



Appeal Decision

Site visit made on 23 May 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2023

Appeal Ref: APP/R1845/C/22/3299706

**Land to the east of Drakelow Lane, Wolverley, Kidderminster,
Worcestershire DY11 5RU**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Gerald Abraham against an enforcement notice issued by Wyre Forest District Council.
- The notice was issued on 21 April 2022.
- The breach of planning control as alleged in the notice is Without planning permission the change of use of land from agricultural to dog agility training, dog training and activities and the installation and/or stationing of various items of dog agility equipment and obstacles, scrap car, touring caravan, portaloos and storage container and the erection of shelters used in connection with the dog agility training, dog training and associated activities.
- The requirements of the notice are to: 1. Remove the dog agility equipment and obstacles, scrap car, touring caravan, portaloos and storage container and the erection of shelters that have been erected and return the land to its condition prior to their installation and /or stationing. 2. Cease the use of the Land for dog agility training, dog training and associated uses and return the use to an agricultural use.
- The period for compliance with the requirements is: 3 (three) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) 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.

Decision

1. It is directed that the enforcement notice be corrected and varied by the following:
 - 1) The deletion of text at section 6, time for compliance and the substitution therefore by the following period of compliance: '6 (six) months.'
 - 2) The deletion of all text at section 5, what you are required to do and the substitution therefor by the following requirements:
 1. Permanently remove the dog agility equipment and obstacles, scrap car, touring caravan, portaloos, storage container and shelters from the Land.
 2. Cease the use of the land for dog agility training, dog training and associated uses and restore the land to its condition before the development took place.
2. Subject to the correction and variations, the appeal is 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.

Preliminary Matters

3. Since the enforcement notice was issued, the Wyre Forest District Local Plan 2016-2036 (the 'LP') has been adopted. Policies referred to in the notice have been replaced as detailed in the Council's questionnaire. The Council and appellant refer to the new policies where relevant in their submissions and I shall do likewise.

Matters concerning the Notice

4. There is superfluous wording in the first requirement and for clarity I shall vary the requirement to remove the unnecessary words. Furthermore, the requirement to return the land to an agricultural use is deemed unnecessary. Accordingly, I shall vary the requirement to restore the land to its condition before the development took place, as the landowner will be the person with the best knowledge of what that previous condition was. It is open for me to correct and/or vary the notice in accordance with my powers under section 176(1) of the Act. As such, I consider that the variations and correction provide clarity and by doing so, I am satisfied that no injustice will arise to either of the main parties.

Site and development

5. The appeal site comprises a large level field which lies in an elevated position surrounded by open countryside. The character of the surrounding landscape is undulating and wooded. The site is accessed via a long narrow track from Drakelow Lane. The track is rough surfaced and to either side are fields on which, at the time of my visit, horses were grazing. Post and wire fencing bounds the site and this is bolstered on two sides by mature vegetation. There are structures and equipment on the site, including jumps, tunnels and weave sets. There is also a scaffold structure for training at height, a structure made from fence panels, a dilapidated caravan and a black taxi sited on the field used for training purposes.
6. Alongside the eastern boundary is a container for office and storage use, a basic open fronted shelter for visitors, and some portaloos within the area set aside for parking. Some of the equipment is sited on the land and is moveable and other equipment such as the scaffold structure and the container used for the office have a degree of permanence and there is no evidence to show that they have been moved.
7. The facility is primarily used by the National Association of Security Dog Users (NASDU) and the Protection Sports Association (PSA) for training sessions, accredited courses and for competitions. The facility is also available to members of the public who can book courses directly with K9 Pawfection who operate from the site. The purpose of the structures and equipment is said to be for environmental exposure for the dogs to replicate scenarios they may be exposed to when working as security or search and rescue dogs. The training sessions involve dogs working their way through a series of obstacles. The structures and equipment are clearly an integral part of the material change of use and are used solely for the purpose of facilitating the unauthorised use.

Ground (a) and the deemed planning application

Main Issues

8. The main issues are

- whether the development constitutes inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies, and the effect upon the openness of the Green Belt and the purposes of including land within it.
- the effect of the proposed development on: access, parking and turning and highway safety; ecology and biodiversity; and noise.
- If it is inappropriate development, 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 necessary to justify the proposal.

Reasons

Whether Inappropriate Development

9. Policy DM.22 of the LP sets out detailed local guidance on development within the Green Belt. It provides that within the Green Belt, development will not be permitted except in very special circumstances, or unless it complies with the criteria contained within the policy.
10. Substantial weight is given to any harm to the Green Belt. The National Planning Policy Framework (the Framework) advises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and openness and permanence are stated as being the essential characteristics of Green Belts¹. Green Belts serve 5 purposes, one of which is to assist in safeguarding the countryside from encroachment². The Framework advises that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances³ which will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
11. Certain forms of development are identified in the Framework which are not inappropriate, provided that they preserve the Green Belt's openness and do not conflict with the purposes of including land within it. In this latter category, under paragraph 150 (e), one of the forms of development which may not be inappropriate is a material change in the use of land. This point provides examples such as changes of use for outdoor sport or recreation, which, in the appellant's view, is how the land is being used. Notwithstanding this stance, the alleged breach of planning control is the material change of use of the land from agriculture to a use for dog agility and training purposes. In this respect, and in line with the Framework paragraph 150 (e), the use is not inappropriate development provided it preserves the visual and spatial openness of the Green Belt and the purposes of including land within it.

¹ Paragraph 137

² Paragraph 138

³ Paragraph 147

12. The use of the land for dog training purposes on what was formerly agricultural land in the open countryside will inevitably erode the openness of the Green Belt. Where previously the site was used for agricultural purposes, there are now urbanising features in the form of a parking area to accommodate visitors' vehicles, static and moveable structures and equipment. All of which encroach on the countryside. Although many of the structures and pieces of equipment are modest in terms of height and scale, the development as a whole has a spatial dimension introducing built form into an area of once open field where there was previously no development.
13. The topography of the site, and its general openness are likely to garner longer distance views towards the site although it is possible that many would be interrupted by the heavily wooded surrounding landscape. Nevertheless, even if the development may not be particularly prominent from public vantage points, the absence of significant visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt. The structures on the land inevitably reduce openness, albeit to a moderate degree, and that loss of openness must be given substantial weight.
14. The material change of use of the field represents a noticeable encroachment of activity into agricultural land that would conflict with a main purpose of the Green Belt. Furthermore, the erection and siting of paraphernalia associated with the use does not preserve the openness of the Green Belt. While the effect of the development is moderate, on the basis that the fundamental aim of Green Belt policy⁴ is to keep land permanently open, it is sufficient to amount to inappropriate development in the Green Belt when considered against the provisions of the Framework.

Access, parking and turning and highway safety

15. The Council raised concerns regarding the provision of parking and turning space, the safety of the access onto the public highway, the intensification of the use of the single track and absence of passing spaces. A rough surfaced area is provided at the end of the access track and the space, as displayed on drawing 22-039-SK02, would allow for a number of vehicles consistent with the scale of the operation to park and turn. While the lack of passing spaces could be problematic to the appellant and their clients, it is likely not to have a negative impact on the public highway and thus be a highway safety concern. Nevertheless, the appellant has shown on drawing 22-039-SK03 that two passing bays could be provided. These matters are further supported by Magna Transport Planning Ltd which address the matters of concern in their Transport Note.
16. Responding to the visibility around the access, the speed survey undertaken by the appellant by way of an Automatic Traffic Counter summarised the speeds to require a 36m visibility splay to the left that could be achieved and a 50m visibility splay to the right that could be achieved by cutting back vegetation within the adopted highway land.
17. In light of the supporting evidence provided by the appellant and from what I saw at my site visit, I am satisfied that the development would not have a harmful effect on highway safety or be substandard in its provision of parking

⁴ Paragraph 137

and turning facilities or access. In this respect, there is no conflict with Policy SP.27 of the LP.

Noise

18. The Council raise concerns about the impact of the development on noise disturbance generated by barking and increased vehicular movements. This is described as being harmful to residents in proximity of the site due to the funnelling effect created by the location and topography of the site. While I acknowledge the site's location could amplify noise due to topography and its openness, and I am aware of comments from some local residents, there is limited evidence to support these concerns. Furthermore, the appeal site is some 150m from the nearest properties and separated by woodland. In this respect, and without evidence to the contrary, I am not persuaded that the development has a harmful effect on the living conditions of nearby residents which would conflict with Policy DM.24 of the LP.

Ecology and biodiversity

19. The site is immediately adjacent to a grassland inventory local wildlife site and the Council consider it is likely that some loss of biodiversity has occurred. However, it considers that with a mitigation and management plan any impact could be adequately addressed. While I acknowledge that the land was formerly agricultural and likely grazed rather than under a system of crop rotation, the change of use may well have affected species and habitats. Without an ecological assessment of the land, it is not clear whether this would have been a material consideration as to the appropriateness of the development and whether mitigation measures would be required. In this respect the development conflicts with Policy SP.23 of the LP.

Other considerations

20. The appellant has offered to limit the number of training sessions, limit the number of pieces of equipment, relocation or removal of equipment or limit the total coverage of the site. Although these individually or together would go some way to lessen the impact of the development, there would remain an intrusion of activity and this would not preserve the visual and spatial openness of the Green Belt and the purposes of including land within it.
21. The appellant submits that the use of the site promotes diversification of the agricultural use of the wider landholding, employing two people and supporting families on the income from the business. It is said to provide economic benefits and supports the training of vital security, detection and Search and Rescue dogs through use of the facility by the National Association of Security Dog Users who are responsible for training security guard dogs, security detection dogs and Search and Rescue dogs, and the Protection Sports Association. While the training of security and rescue dogs is likely to be of great importance, there is no reasoning as to why the appeal site presents the only geographically suitable site for the use. Furthermore, although the appellant suggests that use could be described as a diversification of the agricultural use, I am not provided with any information to show that the use of the land supports an agricultural enterprise.
22. Overall, I give these other considerations, including economic benefits and employment, moderate weight.

Planning Balance

23. The development constitutes inappropriate development and erodes the openness which causes harm to the Green Belt. This is a matter to which substantial weight is given. The development represents encroachment, conflicting with at least one purpose for designating land inside the Green Belt, which is a serious planning objection. I have also identified conflict with Policy SP.23 to which adds moderate weight against the development. While I have not identified any harm to the occupiers of the neighbouring properties, or to highway safety, these are neutral factors which do not weigh for or against the proposal in the overall balance.
24. The Framework advises that very special circumstances will not exist unless harm to the Green Belt, and any other harm, is clearly outweighed by other considerations. Having carefully taken account of all other considerations in this case, I find that individually and cumulatively, the substantial weight given to the Green Belt and policy conflict is clearly not outweighed to justify allowing the appeal. Consequently, the very special circumstances necessary to justify the development do not exist.
25. As such, the development conflicts with Policies DM.22 and SP.23 of the LP which, amongst other things, seeks to protect the Green Belt from inappropriate development. Furthermore, it fails to accord with the Framework which aims to keep land within the Green Belt permanently open and prevent encroachment into the countryside.

Conclusion on ground (a)

26. For the reasons given above, I conclude that the appeal cannot succeed and I refuse to grant planning permission on the deemed application.

Ground (f)

27. The basis for an appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or any injury to amenity. Since the notice requires the use to cease and for the equipment associated with the use to be removed, the purpose is to remedy the breach (s174(4)(a)). For the appeal on ground (f) to succeed, the appellant must propose alternative steps which would remedy the breach.
28. As an alternative to full cessation of the development, the appellant suggests planning permission could be granted with conditions imposed to make the development acceptable. I have considered these under the ground (a) appeal and concluded that this would not remedy the breach of planning control because it would not overcome the harm identified. The appellant also raised matters concerning the requirements in the notice. These I have considered at the beginning of the decision at paragraph 4.
29. No cogent reasoning has been advanced to show what lesser steps, if any, could be taken to remedy the breach of planning control. The requirements of the notice, as varied, are not excessive but are the minimum necessary to remedy the breach that has occurred. There is nothing short of ceasing the use of the land as alleged and the removal of the equipment used in connection with the use that would achieve the purpose behind the requirements.
30. Accordingly, the appeal on ground (f) fails.

Ground (g)

31. The appeal on ground (g) is that the period specified in the notice falls short of what should be reasonably allowed. The appellant suggests the compliance period be extended to 12 months. This is because the business is thriving and is relied upon by ongoing dog training and agility courses, with courses being booked for around 6 months in advance. The appellant has a commitment to courses booked and currently underway and not allowing sufficient time to find and secure an alternative site would lead to a loss of income and livelihood.
32. While there is no evidence to support the appellant's suggestion that courses are typically fully booked for around 6 months, I do acknowledge that the cessation of the business prior to relocating it could lead to a loss in income. I note that the Council agree to extending the period for compliance to 6 months and this I consider would enable the appellant to look for a suitable new location.
33. The appeal on ground (g) therefore succeeds to that extent.

Conclusion

34. For the reasons given above, and taking all other matters into consideration, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

S A Hanson

INSPECTOR