
Appeal Decision

Site visit made on 8 January 2016

by M Seaton DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10 February 2016

Appeal Ref: APP/A4520/W/15/3133725

46 Soane Gardens, Whiteleas, South Shields, Tyne & Wear, NE34 8NN

- 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 Miss Denise Rutherford against the decision of South Tyneside Metropolitan Borough Council.
 - The application Ref ST/0527/15/FUL, dated 1 June 2015, was refused by notice dated 29 July 2015.
 - The development proposed is described as "*a dog grooming and dog boarding/day care business from home address*".
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Procedural Matters

1. The Council has requested consideration as to whether the description of development as proposed by the appellant actually reflects the entirety of the development. In this respect the Council has suggested that, given the nature of the scheme, the permission effectively being sought is for a change of use of the dwelling and its curtilage to a mixed residential and business use. I have carefully considered this matter and I would agree with the Council that the resultant use of the property and curtilage would be for all intents and purposes a mixed use, and that the description of development should reflect this to be the case, and also include reference to the timber structure. In this respect, and taking into account the appellant's clarification from the Grounds of Appeal that there is no longer any intention of providing a day care facility, I have amended the description of the development as set out at paragraph 3 of this Decision Letter.
2. It was evident at the time of the site visit that the works had been implemented with the timber structure in place, and equipment related to dog grooming in situ. Furthermore, the appellant has indicated in their submissions that both the dog boarding and dog grooming elements of the business have commenced.

Decision

3. The appeal is allowed and planning permission is granted for the change of use of the dwelling and curtilage to a mixed residential and business use, with the business use relating to dog boarding and dog grooming, with a timber clad structure to the gable elevation of the property providing accommodation in connection with the dog grooming at 46 Soane Gardens, South Shields, Tyne and Wear, NE34 8NN in accordance with the terms of the application, Ref ST/0527/15/FUL, dated 1 June 2015, subject to the following conditions.

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Titled "Proposed timber built construction to the gable of No. 46 Soane Gardens", received by the Council on 3 June 2015.
- 2) The activities related to the grooming of dogs in connection with the business shall not take place anywhere on the site except within the timber framed building hereby approved for such use, and the use of the equipment related to the grooming of dogs shall only be undertaken with the door and window closed. The timber framed building shall not be used as accommodation for the boarding of dogs.
- 3) The dog grooming parlour shall not be open to customers before 09:00 and after 16:00 on Mondays to Saturdays. It shall not be open to customers at any time on Sundays or Bank Holidays.

Application for costs

4. An application for costs was made by Miss Denise Rutherford against South Tyneside Metropolitan Borough Council. This application is the subject of a separate Decision.

Main Issue

5. The main issue is whether the development safeguards the living conditions of surrounding residential occupiers, having regard to noise and disturbance, and odours.

Reasons

6. The appeal property is comprised of a two-storey end of terrace dwelling positioned at the head of the cul-de-sac, with a comparatively large private rear garden. The site is located within a residential area with terraced properties and private gardens located to the north of the property, with the respective rear gardens separated by fencing. The property possesses limited off-street parking space to the road frontage.
7. The business comprises both the boarding and grooming of dogs at the property, with the appellant indicating in the Grounds of Appeal that following advice from the Council's Environmental Health team, the provision of day care has been omitted. The dog boarding element of the business would be principally contained within the house and garden, and would be separate to the dog grooming business which would be undertaken solely within the timber structure. The appellant has highlighted that they have been licensed for the boarding of a maximum of 3 dogs at any one time, and with the exception of periods of walking, these would remain at the property for a duration which could vary from overnight to extended periods. The dog grooming facility provides sufficient space for the grooming of a single dog at a time to occur, with each appointment estimated as lasting approximately 2 hours.
8. The Council has raised a number of concerns with regards to the operation of the business at the property, and in particular the potential for noise and disturbance arising and having an adverse impact on the living conditions of neighbouring occupiers. Whilst some of the concerns specifically relate to the undertaking of the business itself, traffic related noise and the comings and goings of visitors to the property have also been cited as areas of concern.

9. In respect of noise and disturbance, I accept that there will always be the potential for a dog barking at the premises, but given the limited capacity of both the boarding and grooming elements of the business, the numbers of dogs at the property would not be so significant as to amount to a departure from what could possibly be expected in terms of private ownership. I am also mindful that the dog grooming would take place within the timber building with door and window closed, and whilst not operational at the time of my visit, I am satisfied that the structure would provide at least some limited mitigation for barking or noise generated by the equipment when in use. Furthermore, the appellant has indicated that boarding is restricted to dogs from a single family, and I note that boarding dogs and dogs being groomed would be kept separately to minimise the potential for such disturbance. In addition I do not consider that a barking noise can be said to be either unexpected or uncommon within a residential area. On this basis, I am not persuaded that the numbers of dogs present at any one time would give rise to significant or unacceptable levels of noise and disturbance.
10. I have also considered the potential for noise and disturbance from the comings and goings of vehicles and pedestrians associated with the business. However, I do not consider that the limited numbers and nature of vehicular and pedestrian movements associated with the business on a daily basis, would lead to a significant or abnormal level or nature of activity, which would result in unacceptable levels of noise and disturbance.
11. Further to issues of noise and disturbance, interested parties have raised concern over the possibility of odour emissions from the dog grooming itself. Whilst this element of the business was not operational at the time of my visit, I have no compelling evidence before me that odours would be readily discernible once outside of the building when in operation with the door and window closed, or that these odours would not dissipate to an acceptable degree. I am therefore satisfied that given the scale of the business that there would not be an unacceptable impact on the living conditions of neighbouring occupiers in this respect.
12. In setting out its case, the Council has set out concerns raised by its own Environmental Protection team, which in addition to matters related to noise and disturbance, encompass health and welfare considerations related to the running of the business, and also the requirements of the licensing conditions as granted for the dog boarding, and the Animal Welfare Act 2006. In this regard the Council has raised specific concerns over the potential for cross-contamination of dogs between the separate parts of the business, and the suitability of the timber structure for the proposed dog grooming business and in particular the environmental conditions for dogs when being groomed.
13. I note that the appellant has responded to these matters in the submissions, and would seem to be clearly aware of their responsibility in respect of the avoidance of cross-contamination and animal welfare. I am also mindful that, as pointed out by the Council in respect of the appellant's reference to the granting of a licence for dog boarding, these are matters which whilst capable of being material considerations, essentially sit under separate statutory regimes or controls. Furthermore, on the basis of the evidence placed before me, it would appear that if welfare concerns arose during the course of the operation of the business, that there would be the potential for operational adjustments or changes to be made to address such matters as required by

any license or separate legislation, whilst remaining within the scope of the restrictions placed upon the business by any proposed planning conditions.

14. I have carefully considered the evidence which has been placed before me, and have also had regard to the proposed hours of operation of the dog grooming part of the business as being within general 'daytime' hours. On this basis, and in view of the small scale of both the dog boarding and dog grooming parts of the business, I do not consider that it would have an adverse or unacceptable effect on the living conditions of the occupiers of neighbouring properties by way of noise and disturbance, or odour emissions. The development therefore accords with Policy DM1(B) of the South Tyneside Development Management Policies (2011), which seeks to ensure that development is acceptable in relation to any impact on residential amenity.

Other Matters

15. Both the Council and the appellant have referred me to another case within the area which was proposed solely for a dog grooming parlour and was allowed recently at appeal. The Council has drawn comparison between the allowed appeal site and the current appeal property with regards to the density of development in the area and the nature of the business, concluding that in this instance the current site is in a far more densely developed residential area, with the business proposing more than just dog grooming. However, whilst I have had regard to the conclusions reached in the previous appeal decision, my attention has not been drawn to any quantitative statements made by the Inspector suggesting that the character and nature of the area or the business in that instance should be regarded as setting a threshold as to the acceptability of other similar or related proposals. Whilst I accept at face value the Council's comparative statement regarding differences between the proposals, I do not accept that this should automatically translate to a refusal of planning permission. In this respect, I have considered this appeal on its own planning merits.
16. I note that interested parties have also raised concerns over a number of other issues including matters related to parking and highway safety, the loss of property value, and the setting of precedent for similar development. With regards the highway matters, whilst I noted there to be evidence of existing on-street parking at the time of my visit, I also observed that there was significant available capacity within the vicinity, and that many properties possess the opportunity to park off-street. Having regard to the absence of any objection from the Council acting as the Highway Authority to the impact of the development on parking or highway safety, I am satisfied that the levels of traffic generated by the business would be capable of being satisfactorily accommodated without an adverse effect on existing parking levels or highway safety.
17. Turning to the suggestion that the scheme would cause a reduction in property values in the area, I have not seen any convincing evidence that this would be the case. With regards the argument that that by allowing this appeal an undesirable precedent would be set for similar developments, I am satisfied that a scheme genuinely comparable with this one would be likely to be acceptable, and I envisage that the Council would successfully be able to resist any development which could cause demonstrable harm.

Conditions

18. Whilst the Council has expressed its reservations over the appropriateness of the use of conditions, it has suggested some were the appeal to be allowed. I have considered these in the light of paragraph 206 of the National Planning Policy Framework (the Framework).
19. In the interest of proper planning, a condition relating to the identification of plans would be necessary. Whilst I accept that the dog boarding would be likely to occur over differing or extended periods of time, I consider the imposition of conditions pertaining to control over the specific activities related to the dog grooming and use of the timber building as being both reasonable and necessary. In this respect, I disagree with the Council that conditions related to control over the use of the building, how the business would operate within the building, and the restriction of the proposed hours of operation in accordance with those set out by the appellant, would not be enforceable. I am satisfied that these conditions would meet the tests set out in paragraph 206 of the Framework, and for the reasons set out in the main issue, would be both reasonable and necessary in the interests of safeguarding the living conditions of neighbouring occupiers.

Conclusion

20. For the reasons given above, and having regard to all other matters raised, the appeal should be allowed.

M Seaton

INSPECTOR