



Appeal Decisions

Site visit made on 3 January 2024

by **A Walker MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 January 2024

Appeal A Ref: APP/D2320/C/23/3321544

Holker Cottage, Holker Lane, Ulnes Walton, Leyland PR26 8LL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Sarah Clarke on behalf of Muddy Trails n Happy Tails against an enforcement notice issued by Chorley Borough Council.
- The notice was issued on 6 April 2023.
- The breach of planning control as alleged in the notice is the erection of a building within the green belt for use in connection with a dog day care business.
- The requirements of the notice are to:
 - i) Remove the building; and
 - ii) Remove from the Land all buildings materials and rubble arising from compliance with requirement (i) above and restore the land to its condition before the breach took place by levelling the ground and re-seeding it with grass.
- The period for compliance with the requirements is 20 weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (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.

Summary of Decision: The appeal succeeds in part, the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/D2320/C/23/3321537

Holker Cottage, Holker Lane, Ulnes Walton, Leyland PR26 8LL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Sarah Clarke on behalf of Muddy Trails n Happy Tails against an enforcement notice issued by Chorley Borough Council.
- The notice was issued on 6 April 2023.
- The breach of planning control as alleged in the notice is the material change of use of the land from agricultural to a dog day care facility and from domestic car parking to a mixed use of domestic car parking and car parking associated with the dog day care facility.
- The requirements of the notice are:
 - You must stop using any part of the land as a dog day care facility and car parking associated with the dog day care facility.
- The period for compliance with the requirement is 20 weeks.
- The appeal is proceeding on the ground set out in section 174(2)(a) and (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.

Summary of Decision: The appeal succeeds in part, the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision and

planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C Ref: APP/D2320/W/23/3321575

Holker Cottage, Holker Lane, Ulnes Walton, Lancashire PR26 8LL

- 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 Sarah Clarke against the decision of Chorley Borough Council.
- The application Ref 22/01296/FUL, dated 15 December 2022, was refused by notice dated 24 March 2023.
- The development proposed is the retention of building used in connection with doggy day care business.

Summary of Decision: The appeal is dismissed.

Appeal D Ref: APP/D2320/W/23/3321577

Holker Cottage, Holker Lane, Ulnes Walton, Lancashire PR26 8LL

- 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 Sarah Clarke against the decision of Chorley Borough Council.
- The application Ref 22/01217/FUL, dated 22 November 2022, was refused by notice dated 24 March 2023.
- The development proposed is the change of use of land to the east of Holker Cottage from agriculture to a dog day care facility and change of use of car park to the west of Holker Cottage from domestic (Use Class C3) to a mixed use of domestic car parking (Use Class C3) and car parking associated with the dog day care facility (retrospective).

Summary of Decision: The appeal is dismissed.

Preliminary Matter

1. For Appeal D, I have taken the description of the development as set out in the Council's decision notice and the appellant's appeal form. This is a more accurate description of the development than that set out in the planning application form. I have determined the appeal on this basis.
2. Since the appeal was submitted, a revised version of the National Planning Policy Framework (the Framework) has been published and this is a material consideration which should be taken into account from the date of its publication. I have therefore determined the appeal in light of the revised Framework. As there is no change in the revised Framework relevant to the appeal, it has not been necessary to seek comments from the parties on the revised version.

Appeal B - The Notice

3. Regardless of the outcome of the appeals, I have a duty to get the enforcement notices in order. The allegation set out in paragraph 3 of the notice relating to appeal B states '...the material change of use of the land from agricultural to a dog day care facility and from domestic car parking to a mixed use of domestic car parking and car parking associated with the dog day care facility.' This suggests there are two material changes of use occurring – the material change of use of the land from agricultural to a dog day care facility; and, the material change of use to a mixed use comprising domestic car parking and car parking associated with the dog day care facility. However, based on the evidence before me and my observations made on site, there is only one material change of use that has occurred, comprising a dog day care

facility and domestic parking. The car parking associated with the dog day care facility is not a separate use to the wider dog day care facility use.

4. Therefore, I shall correct the notice to read 'Without planning permission, the material change of use of the Land to a mixed use comprising a dog day care facility and domestic car parking'. As a consequence of this correction, the requirement of the notice also needs to be corrected to read 'Cease the mixed use of the land comprising dog day care facility and domestic car parking by ceasing the dog day care facility use' to ensure the requirement matches the allegation.

Appeals A and B - The ground (a) appeals and the deemed planning applications; and Appeals C and D

Main Issues

5. In respect of Appeals A, B, C and D, the main issues are:
 - Whether the proposal is inappropriate development in the Green Belt having regard to relevant development plan and national planning policies, taking into account the effect on the openness of the Green Belt and the purposes of including land within it; and
 - If the development is inappropriate, 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.
6. In addition, in respect of Appeals B and D, the main issues also include the effect of the development on the living conditions of the occupants of neighbouring residential properties, with regard to noise.

Reasons

Appeals A, B, C and D - Inappropriateness

7. The appeal site is located within the Green Belt. I have not been referred to any policies within the development plan pertaining to development in the Green Belt. However, I have been directed to the Framework.
8. Paragraph 154 of the Framework confirms the construction of new buildings in the Green Belt should be regarded as inappropriate development unless they comply with stated exceptions. Exception (b) allows appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. Paragraph 155 goes on to state "Certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it". Exception (e) is 'material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds);'
9. The development includes the use of an existing parking area to the west of the dwelling, Holker Cottage, for staff/customers and land to the east of the

- dwelling. The land to the east comprises a fenced off area containing a small stable block and a larger building, which is the subject of appeal A and C.
10. With regard to Appeals B and D, these relate to the material change of use of the land only, not the erection of the large building. Therefore, in accordance with paragraph 155(e) of the Framework, whether the material change of use amounts to inappropriate development depends on whether the proposal preserves the openness of the Green Belt or conflicts with the purposes of including land within it.
 11. The Framework indicates that openness is an essential characteristic of the Green Belt with a key objective being to keep land permanently open. Openness has both a visual and spatial dimension and the absence of visual intrusion does not, in itself, mean that there is no impact on the openness of the Green Belt.
 12. The appellant confirms the land was previously used for agriculture. The site is well screened from views off Holker Lane by way of high hedging and close boarded timber fencing. The existing stable block is used for storage/comfort room/indoor area as part of the business and, notwithstanding the use of the unauthorised larger building, the rest of the business area is open land. Therefore, the general operation of the business has no effect on the openness of the Green Belt.
 13. However, it is not simply the characteristics of the business itself that need to be considered but also the activities associated with it. The appellant confirms they have a license for up to 20 dogs. This would equate to approximately 40 additional traffic movements in and out of the appeal site and along Holker Lane each day. These are likely to be at peak morning and evening hours as people are dropping their dogs off/collecting them on their way to/on their way home from work. Such an increase in traffic movements to/from the site would result in a large number of cars parked on the site and along the lane during these peak hours, far in excess of what one would expect from the residential/agricultural use of the land. As such, it would diminish the openness of the Green Belt. Therefore, the development does not preserve the openness of the Green Belt and as such does not comply with paragraph 155(e) of the Framework.
 14. The appellant has referred me to an appeal decision¹ relating to land for a dog exercise area. However, the development appears to have been on a significantly smaller commercial scale to the development that is the subject of the appeals before me, with the Inspector specifically referring to minimal vehicle movement. Consequently, they found it preserved the openness of the Green Belt. Moreover, the development was subject to a number of conditions, including limiting the hours of operation, the number of canines, the number of people accompanying them and the number of private vehicles. The imposition of such conditions in the appeals before me would likely result in unacceptable harm to the viability of the business and therefore would not be appropriate.
 15. With regard to Appeals A and C, these relate to the erection of the building used in association with the dog day care business. The appellant contends the building is in connection with an existing use of land or a change of use.

¹ Appeal reference APP/Y3425/W/22/3313040

However, the exception in paragraph 154(b) of the Framework only relates to specific uses of land, which are listed as outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments. It is a closed list. Whilst there is a dog exercise area, this is used by staff as part of the dog day care business. It is not for private or public hire. Consequently, the development is not for outdoor recreation. As the development is also not for outdoor sport, a cemetery, burial ground or an allotment it therefore does not meet the requirements of paragraph 154(b).

16. With regard to the effect of the building on the openness of the Green Belt, the building is well screened by the high hedging, with only glimpsed views of it through gaps in the hedge and from within the site itself. Overall, I find that the building does not represent an unacceptable visual intrusion.
17. Nevertheless, in terms of the spatial dimension of openness, the erosion of three-dimensional space arising from the erection of the building would itself result in an erosion of openness. Consequently, whilst the building would not represent a visual intrusion, it would diminish the openness of the Green Belt.
18. The appellant argues the land could be intensively farmed, which could have a greater effect on the openness of the Green Belt than the appeal development. That may be, however, the Framework specifically states that buildings for agriculture are not inappropriate development in the Green Belt.
19. I find therefore, the material change of use of the land and the erection of the building do not meet the requirements of any of the exceptions listed in paragraph 154 or 155 of the Framework. Therefore, they are inappropriate development in the Green Belt, which, by its very definition, is harmful to the Green Belt and should not be approved except in very special circumstances.

Appeals B and D - Noise

20. A Noise Assessment, dated 1 February 2023, prepared by Martec Environmental Consultants Ltd. measured the sound generated by the dog day care facility over the period of a week in January 2023. The results of the assessment are that at the times dogs were recorded barking, this did not exceed the background noise levels. As such, it would not be unacceptably harmful to the living conditions of neighbouring residents.
21. The noise was measured from a location in the northwest corner of the car park, which is significantly closer to the source of noise than neighbouring residential properties. Consequently, the noise measured in the assessment would likely be greater than if the measurements were taken directly from the neighbouring properties. I have not been presented with any substantive evidence that would contradict these findings.
22. The Council state the assessment was based on a relatively short sample period and that for over half of the days it was surveyed the facility was at less than half of its full capacity. Nevertheless, it was at full capacity on three of the days and the capacity throughout the period of the survey appears to be representative of the business. There is nothing to suggest that had it been at full capacity on all of the days then the results would be materially different.
23. I also note the Council's comment that the extent of the dog barking and whether this constitutes a significant or unreasonable disturbance or a

statutory nuisance will only be able to be determined in the summer months. However, there is no explanation why it would be any different in the summer months compared to the winter months.

24. I note the anecdotal evidence received from neighbouring residents that the noise is causing them harm and that Council officers have witnessed dogs barking during visits to the appeal site, on one occasion for a 15-20 minute period. However, it is not disputed that the dogs bark, or even that their barking can be heard from neighbouring residential properties. The question is whether the barking would be unacceptably harmful to the occupants of these properties. It is notable to add that during my site visit, which was when there were approximately 20 dogs on the site, on my arrival into the fenced off area where the majority of the dogs were free to roam, a couple of the dogs barked for a few seconds but the staff promptly controlled them and then they were silent for the remainder of my visit.
25. I find therefore, based on the evidence before me, the development does not cause unacceptable harm to the living conditions of the occupants of neighbouring residential properties, with regard to noise. As such, it complies with Policy BNE1 of the Chorley Local Plan (LP) 2015, which seeks to ensure development does not cause an unacceptable degree of noise disturbance to surrounding land uses.

Other considerations

26. Paragraph 153 of the Framework states that substantial weight should be given to any harm to the Green Belt and that very special circumstances 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. I turn now to address other considerations that, potentially, might clearly outweigh harm arising from inappropriate development in the Green Belt and the erosion of openness so as to provide the very special circumstances required to justify a grant of planning permission.
27. I note the business is the appellant's only source of income and should I dismiss the appeals then this income would cease. However, there is no evidence before me that the appellant could not find employment elsewhere in the locality.
28. Whilst the business provides dog day care for dog owners in the locality, the Council confirms there are 37 other similar businesses in the locality that have licenses for Animal Daycare or Animal Home Boarding. Although the appellant argues approximately 21 of these businesses do not provide the same service as the appeal business, the remaining 16 potentially could. Moreover, of the 21 businesses disputed by the appellant, some of these nevertheless provide a day care service, albeit within an industrial unit setting rather than a rural setting such as the appeal site.
29. The appellant states that the license for the dog day care business requires a clean, comfortable and warm area where dogs can rest and sleep; and, another secure area in which water can be provided and in which there is shelter. However, there is nothing to suggest that these requirements can only be provided in the appeal building. It is not unreasonable to consider that these facilities could potentially be provided in the existing stable block building. In

any event, were I to dismiss the appeals relating to the material change of use of the site, this argument becomes superfluous.

Planning balance

30. The development has harmful implications for the Green Belt in terms of inappropriate development and the erosion of its openness. Whilst the overall loss of openness would be moderate, the Framework establishes that substantial weight should be given to any harm to the Green Belt.
31. The development provides employment for the appellant and provides a service for dog owners in the locality. However, I do not find that this clearly outweighs the harm to the Green Belt. Whilst I have found no unacceptable harm with regard to the effect on the living conditions of the occupants of neighbouring residential properties, in respect of noise, this is a neutral effect that neither weighs in favour of nor against the appeals. Consequently, it does not outweigh the harm to the Green Belt.
32. I find therefore, the very special circumstances required to clearly outweigh the harm to the Green Belt have not been demonstrated. Consequently, the proposal conflicts with the objectives of the Framework to protect the Green Belt.

Appeals A and B - Conclusion on the ground (a) appeals and the deemed planning applications; and Appeal C and D

33. For the reasons given above, having considered the development plan as a whole and all material considerations, I conclude that planning permission should not be granted in response to either the ground (a) appeals against the enforcement notices and deemed applications, or to the Section 78 appeals against the refusals of planning permission. Therefore, Appeals A and B on ground (a) fail, as do Appeals C and D.

Appeals A and B – the ground (g) appeal

34. This ground of appeal is that the period for compliance is unreasonably short.
35. The appellant seeks an extension of time to comply with the requirements of the Notices from 20 weeks to a minimum of 18 months. This is in order for them to find an alternative site to provide the dog day care business and secure any necessary planning permission.
36. The cessation of the business and the removal of the building would not likely take very long and could reasonably be accomplished within the existing compliance period of 20 weeks. However, this must be weighed against the fact the appellant would lose their livelihood as a result.
37. I have found the development is harmful to the Green Belt in both its inappropriateness and its loss of openness. However, this harm is only moderate. The extension of the compliance period to allow the appellant to find an appropriate alternative site and seek the necessary planning permission would merely extend this moderate harm to the Green Belt; a harm which would disappear once the requirements of the notices are complied with. However, to prolong the harm to the Green Belt for a significant period of time

would unreasonably prolong the harmful effect it has on the Green Belt, to the point that it would be read as permanent harm.

38. Therefore, I find the extension of the period of compliance to 18 months would not be acceptable. Nevertheless, an extension of the period of compliance to a period of 12 months would give the appellant a reasonable period of time to find an alternative site and comply with the requirements of the notice. I consider this period to be both proportionate and reasonable and achieves an appropriate balance between the need to bring the stated harm caused by the unauthorised development to an end and the need of the appellant to seek out an alternative site.

39. The ground (g) therefore succeeds and I shall vary the enforcement notices prior to upholding them

Formal Decision

Appeal A

40. It is directed that the enforcement notice is varied by the deletion of "20 weeks" in paragraph 6 and the substitution of "12 months".

41. Subject to the variations, 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.

Appeal B

42. It is directed that the enforcement notice is varied by:

- (a) The deletion of paragraph 3 and its substitution for "Without planning permission, the material change of use of the Land to a mixed use comprising a dog day care facility and domestic car parking".
- (b) The deletion of paragraph 5 and its substitution for "Cease the mixed use of the land comprising dog day care facility and domestic car parking by ceasing the dog day care facility use".
- (c) The deletion of "20 weeks" in paragraph 6 and the substitution of "12 months".

43. Subject to the variations, 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.

Appeal C and Appeal D

44. The appeals are dismissed.

A Walker

INSPECTOR