



Appeal Decision

Site visit made on 26 June 2019

by I A Dyer BSc (Eng) MIHT

an Inspector appointed by the Secretary of State

Decision date: 26 July 2019

Appeal Ref: APP/N0410/W/18/3215365

Land Adjoining Huntercombe Spur, Huntercombe Lane South, Burnham, Buckinghamshire

- 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 Slough Borough Council against the decision of South Bucks District Council.
 - The application Ref 17/01239/FUL, dated 29 June 2017, was refused by notice dated 4 May 2018.
 - The development proposed is described as: "The proposal is to use this bit of land as a dog recreation area involving approximately five agility stations constructed of mainly timber and earth. We are seeking advice from the Kennel Club Charitable Trust who have sent us some design ideas. It is also proposed that a timber shed and lattice screed car parking facilities, for 4 vehicles be provided at the entrance to the field [to the right of No 2 Oldway Lane]".
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application form provides no address for the site, only a grid reference, and so I have used the address provided on the Decision Notice to identify the site.
3. Following the Council's determination of the application, a revised version of the National Planning Policy Framework (the Framework) was published in July 2018. The Government made further revisions to the Framework in February 2019. The parties have had opportunity to comment on the implications for the appeal and I have assessed the appeal in accordance with the 2019 Framework
4. The Council has confirmed that, having received further comments from Slough Borough Council, who are the Local Highway Authority (the LHA) for the access, the concerns of the LHA have been fully addressed and I see no reason to disagree with that assessment. Consequently, the Council no longer wish to support the third Reason for Refusal.
5. The Council has confirmed that they have reassessed the proposal in regard to the provisions of the revised Framework with regard to development in the Green Belt. I will return to this matter later.

Main Issues

6. In light of the Council's decision not to defend the current appeal in relation to Reason for Refusal three the main issues are: -
- Whether, or not, the proposal would be inappropriate development in the Green Belt having regard to the Framework, and the effect on the openness of the Green Belt,
 - The effect of the development on the living conditions of the occupiers of neighbouring properties having particular regard to noise, and:
 - If inappropriate development, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether Inappropriate Development

7. The appeal site is an area of land between the Huntercombe Spur Road, a busy dual carriageway road leading to and from the M40, and Oldway Lane. The site is currently a mixture of open grassland and overgrowth. During my site visit I did not observe any existing buildings or other structures within the site.
8. The Council has confirmed that they have reassessed the proposal in regard to the provisions of the revised Framework and that in the light of the changes to the Framework the Council considers that the proposed use of the site as a dog recreation area would not constitute inappropriate development in the Green Belt as they consider that the proposal would satisfy the constraints placed upon such changes of use by the Framework and no longer wish to defend the first Reason for Refusal.
9. The site lies within the Metropolitan Green Belt. Policy GB1 of the South Bucks District Local Plan (2009) (the Local Plan) restricts the construction of new buildings within the Green Belt to development for agriculture or forestry, essential facilities for outdoor sport, outdoor recreation or outdoor leisure, cemeteries, replacement of existing dwellings and limited infilling in existing villages, all of which must be in accordance with other policies within the Local Plan; mineral working and subsequent restoration of the land, in accordance with the policies in the Buckinghamshire Replacement Minerals Local Plan; and other uses of land and essential facilities for them which would not compromise the purposes of including land in the Green Belt and which would permanently retain its open and undeveloped character.
10. Paragraph 146 of the Framework advises that material changes in the use of land, such as changes of use for outdoor sport or recreation should be regarded as not inappropriate development in the Green Belt, whilst Paragraph 145 provides an exception to the construction of new buildings being inappropriate in the Green Belt for the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation. However, both include the caveat that such development must preserve the openness of the Green Belt and not conflict with the purposes of including land within it.

11. Whilst the appellants refer to buildings within the site, both my observations on site and the Planning Officer's report do not identify the presence of any buildings or significant structures. The development proposal would involve construction of a shed, acting as a reception for the proposed use, and several structures that would be constructed within the site for the training of dogs.
12. The revised Framework identifies that the fundamental aim of the Green Belt is "to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence". Whilst there is no dispute that the plot could accommodate the buildings and structures as proposed, they would nonetheless be additional structures. The Green Belt has both a spatial and a visual dimension. The increase in built form on the site would result in a loss of openness which is a separate issue from the character and appearance of the area. By virtue of the overgrowth within and around the site views into, and out of, the site are limited from the public realm. Houses on Oldway Lane have rear elevations containing windows on the upper floors that would have views into the site, albeit that these views would be limited by existing vegetation. The fact that the proposal would be well screened from the public realm and the wider countryside does not affect my findings in respect of the effect on openness.
13. I conclude that the proposal would amount to inappropriate development in the Green Belt having regard to the Framework, and the effects on the openness of the Green Belt. The proposal is therefore contrary to Policy GB1 of the Local Plan and Section 13 of the Framework.

Living conditions of neighbours

14. Houses on Oldway Lane have rear elevations and gardens, facing towards the site. Occupiers of the properties with rear gardens closest to the appeal site experience steady background noise from the Huntercombe Spur. Further, the site lies beneath a flight path for aeroplanes approaching Heathrow Airport and which provides an intermittent additional noise source.
15. During the periods of operation of the proposed training facility occupiers of the rear gardens would experience additional noise from up to ten dogs barking and the oral control of dog trainers associated with the proposal.
16. The level of background noise generated by the road, while of more constant nature, would be expected to vary during the day, and from day-to-day. Dog barking is likely to be more intermittent. Occasional, intermittent, or sudden noise is more likely to disturb residents in their gardens than general background noise. There is little information provided regarding the overflying by aircraft during the periods of monitoring.
17. The information provided by the report is not sufficient to establish the levels of background noise over the day, or week, due to the limited period of monitoring. No opening hours have been provided by the appellants, but it would be expected that such a facility as that which is proposed would be popular outside of normal working hours, when people are available for leisure-related and other pursuits. In a similar way it would also be expected that occupants of Oldway Lane would be more likely to use their gardens during the evenings and at week-ends, particularly to enjoy their outdoor amenity space, and, without noise data relating to these periods it is not possible to assess the effect of the proposal fully. The number of dogs used to simulate generated

noise was much smaller than the maximum number intended to use the facility at any one time. There is little information regarding the breeds of dog used to generate noise and volume and pitch would, together with barking behaviour, vary with breed.

18. Whilst I understand that the appellants have made efforts to simulate a realistic level of noise generated by the use and its impact upon occupants of the rear gardens of Oldway Lane I am not satisfied that the modelling and assessment of the disturbance to users of the rear gardens of Oldway Lane is sufficient to demonstrate that the proposed use will not have a harmful and unacceptable impact on the amenities of the surrounding residential properties. Future occupants of the properties may experience unacceptable noise and disturbance in their private outdoor amenity space. This noise would be particularly disturbing as it would take place at irregular intervals, including during times when the occupants are most likely to be enjoying their outdoor amenity space.
19. The appellants have proposed additional tree planting to mitigate the impact of noise on occupiers of the garden of 2 Oldway Lane. Whilst such planting could be provided by planning condition, I am not satisfied that such measures would, of themselves, be adequate to mitigate the harm identified, as new planting would take time to establish itself and there is no substantive evidence before me that sufficient screening would be achieved to address the adverse impact successfully.
20. I have considered whether the proposal could be made acceptable by the imposition of a planning condition restricting hours of use. However, it is likely that peak demand for the facility would coincide with peak use of the resident's gardens for leisure use and so the effect of such a condition would restrict the proposed use to an unreasonable degree.
21. I conclude, on the basis of the evidence before me, that the appeal scheme would cause material harm to the living conditions of the occupiers of neighbouring properties. The development is, therefore, contrary to Policy EP3 of the Local Plan which, amongst other things, requires that development should not adversely affect the amenity of any nearby properties.

Other considerations

22. The development would provide benefits in terms of bringing back into use a piece of land that would otherwise stay unused and derelict. The landscaping of the land would improve the visual amenity of the area whilst active use of the land would also increase natural surveillance of the site and reduce the risk of the land being misused and attracting antisocial behaviour. The proposal would provide an outdoor recreational facility for the use of local people. There would be likely minor benefits to the local economy in terms of short term employment in the construction industry and longer term employment in association with the proposed use.
23. The appellants have carried out a series of consultation exercises that indicated a mixed attitude to the development amongst the local community, although with a majority in support. I note that the Parish Council has not objected to the proposal. Taken together these benefits carry moderate weight.

Conclusion

24. The revised Framework establishes that substantial weight should be given to any harm to the Green Belt and that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I have not identified any benefits which would clearly outweigh the harm to the Green Belt by reason of inappropriateness and the living conditions of occupiers of neighbouring properties. Consequently, the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist.
25. The proposal is therefore contrary to Policy GB1 of the Local Plan (1999), in as much as the development would compromise the purposes of including land in the Green Belt and would not permanently retain its open and undeveloped character. Similarly, the development is contrary to the aims of the Framework which seeks to protect the Green Belt from inappropriate development. The proposal is also contrary to Policy EP3 of the Local Plan, which seeks to protect the amenity of any nearby properties.
26. For the reasons given above the appeal should be dismissed.

I Dyer

INSPECTOR