The Planning Inspectorate

Appeal Decision

Site Visit made on 25 February 2021

by Rory MacLeod BA(Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th April 2021

Appeal Ref: APP/K3605/W/20/3260821
Plot 3, Racecourse Paddocks, Barwell Lane, Chessington, Surrey KT9 2LZ

- 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 Mrs. Barbara Johnson against the decision of Elmbridge Borough Council.
- The application Ref 2019/1606, dated 10 June 2019, was refused by notice dated 7 April 2020.
- The development proposed is described as private fenced dog walking field for hire by the hour enclosed by a 1.2m stock fence for the purpose of exercising dogs in an enclosed area free from interference by other dogs or people.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:

   (a) Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.

   (b) The adequacy of the proposed fencing to prevent dogs escaping,

   (c) The impact of vehicle parking and access on the living conditions of nearby occupiers,

   (d) The impact of the proposal on protected species, and

   (e) If inappropriate, 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

3. The appeal concerns the sub-division and change of use of one of twelve paddocks within an open field once used as a pony racecourse. The paddocks are all enclosed, usually by post and wire fencing with a metal gate, and several include a field shelter associated with horse grazing. There is a central rough surfaced vehicular track across the length of the field leading from a small parking area at the edge to the wider paddocks site. This is adjacent to the terminus of Barwell Lane with a junction of footpaths.

4. Policy DM18 of the Council's Development Management Plan (2015) (DMP) relates to the development of buildings in the Green Belt. It predates the Framework and is of limited relevance to the proposal which is essentially for a change of use.

5. The Framework at Paragraph 145 states the construction of new buildings should be regarded as inappropriate development apart from stated exceptions. Paragraph 146 of the Framework states 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 (e) "*material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)*".

6. The proposal is for a change of use from grazing, an agricultural use, to dog walking and exercising. Whilst the proposed use involves payment for hire of the field, it can be regarded primarily as a form of "*outdoor recreation*" for dogs and their owners as opposed to a business looking after other peoples' dogs. It is therefore necessary to examine the proposal in relation to its impact on openness and the purposes of including land in the Green Belt.

7. The site is currently an open field and would remain as such. No operational development is proposed other than new enclosures to sub-divide Plot 3 and to line other boundaries. The fence posts forming the enclosures would appear as a series of punctuation marks along the boundaries, but the wire mesh fencing between them would only be visible from close quarters. Visually, there would be no material difference between the proposed enclosures and those bounding other paddocks across the wider site.

8. The Council indicates that there would be an impact on openness if there are several vehicles regularly parked at the site. The site like other paddocks can be accessed by vehicles, such as for bringing in hay to supplement grazing, but no parking area is proposed at the site. The appellant indicates a planning condition would be acceptable restricting parking to the parking area at the head of Barwell Lane and to a single vehicle at any time. There could be a succession of vehicles arising from consecutive hiring of the field within the present parking area, which is shared with other users of the wider site, but it is unlikely that there would be many vehicles associated with the proposed use at any one time. The parking implications arising from the proposal would not have a significant impact on openness.

9. The proposal would therefore preserve the openness of the Green Belt. There would not be any conflict with the strategic purposes of the Green Belt set out at Paragraph 134 of the Framework. The proposal would not therefore be inappropriate development in the Green Belt.

Fencing

10. In response to the Council's concerns about the inadequacy of the proposed 1.2m high fence to contain dogs, and the potential threat to safety on the A3 Esher Bypass, the appellant has submitted an amended plan showing the height of the fence increased to 1.8m. This shows metal extension bars fixed to the timber fence posts to support the additional wire mesh fencing.

11. I have examined the whether the amended plan should be accepted in relation to the Wheatcroft principles[1]. At a height of 1.8m the fence would be permitted development adjacent to open land to the northern, eastern and western boundaries and so would not require a grant of planning permission[2]. The southern boundary is parallel to the A3 but is on lower ground and separated by an embankment, a belt of trees and shrubs and a timber fence. Even at a height of 1.8m it would not be readily visible from the A3. Reference to the new fence height would result in a minor change to the description of the development but not to the essence of the proposal which would remain as a change of use. The site is not close to neighbouring occupiers. Acceptance of the amended plan would not so change the nature of the development that to grant it would deprive those who should have been consulted on the changed development the opportunity of such consultation.

12. The increased height of the fence would reduce the risk of dogs escaping and so address the Council's concerns about the safety of road users on the A3 and related safety issues arising from Policy DM7.

13. The additional height to the fence would not be readily visible apart from at close quarters; it would not therefore have an adverse effect on the openness of the Green Belt.

Parking and access

14. The unmade track accessing the paddocks would not be conducive to drivers of most domestic cars visiting the site particularly in the winter months or after heavy rain. For pragmatic and Green Belt openness reasons it would therefore be appropriate to contain the vehicles of those hiring the field to the informal parking area adjacent to Barwell Lane. The appellant has offered a planning condition to this effect.

15. There could be an overlap between a car for one booked slot leaving and another for the next hour slot arriving, but the number of vehicles attending the site at any one time would be small. The nearest dwellings are in Caerleon Close and Tower Gardens to the north and north-west of the field entrance parking area. Tree belts alongside footpaths screen views of the parking area from these dwellings. Given the separating distances and the background noise of traffic on the A3 it is unlikely that any noise from cars at the parking area would materially impact on living conditions at these dwellings.

16. It is possible that hirers of the field may choose to park on a street within the residential area of Claygate to the north-west, but this would add to the walking time to get to the site. The number of vehicles attending at any one time would be low and any on street parking within the residential area would not be so great as to result in material nuisance for residents. The proposal would not be contrary to parking clauses within Policy DM7 which require parking provision to be appropriate to the development and to not result in an increase in on-street parking stress that would be detrimental to the amenities of local residents.

17. Many residents have objected in relation to nuisance and disturbance and on highway safety grounds arising from additional vehicles in Barwell Lane, the

[1] Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]
[2] Class A (gates, fences, walls etc), Part 2 Minor Operations, Schedule 2 Permitted Development rights to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

route the appellant anticipates users of the site to follow so that the indicated parking area can be used. Barwell Lane is a long and winding route that connects to the A243 Leatherhead Road and lies almost completely within the adjacent borough of Kingston-Upon-Thames. That Council's Highway Officer comments that it is a privately owned road with access rights established as forming part of a public bridleway. From my site visit I noticed that it is used as the access for dwellings at Barwell Court, for a few other dwellings, for equestrian units and stables along its length and by small vans regularly used to ferry dogs to "City Paws", a dog day care enterprise on the opposite side of the A3 Esher Bypass to the appeal site. Barwell Lane is unlit and unmade for most of its length and in places is in poor condition with many potholes. Its width varies but several stretches are narrow with inadequate space for vehicles to pass without mounting a verge. It does not have a separate footpath and is regularly used by pedestrians and horses.

18. The appellant anticipates hirers of the field arriving in a single vehicle most of the time and would be willing to accept a planning condition to this effect. Even if two vehicles were to arrive for one hire period, this may be balanced by times when the field is not hired. There would therefore usually be two vehicle movements along Barwell Lane each hour when the site is busy, one in and one out. As the site would operate during daylight hours, there could be a regular flow of vehicles visiting the site throughout the day, particularly during the longer daylight hours of the summer months. Traffic movements would be intermittent but over a day overall traffic numbers would be likely to be significantly greater than those arising from the present grazing use for Plot 3 and most neighbouring plots.

19. Given the present poor condition of Barwell Lane and its regular use by horses and pedestrians, the regular additional traffic movements that would arise from the proposal would be likely to have some impact on its residents and other users. The appellant contends that the impacts would not be significant but without data on current traffic levels or a transport assessment it is not possible to conclude that this would be the case. No data is before me on present traffic levels along Barwell Lane and therefore there is uncertainty on the cumulative impact of additional traffic generated by the proposal.

20. In this respect it is not possible to conclude that the proposal would not be in conflict with Policy DM7 of the DMP which requires access to and from the highway to be safe and convenient for pedestrians, cyclists and motorists and that proposals should minimise the impact of vehicle and traffic nuisance, particularly in residential areas and other sensitive areas. The Rights of Way team at Surrey County Council has reviewed the proposal and asked that users of the facility be reminded that drivers must give way to public users (pedestrians, cyclists and equestrians) at all times. I am not satisfied that such a request would overcome harm that may arise from additional traffic generated by the proposal.

Protected species

21. The appeal site is a short grass field adjacent to similar fields that have been used for grazing. At my site visit there was no obvious indication of badger setts or the presence of other protected species and no specific evidence of their presence has been brought to my attention. A pond set amongst trees just beyond the site's southern boundary is the main biodiversity feature.

22. The Surrey Wildlife Trust comment that badgers are known to be in the area and that there should be a survey to determine the potential impact and to propose relevant appropriate mitigation and compensation measures. A planning condition could be used to address these concerns if the proposal had been otherwise acceptable. The Trust also recommends the planting of native species complementary to surrounding important habitats that would enhance connectivity with sites of nature conservation interest in the wider area. The appellant has already planted native hedgerow plants inside the site's boundaries as a biodiversity enhancement measure.

23. These measures and a suitable planning condition would enable the proposal to be in accordance with Policy CS15 of the Elmbridge Core Strategy (2011) and Policy DM21 of the DMP. These policies expect new development to preserve, manage and where possible enhance existing habitats, protected species and biodiversity features to contribute to a net gain in biodiversity and to use conditions to secure the provision of mitigation measures, as appropriate.

Other considerations

24. The proposal would not be inappropriate development and would provide a beneficial recreational use of the Green Belt in accordance with Paragraph 141 of the Framework. However, it has not been demonstrated that the additional traffic that would be generated by the proposal would not be harmful to the living conditions of residents and other users of Barwell Lane. The harm arising would outweigh the benefits of the proposal and furthermore would conflict with Policy DM7 of the development plan.

Other Matters

25. The validity of the planning application and subsequent appeal has been challenged through the non-identification of land along Barwell Lane in ownership of another party across which it is necessary to pass to reach the public highway, and the service of notice on that party. The Design and Access Statement submitted with the application states that Barwell Lane connects to the A243 Leatherhead Road and that no changes are envisaged to the vehicular access route. Whilst the plans do not show the whole of Barwell Lane it is clear from the proposal that this is the intended means of access. A representative of the Barwell Court Estate is clearly aware of the proposal and has made comments on it. The appellant has completed an ownership certificate with the application; if this is incorrect or incomplete, my decision does not affect any private rights that may be enjoyed.

26. Several residents have compared the proposal to the dog care enterprise on the opposite side of the A3 Esher Bypass, that also uses Barwell Lane as an access. The appeal proposal would be considerably smaller in scale and in the intensity of use of land by comparison.

Conclusion

27. For the reasons given I conclude that the appeal should be dismissed.

Rory MacLeod BA(Hons), MRTPI

INSPECTOR