
Appeal Decisions

Site visit made on 24 September 2020

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2020

Appeal A: APP/W1905/C/20/3246001

Land lying north west of College Road, Hoddesdon EN11 9DJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms Verienne Wood against an enforcement notice issued by Broxbourne Borough Council.
 - The enforcement notice, numbered ENF/20/0001, was issued on 14 January 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, unauthorised use of the land for Dog Day Care business.
 - The requirements of the notice are:
 - i) Cease use of the land for Dog Day Care business
 - ii) Permanently remove from the land all equipment and waste arising from compliance with point i) above.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
-

Appeal B: APP/W1905/W/20/3245192

Paddock, Roselands House, College Road EN11 9DJ

- 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 Ms V Wood against the decision of Broxbourne Borough Council.
 - The application Ref 07/19/0805/F, dated 20 September 2019, was refused by notice dated 2 December 2019.
 - The development proposed is extension to existing facilities building, an extension to existing outbuilding for its use as a staff kitchen facility and the creation of two additional outdoor play areas and an acoustic boundary fence.
-

Decisions

1. Appeal A: The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
2. Appeal B: The appeal is dismissed.

Preliminary Matters

3. Although the addresses given (taken from the enforcement notice for Appeal A and the planning application form for Appeal B) vary, the two appeals relate to the same site. The address given in the planning application refers to Roselands House, but there is no connection with that neighbouring property.
4. The Council's description of the development for Appeal B, as shown on the decision notice, is similar to that entered in the planning application form, but adds the words 'and use of land for Dog Day Care Business'. From the information submitted with the appeal it appears that the proposal included the use of the land as described in the decision notice and I have considered the appeal on that basis. Thus, whereas the deemed planning application arising from Appeal A is concerned only with the use of the land, the Appeal B proposal relates to both the use of the site and the building works proposed.
5. There is some variation in the matters the Council has raised in relation to the two appeals, and this is reflected in the main issues I have defined.
6. The Council's decision notice and the enforcement notice both refer to the Council's 2005 Local Plan. However, in June 2020 the Council adopted the new Broxbourne Local Plan 2018-2033 to replace it. I have therefore considered these appeals only with regard to the new Local Plan and have disregarded the policies of the 2005 Plan. The relevant policies of the new Local Plan are substantially the same as the draft versions of the same policies, as referred to in the decision notice and enforcement notice.

Reasons: Appeal A

Main issues

7. The site lies within an area of Green Belt. As a consequence of this and the other matters raised, the main issues are:
 - Whether the development is inappropriate within the Green Belt, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.
 - The effect of the development on protected trees within the site;
 - Its effect on the living conditions of nearby residents, with particular regard to any noise arising from the use; and
 - If the development is inappropriate, whether the harm arising from this, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

The Green Belt

8. Policy GB1 of the Local Plan supports the Green Belt policy set out in the Framework. The Framework establishes which forms of development are inappropriate within the Green Belt. The material change of use of land is only 'not inappropriate' if it preserves the openness of the Green Belt, does not conflict with the purposes of including land within it and falls within the exception set out at Paragraph 146 e), which is concerned with 'material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)'. Although the use here is not one of the specific uses listed, the words 'such as' indicate that this is not a

'closed list'. In my judgement, the use of the land for a dog day care business falls within the exception at Paragraph 146 e). The deemed application includes no buildings and the openness of the Green Belt has not been affected. Nor have any of the five purposes of including land within the Green Belt been compromised. It follows from this that the use is not inappropriate within the Green Belt. Consequently, having regard to the guidance in the Framework, it is not necessary to consider whether very special circumstances exist.

Trees

9. The site contains many mature trees, which are the subject of a Tree Preservation Order. Although the enforcement notice refers to loss of or damage to protected trees, no further details are provided and the matter is not pursued by the Council in its appeal statement. I saw no evidence of damage to trees arising from the dog day care use during my site visit and any potential future damage could be addressed with a planning condition. Accordingly, I conclude on the evidence before me that there has been no harm to protected trees arising from the use and I find no conflict with Policy NEB5 of the Local Plan.

Living conditions

10. The nearest dwelling to the site is Roselands House, immediately to the south. To the east of the site is a treed strip of land within the appellant's control. A public footpath runs next to this, with dwellings to the other side of the footpath. There has been no technical assessment of noise that arises from the use and its effect on these nearby dwellings. Accordingly, my assessment is based on judgement.
11. In my view, the use of the site for a dog day care business has the potential to cause significant disturbance to nearby residents due to dogs barking. Even a single dog barking can be quite noisy. However, a group of dogs may trigger barking or howling in each other, resulting in a great deal of noise. I am particularly concerned at the effect of this on the occupiers of Roselands House, the garden of which abuts the long southern boundary of the appeal site. However, in my judgement the noise is also likely to be noticeable and intrusive in the gardens of the properties on the other side of the public footpath to the east of the site. My concerns are borne out by letters from local residents, a number of which refer to noise from dogs on the site.
12. As the appellant points out, the Council's Senior Environmental Health Officer did not object to the development, and instead recommended planning conditions, including one requiring the submission of a noise management plan. However, there is insufficient information before me to show how effective such a plan would be. In particular, I have no evidence to show that fencing limited to the 1.8m height the appellant proposes would be effective in terms of noise suppression. Should the noise management plan indicate a need for higher or more extensive fencing than the appellant suggests, this could prove harmful to the openness of the Green Belt. Accordingly, in the absence of clear evidence that noise could be addressed with visually acceptable measures, I am not persuaded that this matter should be addressed with planning conditions.
13. I understand that the Council has not taken the view that noise from the site has caused a statutory nuisance to date, but that is no reason to allow a use

which is likely to cause significant disturbance to local residents, particularly given the evidence from local people of the disturbance caused to date. Nor does the fact that the Council has the power to issue a Noise Abatement Notice strike me as a good reason to create an unsatisfactory planning situation that might lead to such circumstances.

14. The limited operating hours proposed would reduce the harmful effects of the use and is something that could be controlled with a planning condition. Conditions could also control matters such as the number of dogs at the site, the layout and management of the site and boundary treatment. There is also a separate element of control arising from the licensing requirements of the Animal Activities Licensing Regulations 2018. Nevertheless, in the absence of clear evidence relating to the noise that the use generates and the prospects of controlling it with visually acceptable measures, I conclude that it causes significant harm to the living conditions of nearby residents. This places the development at odds with Local Plan Policy EQ1, which seeks to protect residential and environmental quality from harmful impacts, including from noise.

Other considerations

15. The economic contribution of the business and the employment it provides for 3 members of staff weigh in favour of the development. I am also mindful of the service it provides to local dog owners. This is demonstrated by a large number of letters from customers who support the expansion of the business and is a benefit to which I attach some weight.

Conclusion – Appeal A

16. While the benefits of the development are significant, they do not outweigh the harm to the living conditions of nearby residents due to noise. Nor is that harm diminished by my findings in respect of the Green Belt and trees. Consequently, I conclude that the appeal should not succeed. I shall therefore uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Reasons: Appeal B

Main issues

17. The main issues are:
- Whether the development is inappropriate within the Green Belt, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.
 - The effect of the development on the openness of the Green Belt.
 - Its effect on the living conditions of nearby residents, with particular regard to any noise arising from the use; and
 - If the development is inappropriate, whether the harm arising from this, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

The Green Belt - inappropriateness

18. The appeal scheme includes the change of use of the site, fencing and various works to, and re-use of, existing buildings on the site. Given the limited nature of the proposed fencing (as clarified by the appellant) and the fact that the need for it arises directly from the proposed use, I regard it as part and parcel of the change of use of the land and have considered it on that basis. On the other hand, although clearly related to the proposed use, the development relating to the existing buildings strikes me as more significant in its own right and I have considered it separately.
19. The reasoning relating to the use of the site is set out in relation to Appeal A. Even with the fencing, the change of use would not harm the openness of the Green Belt (a matter I consider further below). Accordingly, as with Appeal A, the use of the land is not inappropriate within the Green Belt.
20. The existing stable on the site is constructed of blockwork but with a glazed addition. Overall, the building appears to be of permanent and substantial construction. Its reuse as proposed would not affect the openness or purposes of the Green Belt and, in accordance with Framework Paragraph 146 d), would not be inappropriate within the Green Belt. The modest extensions proposed would not be disproportionate and, in accordance with Paragraph 145 c), would not be inappropriate either.
21. There is a separate building to the rear of the stable. This would be replaced with a new building to create a staff kitchen. New buildings within the Green Belt are inappropriate unless they accord with one of the exceptions set out in paragraph 145 of the Framework. The replacement building would not be in the same use as the existing building and would not, therefore, benefit from the exception for replacement buildings at Paragraph 145 d). Accordingly, since none of the other exceptions apply either, the proposed building would be inappropriate development within the Green Belt.
22. The Framework advises that inappropriate development is, by definition, harmful to the Green Belt and should not be permitted other than in very special circumstances. As I have already indicated, this approach is supported by Local Plan Policy GB1.

The Green Belt - openness

23. The extensions and replacement building proposed would not harm the openness of the Green Belt, having regard to their small scale and the existing structures they relate to. Full details of the acoustic fencing have not been provided. However, the appellant indicates that it would be 1.8m in height and focused on the southern boundary rather than the perimeter of the whole site. Overall, the evidence before me does not show that the fencing required would be of a scale or extent such that the openness of the Green Belt would be harmed.

Living conditions

24. Although the buildings would provide internal accommodation for the dogs, the use of the external play areas would remain. Consequently, for the reasons set out in relation to Appeal A, the development would cause significant harm to

the living conditions of nearby residents due to the effects of noise arising from the use. There would be consequential conflict with Local Plan Policy EQ1.

Other considerations

25. The same matters that weigh in favour of Appeal A are equally applicable to this appeal.

Conclusion – Appeal B

26. As with Appeal A, I have found significant harm to the living conditions of nearby residents. I have also found that the replacement building would be inappropriate development in the Green Belt. I attach substantial weight to the harm arising from this, although recognise that it only relates to a single element of the proposal as a whole. Having considered all matters raised in support of the development, they do not outweigh the harm arising from it and the very special circumstances necessary to justify inappropriate development in the Green Belt do not exist. Accordingly, I conclude that the appeal should be dismissed.

Peter Willows

INSPECTOR