended to 10 hours. The appellant has requested in response to the Council's suggested condition that 15 hours would be preferable, however, no specific reason is given for this and, consequently, I have not accepted this. The appellant has also requested an amendment in respect of the number of dogs at the two training camps. As these training camps are of a different nature to the more general operation of the site and would be limited to two occasions per year, the appellants' suggestion would not result in any significant additional disturbance.

26. The Council have suggested that any planning permission should be made personal to the appellants. The Planning Practice Guidance advises that planning permission usually runs with the land and it is rarely appropriate to provide otherwise, apart from in exceptional circumstances where this is justified on planning grounds. The reason for the condition set out by the Council is: 'to enable consistent standards with regards to the facility and standards in care which have been demonstrated by the applicant in this matter'. The appellants do not object to this suggested condition.

27. Although the appellants have set out that the site would be operated in a particular manner, the operating hours, number of hours per week and number of dogs per session proposed by the appellant are the subject of separate conditions and would be binding on any operator of the training facility. It is not clear what the Council's statement in respect of standards of care refers to. As the principal disputed matter was potential for noise and disturbance and this can be addressed though other conditions, and there is no other evidence that would indicate that there are exceptional circumstances that would justify restricting the planning permission in this manner, I do not find that this condition is necessary and have not included it.

Conclusion

28. For the above reasons, I conclude that the appeal should be allowed.

John Dowsett

INSPECTOR

Schedule of conditions

1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; Block Plan showing proposed layout; and Block Plan showing proposed camp layout.

2) The training of dogs shall only be undertaken between the hours of 09:00 to 17:00, on Mondays, Thursdays, Fridays, Saturdays, and Sundays; and between the hours of 09:00 to 20:00 on Tuesdays and Wednesdays.

3) Notwithstanding the provisions of Condition 2, the training sessions shall not exceed 10 hours in total per week with the exception of two, 3 day, training camps per year. The number of dogs per session shall not exceed 6 dogs with the exception of two, 3 day, training camps per year where up to 2 groups of 6 dogs is permitted on each day.