
Appeal Decision

Site visit made on 14 October 2019

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th November 2019

Appeal Ref: APP/N4720/W/19/3231578

Land at Stone Mill Way, Meanwood, Leeds, West Yorkshire LS6 4LA

- 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 Teds Dogs Ltd against the decision of Leeds City Council.
 - The application Ref 18/04941/FU, dated 26 July 2018, was refused by notice dated 13 February 2019.
 - The development proposed is the change of use of land to form a dog day care centre to include the erection of a reception/administration hub, and a scheme of hard and soft landscaping works and erection of fencing to provide secure all-weather dog walking, exercise and training facility.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant has raised concerns with the Council's handling of the case and in particular the lack of communication during the time the application was being determined and how the Council dealt with supplementary information that was submitted. These are matters that would need to be taken up with the Council in the first instance and in determining the appeal I have only had regard to the planning merits of the case.
3. At appeal stage the appellant has submitted plans showing revisions to both the accesses. I am normally required to deal with an appeal on the basis of the same plans that informed the Council's decision. Bearing in mind the 'Wheatcroft' principles, as I cannot be certain that all who should be consulted on the revised plans have been, and would not be prejudiced by a revised scheme, I consider that it would not be appropriate for me to take these revised drawings into account.
4. The appellant has also suggested that rather than being for up to 150 dogs the number of dogs permitted on the site should be determined by the licencing conditions set by the Animal Welfare Team. However, such a condition would fail the test of precision and so such an approach would be inappropriate. Therefore, I have determined the appeal on the basis that it was applied for.
5. In September 2019 the Core Strategy Selective Review was adopted. However, the Selective Review did not cover any issues or alter policies that are relevant to this appeal. As such, I did not consider it necessary to consult the parties as to whether the adoption of the plan had any implications for this appeal.

Main Issues

6. The main issues in the appeal are:

- Whether or not the proposal is inappropriate development in the Green Belt for the purposes of the development plan and the *National Planning Policy Framework* (the Framework), having regard to the effect of the proposal on the openness of the Green Belt and the purposes of including land within it;
- The effect of the proposal on highway and pedestrian safety;
- The effect of the proposal on the living conditions of nearby residents with particular regard to noise and disturbance; and
- if the proposal 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 it.

Reasons

Whether inappropriate development, openness and purposes

7. The site is located within the Green Belt as defined by *Leeds Unitary Development Plan Review 2006 (adopted July 2006)* (UDP). The Council has also indicated that within the development plan the former cricket pitch is allocated as outdoor recreation and the rest of the site as amenity greenspace. Policy N33 of the UDP indicates the types of developments that may be acceptable within the Green Belt. Similarly, paragraphs 145 and 146 of the Framework set out the forms of development that are not inappropriate within the Green Belt.
8. Whilst the criteria within the UDP policy are similar to those in the Framework, the Framework includes additional criteria, and so in this respect the UDP policy is not fully consistent with the Framework. In such circumstances, paragraph 213 of the Framework indicates that policies in existing plans should be given less weight.
9. The site was formerly used as a cricket ground and it is common ground that it has not been used in this way for a considerable number of years. The majority of the site is fenced off preventing any public access to it and the site is unused and the vegetation overgrown. Whilst I note the Council's argument that this former use has been abandoned, this suggestion is not for me to determine in the context of this appeal. The proposal seeks the change of use of the land to a dog day care centre.
10. Both the Framework and Policy N33 of the UDP indicate that changes of use of land are not necessarily inappropriate. This is conditional on the use preserving the openness of the Green Belt and the purposes of including land within it. These are matters I address below.
11. The proposal would also involve the construction of a new building that would act as a reception / administration hub for the enterprise. This would be located on the site of an existing building on the site which both parties state was the former pavilion / clubhouse for the cricket club. This building is in a poor state of repair. It is indicated by the appellant that the proposed building would occupy a similar footprint to the former clubhouse.

12. The Framework indicates that new buildings in the Green Belt are inappropriate unless they are for one of a small number of exceptions. This includes the provision of appropriate facilities (in connection with the existing use of land or changes of use) for uses including outdoor sport and outdoor recreation as long as the facilities preserve the openness of the Green Belt and the purposes of including land within it.
13. The appellant has argued that as walking a dog is a form of outdoor recreation and the main purpose of the use would be to exercise dogs, the use would be a form of outdoor recreation. However, whilst taking a dog for a walk may constitute a recreational activity for the owner, this is not creating a facility to enable people to walk their dogs but is a commercial enterprise providing day care for dogs. As such, I am not persuaded that it constitutes an outdoor recreational use, even if the dogs would be exercised whilst they are at the site. Given this conclusion, the proposed reception building would not fall into this criterion.
14. However, even if I were to accept the appellant's argument that this would be an outdoor recreational use, exercising or walking dogs does not generally require any facilities in order for it to take place other than open space. As such, the proposed building would not be an appropriate facility supporting an outdoor recreational use. In my mind this underlines the fact that the use is not a recreational one.
15. Paragraph 145 of the Framework also indicates that new buildings may not be inappropriate if they are replacement buildings, providing the new building is in the same use and not materially larger than the one it replaces. However, even if I were to conclude that the building would not be materially larger than the clubhouse, given my conclusion regarding the nature of the use, I consider that a reception/administrative building for the business would not have the same use as the former clubhouse for the cricket club.
16. The appellant has also argued that the proposal would represent the redevelopment of previously developed land and so can be considered under part (g) of paragraph 145 of the Framework. Nevertheless, the definition of previously developed land given in Annex 2 of the Framework, specifically excludes recreation grounds in urban areas. Whilst a cricket ground could be said to be a sports ground rather than a recreation ground, the list given in the definition is not a closed list and sports grounds generally have similar characteristics to the types of uses listed.
17. As a former cricket ground the vast majority of the site has not been built on and therefore would not constitute previously developed land. Whilst I understand the site previously had a car park close to the clubhouse, I observed that this was no longer visible but had blended into the vegetation. The Framework definition excludes such land from the definition of previously developed land too. Moreover, the clubhouse, although semi-derelict, was an ancillary building to the sports facilities. Consequently, I am not persuaded that the site is previously developed land.
18. Nevertheless, even if I were to accept the appellant's argument that it is previously developed land it would only not be inappropriate if it would not have a greater impact on the Green Belt than the existing development. This is a matter that I will now turn to consider.

19. Openness is an essential characteristic of the Green Belt. It can be taken as the absence of buildings and development. At present, apart from the former clubhouse building and a storage container which is largely hidden by vegetation the site is open land. There is some evidence of fencing around the boundary of the site, but the majority of this is temporary "Heras" type fencing being utilised to secure the site and prevent access on to it.
20. The proposed single storey building would be located in a similar position and would have a similar footprint to the former clubhouse building on the site. However, the container would be relocated and being less hidden by overgrown vegetation, it would be a more prominent feature on the site.
21. The layout plan indicates that the site boundary would be enclosed with high post and mesh fencing. Additionally, slightly lower post and rail fencing would be used to enclose a retention basin and either side of the beck that runs through the site to prevent the dogs accessing it. The proposal would also create various enclosed exercise and training areas for the dogs as well as semi-enclosed wildflower and meadow areas.
22. Each exercise area would have a timber shelter with a water butt. Details of this shelter are not provided and its exact function, but as it would appear to be the only shelter provided for the dogs during the day it would potentially be a fairly solid structure.
23. Furthermore, the proposal would have a car park adjacent to the reception building together with cycle parking for staff and visitors. A smaller car park would also be created close to the access from Stone Mill Approach. The main car park is likely to be occupied by vehicles for the majority of the day. A variety of paths and tracks across and within the site would also be created; the plans indicate that the majority of these would be grass paths, whilst the main path across the site would be crushed stone.
24. Although the mature trees and vegetation around the edges of the site would offer a degree of screening there are places along the footpaths that border the site where the views into, and across, the site are possible. Spatially the proposal would introduce fencing, shelters and car parks into areas where at present no development exists, and the fencing would create a much greater degree of enclosure within the site.
25. Whilst the main access path across the site may not be any higher than the surrounding land its crushed stone surface would make it visually apparent. As would be the case with the shelters, timber fencing, relocated container and the car parks.
26. Cumulatively, I consider the scheme would have an adverse impact on, and would fail to preserve, openness.
27. One of the purposes of Green Belt set out in paragraph 134 of the Framework is to prevent the unrestricted sprawl of large built-up areas. Even though there is no access or use of the site at present, it, together with Meanwood Park and the adjacent allotments provide a valuable open area within the valley, preventing the sprawl of the urban area and coalescence of different parts of the city. In failing to preserve the openness of the site, I consider the proposed development of the site would conflict with this purpose.

28. Therefore, overall the proposal would have a greater impact on, and would fail to preserve, the openness of the Green Belt. It would also be contrary to one of the purposes of including land within it. As a result, it would not fall into any of the exceptions given in paragraphs 145 or 146 of the Framework. Consequently, the proposal would be inappropriate development, which according to paragraph 143 of the Framework is, by definition, harmful to the Green Belt.

Any other harm

Highway and pedestrian safety

29. The main vehicular access would be the existing access on Hollin Drive, with a secondary access utilising an existing gated access from Stone Mill Approach. The main access would be utilised by staff only and it is envisaged that the majority of dogs would be collected from and returned to homes by staff in vans that could hold up to 15 dogs. Dogs brought to the site by owners would utilise the secondary access and it is proposed to create a small car park for this purpose. Both access points are single width tracks that are also public footpaths, and the access from Hollin Drive is also the access to the domestic property - Hollin Lane Farm and the nearby allotment site.
30. Whilst it is proposed to widen part of the main access to enable two vehicles to be able to pass, I note the concerns of the Council regarding the adequacy of the width of both the accesses and the potential for vehicles to have to wait on the highway should another vehicle be exiting the site. However, there would appear to be sufficient space to the side of each of the accesses to enable further widening to take place allowing 2 vehicles to pass and this could be dealt with by a condition.
31. Furthermore, given the lightly trafficked nature of the surrounding roads, even if a vehicle was required to wait on the highway whilst another exited the site, I am not persuaded that this would unacceptably harm highway safety especially given the limited time any vehicle would be required to wait.
32. Although only a snap shot in time, during my site visit, I observed that the public footpaths were well used. The plans show a separate pedestrian path alongside the vehicular access from Stone Mill Approach which would reduce the potential conflict between vehicles and pedestrians. Despite the shared nature of the access tracks, as they are relatively straight there would be good intervisibility between different users.
33. I note the Council's concerns regarding the ability of service vehicles to reach the site, especially given the need to cross the bridge over the stream whose structural integrity is questioned. However, the former use would have had service vehicles having to access the site, and the potential for widening the main access track would also assist in this. Conditions can also be used to ensure that the car park provides sufficient spaces that could accommodate the vans that would be used to bring dogs to and from the site.
34. Overall, I am satisfied that the proposal would not unacceptably harm highway and pedestrian safety. Accordingly, there would be no conflict with Policies T2 of the LCS and GP5 of the UDP which require developments to be provided with safe and secure access for all users and maximise highway safety.

Living Conditions

35. The proposed facility would cater for up to 150 dogs and would be open 7 days a week (apart from Bank Holidays) from 07:00 to 20:30 on weekdays and 09:00 to 17:00 at weekends. At both Hollin Drive and Stone Mill Approach there are a number of houses in close proximity to the site. Both these roads are lightly trafficked residential roads and I observed the ambient noise levels to be low.
36. The proposed use has the potential to create noise from both traffic and from the dogs themselves. A Noise Impact Assessment (NIA) was submitted as part of the application, which considered the noise from the dogs. The NIA recognises that there are no standards or guidance specifically designed for assessing a facility such as this. As a result, the appellant has stated that a methodology was agreed with Environmental Health.
37. The assessment used was based on a test with 12 untrained dogs in a similar sized space which were then extrapolated to model the likely impacts of 156 dogs. It concludes the facility would not have a significant adverse impact on any of the nearby residential properties and that the likely effect would be minimal.
38. In addition, it is highlighted that this is a worst-case scenario, as it is based on untrained dogs, whereas it is intended that all dogs would be assessed before they would be accepted onto this facility in order to rule out dogs that are pre-disposed to barking. Furthermore, dogs whose subsequent behaviour is considered unacceptable would not be allowed to continue to use the facility. The impact is also based on the loudest 15 minute measurement period.
39. I note that the main training and exercise areas would be located in the central area of the site, furthest away from the residential properties. The mature vegetation and trees that exist around the edge of the site, and which could be supplemented as part of a landscaping scheme, would also help to reduce the impact of any noise.
40. I note the Council's questions over the methodology utilised, and I agree that the appellant's intention of assessing dogs before they are accepted onto the site would not be something that could be controlled by way of a condition. Given this, and as any permission would run with the land not a person, there would be no way of ensuring that only well trained dogs were allowed on the site. The appellant has also suggested that a condition could be used to control noise levels on the site, but given this is an outdoor use, and you cannot control a dog barking in the way you can control a machine, I am not persuaded that this would be possible either.
41. Although the area and adjacent park are already popular with dog walkers, including professionals who may walk several dogs at once, the scale of this enterprise would result in a significantly greater number of dogs being present in a relatively small area. Thus, I consider the potential for noise and disturbance is much greater, particularly considering the opening hours.
42. All in all, notwithstanding the findings of the NIA, given these uncertainties, the unpredictability of animals and the inability to control noise levels satisfactorily by condition, I consider that there is the potential for the proposal to have a detrimental impact on the living conditions of those living nearby.

43. At present there is no vehicular traffic to the site but even if it is considered that the former use has been abandoned the council have accepted that there is potential for it to be used for outdoor activity/sport which would generate traffic movements to and from the site. Any such use could also operate 7 days a week and could attract traffic during the evenings and at weekends. Given this, and the location of the proposed car parks in relation to the houses, I am satisfied that any noise associated with traffic to and from the site would not unacceptably harm the living conditions of nearby residents.
44. Notwithstanding this, given my conclusion regarding the potential for noise and disturbance from the dogs, I consider that the proposal would have an adverse impact on the living conditions of nearby residents with particular regard to noise and disturbance. Therefore, it would be contrary to GP5 of the UDP which requires that developments should seek to avoid causing a loss of amenity.

Other considerations

45. The proposal would create a number of jobs, both full and part time, and would provide the opportunity to gain qualifications in dog handling. The construction and operation of the business would also bring benefits to the local economy. Additionally, it is highlighted that the building would utilise many sustainable construction techniques and that the business would utilise electric vans for the collection and delivery of the dogs and would compost waste materials. These are matters that favour the scheme but the weight I give them is limited as they would be common to the scheme wherever it was sited.
46. The landscape proposals and management plans would enhance the biodiversity and the appearance of the site. However, the weight of these benefits is only moderate as such improvements could also be gained through a scheme that was not inappropriate development.
47. My attention has been drawn to the fact that the Council have allocated another former playing pitch within the Green Belt in close proximity to this site for housing development. However, the appropriateness of this allocation would have been tested at the examination for that plan and is not a matter before me at this appeal. Moreover, this does not provide justification for allowing inappropriate development on this site.

Conclusion

48. The proposal would be inappropriate development in the Green Belt, which is harmful by definition. In accordance with paragraph 144 of the Framework, I attach substantial weight to the harm to the Green Belt. In addition, it would have an unacceptable impact on the living conditions of nearby residents. Whilst I have concluded that the proposal would not be detrimental to highway safety an absence of harm in this regard is a neutral matter. Overall, I consider that the benefits cited in the scheme's favour do not clearly outweigh the harm it would cause. Consequently, very special circumstances do not exist. As a result, the proposal would be contrary to the Framework and Policy N33 of the UDP. Therefore, I conclude that the appeal should be dismissed.

Alison Partington

INSPECTOR