
Appeal Decision

Site visit made on 20 February 2024

by S Ashworth BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2024

Appeal Ref: APP/R1038/W/23/3328019

Land south of Little Chatsworth Cottages, Millthorpe Lane, Holmesfield S18 7SA

- 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 Harriet Wordsworth against the decision of North East Derbyshire District Council.
 - The application Ref 22/00574/FL, dated 27 May 2022, was refused by notice dated 27 March 2023.
 - The development proposed is change of use from agriculture to dog exercise and training facility.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposal 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 of the proposal on the openness of the Green Belt;
 - The effect of the proposal on the living conditions of nearby residents with particular regard to noise and disturbance;
 - The effect of the proposal on the character and appearance of the area;
 - If it is inappropriate development, 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.

Reasons

Whether inappropriate development

3. The Framework identifies that the fundamental aim of Green Belt Policy is to prevent urban sprawl by keeping land permanently open. Paragraph 155 sets out forms of development which are not considered inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes

of including land within it. They include, at paragraph 155 b) engineering operations and at paragraph 155 e) material changes in the use of land (such as changes of use for outdoor sport or recreation). Paragraph 154 b) sets out that appropriate facilities for outdoor sport or recreation (in connection with the existing use of land or a change of use) can also be regarded as an exception as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.

4. Policy SS10 of the North East Derbyshire Local Plan (the Local Plan) which relates to development within the Green Belt is not consistent with the policies of the Framework in that, amongst other things, it does not include an exception for material changes of use of land. On that basis the policy can carry little weight.
5. The appeal site would be used for the exercising and training of dogs, generally by their owners, in a secure space. The activity would be carried out in the owner's spare time. I therefore consider the use of the land would constitute outdoor recreation and accordingly falls to be considered within paragraph 155 e) of the Framework. Also proposed is an alteration to the existing field access and the formation of a car parking and turning area, and the provision of perimeter fencing. These elements of operational development would fall to be considered under paragraphs 155 b) and 154 b). As set out above, these paragraphs contain a specific test about whether openness is preserved in determining whether the proposal should be categorised as inappropriate development.
6. The appeal site comprises an open area of grassed land some 166 ha in area. Although I have read that the land had lain fallow for some time, at the time of my visit it was being used as grazing land for sheep. The site lies in the open countryside, surrounded by fields, except to the north where there are two houses, Little Chatsworth Cottages, set back from the common boundary. The site has a narrow frontage onto Millthorpe Lane where there is a limited area of hardsurfacing and a field gate which allows vehicular access onto the site. The site boundaries are currently enclosed by a mix of mature trees and shrubs, except for the boundary with the cottages which is more open, and a dry stone wall to the highway. Fencing within the site generally consists of low wires in front of the vegetation.
7. No buildings are proposed on the site and generally the grassed area would remain open. The proposed perimeter fencing would be 2m high but nevertheless would be an open mesh type of fencing that would allow views through it and accordingly would retain openness visually. The hardsurfaced area would be more extensive than the small area of hardsurfacing at the site entrance. However, the use of 'grasscrete' over part of it would allow grass to grow through the surface and thus reduce its visual impact. Parked vehicles would be limited in number to four at any one time and are most likely to be present only when the field is in use or being managed. As such the impact of the parked cars on openness would be temporary.
8. Taking all these matters into account, I conclude that the proposal would preserve the openness of the Green Belt in spatial and visual terms and would not conflict with the purposes of including land within it. Accordingly, the proposal does not constitute inappropriate development in the Green Belt.

Living Conditions

9. It is proposed to operate the use during daylight hours - between 08.00 and 16.00hrs during the winter months increasing to between 07.00 and 20.00hrs in the summer months. Users would book online in timeslots of 50 minutes per session with a 10 minute turnover between sessions to enable the users to tidy the field and leave the site. A maximum of 4 dogs would be permitted to use the field per session although there would be no limit on the number of people accompanying them. Two cars would be permitted within the fenced-off part of the field to enable dogs to run freely immediately, and space would be provided for a further two cars to wait.
10. The appellant has produced a Terms and Conditions and Code of Conduct for users of the facility, and I have no doubt that the operation would be run on a professional basis. All users would be required to undertake an induction and there would be clear rules to prevent, amongst other things, excessive barking and loud whistles and training aids and to require the removal of any equipment and waste from the site at the end of each session.
11. However, whilst the appellant seeks to prohibit dogs who bark, it is not clear what would constitute 'excessive' barking and it seems to me that barking, particularly in excited dogs, can be unpredictable and can depend on both the on the breed of dog and how it is managed by its owner. In addition, there would be no control over noise from owners calling or training their dogs. There would be no on-site supervision and it is unclear how CCTV would be monitored. Moreover, the enforcement of the Code of Conduct would largely be reliant upon neighbouring occupiers complaining to the appellant which to my mind would be onerous and unreasonable in perpetuity.
12. Little Chatsworth Cottages are a limited distance from the site and their gardens are on their south side close to the appeal site. The residential property Woodbury is also within close proximity. It seems to me that noise is likely to be heard within these properties, particularly when windows were open, and would be especially apparent from within their gardens at times when residents should reasonably expect to enjoy the use of those spaces. Background noise levels are generally created by low traffic noise on the lane and given the relative tranquillity of the rural area, the sharp sound of barking and raised voices is likely to be jarring. Accordingly, the proposal would be detrimental to the enjoyment of those properties and thereby harm living conditions. The provision of a wildflower meadow buffer is unlikely to mitigate against the adverse impacts of the proposal in that respect.
13. I acknowledge that a public footpath to the east of the site is likely to be well used by dog walkers. However, the use of a footpath where dogs are more likely to be under close supervision seems to me to be different to the use of a field where up to 4 dogs will be exercising more freely together and/or where they are being trained.
14. There would also be a degree of noise and disturbance from the use of the parking area as a result of coming and goings and vehicles manoeuvring. However, given that the access could be used by farm vehicles and taking into account the background traffic noise, and the comings and goings associated with the stables adjacent to the site, any additional noise associated with the use of the parking areas is likely to be limited.

15. Nevertheless, considering the proposal as a whole, it would result in an increase in noise and disturbance that would have a detrimental impact on the living conditions of people living nearby for the reasons set out above. Accordingly, the proposal is contrary to Policy SDC12 of the Local Plan which seeks to protect the amenity of existing occupiers and create a good quality of amenity for future occupants of land and buildings.

Character and Appearance

16. Policy SDC3 of the local plan states that proposals for new development will only be permitted where they would not cause significant harm to the character, quality, distinctiveness or sensitivity of the landscape or other perceptual qualities such as tranquillity. It goes on to require development to be informed by and sympathetic to the distinctive landscape areas identified in the Derbyshire Landscape Character Assessment and the Areas of Multiple Environmental Sensitivity, and contribute, where appropriate, to the conservation and enhancement of the local landscape taking into account its wider landscape character type.
17. The site lies within an area identified as being of primary sensitivity and most likely to be negatively affected by change or development. In these areas, the annex to Policy SDC3 states that there will be a strong focus on the protection and conservation of their environmental assets.
18. The site lies within the Peak Fringe and Lower Derwent Character Area as set out in the Derbyshire Landscape Character Area Assessment and is of a 'Wooded Slopes and Valleys' character type which features, amongst other things, moderate to steep slopes, pasture land, densely scattered hedgerow trees, irregular field patterns bounded by mixed species hedgerows, dry stone walls and narrow lanes. The appeal site and immediately surrounding land displays a number of these key characteristics and makes a positive contribution to the character and appearance of the area.
19. The fencing and 2m high pedestrian gate, which would be clearly apparent from Millthorpe Lane at the entrance to the site, would be at odds with the characteristic boundary treatments of the area in terms of their height and appearance. The areas of car parking and the provision of visibility splays would be an urbanising feature and waste bins and CCTV would detract further from the present pastoral appearance of the landscape. Moreover, the proposal would result in comings and goings at regular intervals throughout the day, including at weekends and in the evenings. The nature of human and vehicular activity at the site would thereby be considerably more intensive than would normally be associated with the agricultural use of the land. In addition to that, the noise from dogs barking and human voices would erode the tranquillity of the site.
20. I acknowledge that the proposed landscaping includes the planting of trees and shrubs to fill existing gaps in the boundary vegetation and provide screening around the parking area. However, it would take a while for such planting to mature and have a significant visual impact and even then would do little to mitigate any impact from noise. I have taken into consideration the appellant's contention that fencing of the type proposed could be erected without the need for planning permission although I note the Council disagree. Nevertheless, I am not persuaded that an agricultural use of the land necessitates such high fencing. I therefore give the matter little weight as a fallback position.

21. I therefore conclude on this main issue that the proposal would result in significant harm to the character and appearance of area. In that regard the proposal would conflict with Policy SDC3 of the Local Plan.

Other Matters

22. The proposal has attracted many representations from third parties both in support of and against the proposal. The proposal would undoubtedly provide an opportunity for dog owners to exercise and train their dogs in a secure environment away from distractions. However, support for the proposal is largely from people living well away from the settlement rather than from local residents. There is little convincing evidence that the facility is needed in this particular area. Accordingly, the social benefit of the scheme in this regard carries limited weight.
23. The proposal includes various measures to improve biodiversity, including the planting of trees and shrubs and a wildflower meadow. I have taken into consideration the appellant's biodiversity calculations in that regard. Such benefit carries limited weight in favour of the scheme. The proposal would also be of benefit to the appellant in economic terms although there is no evidence of any wider public benefit. This private benefit carries little weight in my considerations.
24. I have noted the concerns of objectors regarding highway safety. However, no objection from the Council in highway safety terms has been raised subject to the provisions of visibility splays and adequate parking and turning facilities. I have taken into consideration the appellant's view that the proposal would be a benefit to highway safety over the existing field access. Be that as it may, the access has existed for many years and there is little convincing evidence before me that farm vehicles using it have caused harm to highway safety. Accordingly, this is a neutral matter in my considerations.
25. Other matters raised, including whether or not the field would be classified as a brownfield site if the use became established and what its potential future use might be, are not matters for me to consider as part of this appeal. Inflammatory and discriminatory personal comments have been entirely disregarded.
26. I have considered the appellant's willingness to accept a condition limiting the use to a temporary period of 2 years in order to allow the effect of the proposal on the living conditions of the neighbouring residents to be monitored. However, given my concerns about the enforceability of the Code of Conduct and the burden placed on neighbouring residents in perpetuity, I am unconvinced that a temporary permission is appropriate. Moreover, even if no harm to living conditions was found, the proposal would still result in harm to the character and appearance of the area. Accordingly, a temporary permission would not be appropriate in this instance.
27. My attention has been drawn to various other appeal decisions for a similar development in Green Belt areas. However, I am not aware that in any of these other cases the sites were within landscapes considered to be sensitive to development. In addition, there are other differences between the cases. Appeal reference 3314129¹ proposed a maximum of one vehicle at a time and

¹ Appeal ref: APP/Q4625/W/23/3314129

no hardstanding; in appeal 3293836², neighbouring properties were further from the site than they are in this case and in appeal ref 3264866³, there was a limit of one car and a maximum of two people. Operational hours were also shorter than they are in the case before me. Accordingly, whilst I acknowledge that there are some similarities between the cases, the context and circumstances of those cases differ from the appeal before me and do not justify it.

Planning Balance and Conclusion

28. I have found that the proposal would not constitute inappropriate development in the Green Belt. However, the proposal would cause harm to the living conditions of the neighbouring occupiers and harm to the character and appearance of the area and would conflict with the development plan considered as a whole.
29. The conflict with the development plan in this respect carries significant weight. On the other hand, the benefits of the scheme considered cumulatively, carry only moderate weight. Accordingly, the other matters raised do not indicate that planning permission should be granted contrary to the development plan.
30. On that basis, taking all other matters raised into account, the appeal is dismissed.

S Ashworth

INSPECTOR

² Appeal Ref: APP/Y3615/W/22/3293836

³ Appeal Ref: APP/K3415/W/20/3264866