



Appeal Decision

Site visit made on 6 February 2024

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 February 2024

Appeal Ref: APP/R1845/W/23/3330036

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 J Hutton against the decision of Wyre Forest District Council.
 - The application Ref 23/0456/FUL, dated 21 June 2023, was refused by notice dated 16 August 2023.
 - The development proposed is the erection of dog breeding building.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The application sought the retention of the existing building but retention is not an act of development. I have therefore modified the description used above to reflect this.
3. The appeal documents include a site plan (Ref. 2053/101) which reduces the number of kennels proposed from that considered in a previous application and appeal (see below). I have considered this amendment in the context of the decision of the High Court in the case of *Holburn Studios Ltd* and find that it would not be unfair to the Council or local community to consider this revision which seeks to reduce the local visual and aural impact of the kennels.
4. The government issued a revised version of the National Planning Policy Framework (the Framework) on the 19th December 2023. I have considered the changes in relation to the main issues in this appeal but find that the changes are minor and not material to the decision. The parties were therefore not invited to make submissions on the application of the amended Framework.

Main Issues

5. The main issues are:
 - Whether the proposal constitutes inappropriate development in the Green Belt and the effect on its openness;
 - The effect on the living conditions of the occupiers of neighbouring residential properties due to noise disturbance from barking;
 - Whether any harm by inappropriate development, and any other harm, is clearly outweighed by other considerations so as to amount to very special circumstances.

Reasons

Background

6. The appeal site lies in an area of countryside north of Bewdley which also forms part of the Green Belt. The site lies close and to the east of the River Severn. Northwood Farm is a smallholding with pigs, poultry and sheep and which contains a number of stables and other outbuildings including the line of kennels the subject of this application. There is also a small group of other houses to the south of the site and a residential caravan park.
7. The recent planning history of the site is relevant to this appeal. In June 2021 the Council refused planning permission retrospectively for the erection of new purpose-built dog kennels, office and store. This was followed in January 2022 when the Council issued an enforcement notice against (in summary) the erection of buildings for use as dog kennels and use as a dog breeding business. This notice was appealed against along with the planning application refusal¹.
8. The inspector concluded that because of a number of errors in the drafting of the notice, which could not be corrected, the notice was invalid and was quashed. However, on the planning appeal the inspector concluded that the erection of the kennels was inappropriate development in the Green Belt and the potential existed for barking dogs to adversely impact the living conditions of nearby residents. While the proposal did not harm the character and appearance of the area, he found that the other considerations in this case did not outweigh the identified harm to the Green Belt and living conditions. Therefore, there were no very special circumstances to allow the development in the Green Belt.
9. The current application has been submitted in order to try and overcome the objections to the development by reducing the number of kennels and by offering to take away some existing buildings to maintain openness. Moreover, the appellant says that while the kennels were originally erected to support a dog breeding business which he said had existed for many years, and comply with current licence requirements, it is now intended to use the kennels as a hobby on an informal reduced basis.
10. The kennels as erected had 20 individual accommodation units (bays) and 5 whelping pens and a store which in total the Council describe as 47m long, 5m deep and 3.2m high with the attached store being 3.5m high. It is now proposed to reduce the building in size to 12 bays and 5 whelping pens and store.

Whether inappropriate development

11. The Framework indicates in paragraph 152 (previously 147) that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. The construction of new buildings is inappropriate unless a proposal falls within one of the exceptions set out in paragraph 154 (150).
12. The term 'building' includes a structure and this would include the kennels which have a solid rear wall, roof and sides. Although the line of kennels has a

¹ Under references APP/R1845/C/22/3291906; APP/R1845/C/22/3291907; and APP/R1845/W/22/3281433.

partially open front wall to allow access to the individual bays there is a form of screening along the front elevation giving the structure a solid appearance.

13. In terms of the exception categories set out in paragraph 154, part (b) relates to the provision of outdoor sport and recreation and similar facilities so long as the facility preserves the openness of the Green Belt. A dog breeding use does not display the characteristics of a use based on outdoor sport and recreation even though the dogs may be exercised outside the building from time to time. In my view the kennels development does not fall within this category but nevertheless I acknowledge that the list set out in (b) is not a closed list and it is appropriate to consider the effect on openness as undertaken below.
14. The appellant's agent also appears to submit that the proposal falls within other stated exceptions as set out in parts (a), (c) and (d) of paragraph 154, however, (a) is not relevant as this relates to buildings necessary for agriculture and forestry which does not include use as dog kennels. Neither does the line of kennels fall with part (c) as the kennels are a new complete building rather than an extension or alteration to a lawful one. In respect of (d) the line of kennels may be a replacement of a building but this is subject to the proviso of not being materially larger than the building being replaced. This is similar in nature to the assessment of the effect on openness as it needs to take account of the present size and scale of buildings which are said to be replaced.

The effect on openness and whether buildings materially larger

15. The submitted plan indicates that a number of buildings would be removed in compensation for the scale of new kennels to be retained. These buildings are not numbered or referenced but starting from the west the wooden summer house to be removed has the appearance of a temporary domestic building and not in kennel/dog rearing use and therefore it should be excluded from the equation. The existing kennels in the northern part of the site are about the same extent of building bulk as the 8 kennels to be deleted and it is reasonable to take their removal into account. Finally, there is a line of buildings to the east of the farmhouse but these are said to be a poultry house and 'run', which prevents them being used in the equation under (d) as they are not in the same use as the kennels. In terms of the effect on openness, while about half of the buildings have a similar building bulk as the kennels, the poultry run is a form of open cage which is 'see through' and this has a limited effect on openness.
16. The original plans of the scheme also indicated other buildings could be removed, including from the forecourt and parking area. While I was shown the siting of these buildings at my visit, the structures had been removed by that time and in any event appeared to have been open cage runs rather than buildings as there were no foundations present.
17. The appellant has not put forward a detailed description of the volume and scale of buildings to be removed and the comparison with the new kennels and store to be retained. However, based on my observations on site I find that the currently proposed kennels building would greatly exceed the scale and form of the older kennels buildings to be removed. As such the proposal, even in its revised form with the building reduced to 12 kennels/5 pens plus store would have a harmful effect on the openness of the Green Belt. As the new building would also be materially larger than the buildings it is said to replace,

the proposal would not be consistent with part (d) of paragraph 154 of the Framework.

18. Overall on these issues taken together I find that the proposal to develop some 12 kennel bays, whelping pens and a store would be inappropriate development in the Green Belt and would be harmful to its openness, contrary to the provisions of the Framework and to the linked Policy DM.22 of the Council's Local Plan.

Effect on living conditions

19. The previous inspector found, on the evidence before him, that the potential for barking dogs to adversely impact nearby residents' living conditions existed, although he recognised that the number of complaints made to the Council before that appeal appeared to be relatively low. Moreover, there are letters of objections from local residents on this current appeal about the constant noise from dogs at the kennels barking and it is understood that a Noise Abatement Notice is in force.
20. There is no proper noise assessment before me to examine the extent and nature of noise stemming from the kennels and how far this noise travels. The appellant's agent suggests that a condition could be imposed on a permission for the appellant to submit a noise attenuation scheme in due course however this solution does not give me any certainty that the noise issue can be resolved in this manner.
21. The appellant says that the 12 kennels and 5 whelping pens proposed to be retained will be used by him for keeping dogs as a hobby but this scale of facility appears to me well in excess of what could reasonably constitute a hobby and the kennels and whelping pens have all the characteristics of a commercial dog breeding or commercial kennels operation.
22. In physical terms the 8 pens to be removed are at the northern end of the site adjacent to open fields whereas the main cluster of housing and the residential caravan site is to the south and I find it difficult to believe there would be a material reduction in the impact and disturbance caused by dogs barking.
23. Overall on this issue I find that it has not been demonstrated that the kennels and whelping pens proposed would not give rise to noise and disturbance which would harm the living conditions of the occupiers of surrounding residential properties. The proposal conflicts with the provisions of Local Plan Policy SP.33 in terms of the adverse effects on human health and wellbeing.

Other matters

24. Local residents also express objection about the continued spread of built development at the premises and the effect on the character and appearance of this rural area. The previous inspector concluded that in visual terms much of the line of kennels was hidden along-side existing buildings and the block was not prominent to view from the footpath along the River Severn or from the higher land to the east. In the case of the present appeal case the 8 kennels proposed to be removed are those that 'stick out' past the group of existing buildings. This would reduce the visual impact of the new structures to the extent that the line would not be visually harmful to the rural character of the area notwithstanding my conclusions about the effect on the openness of the Green Belt.

Planning and Green Belt balance

25. On the main issues I have found that, even with the reduced number of pens, the proposed building of kennels, would be inappropriate development in the Green Belt as the building and use would not be one of the exceptional categories set out in the Framework. The new structure would also harm the openness of the Green Belt as it has not been demonstrated that the spread and scale of buildings proposed to be taken away relate to the same use or would result in a net benefit in the reduction of built form to maintain openness. I have also found that although the appellant intends to use the kennels as a hobby rather than for commercial use, the scale of activity associated with their physical scale would be likely to continue to have an adverse effect on the living conditions of the occupiers of residential properties near the site. The proposal therefore conflicts with the relevant policies in the development plan as mentioned above.
26. This conflict and the adverse effects identified have to be balanced with other considerations. I note that the appellant says that dog breeding has been undertaken on the site for a long time but this is disputed by other parties and overall the evidence on this is not clear cut. I have also taken account of the pressure to upgrade the facilities to meet current animal welfare and dog breeding regulations, but the scale of new kennels now proposed in this amended scheme results in a material increase in built development on the site.
27. I also note that following the refusal of the previous appeal, the Council's Planning Enforcement Officer gave an indication of what changes could be made to arrive at an acceptable resolution of the unauthorised development. However, I have to place most weight on the previous appeal decision and the formal reasons why the Council refused permission. In respect of the effect on openness and from noise disturbance these issues have not been overcome.
28. Substantial weight has to be given to the harm caused by being inappropriate development, and this together with the harm to openness and the continuing noise problem from dogs barking, are not clearly outweighed by any other factor. Overall, I find that very special circumstances do not arise in this case and the appeal should be decided in accordance with the development plan.

Conclusion

29. For the reasons given above I conclude that the appeal should be dismissed.

David Murray

INSPECTOR