



Appeal Decision

Site visit made on 7 August 2023

by B S Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2023

Appeal Ref: APP/U2370/C/22/3303730

Land on South West of Fleetwood Road South, Thornton-Cleveleys, Lancashire, FY5 5EE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Walkies against an enforcement notice issued by Wyre Borough Council.
- The notice was issued on 16 June 2022.
- The breach of planning control as alleged in the notice is (a) the erection of a fence around the entire boundary of the land; (b) the erection of a bus shelter; (c) the laying out and construction on the land of areas of hardstanding and of areas of gravel and/or hardcore; and (d) a material change in the use of the land consisting in the use of the land for the purpose of dog walking/training/exercising with associated parking of motor vehicles.
- The requirements of the notice are: (a) cease the use of the land for dog walking, dog training, and dog exercising and the parking of vehicles associated therewith; (b) remove the shelter in its entirety from the land; (c) remove the fence in its entirety from the land; (d) remove from the land all the materials that form the surface and base courses of all areas of hardstanding; (e) remove all the gravel from the land; (f) remove all the hardcore from the land; (g) remove from the land all paraphernalia related to the use of the land for dog walking, dog training and dog exercising; and (h) after complying with sub-paragraphs (b), (c), (d), (e) and (f) of this paragraph 5, restore the land in its entirety to the grassland condition it was in before any of the breaches of planning control enforced against by this notice took place.
- The period for compliance with the requirements is four 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.

Summary of Decision: The appeal succeeds in part and permission for that part is granted but otherwise the appeal fails and the enforcement notice is upheld as varied.

Decision

1. It is directed that the enforcement notice is varied by the replacement of requirement 5(c) with "Either (a) remove the fence along the southern and eastern boundaries of the site or (b) reduce the fence along the southern and eastern boundaries of the site to a maximum of 1m in height above the adjoining ground level."

Subject to this variation, the appeal is allowed insofar as it relates to the erection of a fence along the western and northern boundaries of land to the South West of Fleetwood Road South, Thornton-Cleveleys and the material change of use of the land for the purpose of dog walking/training/exercising with associated parking of motor vehicles and planning permission is granted on the application deemed to have been made for these matters under section 177(5) of the 1990 Act as amended, subject to the conditions in the schedule at the end of this decision letter.

The appeal is dismissed and the enforcement notice is upheld, as varied, insofar as it relates to the erection of a fence along the southern and eastern boundaries of the site, the erection of a bus shelter and the laying out and construction on the land of areas of hardstanding and of areas of gravel and/or hardcore and planning permission is refused in respect of these matters on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary matters

2. I saw during my site visit that the bus shelter had been removed and that the areas of hardstanding, gravel and hardcore had been removed from the land; the land has been restored to grassland. These matters form part of the allegation in the notice and therefore part of the deemed application. A small tarmac area has more recently been formed adjacent to the gated entrance to the site. This does not appear to be the subject of the notice.
3. During my site visit, I was shown the main site of the appellant's dog walking and training business, located to the north of the small group of dwellings to the north of the appeal site. This comprises a substantial building, in which are based 3 staff, with an associated grass paddock for canine use and car parking. The Council's representative confirmed that this use was authorised.
4. Although no appeal has been made on ground (c), the appellant claims that the fence does not need planning permission as it is permitted development. However, under Class A of Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 [GPDO], such a development is not permitted adjacent to a highway used by vehicular traffic if it exceeds 1m above ground level, as is the case here on the southern and eastern boundaries.

The appeal on ground (a)

5. The appeal site is a substantial area of land to the north side of the Norcross roundabout, enclosed to the south by the A585 and to the east by Fleetwood Road South (B5268). To the west lie open fields and, to the north, a small group of residential properties. The Council indicates that the field was used for the grazing of horses until, just prior to the current unauthorised use, the site was used as a contractor's compound during the carrying out of major highway works at the nearby junction. I understand that the fence, the hardstanding and the shelter were installed in conjunction with this temporary use, which ceased in 2021, and should have been removed under the terms of the GPDO.
6. The land is within the Green Belt, designated in the Wyre Local Plan 2011-2031 (WLP). Policy SP3 is consistent with the National Planning Policy Framework (Framework) in setting out a general presumption against inappropriate development.

Main issues

7. The main issues in this case are: 1. Whether the development would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies; the effect of the development on the openness of the Green Belt; the effect of the development on the character and appearance of the area; the effect on the living conditions of neighbouring

residents; and whether any 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 required to justify the proposal.

Green Belt

8. The Framework indicates that material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds) are not inappropriate forms of development in the Green Belt, provided they preserve its openness and do not conflict with the purposes of including land within it.
9. In this case, the use for dog walking/training/exercising would, of itself, appear to be a form of outdoor recreation which preserves the openness of the site. The provision of equipment for dog training would appear to me to have no greater impact on openness than, say, the provision of jumps for horses, which are commonplace in the Green Belt. As such, the use appears not to be inappropriate and not to conflict with the purposes of including land in the Green Belt.
10. Turning to the operational development, the presence of the bus shelter must have reduced openness, albeit that this has now been removed. The use of the original extent of hardstanding for car parking could have reduced the openness of the site, although I have been provided with little evidence of the degree to which this has taken place; as indicated above, almost all the hardstanding has now been removed. A planning condition limiting car parking to a small area of the site could ensure openness is retained.
11. With regards to the fence, it is around 2m high and formed of close-boarded timber. However, for much of its frontage to the 2 adjoining roads, it is set down lower than the road level and there are clear views across the site from most public vantage points. Where the fence abuts open countryside to the west, it adjoins a substantial, higher hedgerow and therefore has little impact on openness. Where it abuts no.224 Fleetwood Road South, it is seen against the context of an established residential curtilage. Accordingly, taking into account the extensive area of the appeal site, I form the view that the fence does not diminish the openness of the Green Belt.
12. Turning to the character and appearance of the area, Policy CDMP3 of the Wyre Local Plan (2011-2031) requires new development to be of a high standard of design. Development should respect or enhance the character of the area and make a positive contribution to an attractive and coherent townscape. Whilst I accept that the fence does not harm the openness of the Green Belt, I find much of it to be unacceptable visually. On the southern and eastern boundaries adjoining the busy highways, it gives a hard and unduly urban feel to the site, which is out of character with its semi-rural surroundings.
13. Where the fence abuts open countryside to the west, there is an established hedgerow alongside it which significantly mitigates its visual impact. Furthermore, it is a considerable distance from most public vantage points. I therefore find this to be generally unobtrusive. The fence to the northern boundary abuts an established residential curtilage and is also tolerable in this context.

Living conditions

14. The site adjoins a small group of dwellings to the north and there is a residential area to the eastern side of Fleetwood Road South. The appellant submitted a noise assessment which took into account the background noise levels close to 2 heavily trafficked roads, the projected use, including the additional intrusion caused by barking and its proximity to the nearest dwelling to the north, no.224 Fleetwood Road South. The report concluded that, subject to preventing dogs from being within 20m of the northern boundary, the impact on the occupants of no.224 would be acceptable within the guidance of the Noise Policy Statement for England.
15. I have seen no evidence to persuade me that the noise assessment is flawed and therefore I am led to the view that there would be no undue harm to the living conditions of neighbouring residents, contrary to the aim of the development plan. The Council considers that further fencing to achieve the above mitigation would further urbanise the site. However, a fence of suitable design would have little visual impact on such a large site.
16. I have taken account of the benefits of the development, including local and national policy commitment to promote healthy communities. The site provides an opportunity for outdoor exercise. It also provides employment for the appellants and their staff. However, these benefits do not outweigh the visual intrusion of the fence to the southern and eastern boundaries, which conflicts with the provisions of Local Plan Policy CDMP3.

Conclusion

17. On the two main issues, I have found the material change of use to dog walking, dog training and dog exercising be acceptable on this site, having regard to the provisions of development plan and the Framework and I will grant planning permission for this aspect of the development but otherwise I will uphold the notice with a variation. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of S.180 of the Act.

Conditions

18. As indicated above, there is a need to preclude dogs from exercising within 20m of the northern boundary to minimise disturbance to neighbouring residents. In order to maintain the openness of the site, there is also a need to prevent parking from taking place other than on the existing tarmac area adjacent to the site entrance.

The appeal on ground (f)

19. The appellants have indicated a willingness to move or alter the fence. I have found above that the retention of the existing fence along the northern and western boundaries is acceptable but not to the southern and eastern boundaries. However, a fence of no more than 1m in height could be erected along these latter two boundaries, under the terms of Class A of Part 2 to Schedule 2 to the GPDO. This is a realistic fall-back position for the appellant to undertake and therefore I shall vary the requirement of the notice to remove the fence to allow an alternative reduction in its height. Should the appellants have a functional need for a higher means of enclosure to restrain the dogs

using the land, it is open to them to submit a scheme to the Council for planning approval. The appeal on ground (f) succeeds to this limited extent.

The appeal on ground (g)

20. The specified period of 4 months appears to me to be ample time to undertake the removal or alteration of the relevant parts of the fence. The appeal on ground (g) fails.

B S Rogers

INSPECTOR

Schedule of conditions:

1. No parking of cars or other motor vehicles shall take place other than on the existing tarmacadam surfaced area adjoining the site access from Fleetwood Road South.
2. No dog walking, training or exercising shall take place within 20m of the northern boundary of the site.