
Appeal Decisions

Site visit made on 12 October 2022

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2022

Appeal A Ref: APP/K2230/W/21/3286748

Nurstead Court, Nurstead Church Lane, Meopham, Kent DA13 9AD

- 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 Doggy Base Ltd against the decision of Gravesham Borough Council.
 - The application Ref 20210927, dated 22 July 2021, was refused by notice dated 30 September 2021.
 - The development proposed is described as *temporary change of use of agricultural land to a dog day care facility (Sui Generis), together with the temporary siting of 3 no. portakabins and a perimeter fence.*
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Appeal B Ref: APP/K2230/Y/21/3286750

Nurstead Court, Nurstead Church Lane, Meopham, Kent DA13 9AD

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Doggy Base Ltd against the decision of Gravesham Borough Council.
 - The application Ref 20210994, dated 3 August 2021, was refused by notice dated 30 September 2021.
 - The works proposed are described as *temporary change of use of agricultural land to a dog day care facility (Sui Generis), together with the temporary siting of 3 no. portakabins and a perimeter fence.*
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Decision – Appeal A

1. The appeal is dismissed.

Decision – Appeal B

2. The appeal is dismissed.

Preliminary matters

3. The proposed change of use appeared to have taken place at the time of my visit. I saw that portakabins and fencing were in place and there were several dogs at the premises being looked after by staff. I have considered the appeal on the basis of the submitted plans and the other appeal documents.
4. The description of the proposed works in Appeal B includes matters which seem unlikely to require listed building consent, namely the change of use of land. It is not clear from the appeal documents which works are thought to be works that require listed building consent. Nevertheless, the Act provides a procedure whereby a formal determination of the need for listed building consent can be sought. The appellant has sought listed building consent, which has been refused by the Council. I have therefore determined the appeal on the basis of

the statements before me and will not comment further on the question of whether or not listed building consent is required.

5. The appellant argues that the change of use would be temporary and that it would be willing to accept a personal permission. However, no good planning reason for granting a temporary permission has been provided. For example, there is no suggestion that this would be an interim use, pending more permanent development at a later date. Moreover, to the extent that the proposal would cause harm, as discussed below, that harm would persist for a period of years. Planning permission normally runs with the land and no circumstances have been identified that would justify a personal permission in this case. In any event, personal permissions will rarely be appropriate where the appellant is a company, the ownership of which could change. I attach very little weight to the suggestions that any permission could be temporary and/or personal.

Main issues

6. The main issues for Appeal A are:
 - whether the proposal would be inappropriate development in the Green Belt;
 - the effect of the proposal on the character and appearance of the area;
 - the effect of the proposal on the special interest of Nurstead Court, which is a Grade I listed building;
 - whether the proposal would provide safe and suitable access; and
 - whether any 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.
7. The main issue for Appeal B is the effect of the proposed works on the special interest of Nurstead Court.

Reasons

Whether the proposal would be inappropriate development in the Green Belt (Appeal A)

8. The National Planning Policy Framework (the Framework) states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to say that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances and that substantial weight is to be given to any harm to the Green Belt.
9. The appellant has stated that the portakabins would be sited on an existing hardstanding and would not be permanently attached to the land. For the purposes of this appeal, I have therefore treated them as part and parcel of the change of use for which permission has been sought, rather than as new buildings in the Green Belt. This means that paragraph 149 of the Framework, which deals with new buildings in the Green Belt, is not applicable. Paragraph

150 of the Framework identifies certain other forms of development that are not inappropriate in the Green Belt, provided they preserve its openness and do not conflict with the purposes of including land within it.

10. Of the forms of development listed in paragraph 150, only 150(e) is relevant to this appeal:

"material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds);"

11. The appellant argues that the proposal is for outdoor sport or recreation. However, this is a proposal for a commercial facility where dog owners could leave their pets during the day. The dog owners would not be taking part in sport or recreation at the appeal site. Moreover, the staff of the appellant company would not be taking part in sport or recreation. They would be at work, engaged in the business of caring for dogs. The fact that elements of that care would take place outdoors and might, perhaps, look like play to a casual observer, does not in my view bring the proposed use into the ambit of *"outdoor sport and recreation"* as that term is used in the Framework.
12. Most of the appeal site is part of a larger open field, which was being used for grazing horses at the time of my visit. The proposal includes the siting of three steel portable buildings, arranged in an L shape. The site was enclosed with a considerable length of mesh fencing, fixed to steel posts. Within the fenced compounds, there were various items such as shelters, obstacles and play equipment which appear to be associated with exercising dogs. The combined effect of these features brings about a significant reduction in the openness of the site. The openness of the site would not be preserved, as required by paragraph 150.
13. The appellant argues that the portable buildings would be closely associated with a larger group of buildings. I disagree. Although some surfacing has been provided in this part of the site, the location of the portakabins is well away from the complex of buildings to the west of Nurstead Court. This point does not assist the appellant with regard to the effect on openness.
14. One of the five purposes of the Green Belt set out in the Framework is to assist in safeguarding the countryside from encroachment. The appeal site is in a rural location although, as noted above, there is a complex of buildings to the west of Nurstead Court. The proposal would extend commercial activity away from Nurstead Court into an area of open countryside. This would amount to significant encroachment, contrary to one of the purposes of Green Belt.
15. I conclude that the proposal is for a material change of use which would not preserve the openness of the Green Belt and would conflict with one of the purposes of including land in the Green Belt. Accordingly, having regard to the Framework, it would amount to inappropriate development which should not be approved unless very special circumstances can be shown.

The effect of the proposal on the character and appearance of the area (Appeal A)

16. The site is located within the Meopham Downs Landscape Character Area. The Council's Landscape Character Assessment has identified the characteristics of this area as including gently undulating topography, a mixture of arable and pastoral farmland, narrow lanes and roads lined with hedgerows. The appeal site has been subdivided from a larger grazing field, bounded by trees and

hedgerows. There are views out from the site to a patchwork of open fields, trees and woodlands. I consider that the site lies within an attractive tract of open countryside, which is characteristic of the wider landscape character area of which it forms a part.

17. The steel portable buildings are unattractive utilitarian objects, such as might be seen in association with temporary construction works. The extensive lengths of mesh fencing would break up the openness of the field. The height and materials of the fencing would be seen as an uncharacteristic form of boundary treatment. Moreover, the proposed use requires items such as shelters, obstacles and play equipment which need to be distributed around the site, resulting in a visually cluttered appearance. Together, these features would be visually intrusive and would result in significant harm to the character of the landscape.
18. The complex of buildings to the west of Nurstead Court is visually distinct from the appeal site. This visual separation is strengthened by intervening trees and vegetation. Consequently, the presence of this complex does not alter my findings in relation to the visual and landscape impacts of the appeal proposal. The appellant refers to some indicative proposals for tree and hedgerow planting in the wider area around Nurstead Court. I attach little weight to this factor because the proposals appear to be unrelated to the proposed development at the appeal site. They would not mitigate the impacts I have identified and, in any event, there is no evidence that delivery of these landscape works would be within the control of the appellant.
19. I conclude that the proposal would be harmful to the character and appearance of the area. It would be contrary to Policy CS19 of the Core Strategy which states that new development should be visually attractive and should conserve the character of the natural environment. It would also conflict with Policy CS12 which seeks to conserve landscape character.

The effect of the proposal on the special interest of Nurstead Court (Appeal A and Appeal B)

20. The Framework states that local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. It goes on to say that the level of detail should be proportionate to the assets' importance. Nurstead Court is a Grade I listed building, dating from the 14th century with later changes. It is therefore a heritage asset which has a very high level of importance. However, no heritage assessment has been provided. There is no assessment before me of the significance of the asset, the contribution made to significance by its setting (in general), the role the appeal site may play as part of that setting, or how the contribution of setting to significance would be affected by the appeal proposal.
21. Nurstead Court appears to be set within parkland and farmland which contributes to its significance. The appellant argues that Nurstead Court is secluded and faces away from the appeal site. Whilst I saw that there is limited intervisibility between the Nurstead Court and the appeal site, it does not follow that there would be no impact on the ability to experience the listed building. The proposal is for visually intrusive development which would detract from the character of the landscape and would be visible from one of the accesses to the Nurstead Court complex. There is, therefore, the likelihood of an adverse effect on the significance of the listed building.

22. The appellant has failed to provide a level of detail that is proportionate to the importance of this Grade I listed building, such that it is not possible for me to fully assess the impact of the proposal on the listed building. This is contrary to the Framework and results in an unacceptable risk of harm to the significance of the listed building through development in its setting. On the information before me, I conclude that the setting of the listed building would not be preserved. However, I am unable to carry out the balancing exercise required by the Framework¹ because the harm has not been assessed in the way the Framework requires.
23. I conclude that the proposal would conflict with Policy CS20 which states that the Council will accord a high priority towards the preservation, protection and enhancement of heritage assets.

Whether the proposal would provide safe and suitable access (Appeal A)

24. The appeal site is reached by a single track drive from Nurstead Church Lane, which also serves buildings to the west of Nurstead Court. It is gated at its northern end, closest to Nurstead Court, and there is a single passing bay part way along the drive. Nurstead Church Lane is also a single track road and there do not appear to be any passing bays between the southern end of the Nurstead Court drive and Wrotham Road.
25. The proposal is in a rural location and it appears likely that most, if not all, of the dogs would be dropped off and collected by car, resulting in four vehicle movements per dog each day. The appellant suggests that arrival and departure times could be staggered, to spread out vehicle movements. However, no means of securing such an arrangement has been suggested. In any event, it seems unlikely that a planning condition would be effective in this regard because pet owners would, no doubt, need to arrange their visits around work or leisure activities, the timing of which may not be flexible.
26. The highways officer has suggested that additional passing bays could be provided along Nurstead Church Lane. However, there is no evidence that this could be achieved without the use of third party land and, again, no means of securing such mitigation has been suggested.
27. I consider that the proposal is likely to result in a significant increase in traffic at peak times. No means of mitigating this increase has been identified. Without such mitigation, I do not consider that there would be a safe and suitable access to the site. This would be contrary to the Framework. It would also be contrary to Policy CS11, which states that new developments should mitigate their impacts on highway networks.

Other matters (Appeal A)

28. The Council points out that the site is within a Groundwater Source Protection Zone and is concerned about the lack of information on foul drainage. However, the Environment Agency has not raised any objection. I consider that drainage details could be secured by a condition.
29. The Council has also drawn attention to the potential for noise disturbance from dogs barking. Based on the application plans, it appears that the closest potential residential property is Farm Cottage which is 80m or so from the

¹ Paragraphs 201 or 202 of the Framework

appeal site. The proposal is for a daytime use only and it would be possible to control the hours of operation by condition. Having regard to the separation between the nearest sensitive receptor and the proposed use, I consider that such a condition would be sufficient to protect the living conditions of any residential occupiers.

Whether there are very special circumstances to justify the proposal (Appeal A)

30. The proposal would represent inappropriate development in the Green Belt. It is therefore necessary to consider 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. In addition to the harm by reason of inappropriateness, there would be harm to the openness of the Green Belt and to one of the purposes of including land within the Green Belt. The Framework states that substantial weight should be given to any harm to the Green Belt.
31. There would also be harm to the character and appearance of the area. Moreover, the proposal would fail to preserve the setting of Nurstead Court, a Grade I listed building. This is a matter of considerable importance and weight.
32. The proposal would bring an economic benefit in that a modest amount of employment would be generated. No doubt the proposal would provide a service that would be useful to some pet owners. However, I see no reason to think that this would amount to a social benefit to which significant weight should be attached. Overall, I attach only moderate weight to these benefits. They do not clearly outweigh the harm to the Green Belt, and the other harm, that I have identified. The very special circumstances required to justify the proposal do not exist.
33. Policy CS02 supports proposals to diversify the rural economy where this would be compatible with national policies for protecting the Green Belt. However, the proposal is contrary to the policies of the Framework relating to Green Belt. It follows that the proposal is not consistent with Policy CS02.

Conclusion – Appeal A

34. For the reasons given above, the proposal would be contrary to the development plan. I have not identified any considerations that indicate a decision other than in accordance with the development plan. Accordingly, the appeal should be dismissed.

Conclusion – Appeal B

35. For the reasons given above, the proposal would fail to preserve the setting of Nurstead Court. The appeal should therefore be dismissed.

David Prentis

Inspector