



Appeal Decisions

Site visit made on 30 August 2022

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 29 September 2022

Appeal A: Ref APP/B5480/C/21/3289612

54 Frederick Road, Rainham RM13 8NJ (Land Registry Title EGL108809)

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms D Yazar against an enforcement notice (Ref ENF/503/19) issued by the Council of the London Borough of Havering on 3 December 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the dwelling to mixed use as a dwelling and as a commercial cattery.
 - The requirements of the notice are to (i) Cease the use of the dwelling and curtilage as a cattery; (ii) Remove from the land the mobile home (which serves as an office to the cattery and two cat rooms); (iii) Demolish the outbuildings in the rear curtilage as shown on Plan 1 and Plan 2 as appended to this Notice; (iv) Remove all other debris, rubbish or other materials accumulated as a result of taking steps (i) to (iii) above.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Appeal B: Ref APP/B5480/W/21/3289608

54 Frederick Road, Rainham RM13 8NJ

- 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 Debbie Yazar against the decision of the Council of the London Borough of Havering.
 - The application Ref P1436.21, dated 19 July 2021, was refused by notice dated 19 November 2021.
 - The development is change of use from residential to mixed use residential and commercial for running a cattery business.
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Decisions

1. Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land and buildings at 54 Frederick Road, Rainham RM13 8NJ, as shown on the plan attached to the notice, for mixed use as a dwelling and as a commercial cattery subject to the conditions in the attached schedule.
2. Appeal B is allowed and planning permission is granted for change of use from residential to mixed use residential and commercial for running a cattery business at 54 Frederick Road, Rainham RM13 8NJ in accordance with the terms of the application, Ref P1436.21 dated 19 July 2021 and the plans submitted with it, subject to the conditions in the attached schedule.

Procedural Matter

3. In respect of Appeal B, I have used the description of development provided in the application form (rather than that used by the Council in its decision notice) as that was the basis upon which permission was sought. I have not seen written confirmation that a revised description was agreed between the parties.

Main Issues

4. The main issues in both appeals are the effect of the development on:
 - the character and appearance of the area;
 - on-street parking provision; and
 - the living conditions of neighbouring occupiers, particularly as regards noise and disturbance.

Reasons

Character and appearance

5. The Officer Report (OR) in respect of the application which is the subject of Appeal B states that:

"Viewed from the street, there appears to be little in the way of outwards signs of the commercial use..."

I agree entirely with that statement. From public views, the developed appeal site essentially has the character and appearance of a residential property within a setting which is largely residential. The mobile home, without signage and set back to the side of the dwelling behind a fence, is unstriking.

6. Visibility of the development within private views is also limited. The outbuildings are well-screened along the nearby boundary with 56 Frederick Road (No 56) by existing vegetation, and their heights (as is the case of the mobile home) are either broadly similar to the boundary treatment with that property (or else sit significantly below it) due to a lower ground level than next door. Neither are they of a size or scale that cause them to look out of place as outbuildings which commonly feature within residential curtilages, as seen locally. These factors together mean that they cause no visual harm.
7. The Council is concerned, notwithstanding the limited visibility I have identified, that the development creates a strip of commercial use separating 2 residential gardens, which "is regarded as out of character and at odds with the prevailing environment". However, I do not accept that is the case. There are non-residential uses amid otherwise residential uses nearby at 39 (Medical Centre), 84 and 89 Frederick Road. Indeed, the rear garden of the latter property appears to have been used in association with a commercial children's nursery adjacent to the rear garden of the next-door dwelling. Such nearby uses on Frederick Road also necessitate customers coming and going to them, as does the appeal development. Further, I am persuaded by the appellant's records, procedures and evidence as a whole (noting also that a significant number of residents in Frederick Road appear to have been entirely unaware of the existence of the business until surveyed by questionnaire) that the comings and goings from the appeal site are relatively modest.

8. Accordingly, I do not find the development causes any harm to local character and appearance. Therefore there is no conflict with Policy 26 of the Havering Local Plan 2016-2031 (LP) or Policy D3 of the London Plan 2021 (LONP) which protect character and appearance. Further, there is no conflict with the design requirements of the National Planning Policy Framework (the Framework).

On-street parking

9. The appeal site provides dedicated off-street parking, with a large driveway covering the frontage with sufficient vehicle capacity for the numbers of customers who are expected through the operation of an appointment system set out in the appellant's management plan (MP). The MP directs the modest number of daily visitors to this facility, which in my view obviates any need for on-street parking.
10. I acknowledge there will be customers who may not use the offered parking provision. However, while appreciating that site visits can only be a snapshot at one point in time, I found that (notwithstanding the sufficient off-street parking provision) there were plentiful opportunities for lawful parking on the street nearby which in my view would not cause either unacceptable impacts on the transport network or upon highway safety. Therefore, I do not find the development causes a conflict with Policies 7, 23 and 24 of the LP or Policy T6 of the LONP which together seek to prevent such negative highway impacts.

Noise and disturbance

11. I place significant weight on the data collated by the appellant over a lengthy period of time which demonstrates that the average number of customer trips to the site was slightly over 2 per day. I also accept the submission that customers remain on site for a relatively short period of around 10-20 minutes. Therefore, it appears that for the vast majority of the time there are no visitors at the site. I further note that the 'pet-taxi' operation (introduced during 2021) has the effect of reducing visitor numbers by entirely eliminating the need for customers to visit the site.
12. I have also carefully considered the environmental noise survey conducted by a qualified acoustician, which appears to have appropriately measured and assessed noise from the development including that associated with the various operational activities of concern to those opposing the development. I note within this context that the measurements incorporated noise from 2 customer visits to the cattery – therefore broadly representative of a typical day – along with noise associated with the moving of cats within handheld cages to and from the dwelling, mobile home and outbuildings. It also incorporated measurement of noise emitted from plant (air-conditioning) as well as from the cats themselves (although I note that the attending acoustician stated that he heard no noise at all directly from boarded cats during more than 8 hours of measurement, and nor did I during the period of my site visit).
13. The noise survey found that, notwithstanding the operation of the cattery business, noise levels at neighbouring properties were comfortably within relevant standards including those set by the World Health Organisation. Further, it concluded that "*The noise generated from The Pussy Cat Hilton Cattery does not contribute to overall background noise level within the rear gardens (or external amenity spaces) of 52, 54, 56 and 58 Frederick Road*".

I place significant weight on these findings and they persuade me that the development causes no harm as regards noise. Accordingly, I see no reason or need for conditions requiring insulation schemes to be submitted for approval.

14. Moreover, implementation of the appellant's MP is likely to prevent any significant adverse impact from customers dropping off and collecting cats due to its detailed compulsory appointments system which considerably controls and limits the number of visitors during the course of a day (and seeks to prevent more than one visit occurring at the same time). I give significant weight to a number of testimonials from customers which confirm that these controls are in place in practice.
15. I am also persuaded that the cleaning and waste management procedures outlined within the MP make it unlikely that the development would cause any significant odour, hygiene or pest issues that might cause harm to the living conditions of neighbouring occupiers. Indeed, while again acknowledging that a site visit is a single point in time, I found the premises to be clean and well-managed under the operation of the MP.
16. As the controls as set out in the MP are reasonable and necessary in rendering the development acceptable, it is appropriate to impose a condition requiring the MP to be followed in full and for any future changes to be agreed in advance by the Council. To overcome the Council's concerns as to enforceability, records from the implementation of the MP and booking system – including those that show the number of cats on site at any time – are also required through conditions to be provided to the local planning authority upon request (however, the Council's suggestion that monthly records are routinely submitted is unreasonably onerous and unnecessary).
17. It is also appropriate to attach a condition in the interests of preventing noise and disturbance to require that customer visits to drop off or pick up their cats may only occur between 10:00 and 17:00 Monday to Saturday, and never on a Sunday or on Bank and Public Holidays. This was suggested by the Council and is in any case consistent with the booking-in system operated under the MP.
18. I am of a view, formed from a common-sense approach to the issue together with everything before me including the conclusions of the acoustic survey and professional opinions of its author, that cats are neither particularly noisy animals nor indeed thrive in noisy conditions. Indeed, the many letters of support I have seen from customers suggests to me that there is widespread satisfaction with the welfare conditions, which lends to the already substantial evidence that the development – partly out of commercial necessity – is not associated with a noisy environment. I also note that the Council has issued the cattery with an animal welfare licence for 53 cats, and as the associated guidance¹ states that "Cats must not be exposed to excessive or continuous noise" it could be reasonably argued that it is implicit in granting the licence that the Council considered that such a number of cats could be boarded without such noise being likely from the day-to-day running of this pet boarding operation. However, in this vein, a condition is imposed to ensure that future noise and disturbance would not be caused by the boarding of animals which might be more vocal or otherwise create more noise than cats.

¹ The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018; Guidance notes for conditions for providing boarding for cats (November 2018)

19. As I understand it, notwithstanding a welfare licence permitting a much higher figure, 27 is the maximum number of cats which have been boarded to date. As it has been this existing scale of operation upon which the bulk of the appellant's evidence in support of the development has been submitted (trip generation data, noise survey etc), and which I have found acceptable in planning terms, I have limited evidence upon which to conclude that a greater scale of operation would not have unacceptable consequences. Accordingly, I am imposing a condition requiring that the cattery can at no time board more than 27 cats.
20. I am also attaching a condition, necessary to prevent possible disturbance to local residents, prohibiting the provision of external lighting without the prior consent of the Council.
21. For the above reasons, the appeal development in respect of both appeals (conditioned as I have detailed) would not cause harm to living conditions as regards noise and disturbance. Accordingly, the conditioned development is not in conflict with Policies 7, 23, and 24 of the LP with together seek to protect living conditions. For the same reasons, the development is not in conflict with the Framework (including paragraph 130).

Other Matters

Loss of light

22. A rear section of the mobile home runs slightly higher than the boundary fence with No 56. However, while it was not possible on my site visit to view the development from that property, the small difference in height was not so significant in my judgement so as to cause any material effect on the living conditions of the occupiers of No 56.

Privacy

23. Notwithstanding third-party representations, the windows of the mobile home do not overlook the garden of No 56 since they face directly into either the brickwork of the side wall of that property or into the boundary fence. Similarly, there are no windows of the outbuildings which overlook that property. Accordingly the development causes no harm through loss of privacy to the occupiers of No 56.

Fire safety

24. I have read third-party comments about fire safety but they are not material planning considerations on which planning decisions must be based.

Other Decisions

25. My findings on the appeals before me are not inconsistent with the appeal decision highlighted by the Council² since, unlike the Inspector in that appeal, I have found that the relatively modest comings and goings from the appeal site do not harm the character of the locale (which is itself influenced by nearby non-residential uses and the comings and goings of their visiting clientele). Further, that the appellant has demonstrated effective control of those comings and goings through an appointments system limiting the numbers and frequency of visitors within restricted hours.

² APP/B5480/W/19/3233130; 48 Woodlands Road, Harold Wood, Romford RM3 0QX

26. Similarly, my findings are not inconsistent with the dismissal of an appeal seeking approval for a beauty nail room on Frederick Road³ since in that case the Inspector was clear that his concerns were connected with both the risk of multiple customers on the premises at the same time (which I am not satisfied is significant in the appeals before me due to the spacing of visits operated under the MP appointments system) and the total number on an average day (which in the appeals before me I have found to be modest and acceptable).
27. The decisions on these appeals are however consistent with the appeal allowed giving rise to permission for a boarding establishment for 24 cats in the rear garden of a residential property in Bedworth⁴, as raised by the appellant, with the Inspector finding the development unlikely to materially harm the living conditions of local residents subject to conditions (amongst others) requiring an appointment system and restricted hours for drop-off and collection. I am also of a view that odours and other forms of pollution and/or disturbance do not need to arise if good management practices are followed.

Conclusions

28. For the reasons given above I conclude that Appeal A should succeed on ground (a) and planning permission will be granted. The appeal on ground (f) does not therefore need to be considered.
29. For the reasons given above I conclude that Appeal B should be allowed.

Andrew Walker

INSPECTOR

Schedule of conditions – Appeal A and Appeal B

- 1) The hereby permitted use shall not allow for pet boarding other than for cats.
- 2) No more than 27 cats shall be accommodated at the cattery at any one time. Records of the numbers of cats accommodated shall be provided to the local planning authority at any time upon request.
- 3) The premises shall not be open to customers for the drop-off or collection of cats outside the hours of 10:00-17:00 Monday to Saturday and not at any time on Sundays or on Bank or Public Holidays.
- 4) The development shall at all times be implemented in full accordance with the Management Plan submitted with the appeals dated December 2021, including the details therein of the appointment and drop-off/collection system and waste management arrangements. Any changes to the Management Plan shall be submitted to and approved in writing by the local planning authority in advance of any such changes being implemented. Records relating to the appointment and drop-off/collection system and waste management arrangements shall be provided to the local planning authority at any time upon request.
- 5) No external lighting at the premises shall be provided without the prior consent of the local planning authority.

³ APP/B5480/W/20/3247908; 21a Frederick Road, Rainham, Essex RM13 8NJ

⁴ APP/W3710/W/16/3158299; 19 Lancing Road, Bulkington, Bedworth, Warwickshire CV12 9QU