



Appeal Decision

Site visit made on 17 July 2023

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2023

Appeal Ref: APP/Q4625/W/23/3314129

Field near Cuttle Pool Farm, Cuttle Pool Lane, Temple Balsall, Solihull B93 0AP

- 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 Ms Odette Kimberley against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2021/01081/PPFL, dated 15 April 2021, was refused by notice dated 8 July 2022.
 - The development proposed is the change of use of land for private dog walking.
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Decision

1. The appeal is allowed, and planning permission is granted for the change of use of land for private dog walking at field near Cuttle Pool Farm, Temple Balsall, B93 0AP in accordance with the terms of the application, Ref PL/2021/01081/PPFL, dated 15 April 2021, and the plans submitted with it, subject to the below conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan (1:1250) (second version showing boundary fencing alongside the Brook), Site Plan (1:5000) and Block Plan (1:500)(showing revised gate location).
 - 3) Prior to the first use of the site, stock fencing, proposed alongside the part of Cuttle Brook that adjoins the site, and surrounding the entire inner edge of the remaining site boundary, and the revised gate position (as shown on the block plan), shall be erected, and then maintained for the duration of the approved use.
 - 4) Upon commencement of the use no more than two vehicles shall access, or be parked, on the site at any one time. The premises shall only be available for customers between the hours of 0700 and 1900 daily. All customers must have booked in advance of any exercise visit, with booking details made available to the Local Planning Authority upon request. A booking slot shall last 50 minutes, and a 10-minute gap must be left between booking slots. No more than two customers and four dogs shall be exceeded at any time.

Preliminary Matters

2. The Emerging Solihull Local Plan was submitted for examination in May 2021. The Council has stated that the relevant emerging policies are similar to

existing policies engaged with this proposal. As such, due to the early stage of its adoption, I have afforded limited weight to the emerging Plan and its policies.

3. A previous appeal for a 'doggy daycare' facility on the site was dismissed¹. The previous scheme included two log cabins and hardstanding. The Inspector found the proposal to be inappropriate development. Although the previous appeal decision is a material consideration, the proposal the subject of this appeal is substantially different to that scheme. It is therefore of limited weight in my consideration of the merits of this case.

Main Issues

4. The main issues are:

- Whether the proposed extension would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (The Framework) and any relevant development plan policies, the effect on the openness of the Green Belt and if the proposal would be inappropriate development, whether any harm is clearly outweighed by other considerations, so as to amount to very special circumstances to justify it;
- whether the proposed use would be in a suitable location with respect to local and national spatial planning policies; and
- the effect of the proposal on highway safety, with particular regard to the use of the access and the width of Cuttle Pool Lane.

Reasons

Inappropriate development

5. The appeal site is within the West Midlands Green Belt. Policy P17 of the Solihull Local Plan [2013] (LP) states that the Council shall not permit inappropriate development in the Green Belt. At bullet point 4, the policy states that where the re-use of land is proposed, the new use should not conflict with, nor have a materially greater impact on, the openness of the Green Belt and the purposes of including land within it.
6. Paragraphs 149 and 150 of the Framework, establish forms of development that would not be inappropriate. Paragraph 150 relates to forms of development that would be not inappropriate in the Green Belt provided they preserve its openness. Development that would not be inappropriate are listed under criteria (a) to (f). Paragraph 150(e) relates to material changes of use of land and provides examples that include outdoor sport, recreation, cemeteries and burial grounds. Accordingly, the policy approach of LP policy P17 is consistent with the Framework.
7. The use of the site for dog walking is not listed in the Framework under Paragraph 150(e), but this is not a closed list and clearly relates to a range of outdoor activities that would require the public to attend to benefit from the specific use. Therefore, any such activity would be likely to generate a certain quantum of vehicle movements for attendees to access the site, especially when in countryside locations. Therefore, whilst the intensity of attending vehicles is an important consideration, the Council appear to have applied an

¹ Planning Appeal Reference: APP/Q4625/W/18/3208605

extreme approach that appears to conflict with the objective of paragraph 150(e). Instead, such consideration should be a matter of fact and degree, with the focus directed to the effect of the use on openness.

8. The proposal would not include alteration to the surface of the field, or to land levels, to accommodate vehicles. The Appellant has indicated that the facility would accommodate one vehicle at a time, with dogs and their owners using the field for recreation. Based on the level of activity described by the Appellant the proposed use would be a low-intensity use.
9. Considerations of openness have both visual and spatial aspects. This means that 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. The site is enclosed by field boundary hedging and is relatively flat. As such, it is well screened from the adjacent lane with limited views from the highway. Public views of the site are largely restricted to views over the access gate and some partial views through the roadside hedging.
10. The appeal site, being within a relatively remote location, would require the attending customers to mostly access the site by motor vehicle. Vehicles, and the proposed boundary fencing, would have a visual impact on the surrounding countryside, albeit minor. Nevertheless, due to the anticipated low-intensity level of activity, the nature of the use proposed and the level of screening, the site would maintain its agricultural appearance.
11. Furthermore, the field could be regularly visited by an agricultural worker by vehicle to care for any livestock on site or to maintain the land as part of its existing use. The typical farming activities associated with the site would result in an intensity of use that would be comparable to that proposed. The proposal would therefore have no material spatial effect and only an extremely minor visual effect on the site's openness. As a result, the proposal would preserve its openness and would safeguard the Green Belt from encroachment.
12. Accordingly, as the proposed change of use would preserve the openness of the Green Belt it would be deemed to not be inappropriate development in compliance with paragraph 150(e) of the Framework and LP policy P17.

Suitability of location

13. The LP establishes the Council's approach to the distribution of development across the borough. This seeks to focus development within its most accessible locations to enhance accessibility levels and promote ease of access. It also seeks new development to reduce the need to travel by promoting linked trips and encouraging mixed use travel. These objectives are supported by the Framework that seeks development to be located where services and facilities can be easily accessed. Nonetheless, the Framework also recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
14. Due to its location, the site would only encourage motorists to visit the site where there are limited alternative travel choices, creating a poor travel pattern which is reliant on the use of the private car. However, the proposal would relate to an extremely low intensity use. Further, the proposal would provide an area for people to walk their dogs, off the lead, in a secure environment. Such a use would require a wide and open space to function and

would be unlikely to be available in an urban setting. Consequently, despite being only moderately accessible, the nature of the proposed use would be suitable within this countryside setting and may be the most accessible site for the type of use proposed.

15. As such, whilst the proposal would be in location providing poor access to alternative means of transport, the activity suits the arrival of dog owners by motor vehicle to enable them to manage animals in a safe and secure manner. Consequently, the location of the site whilst remote, would meet the objectives of paragraphs 92(c) and 120 of the Framework, in providing access to safe and accessible green infrastructure which would improve public access to the countryside.
16. Consequently, based on the characteristics of the proposed use, it would be located where it would provide a suitable level of accessibility for the target users. As such, the proposal would comply with LP policy P7 which seeks all new development to be located in the most accessible locations.

Highway considerations – Cuttle Pool Lane

17. The site is accessed by Cuttle Pool Lane. This is a single-track lane, parts of which include tall hedging and roadside embankments, providing limited passing points and restricted forward visibility. The highway provides various field access points, access to Cuttle Pool Farm and a limited number of other dwellings. The lane is absent footways and streetlights and has a quiet rural character.
18. The Appellant's Transport Assessment (TA) demonstrates that the current number of vehicles using the road is very low, with a recorded peak flow of two vehicles per hour and only 20-25 vehicles a day. The number of vehicles proposed to access the site at any one time would be limited to one or two, with a ten-minute gap provided between bookings. This would limit the opportunity of two vehicles, associated with the use, meeting on the lane.
19. Due to the low intensity of the proposed use, and the limited number of vehicles currently using the lane, the chance of vehicles meeting seems extremely low. Furthermore, whilst passing points are limited, these are sufficient to ensure that opposing vehicles could pass with limited difficulty. This type of potential traffic conflict would be infrequent and likely to occur at low speeds, potentially causing some mild inconvenience, but not resulting in an adverse effect on highway safety.
20. Accordingly, the proposal would comply with LP policy P8, with regard to transport efficiency. This seeks, among other matters, for development to not result in the significant increase in delay to vehicles, pedestrians or cyclists and to minimise a detrimental impact to the efficiency of the highway network.

Highway considerations – Access

21. Cuttle Pool Lane is a quite country lane, lightly use by traffic. The TA identifies that average recorded speed along the lane is 22mph, and a 85th percentile speed of 28.4mph. The existing farm gate is placed at an angle to the roadway and is set at slightly lower land. The proposed scheme seeks to recess the gate by 5 metres to allow a motor vehicle to park fully off the highway whilst opening the gate. The proposed area of parking would be of sufficient size to allow several vehicles to enter, turn and leave the site in a forward gear.

22. The TA calculates that the visibility splay, based on Manual for Streets² (MfS), in both directions should be 40 metres (Y distance) by 2 metres (X distance) to provide sufficient stopping sight distances. Appendix D of the TA demonstrates how these could be achieved with plotted visibility splays.
23. The lane is generally flat and level but slightly curved at the access. This would slightly reduce views of approaching traffic within the lane in both directions, due to the extent of hedge cover and the narrow nature of the highway. However, standing at the access I observed on site that roadside hedging would be within the plotted visibility lines. Views would therefore be obstructed by roadside planting. It is not stated in evidence whether this planting is within the highway or the application site. Furthermore, boundary hedging to the northwest (looking left of the access) encloses land beyond the application site and may be in third party ownership. As such, I am unconvinced that the visibility splays shown at Appendix D could be readily provided.
24. Nevertheless, MfS identifies that where forward visibility is restricted, traffic speed can be controlled by physical constraints, and that such constraints would influence the speed of motorists. The guidance also finds that road speed is influenced by road width and forward visibility. It explains that in studies, inadequate intervisibility does not necessarily increase the risk of collisions for vehicles entering priority roads from junctions. Accordingly, a failure to achieve the required visibility splay is only one consideration when determining the effect of restricted visibility on highway safety.
25. The guidance accepts that in some slow-speed situations, when flows are low, the front of some vehicles may need to protrude into the running carriageway as motorists cautiously nose out into traffic. When cautiously leaving the appeal site, drivers and cyclists on the lane would see this overhang from a reasonable distance, and slow down or avoid as required. MfS notes that this type of activity would be especially applicable in lightly trafficked rural lanes. Consequently, despite the restricted visibility, I am satisfied that the proposed access would operate in a safe manner without harming highway safety.
26. Accordingly, the proposed use would comply with LP policy P8, with respect to the safe use of the access. This requires development to, *inter alia*, not result in a reduction in safety for any users of the highway.

Other matters

27. Highway safety concerns expressed by the Council and local residents have been largely addressed in the main issues. Nonetheless, in terms of danger to cyclists and pedestrians there is no reason, based on the submitted evidence, that the safety of other users of the highway would be affected by the limited number of vehicles that would attend the site.
28. The site is within flood zone 3. Concerns have been raised by interested parties that the site is subject to flooding and the proposal may increase off-site flooding. Nonetheless, the Planning Practice Guidance (PPG) identifies the use, of amenity open space and recreation, as being a water compatible use. The Framework is clear that applications for changes of use should not be subject to a sequential test, to identify the available of site in locations less likely to flood, or an exception test. The proposed fencing along Cuttle Brook would

² Manual for Streets 2, Chartered Institution of Highways and Transportation, dated 2010

allow flood water to pass through it. As such, the proposed use would have no effect on existing flood activity on and off site, a finding also made by the Environment Agency.

29. I have noted the various appeal decisions submitted for different types of development in the Green Belt by interested parties. These largely relate to Inspector's assessments of the effect of the parking of vehicles on the openness of the Green Belt. I have taken these views into account in my decision. However, as no hardstanding is proposed and the level of activity would be extremely limited, the effect on the Green Belt would be negligible preserving its openness.
30. Interested parties have raised concerns that the proposal would affect wildlife in the Local area. The site is adjacent to the Local Wildlife Site (LWS) 'Springfield Farm Meadows' and the adjacent Cuttle Brook flows into the River Blythe understood to be a Site of Special Scientific Interest. The site is also reasonably close to Temple Balsall Nature Reserve. The LWS provides important grassland habitat for many plants, insects, rare birds, mammals, and other types of nature. The Brook is used by a wide range of wildlife including Otters. Local residents are concerned that the proposed use would be incompatible with the proposal. However, I am satisfied that stock proof fencing erected inside the perimeter of the site, would ensure that dogs would not gain access to the brook or adjacent fields preventing harm to local livestock and wildlife. Accordingly, the proposal would not adversely affect local wildlife, a conclusion shared by the Council's ecologist.
31. The site is in a relatively remote location with some dwellings in the area, including Cuttle Pool Farm around 50 metres from the site. The proposed use would involve dogs being exercised off the leash. Although this activity may result in dogs barking, it is not anticipated that this would be of sufficient magnitude, or occur frequently enough, to cause an adverse effect to local residents or local wildlife.
32. The Appellant states that they would require owners to take their dog waste home with them. I am mindful that if left on site this can cause disease in farm livestock. I also recognise concerns raised by local residents that dog waste left in plastic bags on site could degrade affecting the quality of the soil and polluting local watercourses. However, it is unlikely that the waste created, if not taken away, would be of sufficient magnitude to affect the welfare of local animals or contaminate the wider area.
33. The site is close to Temple Fields Natural Burial Ground, located on Temple Lane, and being around 0.5kms from the site. This provides a peaceful location where bereaved members of the public visit the grounds in quiet remembrance. Nevertheless, it is unlikely that the noise of barking dogs would be invasive to this sensitive neighbouring use due to the separation distance and intervening landscaping and topography.
34. A Grade II Listed barn is located adjacent to Cuttle Pool Farm. Its significance seems to derive from its use of traditional materials and its position within a rural setting. The Appellant's Heritage Assessment concludes that the proposal would have no effect on the setting of the barn due to distance and absence of intervisibility due to tree and hedge planting and the farm itself. I see no reason to disagree with this assertion. As a result, I find that the proposal would not harm its significance and would preserve its setting.

Conditions

35. I have considered the use of conditions in line with the guidance set out in the Government's PPG. I shall take the Council's suggested conditions into consideration and impose these with some amendments and adjustments for clarity. A condition is required to ensure that the boundary fence to the Brook, fencing around the remainder of the site and the recessed gate position are installed prior to the use commencing. This would be required to ensure the arrival regime operates effectively and that dogs do not escape the site to the detriment of local wildlife and livestock.
36. A Condition is also required in respect of operating hours, and numbers of dogs and vehicles, with a maximum number of vehicles restricted to two, to allow for changeover periods. This condition would be necessary in the interests of highway safety, due to the narrow nature of Cuttle Pool Lane, and the living conditions of nearby residents.

Conclusion

37. The proposed development would accord with the development plan and national policy and there are no other material considerations which outweigh this finding. Accordingly, for the reasons given, the appeal is allowed and planning permission is granted subject to the attached conditions.

Ben Plenty

INSPECTOR