



Appeal Decision

Site visit made on 25 March 2024

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 April 2024

Appeal Ref: APP/R2330/W/23/3332911

Bold Bark Doggy Day Care, Higher Bold Venture Farm, Haslingden Old Road, Oswaldtwistle, Lancashire BB5 3RP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr William Holden against the decision of Hyndburn Borough Council.
 - The application Ref is 11/23/0064.
 - The development proposed was originally described as portal frame building for exercising of dogs.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. Applications for costs were made by the appellant against the Council and Natural England. These applications are attached as separate Decisions.

Preliminary Matters

3. Since the appeal was submitted, a revised version of the National Planning Policy Framework (the Framework) has been published. In relation to this appeal the relevant parts of the Framework are similar. Consequently, I have not gone back to the parties for comments. Whilst I have had regard to the Framework in reaching my decision, no party would be prejudiced or caused any injustice by me taking this approach. In any event, the main parties were able to deal with this matter within their statement of case and final comments.

Main Issues

4. The main issues are the effect of the proposed development on:
 - The character and appearance of the area; and
 - The West Pennine Moors Site of Specific Scientific Interest (SSSI).

Reasons

Character and Appearance

5. The appeal site comprises an established dog care business, accessed from Elton Road, and is within the ownership of a working farm. The site is situated in an exposed, elevated position and sits higher than nearby highways. The surrounding area is primarily characterised by large, open, arable agricultural fields, as well as a telephone mast and the nearby wind farm.

6. The proposed building would replace the polytunnel and would be adjacent to the existing staff welfare building, parking area, and outdoor areas enclosed by post and rail fencing. The building would closely relate to the existing building which has a modern, industrial appearance and would be sited on the same footprint as the polytunnel. However, that structure is unauthorised and reads as a temporary structure.
7. The building would be significantly larger than the modestly sized building and would result in substantial built form being located within this rural setting. Furthermore, the development would be clearly visible from the nearby public right of way but would not be conspicuous from surrounding roads. As a result of the building's siting, scale, design and appearance, the proposal, in combination with the existing development, would adversely affect the character of the rural landscape. The scheme would appear as a modern industrial type building, due to the proposed materials, which would be at odds with the rural character of the area. For these reasons, the development would have an unacceptable urbanising impact on the countryside and would not be sensitive to the area or respect the rural setting.
8. I recognise that there are licensing requirements, and there is a need for a temperature controlled facility and to provide shelter during inclement weather. However, there is no robust justification to demonstrate that such matters are inherently reliable on the scheme before me to justify the development. Furthermore, the proposal cannot be directly compared to the nearby wind farm application as the policy and other considerations as well as the nature of the developments differ. In any case, I have considered the appeal proposal on its own merits, and do not consider that such considerations outweigh the harm I have found.
9. For the reasons given above, the proposed development would cause unacceptable harm to the character and appearance of the surrounding area. Consequently, it would conflict with Policies BD1 and ENV3 of the Council's Local Development Framework: The Core Strategy (2012), Policy DM34 of the Council's Local Plan: Development Management DPD (2018) (DMDPD). These collectively seek, amongst other things, to protect and enhance landscape character, and support farm diversification which retains landscape character. It would also conflict with paragraph 180 of the Framework which states that decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

SSSI

10. The SSSI supports an extensive mosaic of upland and upland-fringe habitats. The SSSI's nationally important features include diverse assemblages of upland moorland, in-bye and woodland breeding birds, wet and dry heathlands and blanket bogs. The Millstone Grit geology of the region is a hard rock which impedes drainage and has given rise to the development of large flat-topped plateaus covered with deep peat above 400m altitude.
11. Policy DM18 of the DMDPD states that development proposals likely to have an adverse effect on the special features of a SSSI will not be permitted, unless there is no satisfactory alternative location and the benefits of the development clearly outweigh the impacts on the site and any broader impacts on the national network of SSSI's. Consultation with Natural England will inform this view.

12. The lawful use of the site and dog day care business are established, and therefore I am only able to consider the proposed development (either individually or in combination with other developments). The appellant highlights that the polytunnel is situated on a hard surfaced area. Evidence has been provided to demonstrate that the hard surface area has been in place since 2008 (before the designation of the SSSI) and provided an area to store hay bales. The appellant asserts that the hard surfaced area would have been permitted development. Furthermore, they state that the site is already drained away from the SSSI.
13. I do not dispute the evidence submitted regarding the previous hard surface area and the area where the building would be sited is not grassland. Nonetheless, I am mindful that the polytunnel is unauthorised and the proposal would expand the built development area of the dog care business through introducing a large building. It is unclear whether the building would enable more intensified use and activities of the site. However, I note that the previous approval limits the number of dogs to 15 dog per day, but the appellant would not agree to such a condition attached to this development.
14. Blanket bog is a designated feature of the site and drainage works could impact peat. Peat is vulnerable to enrichment which may arise from activities such as elevated nutrients found in dog urine and faeces. Degraded peat cannot support blanket bog vegetation. That being said, the area proposed to locate the building could be used as a dog run and where dog waste would occur.
15. The works and disturbances associated with the removal of the polytunnel, and erection of the building would result in an intensified use of the site for a period of time. There is no robust evidence to demonstrate how the site is drained, and whether any existing drainage is acceptable. The introduction of a permanent building of this size, in relation to a dog care business, would impact ground conditions and surface water drainage.
16. An Ecological Impact Assessment has not been provided to indicate how impacts both from construction and the proposal would be mitigated, taking into account the SSSI. Consequently, based on the information submitted, the proposal could damage or destroy important features for which the SSSI has been notified and I cannot conclude that the proposal would not have an adverse effect on the SSSI. I am not satisfied that this matter could be adequately addressed by planning conditions to guarantee that there would be no adverse effect on the SSSI. Furthermore, it has not been demonstrated that harm to the component features of the SSSI can be adequately mitigated or that the benefits of the development outweigh the impact.
17. For these reasons, from the information before me, the proposed development would have an unacceptable effect on the SSSI. Consequently, it would conflict with paragraph 186 of the Framework which states that development on land within a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest.

18. The reason for refusal refers to Policy DM19 of the DMDPD which primarily relates to protected species. Whilst concern has been raised regarding protected species, this matter does not form part of the reason for refusal. Given my findings above I have not considered this matter further as it would not be determinative to my decision. The reason for refusal also refers to Policy DM22 of the DMDPD which is not relevant because that policy relates to heritage assets.

Other Matters

19. My attention has been drawn to a range of other matters. These include animal and welfare licensing requirements, junction improvements, and suggested condition. However, the other matters highlighted do not outweigh the harm I have found.

Conclusion

20. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other material considerations, the appeal does not succeed.

L Wilson

INSPECTOR