



Appeal Decision

Site visit made on 20 December 2021

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2022

Appeal Ref: APP/M1005/W/21/3281517

Carrington Farm, Heanor Road, Smalley, Ilkeston DE7 6DW

- 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 Kelly McIntyre against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2021/0250, dated 5 March 2021, was refused by notice dated 8 July 2021.
 - The development was described as proposed dog walking field including erecting 1.8m deer fencing behind hedgerows to secure perimeter and formation of new access site with 2No visitor parking spaces.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from agricultural land to dog walking field (sui generis) including erection of fencing, creation of access, access drive and two visitor parking spaces at Carrington Farm, Heanor Road, Smalley, Ilkeston DE7 6DW in accordance with the terms of the application Ref AVA/2021/0250, dated 5 March 2021, subject to the attached schedule of conditions.

Preliminary Matters

2. The development for which planning permission is sought was described on the application form as "proposed dog walking field including erecting 1.8m deer fencing behind hedgerows to secure perimeter and formation of new access site with 2No visitor parking spaces". The Council's decision notice and the appeal form described the development as the "change of use from agricultural land to dog walking field (sui generis) including erection of fencing, creation of access, access drive and two visitor parking spaces". In the formal decision I have used this description as it is a more precise and accurate reflection of the proposed development for which permission is sought.

Main Issues

3. The main issues are:
 - Whether or not the proposal is inappropriate development in the Green Belt for the purposes of the Framework and development plan policy, including an assessment of the effect of the proposal on the openness of the Green Belt;
 - The effect of the proposal on the living conditions of the occupiers of neighbouring properties, having regard to noise and disturbance; and

- If the development is inappropriate, whether the harm, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

4. Paragraph 149 of the Framework states that new buildings are inappropriate in the Green Belt unless they fall within the given lists of exceptions. This includes b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
5. Paragraph 150 of the Framework sets out 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. Within the list is b) engineering operations.
6. Policy EN2 of the Amber Valley Borough Local Plan (2006) (LP) states that within the Green Belt, planning permission will only be granted for appropriate development and sets out those developments. This policy is more restrictive than the approach set out in the Framework by virtue of limiting 'not inappropriate' development to a more selective clutch. Noting paragraph 219 of the Framework, I therefore accord the approach in Framework paragraphs 149 and 150 substantial weight in my assessment of the appeal.
7. The appellant has drawn my attention to similar developments located within the Green Belt to support their application¹, albeit that each proposal must be determined on its particular merits. The appeal site comprises agricultural land enclosed by a mature hedge. Based on the evidence submitted, the proposed change of use from agricultural land to a dog walking field could be regarded as a form of outdoor recreation (permissible in principle under Framework paragraph 150 e)).
8. Exception 149 b), however, only relates to facilities which are buildings. The term building is defined in section 336 of the Town and Country Planning Act 1990, including any 'structure or erection'. Having regard to this definition, the proposed fence and gate should be considered under paragraph 149 b). The engineering operations associated with the proposal (vehicular access and parking area) should be considered under paragraph 150 b).
9. The proposed fencing and gate would be appropriate for the intended purpose of the land in order to provide a safe and secure environment for dogs. Both paragraphs 149 b) and 150 require the facilities/ development to preserve the openness of the Green Belt and not conflict with the purposes of including land within it.
10. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are

¹ Including planning permission reference 17/00155/COU, 19/01366/COU, 15/00628/COU and appeal reference APP/K3415/W/20/3264866

their openness and their permanence. Openness is capable of having both spatial and visual aspects.

11. The surrounding area is characterised by a mix of fields, agricultural buildings and dwellings with associated vehicular accesses and hardstanding areas including for parking. The proposed access would be opposite the access associated with Holly Mount Farm. The appeal site is also close to the main built-up area of Smalley.
12. The site is currently enclosed by a tall hedgerow and it would remain as primarily an open field. The proposed fencing would be situated behind the existing hedgerow and would be netted, rather than a solid fence. The gate would be set back from the highway. The design of both the fence and gate would allow views through them.
13. The scheme would remove a limited section of hedgerow to allow access onto Heanor Road. This new access, and the associated access gate, would be visible from Heanor Road but would be limited in scale. Customers would be able to park their vehicles within the appeal site. However, vehicles would not be a permanent fixture and the parking area would not be conspicuous from the surrounding area due to its proposed siting behind the existing boundary hedge. The proposal would also result in vehicle movements. However, given the scale of the development, the extent of vehicle movement would be limited, and vehicle movement could arise from the existing use of the field.
14. Having regard to the scale, design and siting of the development, its locational context and its spatial and visual implications, I am satisfied that the scheme would preserve the openness of the Green belt and would not conflict with the purposes of including land within it.
15. For those reasons, whilst the proposal would not strictly accord with Policy EN2 of the LP, it would accord with chapter 13 of the Framework. In this case, the conflict with the LP is outweighed due to the scheme's accordance with the Framework given the restrictive approach taken in the LP. I therefore conclude that the proposal would not be inappropriate development in the Green Belt.

Living conditions

16. It is likely that the comings and goings of vehicles, people and dogs would increase the extent of noise and disturbance from the appeal site compared to the current agricultural land. Albeit I note that agricultural use in itself entails potential for noise and disturbance and there is no evidence before me indicating there are any restrictions on the present use of the land in that regard.
17. There are residential properties within the immediate surrounding area. The appeal site is adjacent to Heanor Road which is an A road. There would be a field between the dog walking field and Carrington Farm and the other properties are on the opposite side of Heanor Road. Thus, there is a reasonable gap between the appeal site and the nearby residential properties.
18. Although my site visit was only a snapshot during the day, I observed that given the frequency of vehicles, there was a reasonable level of background noise associated with Heanor Road. However, I acknowledge that at certain times of the day the level of traffic, and associated noise, would be less.

19. During the application process, the pollution officer recommended conditions. The appellant confirmed that they would not agree to a temporary consent and that, due to the sought operating hours, there would not be a need for lighting.
20. Planning conditions could restrict the operating hours of the facility and limit the number of dogs and customers to a very modest level. This would ensure that the field cannot be used at certain times of the day when neighbouring occupiers would reasonably expect a degree of peace and quiet when they would wish to sleep. Furthermore, limiting the number of dogs and customers would restrict the potential noise and disturbance.
21. Owing to the distance to the neighbouring properties, scale of the development, proximity of the main road, level of existing background noise and suitably worded planning conditions, the scheme would not adversely affect the living conditions of neighbouring residents to a degree that would warrant planning permission being refused. I am also satisfied that a temporary permission is not required.
22. For these reasons, based on the evidence submitted, the development would not have an unacceptable effect upon the living conditions of the occupiers of neighbouring properties, having regard to noise and disturbance. Accordingly, the proposal would comply with Policies LS1, LS3, ER11 and EN16 of the LP. These policies seek, amongst other matters, to ensure proposals are compatible with their surroundings and potentially polluting development will not be permitted in proximity to existing residential sites, where such uses cannot reasonably co-exist. It would also comply with chapters 12 and 15 of the Framework. These seek to ensure that developments create places with a high standard of amenity for existing and future users and avoid noise giving rise to significant adverse impacts on health and the quality of life.

Other considerations

23. Given that the proposed development would not amount to inappropriate development in the Green Belt, there is no need for me to assess other considerations, and whether very special circumstances exist in order to justify the development. Similarly, there is no need to consider whether paragraph 11(d) of the Framework is engaged (as the Council consider); given my reasoning above there would neither be conflict with the relevant provisions of the development plan nor Framework. Such an exercise would therefore be academic.

Other matters

24. The Smalley Parish Council's objection highlights concerns in terms of the loss of Green Belt land, other dog walking fields and open spaces in the local area. As set out above, I have found that the development would not amount to inappropriate development in the Green Belt. Furthermore, whether there are alternative similar facilities and open spaces within the local area for dog walking are not matters that impact the planning merits of the case.
25. Although not forming part of the reasons for refusal, the Council state that the proposal would be an incongruous feature within the countryside. I am satisfied that the proposal would respect the character of the countryside. This is due to its scale, limited extent of built development and the scheme would not be conspicuous from the wider area.

Conditions

26. The Council has not suggested any conditions which should be imposed if planning permission is granted. I have considered the conditions suggested by the consultees (including the highways and pollution officer) and the appellant.
27. It is necessary to attach a condition specifying the approved plans as this provides certainty. This condition would also ensure that the scheme would be acceptable in terms of highway safety as the drawings show that the gate would be set back 5 metres from the edge of the highway.
28. A condition is also necessary in respect of operating hours and restricting the number of dogs and customers in the interest of safeguarding living conditions of the occupiers of the neighbouring properties and highway safety. Having considered the pollution officer's comments and the siting of neighbouring dwellings, I have amended the operating hours sought by the appellant in the mornings. The hours sought by the appellant, in the morning, would be at a time when occupiers of the nearby residential properties would reasonably expect a degree of peace and quiet and when there would be less background noise. In my view, the hours in condition 3 are consistent with standard working hours, and many other uses, and there is no countervailing evidence that such hours would adversely affect the proposed business.
29. Based on the evidence submitted, a condition relating to artificial lighting is not necessary given the operating times and there are controls under the Environmental Protection Act 1990 for light pollution.

Conclusion

30. Whilst the proposal would not strictly accord with Policy EN2 of the LP, the proposal would not be inappropriate development and would not conflict with the Framework. Furthermore, the scheme would not have an unacceptable effect upon the living conditions of the occupiers of neighbouring properties. I am therefore satisfied that the proposal constitutes sustainable development.
31. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and having regard to all other matters raised, I conclude that the appeal is allowed subject to the attached conditions.

L M Wilson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2108/01 (Site Location Plan), 2108/03 Rev A (Proposed Site Plan), 2108/04 Rev A (Enlarged Parking Plan) and 2108/05 (Gate and Fencing Elevations).
- 3) The use hereby permitted shall only be open for customers between the following hours:
 - 0800 - 1900 Mondays to Fridays
 - 0830 - 1900 Saturdays, Sundays and Bank or Public Holidays.No more than 2 customers and 4 dogs shall be on the land at any time.