



Appeal Decision

Site visit made on 2 May 2024

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 June 2024

Appeal Ref: APP/G2245/C/22/3303636

Land East of Oakview Stud Farm, Lombard Street, Horton Kirby, DA4 9DF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the 1990 Act). The appeal is made by Mr Tom Hanks (K9 Training) against an enforcement notice issued by Sevenoaks District Council.
 - The notice was issued on 29 June 2022.
 - The breach of planning control as alleged in the notice is without planning permission, change of use of the land to use as a dog-training and kennelling facility.
 - The requirements of the notice are to:
 - 1) Cease using the land as a dog-training and kennelling facility
 - 2) Remove all structures, fencing, equipment and other paraphernalia connected to the use as a dog-training and kennelling facility
 - 3) Remove any landscaping/hardscaping in connection with the dog training and kennelling facility
 - 4) Remove any advertising in, around and at the front of the main site (Oakview Stud Farm) which relates to the dog training and kennelling facility
 - 5) Remove any further resultant material and all waste from the land
 - 6) Return the land to a state fit for agricultural or equestrian use
 - The period for compliance with the requirements is four months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (g) of the 1990 Act. 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.
-

Decision

1. It is directed that the enforcement notice is corrected by inserting the words 'the material' before the word 'change' in section 3.
2. Subject to the correction 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.

Preliminary Matters

3. The breach of planning control as alleged in the notice is the change of use of the land to use as a dog-training and kennelling facility. However, having regard to s171A(1) of the 1990 Act, use, in itself, is not an act of development. For a breach of planning control to have occurred, there must have been a 'material' change of use. I shall therefore correct the notice to refer to the same, under the powers transferred to me by s176(1)(a) of the 1990 Act. I am satisfied that doing so would not cause injustice to any party.
4. Since submission of the appeal, a revised version of the National Planning Policy Framework (the Framework) has been published (December 2023) and this is a material consideration which should be taken into account from the

date of its publication. As the amendments do not materially alter the policies most relevant to the appeal, I have not reverted to the parties for comment.

The Appeal on Ground (b)

5. A ground (b) appeal is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. The onus lies with the appellant to make his case on the balance of probabilities.
6. The ground (b) appeal is made solely in relation to the alleged kennelling facility. In that regard, the Council refers to a site visit which revealed a series of enclosed, rudimentary kennels erected on a concrete base in the south-west corner of the site, in which dogs were kept day and night. Although the appellant states that there is no kennelling facility at the site and that the notice is factually incorrect, it is not explained what those structures were being used for, if not for the purposes alleged.
7. Moreover, there are several third party objections which refer to dogs being kept on site and barking through the night, thereby indicating that a kennelling use did occur.
8. At the time of my site visit I saw no kennelling facilities. However, it makes no difference if the alleged breach has ceased in part or in full because s174(2)(b) of the 1990 Act is worded in the past tense, and the question is whether the breach had occurred by the date of issue of the enforcement notice.
9. In that regard, the appellant has not met the evidential burden to show, on the balance of probabilities, that at the time of issuing the enforcement notice there was no kennelling use at the site. The ground (b) appeal fails.

The Appeal on Ground (a) and the Deemed Planning Application

Main Issues

10. The main issues are:
 - whether the development would amount to inappropriate development in the Green Belt;
 - the effect on the openness of the Green Belt;
 - the effect on the character and appearance of the area;
 - the effect on the living conditions of occupants in the locality, with particular regard to noise and disturbance;
 - the effect on highway safety; 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 required to justify the development.

Reasons

Whether inappropriate development in the Green Belt and the effect on openness

11. The land to which the enforcement notice relates lies within the Metropolitan Green Belt.

12. Paragraph 154 of the Framework explains that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this include the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport and outdoor recreation, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
13. Paragraph 155 of the Framework goes on to explain that, subject to the same caveats on openness and Green Belt purposes, certain other forms of development are also not inappropriate in the Green Belt. These include material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds).
14. Although lying immediately adjacent to a trading estate, almost all of the appeal site protrudes beyond its built edge into an area of largely open fields. By the time of my site visit the northern part of the site had been largely cleared, save for a series of enclosures for the keeping of birds. Nevertheless, photographs¹ of the previous arrangement show numerous timber runs and jumps and other items such as picnic tables, spread over the land.
15. On the southern part of the site the remaining facilitating structures included a shed, vehicular trailers/containers, various types of runs and obstacles fashioned from scaffolding, timber, pipes, plastic barriers, barrels and containers. The tallest and most prominent structure also incorporated a dilapidated caravan.
16. Even if those various features and structures within the site are not permanent, they evidently facilitate the material change of use, and individually and cumulatively have a clear spatial presence on land which would otherwise comprise a largely open field.
17. Those facilitating features and structures are visible in views from Mussenden Lane where the use clearly and significantly extends beyond the parameters of the built development of the trading estate into open countryside. Similar views may also be experienced from the rear of properties on School Lane.
18. The overall effect on the visual and spatial aspects of openness is compounded by the solid timber and concrete post fencing enclosing the site from the adjoining largely open fields.
19. Whilst, like those fields surrounding the site, an equine use of the land may include field shelters and other items such as jumps, the effect on openness is likely to be significantly less compared to the height, coverage and nature of the structures associated with the appeal development.
20. Therefore, even if the change of use of the land could be considered as outdoor recreation, the development results in a moderate to significant loss of openness to this part of the Green Belt. The use and its facilitating structures also conflict with the purposes of including land within the Green Belt, which include assisting in safeguarding the countryside from encroachment.

¹ Included as part of drawing number OSF003 – proposed block plans dated 14 January 2022, prior to the date of the enforcement notice.

21. The use does not therefore meet the above identified exceptions and amounts to inappropriate development in the Green Belt for the purposes of the Framework.

Character and appearance

22. The main parts of the appeal site sit beyond the rear developed parameters of the adjacent trading estate in an area of open countryside largely characterised by open, pastoral fields used for horsiculture purposes. Within that context, the above-described facilitating features and structures, which are rudimentary in nature, appear incongruous and create a cluttered and untidy appearance.
23. The concrete post and solid timber panel fencing, which runs around the majority of the site, also appears out of place and harmful to the character and appearance of the area, being suburban in type and contrasting with the open type fencing and hedge enclosures, typical of this rural location.
24. Moreover, being situated in a shallow valley beyond the built extent of the trading estate, the use and its facilitating features are clearly seen, particularly from Mussenden Lane, as a significant protrusion into the open countryside.
25. As noted, even if the land was previously used for horsiculture with jumps and other features, their extent, height and nature are unlikely to have had a comparable visual impact.
26. I therefore find unacceptable harm to the predominantly rural character and appearance of the area, contrary to DPD² Policy EN1, which states that proposals which create high quality design and meet the specified criteria will be permitted.

Living conditions

27. Even without kennelling facilities, dogs being trained and exercised are likely to bark. Because of the relatively open nature of the land in a shallow valley and the external nature of the training area, it is likely that the sound of barking dogs will travel to the nearest residential properties, despite the intervening distances. Indeed, third party representation from residents living to the north and south of the site in Rashleigh Way, School Lane and Mussenden Lane, refer to noise from barking dogs being clearly heard from their gardens and from inside their homes.
28. Those residents understandably highlight that even when the dogs are not barking, the anticipation of them doing so results in anxiety and an inability to relax. Residents also refer to disturbance from trainers shouting instructions or commands to the dogs.
29. The prolonged exposure of such noise generated by the use is likely to affect the behaviour of local residents and the enjoyment of their homes, including having to close windows during warmer months and affecting their choices as to whether to utilise their garden.
30. Indeed, the Council explain that its Environmental Health team has raised significant concerns over the activity and its adverse impact on neighbouring residential properties, and that it is understood that the dog training use of the site is subject to enforcement action for statutory nuisance. Although I have

² Allocations and Development Management Plan Development Plan Document

not been provided with evidence to that effect, I note that local residents also refer to abatement notices being served. Such factors clearly point to a significant degree of harm.

31. The appellant states that a noise report is being undertaken but no such assessment has been provided in support of the appeal and no specific noise mitigation measures are proposed. The appellant does seek to highlight that the hours of operation could be controlled by way of condition, but he does not suggest any hours which would be acceptable to him. In any event, based on the evidence before me, harm would still occur even if the duration were to be time limited.
32. Moreover, the frequency of visitors is likely to be significantly greater than that which could reasonably be expected for an equine use and the noise generated is incomparable.
33. I therefore conclude that the use of the land as a dog training centre and kennelling facility results in unacceptable harm to the living conditions of local residents by way of noise and disturbance. That is contrary to DPD Policy EN2, which states, amongst other things, that proposals will be permitted where they would safeguard the amenities of existing and future occupants of nearby properties by ensuring that development does not result in excessive noise.

Highway safety

34. At the time of my site visit, the area of hardstanding adjacent to the main part of the site was largely covered with cars and vans. Little, if any, parking was available. Given the type and/or general condition of the vehicles, and given that the appeal site was not being used, it is very likely that they were associated with the business activities taking place in the adjacent trading estate.
35. In any case, it is not shown that the hardstanding, or any other land nearby, is within the appellant's control and/or is available for parking associated with the use of the land.
36. I also saw there to be significant parking constraints and pressures within the main part of the trading estate, which is very likely to spill out onto Lombard Street. Whilst, at the time of my site visit there was some on-street parking available, I have no evidence to show, such as a parking survey, that is the norm. Indeed, interested party representation cite parking as being a major issue along Lombard Street.
37. I am also mindful that the use of Lombard Street for parking would necessitate users having to walk with their dogs through the trading estate, which has no footways to access the site.
38. Moreover, existing parking along Lombard Street effectively restricts it to a single carriageway, thereby disrupting the safe and free flow of traffic. Difficulties passing through the road, which is a bus route, and traffic being held up, are again referenced by interested parties. Reflective of those difficulties, I could also see that posts have been installed adjacent to the western side of the road to prevent/limit vehicles mounting the verge.
39. The appellant states that vehicular comings and goings would be minimal and there would be no effect to highway safety. However, it is not explained how

many movements are typically generated on any given day. In the absence of evidence to the contrary, it is likely that the use generates significantly greater vehicular movements than that which could be reasonably expected for the keeping of horses. The appellant refers to parking provision being already present for equine visitors, but it is not shown where and what that provision is.

40. It is not therefore demonstrated that there is any dedicated parking for the use and that vehicular activity associated with the use would not materially exacerbate existing highways conditions and parking pressures within the locality, to the detriment of highway safety. As a result, the development fails to meet the criteria of DPD Policy EN1, which requires proposals to ensure satisfactory means of access for vehicles and pedestrians and to provide adequate parking facilities.

Other Considerations and Green Belt Balance

41. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations³.
42. Although paragraph 150 of the Framework states that local planning authorities should plan positively to enhance the beneficial use of Green Belt, such as providing opportunities for outdoor sport and recreation, I have found that the material change of use of the land amounts to inappropriate development within the Green Belt and results in a moderate to significant loss of openness. The use and its facilitating structures also conflict with the purposes of including land within the Green Belt, namely assisting in safeguarding the countryside from encroachment. The Framework requires that I apply substantial weight to those Green Belt harms⁴.
43. For the reasons explained, I have also found harm to the character and appearance of the area, the living conditions of nearby residents and to highway safety.
44. As highlighted by the appellant, the development attracts support from paragraph 88 of the Framework, which states that decisions should enable the sustainable growth and expansion of all types of business in rural areas. I attach moderate weight to that benefit.
45. However, the other considerations in this case are significantly outweighed by the Green Belt harms and other harms identified. Accordingly, the very special circumstances necessary to justify allowing the deemed planning application do not exist.

Conclusion

46. For the reasons given above, I conclude that the appeal development is contrary to the Framework and development plan as a whole, and that material considerations do not indicate that the appeal should be determined otherwise

³ Paragraphs 152 and 153

⁴ Paragraph 153

than in accordance with the development plan. The ground (a) appeal should not therefore succeed. I shall refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

The Appeal on Ground (g)

47. The ground (g) appeal is that the four months given to comply with the requirements of the enforcement notice is too short on the basis that it would not allow sufficient time to find a big enough alternative site with customer parking. A period of six months is requested.
48. I note the Council's hope that the appellant is already looking for such alternative sites, but he is entitled to assume success on any ground in an appeal under s174 of the 1990 Act. Consequently, any suggestion that the period for compliance should not be extended because of time afforded during the appeal proceedings must be rejected.
49. Nevertheless, I consider a period of four months to be sufficient to be able to find an alternative site and comply with the requirements of the notice, and that time period strikes a proportionate balance between any difficulties the appellant may encounter and the public interest in this case.
50. The ground (g) appeal fails.

Richard S Jones

INSPECTOR