
Appeal Decision

Site visit made on 28 July 2020

by Adrian Hunter BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd September 2020

Appeal Ref: APP/K3605/W/20/3245857

The Cottage, Pointers Road, Cobham KT11 1PL

- 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 D MacBryde against the decision of Elmbridge Borough Council.
 - The application Ref 2019/1634, dated 13 June 2019, was refused by notice dated 13 September 2019.
 - The development proposed is retrospective planning application for the use of the land as a day care facility for dogs and the retention of three detached buildings for use as an office, grooming parlour and staff cabin along with the engineering operations undertaken in respect of the land.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I note that the application is retrospective and that the change of use has already occurred and is in operation. For the avoidance of doubt, I have determined this appeal on the plans as submitted.
3. My attention has been drawn to the Council's Decision Notice which refers to Policy DM18 of the Elmbridge Development Management Plan (adopted 2015) (DMP). This Policy relates to the development of existing buildings within the Green Belt and, whilst it has some relevance to the appeal, Policy DM17, which deals with new buildings in the Green Belt, is also relevant. I consider that both Policies are broadly consistent with the Framework.

Main Issues

4. The main issues are:
 - Whether the proposal is inappropriate development for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
 - The effect of the proposed development upon the character and appearance of the area; and
 - If it 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

5. The appeal site is a large expanse of land within the Green Belt, with the proposed development comprising a number of elements. Adjoining the main dwelling on the site are structures 01 and 02, which are used for dog grooming and as an office. Structure 01 is a converted static caravan. Structure 02 is a former storage container, which has been positioned behind a laurel hedge. Beyond the house, is an extensive wooded area, within which are the fenced pens, where the dogs are kept and exercised. These are accessible via a set of steps within the relatively steep slope. In one of the pens is structure 03, which is a timber framed structure used for staff welfare purposes. The pens are created by extensive lengths of post and wire fencing, with gates to provide access between them. Within the pens there are also a number of other structures that provide activities for the dogs.

Whether the proposal is inappropriate development

6. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
7. Development should be regarded as inappropriate in the Green Belt unless they fall within the list of exceptions set out in the Framework. Paragraph 145 of the Framework identifies that, with some specified exceptions, the construction of new buildings within the Green Belt should be regarded as inappropriate development. Paragraph 146 identifies that certain other forms of development are also not inappropriate in the Green Belt, provided they preserve its openness and do not conflict with the purposes of including land within it. These include exception (e), material changes in the use of land, such as for outdoor sport and recreation.
8. It is the appellant's case that the proposal should be regarded as acceptable development within the Green Belt, on the basis that Paragraph 146 (e) does not represent an exhaustive list of suitable uses and that there are no reasons why the proposed use of the land should not be covered by this exception. A recent appeal decision¹ has been submitted in respect to this aspect of the appellant's case. The appellant also considers that if the change of use is considered to meet Paragraph 146 (e), then it follows that the structures would then meet the exceptions in Paragraph 145 (b), which allows for the provision of appropriate facilities for outdoor recreation.
9. With regards to the reference to recreation within Paragraph 146 (e), I consider that this is intended to refer to human based recreational activities, as opposed to a commercial operation based on the care of dogs, in a remote location away from their owners and homes. In this regard, I have also been referred to Paragraph 141 of the Framework. Having reviewed this Paragraph, I consider that the reference to recreation would also fall under the same definition and it refers to human based recreational activities.
10. In any event, and notwithstanding whether the proposed use would fall within the definition set out in Paragraph (e), in order to satisfy the exception criteria

¹ APP/K3605/W/18/3209209

of Paragraph 146 and of Paragraph 145 (b) the development in question must preserve the openness of the Green Belt and not conflict with the purposes of including land within it.

11. In this regard, as set out above, the proposal involves the provision of three structures and the erection of substantial lengths of fencing to sub-divide the existing woodland, to create the pens.
12. The existing boundary planting serves to screen structures 01 and 02 from the majority of public viewpoints, with structure 03 hidden due to the topography and its location within the woods. The proposal would however, due to the presence of these structures, have a greater impact on the openness of the Green Belt when compared with the situation prior to their erection.
13. Whilst the fencing is of a similar design to that often found in rural locations, due to its extent, parts are visible along the ridge and from the cycle path which runs past the site. From this path, there are also clear views of the associated 'play' equipment and activities which take place within the north-westernmost pens. Furthermore, the nature of the use would involve an increase in the level of activity on and around the site, which, due to the number of dogs and the level of staffing required, would be in excess of the amount of activity usually associated with a single dwelling, even a large one.
14. Taking all these factors into account, the proposal would fail to preserve the openness of the Green Belt. Therefore, the proposed use would not meet the criteria in paragraph 146 (e) of the Framework. It therefore also follows that the structures would fail to meet the criteria in Paragraph 145 (b).
15. It has not been put to me that the appeal scheme would not be inappropriate development in the Green Belt for any other reason, and I have not found any reason to believe that it would meet any of the other criteria of paragraph 145 of the Framework. On that basis, therefore, when assessed against relevant sections of the Framework and the adopted policies in the Local Plan, the proposed development would represent inappropriate development within the Green Belt.
16. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence. As I have assessed above, the proposal would therefore have a greater impact on the openness of the Green Belt. Whilst this loss of openness may not be considerable, in accordance with paragraph 144 of the Framework, substantial weight must be given to this harm to the Green Belt.

Character and appearance

17. The site lies in a sylvan and verdant location, with very few surrounding urban influences. As a result, this gives both the appeal site and the surrounding area a very distinct rural character.
18. Policy DM2 of the DMP requires proposals to be based on an understanding of local character and, amongst other things, take account of the natural environment.
19. There is disagreement between the parties with regards to whether the area where the works have taken place falls within the residential curtilage of the

appeal property. Notwithstanding this, the works undertaken have resulted in this part of the appeal site having a more developed and man-made appearance. This, in turn, has an urbanising effect upon the rural character of the area, which undermines and causes harm to the overall character and appearance of the area.

20. For the above reasons, I therefore conclude that the proposed engineering operations, harm the rural character and appearance of the area, and in this regard, are contrary to Policy DM2 of the DMP and the Policies contained within the Framework, which amongst other things, are aimed at protecting the natural environment.

Green Belt balance

21. The Framework advises that substantial weight should be given to any harm to the Green Belt. When assessed against the Framework and the relevant development plan policies, the proposal is inappropriate development within the Green Belt and would require very special circumstances to justify the harm caused by inappropriateness. Harm would also be caused to the openness of the Green Belt, albeit that there would be a small reduction. The Framework requires substantial weight to be attached to this harm.
22. The appellant submits that there are other considerations in this case, including the important contribution to the economy through the creation of local employment opportunities; the importance of the service provided to residents of the Borough and elsewhere; and the need for significant areas of open space to allow room for the dogs to exercise. In this regard, it is claimed there are no other sites available that meet the requirements which fall outside of the Green Belt, although no evidence has been put to me to substantiate this. The appellant has also indicated a willingness to accept a personal permission, limiting the use to only the appellant's business. It is also submitted that the fencing would benefit from permitted development rights. The appellant also refers to other planning permissions granted by the Council for similar uses within the Green Belt.
23. I consider that the proposal does deliver a contribution to the local economy and provides other benefits in the form of a service to pet owners in the area. These benefits attract relatively moderate weight, however given the national importance to protecting the Green Belt, such that they and the other considerations that weigh in favour of the proposal, including local support, do not clearly outweigh the identified harm to the Green Belt, so as to amount to the very special circumstances necessary to justify the development.
24. With regards to the other cases, I am not familiar with the full details of these and, in any event, I am required to determine this appeal on its own merits and in accordance with the development plan
25. By reason of the harm caused to the Green Belt, the proposed development is contrary to Policy DM17 and DM18 of the DMP and Chapter 13 of The Framework that, amongst other matters, share a common objective of protecting the Green Belt from inappropriate development.

Conclusion

26. I conclude, for the reasons outlined above, that the appeal should be dismissed.

Adrian Hunter

INSPECTOR