

Appeal Decision

Site visit made on 6 September 2016

by Beverley Wilders BA (Hons) PgDurp MRTPI

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

Decision date: 4 October 2016

Appeal Ref: APP/Q4245/W/16/3152560

Thorley Lane Nursery, Thorley Lane, Timperley WA15 7AL

- 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 Michael Riley against the decision of Trafford Borough Council.
 - The application Ref 87173/COU/15, dated 18 November 2015, was refused by notice dated 10 June 2016.
 - The development is described as to change from mixed use (agricultural and retail) to a dog day care centre with some training classes (1 night per week). For the last three years site part used by Paws for Thought dog walking business as a private field for dog walking (as advertised on website). We wish to expand on this in a more structured way, and have a properly insured well run small day care centre.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Though the planning application form states that the change of use had not already commenced at the time of the application, at the time of my visit the site was in use as a dog day care centre.
3. The appellant has questioned whether the development requires planning permission. However, this is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990. It is open to the appellant to apply to have the matter determined under sections 191 or 192 of the Act. Any such application would be unaffected by my determination of this appeal.

Main Issues

4. The main issues are:
 - Whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
 - The effect of the development on the openness of the Green Belt and on the purposes of including land within it;
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- The effect of the development on the living conditions of the occupiers of adjacent residential property having regard to noise and disturbance;
- If the development is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether the development is inappropriate development

5. The appeal site comprises part of a former plant nursery. It contains a number of polytunnels, a log cabin and a timber shed together with an access track, parking and turning areas. The appeal site is located in the Green Belt.
6. Paragraph 90 of the National Planning Policy Framework (the Framework) states that the re-use of buildings, provided that the buildings are of permanent and substantial construction, is not inappropriate in the Green Belt. This is subject to the openness of the Green Belt being preserved and to no conflict with Green Belt purposes. Policy R4 of the Trafford Local Plan – Core Strategy (CS) states that the Council will protect the Green Belt from inappropriate development and will only permit new development where it meets the criteria listed in the policy.
7. At the time of my visit, which was on a warm and sunny day, I saw that the timber cabin and the majority of the polytunnels were in use in connection with the dog day care centre. The cabin was in use as an office, for storage and for staff facilities and some of the polytunnels and areas surrounding them were in use as dog compounds. I noted that the polytunnels comprise plastic sheeting supported by metal pole frames with some timber framing around the door openings. The plastic sheeting had been removed from one of the polytunnels. The polytunnels appear to have unmade floors with some of the floors being covered in loose wood chippings. Having regard to the form and method of construction of the polytunnels I consider that they are of a temporary and lightweight nature and are not of a permanent and substantial construction. The development is therefore inappropriate development in the Green Belt and is contrary to paragraph 90 of the Framework and to CS Policy R4.

Openness and Green Belt purposes

8. A fundamental aim of Green Belt policy, as set out in paragraph 79 of the Framework, is to keep land permanently open. Openness can be considered as meaning an absence of built or otherwise urbanising development.
9. The development does not involve the construction of any new buildings. However the Council has expressed concerns that the development has increased urbanisation and reduced openness due to an increased level of activity on the site, the erection of fencing and the formation of landscaping including flower beds. Though I note and have had regard to the Council's concerns, given the previous use of the site as part of a plant nursery and based on the available evidence, I do not consider that any increase in activity associated with the development is likely to be material and harmful to openness or Green Belt purposes.

10. Similarly whilst some fencing has been erected and some limited planting carried out on site, having regard to the temporary nature, height and open design of the fencing and to the previous use of the site, which may well have included ornamental planting displays, I do not consider that these aspects of the development are harmful to openness or conflict with Green Belt purposes. However despite my findings on openness and Green Belt purposes, for the reasons outlined above, the development is inappropriate development in the Green Belt.

Living conditions

11. A residential bungalow is located very close to the appeal site. The common side boundary between the bungalow and the site is marked by a combination of timber fencing, sheeting and hedging and there are some existing conifers on the appeal site near to the boundary with the bungalow. A number of windows are located in the side elevation of the bungalow facing directly towards the site, the top of which are visible above the boundary fence adjacent to the bungalow. Land to the rear of the bungalow appears to be in use as a garden.
12. The Council and the occupier of the bungalow together with other interested parties have expressed concerns regarding the amount of noise and disturbance associated with the use of the site as a dog day care centre. I am advised by the Council that the appeal site is the subject of an ongoing noise complaint and I note that the Council's Pollution and Licensing Team have raised concerns regarding the impact of the proposal on the living conditions of the occupiers of neighbouring residential properties.
13. The planning application form states that the hours of opening are 07:00 to 19:00, Monday to Friday with training one evening 18:00 to 21:00 and 10:00 to 16:00 on Saturdays with no opening on Sundays or Bank Holidays. The appellant has stated a willingness to be subject to more restrictive hours of 07:00 to 18:00 Monday to Friday only if necessary. No noise reports were submitted with either the planning application or the appeal but the appellant states that several measures are employed on site to keep all dogs as quiet as possible and that dogs have been prevented from coming to the site because they bark excessively. I also note that some noise monitoring was carried out by the Council but it is unclear from the submitted information whether or not the Council consider the noise emanating from the site to be a statutory nuisance. In any event, the statutory nuisance test involves a different assessment to a planning assessment of the impact of the development on the living conditions of adjacent property.
14. At the time of my visit there were a number of dogs on the site and it appeared that approximately 3 to 4 dogs were being supervised per staff member. Whilst there was some dog barking during my visit, this was fairly limited and any barking was quickly stopped by the intervention of a staff member. However in the absence of any substantive evidence regarding noise and notwithstanding the measures employed by the appellant and the limited noise heard at my visit, I consider that the unpredictable and intermittent nature of dog barking is such that the use of the site as a dog day care centre is likely to give rise to an unacceptable level of noise and disturbance to the occupiers of the adjacent bungalow. This is having particular regard to the proximity of the bungalow to the site which means that any barking is likely to cause a

significant level of disturbance. I do not consider that the fact that the noise would occur during the day when occupiers of residential property might be at work or school or the fact that the barking might be short lived means that the impact of the noise and disturbance is acceptable.

15. Though I note the previous commercial use of the site and other commercial uses nearby, the existence of a busy road and the keeping of poultry and livestock in the immediate locality, I do not consider that this means that the impact of noise and disturbance on the occupiers of the bungalow would not be material. This is largely due to the nature of the particular noise resulting from dog barking which is different to other noise sources in the locality. I do not consider that a reduction in the opening hours suggested by the appellant would overcome the adverse impact on living conditions identified.
16. Taking the above matters into consideration, I conclude that the development would have a significant adverse effect on the living conditions of the occupiers of adjacent residential property having regard to noise and disturbance. It is therefore contrary to Policy L7 of the CS. This policy states, amongst other things, that development must be compatible with the surrounding area and must not prejudice the occupants of adjacent properties by reason of noise and/or disturbance.

Other considerations

17. The application form states that the development employs the equivalent of four full time staff and I note that the development also provides volunteering opportunities. It therefore provides some modest economic and social benefits however it is unclear to what extent these benefits are directly linked to the development given that the appellant previously operated a dog walking business and therefore may have employed staff and used volunteers as part of that business. The development also appears to provide a valued service to customers based on the testimonials provided by the appellant.
18. I note that it is claimed that the appearance of the site has improved since being occupied by the appellant and I have been provided with a number of photographs of the site appearing to show the site prior to and after work being carried out. However from the available evidence any change in the appearance of the site appears to be fairly limited and as such cannot be said to be anything other than a minor benefit of the development.

Conclusion

19. Paragraph 87 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 states that substantial weight should be given to any harm to the Green Belt and very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
20. The development is inappropriate development in the Green Belt and it would have a significant adverse effect on the living conditions of the occupiers of adjacent residential property having regard to noise and disturbance.
21. There are some limited economic and social benefits arising from the development. However I find that the other considerations in this case do not

clearly outweigh the harm that I have identified. Consequently the very special circumstances necessary to justify the development do not exist.

22. Whilst I acknowledge the appellant's attempts to operate a well-run business and to address any concerns raised by either the Council or nearby residents and organisations/businesses, for the reasons outlined above, I consider that the development results in harm to the Green Belt and to the living conditions of adjacent occupiers.
23. The development is contrary to relevant paragraphs of the Framework and to CS policies R4 and L7 and having regard to all matters raised, I conclude that the appeal should be dismissed.

Beverley Wilders

INSPECTOR