



Appeal Decisions

Hearing Held on 29 November 2022

Site visits made on 28 and 29 November 2022

by Debbie Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 December 2022

Appeal A Ref: APP/Q4625/C/22/3302489

Appeal B Ref: APP/Q4625/C/22/3302487

Appeal C Ref: APP/Q4625/C/22/3302488

Land to North East Side of Spencers Lane, Berkswell, Solihull CV7 7BZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr A Zumbe against an enforcement notice issued by Solihull Metropolitan Borough Council. Appeal B is made by Mr Mark Young and Appeal C is made by Mrs Susan Young.
- The enforcement notice was issued on 1 June 2022.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from a field of agricultural or nil use, to that of sui generis dog walking, care and training.
- The requirements of the notice are permanently cease the use of the land for dog walking, care and training centre, and remove all related items and chattels from the land.
- The period for compliance with the requirements is 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b) and (g) of the 1990 Act as amended. Appeals B and C are proceeding on the grounds set out in section 174(2)(b) and (g).

Summary of Decision: The appeals are dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. The enforcement notice plan excludes the access road to the site. The access is necessary to operate the unauthorised use and it forms part of the Council's opposition to the development, both as a vehicular route to the appeal site and as a parking area. In such circumstances, it would normally be included within the Land identified by the notice. However, the Council and the appellant agreed that it would not be necessary to amend the plan to include the access as the requirement to cease the unauthorised use would suffice. There is no reason for me to disagree with this position.
2. The previous use is described as agricultural or nil use. It is not necessary to specify the previous use in material change of use cases, although it is good practice to do so, providing this is accurate. It seems that the previous use of the land was the keeping of horses, but there is uncertainty. Consequently, it was agreed that reference to the previous use should be deleted from the allegation. I am satisfied I can use my powers of correction under Section 176(1) of the 1990 Act without injustice since the terms of the notice would be unaffected.

3. The notice requires the removal of related items and chattels from the Land. For completeness, it would be usual to specify any items or works that facilitate the change of use to avoid any ambiguity. In response to my query as to what the items and chattels entailed, the appellants provided a list as follows: static black van; parked white vans; CCTV camera and floodlighting mounted on a pole; existing stable block; portable WC; 2 x household wheelie bins and fencing.
4. Caselaw has established that a notice directed at a material change of use may require the removal of works integral to, and solely for the purpose of, facilitating the unauthorised use, even if such works on their own might not constitute development, or they would be permitted development or immune from enforcement, so that the land is restored to its condition before the change of use took place. Therefore, it would be appropriate to require the removal of the vans, the portable WC, the wheelie bins, the solid fencing alongside the driveway and at the site access, the sheeting attached to the boundary fencing and the sheep herding gates since these items facilitate the unauthorised use.
5. It was agreed that the pre-existing stable block may be put to some other lawful purpose and its removal would not be appropriate. Also, the wire fencing and the post and rail fencing along the southwest, northwest and northern boundaries of the site do not facilitate the unauthorised use. In contrast, the solid fencing and plastic or material sheeting acts as a screen as opposed to being solely for boundary delineation or livestock management. The sheep herding gates and enclosure within the site are also used in connection with the change of use since they act to separate and contain the dogs. The Council agreed that the CCTV camera and lighting was used in association with the wider land and not the use enforced against, and I accept its removal would not be justified.
6. In view of the above, I consider that the notice should be corrected to require the removal of the items specified that facilitate the unauthorised use. I am satisfied that I can make the correction without injustice as those items would have been included in the items and chattels requirement in any event.

Appeals A, B and C on ground (b)

7. The ground (b) appeals are that the matters alleged in the enforcement notice have not occurred as a matter of fact. The appellants advise that the site is used for dog walking and day care only. The allegation also describes the 'training' of dogs, however training has not taken place at the site. The Council did not dispute the matter and it was agreed I could correct the notice, without injustice, to remove any reference to dog training from the allegation and the requirement. The ground (b) appeals succeed to this limited extent.

Appeal A on ground (a) appeal and the deemed planning application

Main Issues

8. The ground (a) appeal is that planning permission should be granted for the matters alleged. The terms of the deemed planning application are derived from the corrected allegation. Hence, planning permission is sought for the material change of use of the land to dog walking and care.

9. The appeal site lies within the West Midlands Green Belt. The main issues are:

- Whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and relevant development plan policies;
- The effect on the openness of the Green Belt;
- The effect of the development on the character and appearance of the area;
- The effect of the development on highway safety;
- The effect of the development on the living conditions of neighbouring occupiers, with regard to noise and disturbance;
- 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 required to justify the development.

The site and the development

10. The use of the appeal site for dog walking and day care has been taking place for around seven years. The site comprises a field which extends to approximately 0.67 hectares. Access is gained via an existing private driveway from Spencers Lane, which runs alongside the eastern boundary of the site. A 1.8–2.0 metre high, close boarded fence screens the field from the private driveway and a public footpath which runs along the access track. There is a pre-existing stable block located within the north west corner of the site. The surrounding area is rural in character, interspersed with mature hedgerows, coppices and some tall trees. There are residential properties to the east, south and west, which are mostly set within spacious gardens.

Whether the development is inappropriate development in the Green Belt and the effect on openness of the Green Belt

11. The Framework states that 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.
12. As set out above, the matters before me concern a material change of use of land. Paragraph 150 of the Framework advises that certain forms of development are not inappropriate development in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. This includes material changes in the use of land (such as for outdoor sport and recreation, or cemeteries and burial grounds). The Courts have held that openness of the Green Belt has a spatial aspect as well as a visual aspect. The absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result. Equally this does not mean that the openness of the Green Belt has no visual dimension¹.

¹ *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466; *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant)* [2020] UKSC 3.

13. The unauthorised use comprises dog walking and extended care. Some of the dogs are brought to the site, or dropped off, and remain for relatively short periods to allow for exercise and socialisation, while others stay longer. In order to meet the needs of the dogs and the employees in charge of the animals, there are associated works and items on the site. This includes static and parked vans, solid fencing, temporary metal fencing, a portable WC and domestic bins. There is also short term parking by customers on the land alongside the site.
14. I appreciate that dog walking itself may be considered a use for outdoor sport and recreation, but what is taking place at the appeal site is broader than simply exercising dogs. It is a commercial dog minding business which requires associated works and items on the land in order to function effectively. The combined effect of those works and items has an impact on the openness of the Green Belt. The static van is used as a shelter or safe place for dogs. It has a spatial impact, since it occupies land that was formerly open. Similarly, the parked vans, the portable WC and the customer parking effect openness as they occupy space. Although moveable, these items are present on the land on a semi-permanent basis or, in the case of customer parking, frequently throughout the week albeit for relatively short periods. I accept that the wheelie bins could be relocated but this would not address the concerns about the other items.
15. The solid fencing alongside the lane which provides access to the site has a visual effect on openness since it interrupts views across the landscape. The cumulative impact of the other fencing within the site and the sheeting along the boundaries, contributes to visual clutter which exacerbates the visual effect of the solid fencing. In my judgement, the combined effect of the works and items on the site, which are necessary for the unauthorised use, do not preserve openness. In addition, the development represents encroachment into the countryside because it introduces a commercial form of development, and visual clutter, which would conflict with the Green Belt purposes. Hence, it would not fall within the exceptions set out in the Framework.
16. The appellant argues that any lawful use of the land would generate parking and lead to a need for facilities. It may be that one or two cars would attend the site if it were used for agricultural purposes, but this would not be as frequent as the parking that takes place at the appeal site. Nor would it require permanently parked vehicles. Portable toilets are not a feature of rural areas, even where the keeping of horses is prevalent. In this case, facilities are needed as staff are present constantly during operating hours as opposed to being on site for 1-2 hours at a time to tend to animals or land management matters.
17. The appellant further argues that the fencing is commensurate with other field enclosures found in rural areas and permitted development rights should be taken into account. I saw the surrounding area is characterised by relatively small paddocks and enclosures. However, solid fencing or plastic sheeting was not common. Although the Town and Country Planning (General Permitted Development) (England) Order 2015 makes provision for fences and enclosures to be erected without planning permission, subject to conditions and limitations, such fencing would only normally be erected where there is a need to provide screening. I do not accept the argument that such fencing would be

required irrespective of the use of the land. It is necessary in this case to screen the dogs from passers-by and other users of the surrounding land. I appreciate that the fallback position is a relevant consideration to which I have had regard², however, in these circumstances I find that it carries limited weight. The appellant has offered to alter the fencing to reduce its impact but it was explained that solid panels would still be required in some form. Any such alteration would be unlikely to reduce the impact sufficiently and it would not solve the problem of the cumulative impact.

18. The appellant refers to an appeal decision which concerned the refusal of planning permission for a change of use to a dog walking field³. In that case, the Inspector found the proposed use could be considered to be a change of use for outdoor sport/recreation. There was no solid fencing proposed nor any other works to the field. It was concluded there would no effect on openness or conflict with the Green Belt purposes. Dog walking on that site was found to be 'not inappropriate'. The appeal circumstances differ from the appeals before me. The proposed use was for walking only not day care, which requires shelter for dogs and employee facilities and there was no solid fencing or other structures. As such, the site-specific circumstances were significantly different and justify a different conclusion in this case.
19. I conclude that the development is inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and this harm carries substantial weight.

Character and Appearance

20. The appeal site is located within a rural area which is characterised by fields and paddocks, farmland and low density residential development. There are pockets of woodland, and mature trees and hedgerows along the field boundaries. The land in the immediate vicinity is divided up into smaller paddocks and enclosures and there is a variety of post and rail fencing. Scattered utilitarian buildings of various size are features within the landscape.
21. Within this context, the use of the site and the enabling features are not wholly out-of-character. It was put to me that some of the fencing and/or buildings on the adjoining land were unauthorised but there is no evidence of this. While the works and items on site have a spatial and visual impact, thus harming openness in Green Belt terms, I find that there is no adverse impact on the character and appearance of the area. As such, the development would accord with Policy P15 of the Solihull Local Plan (2013), which seeks to ensure development reflects its locality.

Highway Safety

22. The site is served via an existing vehicular access off Spencers Lane. The Council considers the access is below standard and the intensification of its use would be harmful to highway safety.
23. Spencers Lane is subject to a 40mph speed limit and, consequently, the Council is seeking visibility splays of 120 metres by 2.4 metres, along with widening the junction and improving the surface treatment. In response, the

² *Zurich Assurance v North Lincolnshire Council* [2012] EWHC 3708 (Admin).

³ Ref APP/K3415/W/20/3264866 dated 13 April 2021.

appellant has provided evidence including analysis of the access visibility, personal injury collision data and business operation data⁴.

24. The appellant suggests that visibility of up to 81 metres to the left (east) and 64 metres to the right (west) can be achieved based on Ordnance Survey mapping. However, in order to achieve this, the intervening vegetation would need to be cleared or cut back, some of which is on land outside of the appellant's control. I consider that the Council's assessment of the existing splays being approximately 60 metres to the left (east) and approximately 40 metres to the right (west) is reasonable. In any event, it is accepted that the visibility splays fall short of those ideally required, although there is a dispute about the appropriate standard to be applied. The appellant maintains that the visibility at the access is only slightly below that required⁵ and has suggested a series of planning conditions to mitigate any harm. However, what I must first consider, is whether the access arrangement, as it stands, would lead to an unacceptable impact on highway safety.
25. The appellant has provided a review of highway safety in the vicinity of the access using two sources of data obtained from 'CrashMap' and Data Insight (Transport for West Midlands - TfWM). There have been no personal injury collisions recorded at the site access, neighbouring dwelling accesses or the Truggist Lane/Spencers Lane junction within the most recent five year period. In addition, TfWM has confirmed that there were no accidents at the site access or the Truggist Lane/Spencers Lane junction within the last ten years. The data does not record all incidents on the highway with minor bumps and scrapes, which do not result in personal injury or police officer attendance, not recorded. However, there is limited evidence to suggest there is an existing or prevalent highway safety issue.
26. Data has also been obtained detailing the current traffic movements associated with the change of use. The data indicates that during the survey period, May and June 2022, there was a maximum of 44 dogs on site per day with an average of 31 dogs per day. The current operation utilises company vehicles to transport dogs to and from the site. Company vehicles typically generate 30 two-way trips per day. In addition, the operation allows clients to drop off and collect dogs directly. Client drop off generally occurs between 08:00 and 09:30 with pick up between 15:30 and 17:00. The data indicates that an average of three arrivals and four departures were undertaken by client vehicles during the survey period. This equates to an average two-way trip generation of 14 client trips. The overall average trip generation for the site is therefore 44 two-way trips per day. Trip generation of this scale would fall within the day-to-day variation of the surrounding highway network and does not represent a significant intensification of use.
27. Automatic traffic count surveys were undertaken in July 2022 on Spencers Lane and the access track. There was also an informal survey from the company employees. The resulting data indicates that the access track is lightly trafficked. Vehicles associated with the unauthorised use account for an average of 54 percent of total traffic movements. This is a significant increase but must be taken in the context of the overall traffic movements, which are relatively low. The data resulting from the traffic counts undertaken on

⁴ Pegasus Group dated 05/07/2022, 06/09/2022 and 27/09/2022 (Ref P22-1396).

⁵ Manual for Streets 2 - 84.6m to the left (east) and 78.6m to the right (west).

Spencers Lane itself indicates that the road is not heavily trafficked. The surveys also recorded speed data for vehicles travelling along Spencers Lane. This showed the speeds were all below 43.5mph and the Council agreed there was no particular problem with vehicle speeds in the vicinity of the site.

28. Taking all the highways evidence together, it is acknowledged that the visibility splays fall short of what would normally be required. Improvements to the width of the access to enable two vehicles to pass, and a bound surface to prevent skidding or gravel being transferred to the carriageway would be desirable. However, the appellant's analysis has shown that the reduced visibility and the quality of the existing access would not result in an unacceptable impact on highway safety. Therefore, the development would accord with paragraph 111 of the Framework, and Policies P7 and P8 of the Local Plan, which seek to ensure safe access for vehicles and users of the development and to prevent development that would result in a reduction of safety for highway users.

Living Conditions

29. The appeal site is close to residential properties along Spencers Lane and Truggist Lane. Local residents explained that the unauthorised use generates noise from dogs barking, playing or fighting on a regular and frequent basis. This is exacerbated by disturbance from cars/vans arriving and leaving the site and customers or employees talking. It was explained that the noise and disturbance is so great that it is causing considerable harm to the living conditions of neighbouring occupiers.
30. The appellants disputed the claims and argued that some of the noise described is associated with surrounding land uses. It was explained that the dogs are vetted and the site is well-managed to avoid fighting or distress and any noise is thus minimised. It has also been suggested that by providing all drop off and collection by the company rather than clients the overall number of vehicles accessing the site could be reduced, thus minimising noise associated with vehicle movements. Also, all vehicles would operate within the hours of operation reducing the potential impact on local residents.
31. During my site visits, I was not aware of any noise issues either from dogs or customers. However, both visits were conducted towards the end of the working day when fewer dogs were present and my experience was only a snapshot in time. During the Hearing, the neighbours spoke in detail about the day-to-day impacts of the development. Their concerns are corroborated by the written comments of other local residents. Given the proximity of the site to neighbouring properties, the number of dogs and the outdoor nature of the operation, I consider it likely that noise and disturbance is occurring. The noise from barking dogs can be intrusive when it takes place regularly. This would be combined with vehicular noise at certain times of the day, which would have a harmful impact on the living conditions of those people living closest to the site. The lack of any statutory noise nuisance does not indicate there is no harm.
32. I appreciate that the noise would be confined to daytime hours and would not occur at the weekend or during public holidays, as the Council acknowledged. However, noise and disturbance on a daily basis should be avoided in order to preserve residential amenity. I do not consider that there are any planning

conditions that could be imposed to overcome the harm as sound insulation measures would not be possible. Preventing clients attending the site themselves would not address the primary issue which is the dogs at the site.

33. I conclude on this issue that the development would have an adverse effect on the living conditions of neighbouring occupiers due to noise and disturbance. It would not accord with Policy P14 of the Local Plan, which seeks to safeguard the amenity of existing and potential occupiers and to minimise the adverse impact of noise. The impact is relatively localised and I consider the harm identified carries moderate weight.

Other considerations

34. The development employs up to seven local people and there are limited benefits to the rural economy, which weighs in favour of the development. However, this cannot be considered diversification of a rural business as no established business, such as a farm, exists.
35. I appreciate that there is local demand for the services offered but such demand could be met through different means and it is not necessary to locate the business in the Green Belt. I agree that access to the countryside is important and dog walking is one way of encouraging this. However, as explained, this is a commercial enterprise that provides day care for dogs. It is not simply outdoor sport and recreation. The appellant has offered to provide an enhanced planting scheme and other measures to promote biodiversity. However, it would take some time for such measures to become established and any benefit would be limited.
36. In my judgement, the totality of the other considerations advanced carry moderate weight at best.

Conclusion

37. I conclude that the development is inappropriate development in the Green Belt and the Framework establishes that substantial weight should be given to any harm to the Green Belt. In addition, there would be moderate harm to the living conditions of neighbouring occupiers. The other considerations advanced by the appellant carry moderate weight and do not clearly outweigh the totality of the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. The development is unacceptable in principle and the harm could not be mitigated through the imposition of planning conditions, therefore.
38. The development would be harmful to the Green Belt and contrary to Policy P17 of the Local Plan, which seeks to protect the Green Belt from inappropriate development. As a result, the development would not accord with the development plan taken as a whole.

Appeals A, B and C on ground (g)

39. The ground (g) appeals are that the period for compliance specified in the notice falls short of what should reasonably be allowed. The appellants are seeking 12 months to allow a notice period for existing staff and customers so that alternative employment and dog care arrangements can be sought or put in place.

40. While I appreciate the arguments advanced, I must also have regard to the ongoing harm resulting from the unauthorised use. In view of the harm to the Green Belt and local occupiers, I consider 12 months would be excessive since this would be akin to a temporary planning permission. The Council has suggested an extended period of nine months for compliance, which I find reasonable and proportionate in the circumstances. I will vary the notice accordingly and the ground (g) appeals succeed to this extent.

Conclusion

41. For the reasons given above, I conclude that the appeals should succeed on grounds (b) and (g) only. I shall uphold the enforcement notice with corrections and a variation and refuse to grant planning permission on the deemed application.

Formal Decision

42. It is directed that the enforcement notice is corrected by:

- i. the deletion of the allegation in paragraph 3 and its replacement with - "Without planning permission, the material change of use of the land to that of sui generis dog walking and care".
- ii. The deletion of the requirement in paragraph 5 and its replacement with - "Cease the use of the land for dog walking and care. Remove from the land the following items that facilitate the change of use – static black van; parked white vans; portable WC; 2 x household wheelie bins; solid fencing located on the boundary alongside the access driveway and layby; sheeting attached to boundary fence/enclosures and steel gates and enclosures located at the field entrance so the land is restored to its condition before the change of use took place".

And varied by the substitution of six months with nine months as the period for compliance in paragraph 6.

43. Subject to these corrections and variation, the appeals are 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.

Debbie Moore

Inspector

APPEARANCES

FOR THE APPELLANT:

David Onions	Pegasus Group
Karen Evans	Pegasus Group
Mark Young	Appellant
Susan Young	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

David Wigfield	Solihull Metropolitan Borough Council
Tim Colles	Atkins

INTERESTED PERSONS:

Joy Toone
David Stableforth
Sheila Cooper

DOCUMENTS SUBMITTED AT THE HEARING

3 X Photographs taken from 'Byeways'
Copy of Policy P14 Solihull Local Plan