
Appeal Decision

Site visit made on 6 February 2023

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th March 2023

Appeal A ref: APP/R1845/C/22/3291906

Appeal B ref: APP/R1845/C/22/3291907

Land at Northwood Farm, Northwood Lane, Bewdley, Worcestershire

- Appeals A and B are made under section 174 of the Town and Country Planning Act 1990 ('the Act') as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Jim Hutton (Appeal A) and Ms Paula Cartwright (Appeal B) against an enforcement notice issued by Wyre Forest District Council.
- The notice was issued on 12 January 2022.
- The breach of planning control as alleged in the notice is without planning permission the erection of buildings marked A, B, C and D on the attached plan ("the Plan") for use as dog kennels in connection with a dog breeding business and an office in connection with a dog breeding business and the change of use of part of the land coloured blue on the Plan from agricultural use to a mixed use as residential use in connection with the dwelling known as Northwood Farm and in connection with the said dog breeding business and the erection of play equipment on that land and the change of use of the land coloured yellow on the Plan from agricultural land to use in connection with a dog breeding business and the use of the land and dwelling shown coloured green on the Plan for the use as a dog breeding business.
- The requirements of the notice are:
 1. cease the use of the part of the land shown coloured blue on the attached Plan for a mixed use, compromising of residential use and use in connection with a dog breeding business and to permanently remove the play equipment erected on the said land, returning it to an agricultural use only.
 2. cease the use of the land shown coloured yellow on the attached Plan for use in connection with a dog breeding business, returning it to agricultural use only.
 3. demolish the unauthorised buildings marked A, B, C and D on attached Plan and remove all materials arising from the demolition from the land and return the part of the land on which they were situated to grass.
 4. cease the use of the dwelling house and land shown coloured green for use in connection with a dog breeding business beyond a level of use that would be considered ancillary to the principal use as a residential property.
- The period for compliance with the requirements is 4 months from the date this notice takes effect.
- The appeals are proceeding on the grounds set out in section 174(2)(d) and (g) of the Town and Country Planning Act 1990 as amended.

Appeal C ref: APP/R1845/W/21/3281433

Northwood Farm, Northwood Lane, Bewdley DY12 1AP

- 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 Mr Jim Hutton against the decision of Wyre Forest District Council.
 - The application Ref 21/0029/FUL, dated 11 January 2021, was refused by notice dated 25 June 2021.
 - The development proposed is new purpose built dog kennels, office and store room.
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Formal Decisions

1. Appeals A and B - the enforcement notice is quashed.
2. Appeal C – the appeal is dismissed.

The Enforcement Notice – Appeals A and B

3. I have a duty to ensure that the enforcement notice is in order.
4. The enforcement notice alleges operational development and a material change of use. The alleged material change of use related to areas coloured, blue, yellow and green on the plan attached to the notice. The operational development relates to buildings A, B, C and D as referred to on the plan.
5. Section 173(1)(a) of the Act sets out that an enforcement notice must state “the matters which appear to the local planning authority to constitute the breach of planning control.” An enforcement notice complies with this requirement if it enables any person receiving a copy of the notice to know what those matters are. In deciding whether a notice satisfies the statutory requirement a test applied is whether the notice fairly tells the recipient what they have done wrong and what they must do to remedy it. The recipient must also be able to find out from within the four corners of the document what they are required to do. The requirements should square up with and follow logically from the allegation.
6. Under s176(1) of the Act, as amended, it is open to me to correct any defect, error or misdescription in the enforcement notice or to vary its terms provided I am satisfied that the correction or variation will not cause any injustice. This power extends to the substitution of the plan, providing any amendments would similarly cause no injustice. The Courts interpret the power to correct a notice very widely and that the powers in s176(1) can extend to making significant changes to the terms of the notice so as to put it on a proper footing.
7. The use of the land and the dwelling shown coloured green on the plan is alleged to be in use as a dog breeding business. However, even if the dwelling is used in connection with a dog breeding business, its principal use is as a dwelling for residential occupation. Requirement 4 seeks the use of the dwelling house and land shown coloured green for use in connection with a dog breeding business to cease beyond a level of use that would be considered ancillary to the principal use as a residential property. The allegation and requirement 4 are not consistent. Requirement 4 is also vague about what the level of use would need to be to be deemed ancillary to the residential use of the dwelling. This is open to interpretation and could lead to significant confusion in attempts to comply.
8. There is no evidence of the land coloured blue being used for residential purposes in conjunction with the dwellinghouse at Northwood Farm, especially as it is fenced off from the dwelling. Also, even with the lack of evidence of play equipment on the land, I do not know what exactly “play equipment” means and whether it is dog related play equipment or play equipment commonly used by children for example. Nor do I know what the play equipment comprises of. Furthermore, the plan includes a box referred to as ‘E’, but there is no reference to ‘E’ within the allegation or the requirements. As such, the allegation, requirement 1 and the plan are collectively unclear about what would need to be done to comply with the notice.
9. The yellow coloured area is alleged to have changed from agricultural land to use in connection with a dog breeding business. Whilst that may be true, the extent

of the areas coloured blue and green on the plan and the relationship of both colours to the corner/flank elevation of building A do not reflect the situation on the ground. Also, the areas coloured yellow, and green is imprecise, particularly around/between buildings B and C and the land back towards the vehicular access from the road.

10. Several issues arise from the plan being imprecise and inaccurate. Requirements 1 and 2 specify that the areas coloured blue and yellow are to return to an agricultural use only. It is unclear what the land coloured blue and yellow was previously used for, but in August 2012, Mr Hutton applied for, and was granted planning permission for "stables and agriculture store following removal of existing buildings" (ref: 12/0600/FULL ("the 2012 permission"). The stables, now built on site, lie within the area coloured yellow. This is not an agricultural use. If I were to correct the notice without sufficient clarity of the situation, requirements 1 and 2 could be more onerous as a result. This could cause injustice to the appellants. Alternatively, I could delete the plan, but this would result in ambiguity within the notice itself as it would not specify the precise boundaries of the land to which it relates.
11. Requirement 4 relates to the land coloured green. However, this land does not include the existing barn that lies between buildings A and B for example. A plan (0732-01 Rev A), submitted as part of the 2012 permission, shows the existing floor of the barn in 2012. The internal layout of this barn indicates that there were four kennels and runs. However, I am unclear whether there may have been other areas used for dog breeding, and if I were to amend the plan and area coloured green, it could potentially cause injustice to both parties due to the plan not accurately reflecting the correct situation and the extent of any dog breeding, even on an ancillary basis as requirement 4 stipulates.
12. Buildings marked A, B, C and D are alleged "for use as dog kennels in connection with a dog breeding business and an office in connection with a dog breeding business". The evidence before me only points to an office in building A; not in buildings B, C or D. Also, the appellants evidence indicates that building B is not used as dog kennels in connection with a dog breeding business. My observations confirm this. Thus, the allegation in terms of building B is incorrect.
13. Requirement 3 relates to the buildings marked A, B, C and D. It requires those buildings to be demolished and all the materials arising from the demolition to be removed from the land, the land on which they were situated is to be grassed.
14. Building A is subject of Appeal C. I will consider the planning merits of this building later in my decision, but for the purpose of the notice, there is no difficulty arising with the allegation relating to it or requirement 3. However, setting aside the use of building B, photographs and aerial images suggest that there was a building or structure there before more recent works were undertaken that have resulted in the creation of building B. Hence, requiring the entirety of building B to be demolished would go too far. However, the evidence before me is not sufficiently clear to enable me to precisely correct requirement 3 so that the appellants could know what they would need to do to comply with the notice without causing injustice to either party.
15. Buildings C and D were not present when I visited, but I have no reason to believe that they were not present when the notice was issued. The land on which buildings C and D were sited is covered by hardstanding. The hardstanding is not

subject of the notice, and there is no suggestion that a breach of planning control arises from its existence. The scope of an enforcement notice is limited by s173(4)(a) and (b) of the Act. Where planning permission has not been granted for the development, the power is simply to restore the land to its previous condition. There is no statutory power to require the appellant to undertake works which would result in an improvement to that previous condition. Hence, requirement 3 in respect of where buildings C and D stood would be onerous and cause injustice to the appellants.

16. In this case, the allegation and none of the requirements can be considered as sufficiently precise and unambiguous; something one would reasonably expect of a legal document, and certainly one representing a charge on the land. Having regard to the *Miller Mead v MHLG* [1963] 2 WLR 225 judgement, I consider the current notice's construction is so ambiguous and uncertain to the point that the owner or occupier could potentially not tell in what respect the land had been developed without planning permission or further, that they might interpret, with reasonable certainty, what steps had to be taken to remedy the alleged breach.
17. Collectively, I am concerned that the enforcement notice is so littered with errors, of varying importance, that when taken together, they collectively strongly suggest its invalidity. On this basis, I, doubt whether, in the form issued, the notice provides the certainty necessary for it to have a reasonable chance of success. If I were to try to make the significant corrections necessary, I am of the view that this would result in injustice. Therefore, I find that this notice, as issued, is incapable of correction.
18. For the reasons given above, I conclude that the descriptions of the alleged breach of planning control is not correct, and the stated requirements do not cogently relate to the alleged breach of planning control specified. Nor do they specify with sufficient clarity the steps required for compliance and they go beyond the legal scope of any enforcement notice. Therefore, it is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the Act as amended, since injustice would be caused were I to do so.
19. The enforcement notice is invalid and will be quashed. In these circumstances, the appeals on the grounds set out in section 174(2)(d) and (g) of the Act as amended do not fall to be considered.

Appeal C – the planning application

Preliminary Matter

20. The description of development at the start of my decision in respect of Appeal C has been taken from the planning application form. This description relates to building A as referred to in the enforcement notice subject of Appeals A and B. The appellant has stated that this is what they have applied permission for. For consistency, I shall refer to the building subject of Appeal C as building A.
21. However, the description of development found on the decision notice states a "change of use of land from agricultural to commercial breeding of dogs and replacement of existing kennels and structures with a single kennel block to include office and store room." That is the description which was suggested by the appellant's representative to the Council.
22. Despite this, the site edged red on the submitted location plan, to which the

planning application relates, is unchanged. No other plans relating to the wider site and the use considered by the Council were before the Council when it reached its decision. If I were to allow Appeal C, I would need to be clear about the extent of any change of use of land to commercial breeding of dogs. I would also need to ensure that any planning conditions fairly and reasonably related to the development permitted and the six policy tests set out in paragraph 55 of the National Planning Policy Framework (the Framework). I am unclear in both respects and the appellant did not specifically apply for a change of use of land originally. In these circumstances, I have considered Appeal C based on the description of development stated on the planning application form.

Main Issues

23. The main issues are: (a) whether the proposal is inappropriate development in the Green Belt, and the proposal's effect on the openness of it, having regard to the development plan and the Framework; (b) the effect of the proposal on the living conditions of nearby residential occupiers, with regards to noise; (c) the effect of the proposal on the character and appearance of the area; 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

24. The appeal site lies within the West Midlands Green Belt. Policy SAL.UP1 of the Site Allocations and Policies Local Plan 2006 – 2026 (Local Plan) sets out that within the Green Belt, development will not be permitted, except in very special circumstances, unless one of the exceptions listed applies.
25. Building A has not been extended or altered as it was newly built. The appellant says that building A has replaced existing buildings, but it is unclear which buildings are meant by this. Even if I were to take it to mean those referred to as 'existing kennels' on the submitted plan and set aside the question of whether they benefit from planning permission, and whether building A is in the same use as those, building A is of a considerable size and is materially larger than the sum of those existing kennels. Hence, Framework paragraph 149 exceptions c) and d) are not met.
26. Building A is used as part of the appellant's dog breeding business which is not an outdoor sport, outdoor recreation, cemetery, burial ground or allotment. This is not, however, a closed list as the term 'such as' is included in Framework paragraph 150 e). Even so, for the proposal to accord with exception b) of Framework paragraph 149 and exception e) of Framework paragraph 150, building A needs to preserve the openness of the Green Belt and not conflict with the purposes of including land within it.
27. Openness has a visual and spatial aspect. Building A is of a considerable size and whilst it has a low profile, it has occupied land that was previously free of development. The spatial effect of this change is evident from the site but also on the footpath along the River Severn. That said, the scale, massing and siting of building A next to the existing barn means that it does not have a significant visual effect. However, this is not the same as building A having no effect at all. Overall, I consider building A has a moderate effect on the openness of the Green Belt. Hence, the proposal would not preserve it.
28. Building A would also not safeguard the countryside from encroachment as it

has introduced additional built form into an open field and extended a cluster of buildings into that field towards the river.

29. I conclude that the proposal is inappropriate development in the Green Belt, having regard to the development plan and the Framework. The proposal conflicts with Local Plan Policy SAL.UP1 and Framework paragraphs 149 and 150 which jointly regard new buildings and other forms of development as inappropriate development unless they meet the listed exceptions.

Living conditions

30. There is no noise assessment before me, but given the use of building A accommodation for breeding dogs, it is reasonable to expect dogs residing in there to bark. The question is whether that causes an unacceptable noise effect on residents nearby.
31. The open front design of building A and its brick construction mean that it does not attenuate noise from dogs barking. Owing to the number of kennels within the building, which are not enclosed, unlike the whelping pens, there is the potential for noise from dogs barking to spill out across the field and the surrounding area, which is a relatively quiet noise environment given its semi-rural location. The nearest residential receptors are a fair distance away, but in this location, it is highly likely that noise from barking dogs would carry. That could happen at any time of day, and residents do refer to hearing noise from dogs during the day.
32. The Nuisance Assessment Team at Worcestershire regulatory services say that five separate complaints of noise from barking dogs at Northwood Farm have been received since the start of 2021. A further noise complaint is said to have been made in August 2018. I do not have details of the complaints to know what the nature of the issue is, whether they relate to Northwood Farm, the character of the noise, or whether the issues have now been resolved.
33. Although the number of complaints seems to be relatively low that does not mean that noise from dogs barking in building A has not or could not arise, or that it is or could be of a level that is below a statutory nuisance threshold, but which affects peoples' day to day lives.
34. Building A is not used as a boarding kennel, which would involve a turnover of dogs from different owners. The appellant also says that they firmly control dogs in the building and ensure pups learn from their mother's behaviour. However, this may not always be achievable, and it would not be possible to draft, and then impose a planning condition with sufficient precision, that does not place unjustifiable and disproportionate requirements on the appellant, whilst not practicably being enforceable. This is due to the unknown nature and character of the dogs which could very quickly and easily change over time, the absence of any evidence about the day-to-day management procedures of dogs within building A, existing noise levels and what may be achievable with dogs barking whilst not affecting residents' living conditions.
35. I conclude, based on the evidence before me, that the potential for barking dogs to adversely impact nearby residents' living conditions exists. Hence, the proposal conflicts with Framework paragraph 185 as the development is not, based on the evidence before me, appropriate for its location taking into account the likely of noise pollution on nearby residents living conditions.

Character and appearance

36. The appeal site lies within a medium to large scale upstanding, wooded landscape with a sloping topography and a well-defined character. The landscape has a sense of balance, with medium framed views owing to woodland or trees next to the river. As the appeal site is positioned on a low slope between a block of woodland and the river, and it displays characteristics of farmland, it positively contributes to the landscape character area.
37. Building A is designed with a specific function. Its low scale design, mass and proportion is sensitive to its environment, given that it is chiefly viewed up against an existing barn of a greater scale and mass. The dark profile sheeting used for its roof replicates the style of the barn's roof and its colour is suitable in the landscape as it does not draw attention to it. The use of brick does give building A an urban appearance, but there are brick-built dwellings nearby. In this context, I do not share the Council's concerns about building A's effect on the character and appearance of the area. The loss of a small area of pasture has not detracted from the understanding or experience of the landscape's character. Hence, the landscape character has been protected, though it has not enhanced it as the appellant suggests.
38. I conclude that the proposal accords with Local Plan Policy SAL.UP7 and Policies CP11 and CP12 of the Core Strategy (2006 – 2026) (CS); which jointly seek, among other things, new development to sensitively connect to its surroundings; essential that new buildings are of the highest design quality, fit for purpose and use appropriate scale, mass, proportions and materials.

Other considerations

39. The Animal Welfare Act 2006 sets out a statutory duty of care on persons responsible for animals which means that they must take steps to ensure that the animals needs and welfare are met. The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 Guidance notes for conditions for breeding dogs ('the Guidance') require all areas, equipment and appliances to which the animals have access must present minimal risks of injury, illness and escape. Facilities must be constructed in materials that are robust, safe, durable, in a good state of repair and well maintained. The Guidance elaborates on a suitable kennel environment and that animals must be kept at all times in an environment suitable to their species and condition (including health status and age). Kennels must also be of a minimum size depending on a dog's weight, with additional space provided for bitches with litters and puppies housed in litter groups.
40. The appellant specialises in the breeding of Jack Russel Terriers and American Bull dogs as well as other breeds. The appellant says that puppies are sought after both in the UK and Internationally and that there is usually a waiting list. There is, however, no substantive evidence expanding on these points.
41. Building A provides a modern, suitable kennel environment. There are also separate whelping pens. Building A has been built with a view to providing dogs with a safe and suitable environment and to secure a license and ensure that no offence is committed. Whilst building A may have replaced several other kennels, I do not have any details of their condition and suitability in terms of providing a safe and suitable environment for the dogs, having regard to the Guidance and The Animal Welfare Act 2006. There is also no analysis to outline whether any other buildings on the wider site could have been converted or

enhanced whilst realising the same safe and suitable environment for the dogs.

42. Furthermore, even though there may well be a functional need, the scale of that, has not been demonstrated given the number of kennels within building A and the lack of details about the number of breeding dogs, puppies and sales.
43. As a result, I attach moderate weight in favour of the appeal scheme to the provision of suitable accommodation that building A seems to provide and its contribution to support a prosperous rural economy as sought by Framework paragraph 84. The weight that I have attached is tempered by the insufficient detail around other buildings and the scale of the functional need purported.

Conclusion on Appeal C

44. Building A is inappropriate development in the Green Belt, which the Framework states 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. I have not found the proposal to be harmful to the character and appearance of the area, but I have found harm in respect of nearby residents living conditions.
45. Having regard to the other considerations in this case, I consider that they do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.
46. This leads me to conclude that the proposal, subject of Appeal C, 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.

Conclusions

47. For the reasons given above, I conclude that the enforcement notice, subject of Appeals A and B, does not specify with sufficient clarity the alleged breach of planning control and the steps required for compliance. It is not open to me to correct the errors in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeal under grounds (d) and (g) as set out in section 174(2) of the 1990 Act as amended do not fall to be considered.
48. In respect of Appeal C, I conclude for the reasons set out above that the appeal is dismissed.

Andrew McGlone

INSPECTOR