

**Committee Report**

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| <b>Application No:</b>        | <b>DC/17/00428/FUL</b>  |
| <b>Case Officer</b>           | <b>Lois Lovely</b>  |
| <b>Date Application Valid</b> | <b>4 April 2017</b>   |
| <b>Applicant</b>              | <b>Miss K Bruce</b>   |
| <b>Site:</b>                  | <b>8 Thirlmere<br/>Birtley<br/>Chester Le Street<br/>DH3 2JY</b>  |
| <b>Ward:</b>                  | <b>Birtley</b>  |
| <b>Proposal:</b>              | <b>Change of use of the premises incorporating the use of the garage as dog grooming salon, use of the premises for dog boarding thereby creating a mixed use of dog grooming, dog boarding and residential (Sui Generis) (retrospective)</b> |
| <b>Recommendation:</b>        | <b>REFUSE</b>   |
| <b>Application Type</b>       | <b>Full Application</b>   |

**1.0 The Application:****1.1 DESCRIPTION OF THE SITE**

No. 8 Thirlmere is a two storey brick built 1970's semi detached dwelling with attached single storey flat roofed garage with an up and over door.

1.2 The property has a modestly sized front garden with a concrete single drive providing off street parking. The front garden is partly given over to gravel with stepping stones leading to the front door, so that it is possible to walk to the door without having to push past a car parked on the drive.

1.3 The drive of No.9 (the unattached neighbour) is separated from the drive of the application site by a strip of gravel / pebbles approximately 900mm wide. At the end of the drives and this gravelled strip, there is a 1.62m wide shared path that runs in-between the garages of the two houses which provides access to the garden gates to the rear of the application property and No.9 Thirlmere.

1.4 The property has a large rear garden at two levels. The area nearest to the rear of the house has been paved and a balustrade and gate separates it from the lower level of the garden, half of which is grassed the other half being paved, there are also three sheds/ kennels located on the rear boundary. Similarly large residential rear gardens bound the site to the north, south and west.

**1.5 DESCRIPTION OF THE PROPOSAL**

This is an application to change the use of the property to include dog boarding, dog grooming and the residential use. Previously, a six month temporary permission for the use of the garage as a dog grooming salon was granted for the hours between 9:30 and 17:30 four days per week (DC/16/01029/COU). This temporary permission expired on the 14th May 2017. The Applicant is now

applying for dog grooming hours between 9:30 to 18:00 Monday to Saturday, Sundays 10:00 until 17:00 including Bank Holidays other than Christmas and New Year, again within the garage only. The dog boarding would take place on a 24 hour basis inside the house.

- 1.6 Initially the applicant submitted a renewal of the temporary permission for dog grooming in the garage, however, officers advised that what was being applied for did not reflect the operations on the site and advised the applicant to change the description to that now being considered. Thus this application is retrospective.
- 1.7 The current proposal is therefore for the change of use of the premises incorporating the use of the garage as dog grooming salon, use of the premises for dog boarding thereby creating a mixed use of dog grooming, dog boarding and residential (Sui Generis) for the extended hours of 09:30 to 18:00 Monday to Saturday and 10:00 to 17:00 on Sundays including Bank Holidays except for Christmas Day and New Years' Day.
- 1.8 There are two elements to the business, stated as being the dog grooming element and the dog boarding element.
- 1.9 The dog grooming element, when the applicant has no other dogs in her care, is indicated as taking place 5 days per week (although those days vary) and an average day is described as a total of five appointment slots per day with half an hour between each one, are proposed between 09:30 to 17:30, the first at 09:30 and the last between 16:30 and 17:30, followed by cleaning the grooming salon.
- 1.10 The dog grooming element, when the applicant has other dogs in her care i.e. dog boarding, is indicated as 5 days per week (although those days vary) and an average day is described as a total of three appointment slots per day with half an hour between each one, these are proposed between 09:30 to 17:30, the first at 09:30 and the last at 16:00, followed by cleaning after the grooming appointments.
- 1.11 Dog grooming activities would be housed in the garage that bounds the shared access between No.9 Thirlmere and the application property.
- 1.12 Although no dogs were present for dog grooming at the time of the officer site visit, the interior of the building was equipped with various pieces of equipment and furniture relating to the grooming of dogs. The garage has an up and over door to the front, a top opening window on the shared access elevation and a door into the kitchen. The kitchen has an external door into the rear garden.
- 1.13 The dog boarding element is described as a maximum of two dogs in accordance with the dog boarding licence already issued to the applicant by the Council. However the applicant goes on to state that in addition to the two dogs that can be boarded, there may also be the applicant's own dog(s) or family dog(s) or a friend's dog(s) on the premises. The applicant states that the

maximum number of dogs allowed by her insurance is six dogs in her care at any one time.

- 1.14 The dogs that are boarded have full run of the house and either sleep downstairs at the owners request or upstairs in bed with the applicant.
- 1.15 Boarding dogs are bathed by the applicant before she will allow them in her bed and the applicant indicated during discussion that this would occur after all of her grooming appointments i.e. after 17:30, however, in the method statement submitted the applicant has stated that this would occur only during grooming hours of 09:30 to 17:30.
- 1.16 Boarding dogs have the full run of the garden. The applicant states that during grooming times boarded dogs are in the house with the back door open for exercise and ventilation. The kitchen door (between the garage and the kitchen) also kept open so that the applicant can hear the dogs. The applicant also states that she can supervise the dogs with the doors open, although if the dogs were anywhere in the house other than in the kitchen, they would not be visible to the applicant whilst grooming.
- 1.17 The applicant has stated there is a large dividing gate to segregate boarding dogs from the grooming area. This was not in place at the time of the officer site visit.
- 1.18 The applicant states that should any dogs in her care cause noise that may cause neighbours to complain that she immediately brings the dogs inside and closes the door. Further dogs are only mixed for play sessions under supervision.
- 1.19 When the boarding dogs are walked the applicant uses the gate to the rear garden to access the shared access path to exit the property.
- 1.20 The owners of boarding dogs drop off and collect their dog(s) at the front door between 09.30 and 17.30 hours. The applicant has stated that if this is not possible then she will deliver the dog(s) to their home, or offer another date for collection. During implementation of the temporary permission for the dog grooming element owners of dogs have been dropping their dogs off at the rear gate via the shared access path.
- 1.21 **PLANNING HISTORY**  
DC/16/01029/COU Change of use from garage to a dog grooming salon (retrospective) Granted Temporary Permission on 14 November 2016 for a six month period that expired 14 May 2017

## **2.0 Consultation Responses:**

None

## **3.0 Representations:**

- 3.1 Neighbour notifications were carried out in accordance with formal procedures introduced in the Town and Country Planning (Development Management Procedure) (England) Order 2015.
- 3.2 Nine letters of representation have been received from neighbours. One letter is in support of the proposal as the neighbour considers local businesses should be encouraged.
- 3.3 Eight of the letters, four from two residents, object to the development due to:
- the dog grooming salon commenced without permission;
  - temporary permission granted with restrictions which have been disregarded by working over the hours and public holidays and as the number of dogs at the premises at any one time has been in excess of what was allowed;
  - Noise and disturbance as the meet and greet takes place at the rear gate so neighbours can hear clients and dogs arriving, ringing the doorbell installed on back gate and discussions regarding style time for collection. This can be repeated 4 to 5 times a day. Noise is also generated from the dryer, water running, dogs that bark, cry, whinge and yap;
  - Increased traffic;
  - Insufficient parking resulting in clients frequently parking on the pavement;
  - The dog boarding business should not be allowed as this is 24-7 operation;
  - dogs are allowed to roam in the garden during grooming appointments and while awaiting collection, owners sometimes also stay during grooming appointments, resulting in overlooking, loss of privacy resulting in an unwillingness to use objector's own garden;
  - doggy play days advertised on the applicants facebook page;
  - Difficulty using shared access path – as this is used by strangers and they may meet an aggressive dog. Security concerns due to increased activity around garden access gate;
  - The business is inappropriate in a residential area.

#### **4.0 Policies:**

NPPF National Planning Policy Framework

NPPG National Planning Practice Guidance

DC2 Residential Amenity

ENV3 The Built Environment - Character/Design

ENV61 New Noise-Generating Developments

CS13 Transport

CS14 Wellbeing and Health

CS15 Place Making

**5.0 Assessment of the Proposal:**

The main planning considerations of this proposal are the principle of the mixed use, the impact of noise and disturbance upon residential amenity, access and parking.

**5.1 PRINCIPLE**

Following a complaint from a neighbour that a business was operating from a dwelling a planning application was invited by enforcement officers and this was received in September 2016 (DC/16/01029/COU).

5.2 A temporary planning permission DC/16/01029/COU was granted dated 14th November 2016 for a 6 month period so that the principle of the business operating from a dwelling in a residential area could be tested as a trial run. This permission expired on the 14th May 2017.

5.3 During the 6 months period of the applicant operating her business under the temporary permission DC/16/01029/COU, the applicant has been in breach of condition 3 that states:

"The opening hours of the premises shall be restricted to between 9.30 and 17.30 Monday to Saturday and between 9.30 and 16.00 on Sundays and at no time on Public Holidays or as may be otherwise approved in writing by the Local Planning Authority.

**Reason**

To ensure that no disturbance is caused to neighbouring properties as a result of unreasonable operating hours at the premises and to accord with Saved UDP policy DC2 and CSUCP policy CS14."

5.4 The applicant had taken bookings and groomed dogs on both the 16th April 2017 (Easter Sunday) and 27th December 2017, both of which were Public Holidays.

5.5 This current application DC/17/00428/FUL received on the 4th April 2017 initially proposed the renewal of that temporary permission on a permanent basis but with extended operating hours. However, at the time the original application was invited by enforcement officers, they were unaware of the dog boarding licence. This came to light subsequently during the consultation process for the dog grooming use of the garage. Officers were of the opinion that the whole business operation should be considered as a mixed use of the site so that all of the material considerations could be taken into account and the applicant agreed to a change of the description to reflect the mixed use.

5.6 The dog grooming use of the garage of this domestic dwelling, falls under the definition of 'economic development' in the National Planning Policy Framework (NPPF), but it is not a 'main town centre use' (as per the Glossary).

The NPPF states that the Government is committed to securing economic growth in order to create jobs and prosperity and is also committed to ensuring that the planning system does everything it can to support sustainable economic growth with significant weight being given to the need to support economic growth through the planning system (paragraphs 18 and 19).

5.7 As this is not a main town centre use, it is not subject to the sequential approach to location that would otherwise be expected.

5.8 This change of use could therefore be seen as an important first step in helping new business creation.

5.9 Given the above, the principle of the proposal could be considered to be acceptable and in accordance with the NPPF subject to all material considerations.

#### 5.10 RESIDENTIAL AMENITY

In relation to residential amenity impacts, it is considered that there are four elements to consider:

- 1 the number of dogs at the property
- 2 the noise arising from both of the business uses;
- 3 the extended hours of operation proposed; and
- 4 the effect on access to the neighbours' property.

#### 5.11 Number of Dogs

Taking the dog grooming element of the business first, even if all five dogs with grooming appointments (the number indicated by the Applicant in the submitted method statement) were present on site all day, it is not considered that the numbers of dogs present on the site for grooming would give rise to unacceptable levels of noise or disturbance beyond that which could potentially be expected from dogs housed at a residential property.

5.12 However, when the dog boarding element is considered in addition to the dog grooming, the number of dogs may exceed five when taking into account the applicant's own/ friend's dogs. Thus as described by the applicant, it is considered the numbers of dogs on site at any one time could go beyond what would be expected from a residential property. In addition, objections have been received from neighbours that state that the current level of activity is resulting in a range of detrimental impacts on their residential amenity including, noise, disturbance and loss of privacy, as well as inconvenience and security concerns.

5.13 In a recent appeal in South Tyneside that was allowed subject to conditions, the Inspector's decision, in similar circumstances for dog grooming set the maximum number of dogs that was acceptable at a property at a maximum of five.

5.14 Taking this recent case law into account, if the number of dogs is restricted to a maximum of five, the number of dogs in itself is not a concern, as this could be

that which could potentially be expected from dogs housed at a residential property.

5.15 Noise from Business Uses

The applicant has stated that the rear door of the house and the garage / kitchen door and the window to the shared access path are all open during grooming for ventilation. The noise generated by water running to wet and rinse dogs during bathing, and the dryer to dry off the dogs once trimmed, may not exceed a British Standard acceptable noise level, however, the neighbours have become sensitised to these noises as they occur almost every day between the hours of 09:30 and 17:30 hours. This far exceeds the noise and disturbance that would be generated in washing and grooming of five dogs housed in a residential property.

5.16 In addition, the wheelie bins of No.9 Thirlmere are stored on the shared access path and the rear gate is used to access them. Neighbours have complained that some of the dogs that are being groomed bark when they use the bins, and this is more noticeable because the window of the garage is open for ventilation, as stated by the applicant in the method statement.

5.17 The operation of the business, as outlined by the Applicant, where the rear door of the house is open so that boarding dogs have a free run of the garden and house whilst the Applicant is in the garage behind a secure gate grooming other dogs, is not considered to provide adequate supervision of the boarding dogs in terms of controlling noise. It is inevitable that if the boarding dogs are barking in the garden, whether in response to the neighbours using the shared access path or for some other reason, there will be a delay in the Applicant coming out into the garden to control the barking dogs, as the dog being groomed will first need to be secured, the secure gate opened and then the Applicant would be able to deal with the barking dogs. It is considered that this will result in unacceptable noise and disturbance to neighbouring properties. A further noise concern in relation to the dog boarding is that the applicant has stated that she washes the boarding dogs and this occurs after the dog grooming appointments, although the Applicant has stated that this would occur within the hours that have been applied for as part of this application.

5.18 Hours of Operation sought

The application seeks permission for the dog grooming element to operate between the hours of 09:30 to 18:00 Monday to Saturday and 10:00 to 17:00 on Sundays including Bank Holidays except for Christmas Day and New Years' Day.

5.19 These hours represent an extension of the hours restricted by condition, as originally applied for, on the temporary permission DC/16/01029/COU. The hours now applied for are considered would have a harmful impact upon the neighbours' enjoyment of their property. If planning permission were to be forthcoming, the hours for proposed appointment times for the dog grooming operation could be controlled by imposition of a condition limiting the operation of the dog grooming business to hours. The case law referred to above has been used as a guide and the condition the inspector imposed in that case,

restricted the dog grooming business to between 09:00 and 16:30 on Mondays to Fridays, and at no time on Saturdays, Sundays or Bank Holidays. These hours, if planning permission were to be forthcoming, would be considered to be acceptable in terms of residential amenities, both reasonable and enforceable.

5.20 Access to business and neighbouring property

In terms of the comings and goings associated with the business use, it is considered that use of the shared access path for dog grooming delivery and collection, and the applicant taking boarding dogs out for walks, via this route, is unacceptable, as the neighbours who share the path cannot use it without first checking whether they will come face to face with dogs in this enclosed space between the garages. Dogs in this situation would be likely to be anxious, entering a path where the only escape is behind them, and to a property where they are to be groomed/ or boarded. This may result in aggressive behaviour. Use of the shared access path for the purposes of the dog grooming and for walking of boarding dogs is considered to have an unacceptable harmful impact upon residential amenity.

5.21 However, it is considered that the comings and goings associated with the business uses would not amount to a level that would cause harm or disturbance to occupiers of adjacent residential properties if they were restricted to the front door of the application property, and if they were during hours considered to be reasonable.

5.22 The applicant has subsequently stated that all dogs would use the front door to address this concern. It is considered that this would be extremely difficult to enforce and also unreasonable to impose as a condition as it would restrict the domestic arrangements of the applicant.

5.23 In conclusion of the assessment of the residential amenity impacts, it is considered that the occupants of No. 9 Thirlmere are entitled to be able to enjoy their property. At the moment with the dog grooming and the dog boarding they are not able to enjoy their property, due to the noise and disturbance and due to the constraints imposed on their use of the shared access path.

5.24 Given the above the proposal is considered to have a harmful impact on the residential amenities of the neighbouring properties contrary to the NPPF, Saved UDP policy DC2 and CSUCP policy CS14.

5.25 ACCESS AND PARKING

There is a good level of on-street parking available along this street, due mainly to there being no properties to the opposite side of the road (eastern side of Thirlmere). Any parking generated by the proposal should be easily accommodated on-street and there are no highway safety problems foreseen.

5.26 Given the above the proposal is considered to be acceptable in highway terms and in accordance with CSUCP policy CS13.

5.27 OTHER MATTERS



The plans as submitted relate only to the dog grooming operation in the garage.

- 5.28 Concerns have been expressed by a neighbour that the deeds of the property's record that occupants are unable to run a business from them. This is not a planning consideration. The Local Planning Authority does not benefit from the covenant. It is a civil matter to be taken up with the beneficiary of the covenant by the resident.
- 5.29 Another neighbour has concern that the use will affect Property Value. Again this is not a planning consideration.
- 5.30 As a consequence of the applicant operating her business from a residential property the relationship with the neighbours at No.9 Thirlmere has completely broken down. The neighbours have erected a CCTV camera on the front elevation pointing towards the drive and the rear elevation of the property onto the shared access path for the neighbours own safety and peace of mind.
- 5.31 The officer offered the Council mediation services to the applicant in an attempt to redress the break down with her neighbours; details were provided to the Mediation officer, however, the service has not yet been accessed.

## **6.0 CONCLUSION**

- 6.1 The principle of a small business operating from a dwelling is in accordance with the NPPF.
- 6.2 The proposal does not generate any highway concerns and the proposal would be in accordance with CSUCP policy CS13.
- 6.3 The presence of up to five dogs on site at the same time all day, would not give rise to unacceptable levels of noise or disturbance from the dogs beyond that which could potentially be expected from dogs housed at a residential property. However, the noise generated by the comings and goings, washing and drying of the dogs every day, all day, in association with the dog grooming activities and dog boarding does result in noise and disturbance that is harmful to the residential amenities of the neighbouring properties.
- 6.4 Controlling use of the shared access path by the dog grooming customers is considered to be both unenforceable and unreasonable and therefore fails to meet the tests for the use of planning conditions. Therefore use of the shared access path is considered to be harmful to the neighbours' enjoyment of their property and is therefore contrary to CSUCP policy CS14 and Saved UDP policy DC2.
- 6.5 With regard to the case law referred to earlier, even if the dog boarding was omitted from the application, it is not considered that this would ensure that the resulting proposal for the dog grooming only would not have an unacceptable impact on the living conditions of occupiers of nearby properties.

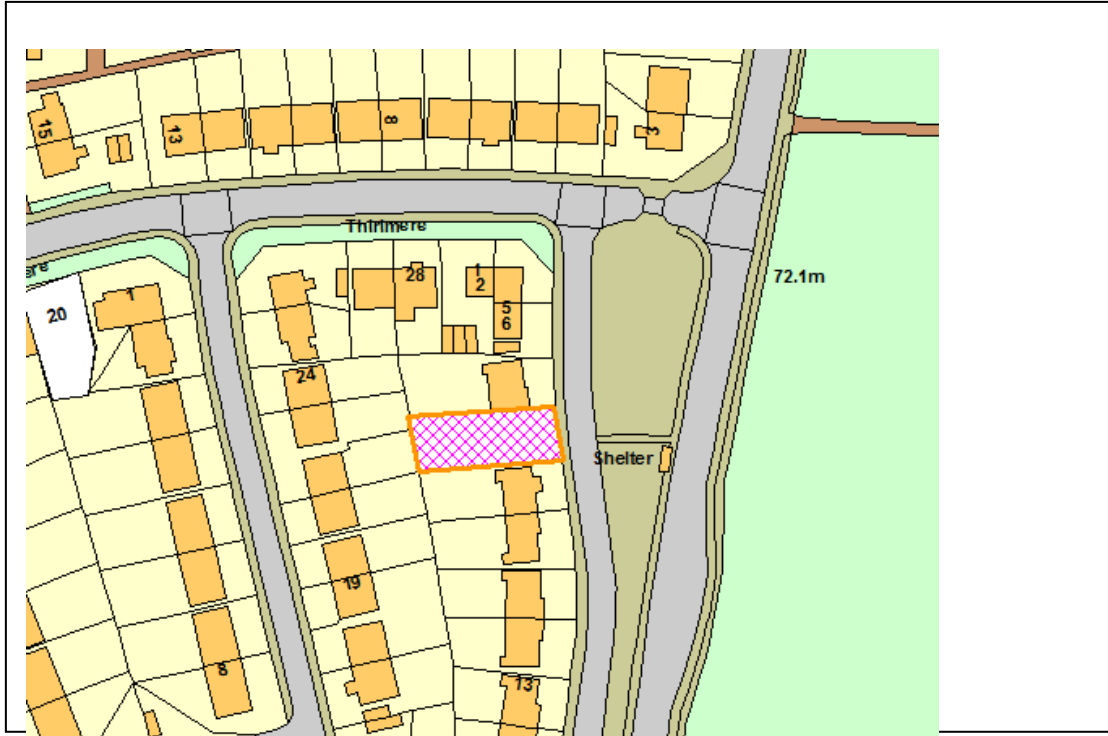
- 6.6 Residents have raised concerns regarding noise and disturbance in relation to early morning comings and goings arising from dogs being dropped off at the premises, and late in the evening collections of boarding dogs. Appropriate control over the hours of operation by imposition of a condition would be reasonable so as to avoid unacceptable harm to living conditions, if planning permission were to be forthcoming.
- 6.7 However, the proposed mixed use of the dwelling in this residential area overall is considered to have an unacceptable, adverse and harmful impact upon the living conditions of occupiers of nearby properties, with particular regard to noise and disturbance in conflict with CSUCP policy CS14 and Saved UDP policy DC2.
- 6.8 Despite the emphasis in the NPPF towards economic development and in the light of evidence of harm to residential amenity, it is recommended that on this occasion planning permission be refused.

**7.0 Recommendation:**

That permission be REFUSED for the following reason(s):

1

The noise and disturbance, lack of privacy and overlooking and security concerns arising from the business uses, coupled with extended hours of operation, to include later in the evening and public holidays, are such that the impact upon residential amenity of neighbours is unacceptably detrimental. The development is thus contrary to the NPPF, policy CS14 of the CSUCP and saved policy DC2 of the UDP.



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