
Appeal Decision

Site visit made on 19 December 2022

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 January 2023

Appeal ref: APP/A0665/C/22/3305998

Land at Fiddlers Lane, Saughall, Chester

- 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 Miss Heather Jones against an enforcement notice issued by Cheshire West and Chester Borough Council.
 - The notice was issued on 1 August 2022.
 - The breach of planning control as alleged in the notice is without planning permission change of use from agriculture to dog walking and dog training including laying hardstanding and artificial grass, erection of a timber enclosure and siting of a caravan ("the unauthorised development").
 - The requirements of the notice are:
 - 5.1 cease the use of the land for dog walking and dog training.
 - 5.2 remove the hardstanding from the land outlined in red on the attached plan.
 - 5.3 remove the artificial grass from the land outlined in red on the attached plan.
 - 5.4 removed the timber enclosure from the land outlined in red on the attached plan.
 - 5.5 remove the caravan from the land outlined in red on the attached plan.
 - The period for compliance with the requirements is within 6 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
-

Formal Decision

1. The enforcement notice is corrected by:
 - Correcting the alleged breach of planning control by substituting 'siting of a caravan' for 'siting of a caravan for storage in connection with the dog walking and dog training use'; and
 - Adding an additional requirement ('5.6) with the wording "reinstate the land to its condition prior to the breach taking place".
2. Subject to the correction, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matter

3. The alleged breach of planning control refers to the 'siting of a caravan', but it does not specify what use of land the caravan is sited for. Based on the appellant's submissions, the caravan is used for storage in connection with the dog walking and dog training use. Given this, no injustice would be caused if I were to correct the alleged breach of planning control as set out above.

The appeal on ground (b)

4. An appeal under ground (b) is that the breach alleged had not occurred on the date that the notice was issued, as a matter of fact.

5. The alleged breach of planning control in this instance involves a material change of use and operational development. The appellant's case on this ground solely relates to laying hardstanding. Based on the evidence before me this comprises of the access from Fiddlers Lane and an area within 'field 1' as referred to by the appellant. To succeed on this ground, the appellant must prove on the balance of probabilities that the hardstanding has not been formed and laid as alleged.
6. The appellant says that hardcore was already present on the land when they signed a contract relating to the field in August 2020. From the street view images provided by the appellant, there would seem to have been some hardcore present on the land before August 2020 serving at least an access. However, these images are inconclusive insofar as the extent of the hardcore and do only show sections of the access, with the entire area of hard standing, which is subject of the notice, not shown. In October 2018 and probably not long after the appellant signed the contract, there was a central grass verge running along the access. Much of field 1 was also covered with chippings and moss. The appellant removed these and images suggest that there were some areas of hardcore within field 1 underneath.
7. Nevertheless, by the appellant's own admission, new hardcore has been laid to fill in potholes on the access and to level off the land within field 1. The images provided of the access after the hardcore was laid do not show a targeted infilling of potholes. They show a universal coverage of the access. As such, the access in situ has been laid on top, but it is unclear, based on the images provided, whether the access has been widened. However, when the whole area of hardstanding is considered, I consider that, on the balance of probabilities and the evidence before me, the hardcore laid in field 1 to form the hard level surface and provide a turning area for vehicles is greater than that shown in the images. The works in field 1 have also included the formation of a new drainage ditch beneath the hardstanding.
8. On this basis, the laying of the hardstanding was an engineering operation at the time when the enforcement notice was served, having regard to section 336(1) of The Town and Country Planning Act 1990 (as amended). The hardstanding is therefore 'development' for the purposes of section 55(1) of the same act. The appeal on ground (b) fails.

The appeal on ground (a) / the deemed planning application

9. The main issues are: a) whether the proposal is inappropriate development in the Green Belt, having regard to the development plan and the National Planning Policy Framework (Framework); b) the effect of the proposal on the character and appearance of the area; c) the effect of the access arrangements on highway safety on Fiddlers Lane; and d) if the proposal is inappropriate development, 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 necessary to justify the development.

Whether inappropriate development

10. The appeal site lies in the Green Belt. Policy STRAT9 of the Local Plan (Part One) Strategic Policies (CELPs) set out that in settlements and areas of the countryside that are within the Green Belt, additional restrictions will apply to development in line with the Framework. Hence, the proposal is required to meet one of the exceptions to inappropriate development set out in Framework paragraphs 149 and 150.

11. A dog walking/training business represents a change of use of land. Even if I were to consider that the proposal was a recreational use, the hardstanding, artificial grass, timber enclosure, caravan and fencing all relate to that use of land and have encroached into the countryside. Furthermore, the timber enclosure, caravan and fencing all cause a spatial and visual loss of openness in the Green Belt. The use of the hardstanding for car parking also affects the openness of the Green Belt when it is in use. Although the openness effect is limited due to the height and siting of each component and the presence of hedgerows and trees on or near to the site, the proposal does not preserve the openness of the green belt. As such, the proposal does not accord with Framework paragraph 150 e).
12. It also follows, that the provision of the appropriate facilities in connection with the use of the land, if I considered the proposal to be a recreational use, would not accord with Framework paragraph 149 b) given my findings on the openness and purposes of the Green Belt.
13. Whilst the land may have been subject to fly tipping and the proposal may provide an opportunity for recreation, and in some regards improve the landscape, this does not change my conclusion, on this issue, that the proposal is inappropriate development in the Green Belt having regard to Framework paragraphs 149 and 150, and also CELPS Policy STRAT9.

Character and appearance

14. The timber enclosure is well screened from public vantage points. However, it is not a typical form of development found within the countryside and it is out of keeping with the open fields enclosed by hedgerows and trees found on the north-eastern side of the lane. Furthermore, the caravan, is not high-quality design and it does not reflect the rural character of the site, even though it provides storage. The additional extent of hardstanding has also harmfully added built form to the field, especially as it facilitates the parking of vehicles on the land. So, whilst the timber post and rail fencing, and the artificial turf respond to the rural character and appearance of the site due to their design, siting and appearance, the proposal, overall, harms the character and appearance of the area. The addition of trees and plants would not overcome that harm. Whilst the appellant may choose to dismantle or remove the timber enclosure and caravan, this is not part of the proposal on ground (a) which is the basis of my assessment.
15. I conclude that the proposal harms the character and appearance of the area and does not accord with CELPS Policy STRAT 9 and Policies ENV6 and Policy DM3 of Local Plan (Part Two) Land Allocations and Detailed Policies (LP2). These policies jointly seek, among other things, to protect the intrinsic character and beauty of the countryside from development that does not harm it due to the development being of a high standard of design that is in keeping with the prevailing layout, landscape, appearance and materials.

Access arrangements

16. Access into the site is located on a bend in Fiddlers Lane; an unlit road. Mature hedgerows and grass verge line either side of the carriageway which bends to the south-east of the site. The road is currently subject of a national speed limit, though this may well change to 30 mph.
17. However, based on current circumstances, the appellant's traffic survey indicates 85th percentile approach speeds of 29.8 mph for eastbound traffic and 30.2 mph for westbound traffic. The alignment and width of the road affect

these measured speeds, but as they are below 40 mph, when guidance in Manual for Streets and Manual for Streets 2 is considered, the required visibility to eastbound traffic is 39.7 metres, and the required visibility to westbound traffic 37.6 metres. On the ground, a visibility splay of 2.4 metres by 41 metres to eastbound traffic and 2.4 metres by 62 metres to westbound traffic can be achieved. Both exceed the required visibility splays based on the appellant's traffic survey. Therefore, notwithstanding the prior agricultural use of the site, the proposed access can operate safely. There is also space within the site for vehicles to park and to enter and leave the site in forward gear.

18. Although the use may principally be accessed by private vehicle, access on foot cannot be ruled out. There is no footway provision in this part of the lane, so any pedestrians need to share the carriageway with vehicles and any other road users. However, that is already the situation, and there is no suggestion that this has led to conflicts or an unsafe environment. Given this, and the depth of the verge on the southern side of the lane that allows pedestrians to step off the road, I do not consider the proposal harms highway safety.
19. On this issue, I conclude that the access arrangements on Fiddlers Lane would be safe and accord with CELPS Policy STRAT 10 and LP2 Policy T5 which jointly seek, among other things, new development to ensure the safety of all road users and to make appropriate provision for access and parking.

Other considerations

20. I note that there is a Public Space Protection Order (PSPO) which means that dogs are excluded from many local playing areas. This reduces the potential areas that they can be exercised and opportunities to explore, play, sniff and investigate in line with the Animal Welfare Act 2006. There are benefits arising from the proposal in terms of the appellant, who is a qualified trainer, providing a safe and secure area for dogs to socialise, exercise and be stimulated. This would particularly be during the day when dog owners are working for instance. The appellant also offers dog training ranging from a basic level to more complex needs. Both are likely to result in more confident and social dogs and attract limited positive weight given the scale of the proposal.
21. Several examples of dog exercise, dog training or dog park facilities have been referred to by the appellant. I have no reason to doubt the appellant's view that these have come about due to the PSPO. Of those that benefit from planning permission, Doodles and Pawsome Paddock Dog Park were granted permission on the basis that the schemes accorded with green belt policy. This is not the case with the proposal before me, so the circumstances are not the same. In the case of Merlin Dog Training, the Council determined that very special circumstances existed to outweigh the development being inappropriate development in the Green Belt. This is a case specific judgement, and I will consider whether the circumstances in this case clearly outweigh the harm that I have identified. In terms of the Off The Leash, there is no officer report to outline how the Council came to the decision that it did. As such, a comparison cannot be drawn. These other facilities therefore do not weigh in favour of the appeal scheme.
22. Whilst the appellant says that the appeal site was previously subject of fly tipping there is limited substantive evidence to support this. As such, this matter carries limited positive weight. Furthermore, I attach limited positive weight to the provision of landscaping and the intended additions of native plants due to the scale of the proposal and its location in a rural area.

23. Even if the owner of nursery opposite the site lives in a static caravan on the land, this is not a matter before me.

Planning balance and Conclusion

24. The proposal is inappropriate development in the Green Belt. This is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm is clearly outweighed by other considerations.
25. The proposal causes harm to the character and appearance of the area, but no harm arises from the access arrangements. I note the appellant's comments on the Council's suggested planning conditions, but I consider that these, along with the other considerations do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.
26. As a result, I conclude that the proposal would not accord with the development plan as a whole and there are no other considerations, including the Framework, that indicate that I should take a different decision other than in accordance with this. On this basis ground (a) fails.

The appeal on ground (f)

27. An appeal under ground (f) is that the appellant considers that the notice's remedial steps go beyond what is reasonably necessary to remedy the identified harm. In this respect it is important to assess whether the purpose of the notice is to remedy the breach or, alternatively, to remedy any injury to amenity. In this case, it seems that the notice serves to address the former.
28. There are two parts to the appellant's case on this ground. The first relates to the caravan. Cladding the caravan with wood would lessen its jarring effect on the character and appearance of the area and the openness of the Green Belt, but it would not overcome the harm by reason of it being inappropriate development and its effect on the purposes of the Green Belt. The second of the appellant's options is to move the caravan elsewhere on the field and further away from the road. However, this would not overcome the identified Green Belt harm. The third option is to remove the caravan entirely. This is what requirement 5.5 of the notice seeks, and it is the sole step that would overcome the Green Belt harm; thus, it is not excessive to remedy the breach of planning control.
29. By removing the timber enclosure, the appellant would be complying with requirement 5.4. Thus, the notice is not excessive in this regard to remedy the breach of planning control. Even so, the notice does not require the land to be returned to any specific state. It ought to due to the green belt status of the land and the character and appearance of adjoining land. The appellant's suggestion to plant turf or grass seed would exceed what is required by the notice, but it would be reasonable to vary the notice to require the land to be returned to its previous condition.
30. I note the appellant's wish for storage in connection with the use. This would be a matter for the appellant to discuss with the Council if they are seeking to continue with the use in anyway.

Conclusion

31. For the reasons set out above, subject to the correction set out above, the

appeal is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Andrew McGlone

INSPECTOR