



Appeal Decision

Site visit made on 15 October 2024

by R Gee BA (Hons) Dip TP PGCert UD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st October 2024

Appeal Ref: APP/Z1510/W/24/3340460

Land south of Sheepcote Wood, Station Road, Cressing, Essex, CM77 8PD

- 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 Wagtails Group Ltd against the decision of Braintree District Council.
 - The application Ref is 22/01789/FUL.
 - The development proposed is described as change of use of agricultural land to doggy day care site.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development from the Council's decision notice.
3. Since the determination of this application, a revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended.
4. In addition, on 30 July 2024 the Government published a consultation on proposed reforms to the Framework and a written ministerial statement. While these proposed changes can only be given limited weight at this stage, those parts most relevant to the appeal are not proposed to be amended. As a result, I consider that there is no requirement for me to seek further submissions in respect of these matters, and I am satisfied that no party's interests would be prejudiced by my taking this approach.

Main Issues

5. The main issues are:
 - i) the effect of the proposal on the character and appearance of the area, including lighting;
 - ii) whether or not the location is suitable for the proposed development, having regard to local and national planning policies;
 - iii) the effect of the proposal on the availability of best and most versatile agricultural land; and

- iv) the effect on living conditions of existing occupiers, with particular regard to noise.

Reasons

Character and appearance

6. The appeal site is located in the countryside, outside of a settlement boundary. The site is open agricultural land, largely bounded on all sides by well-established hedgerows and mature trees. The site has a tranquil, open, rural character, as does the surrounding area. Overall, the appeal site makes a positive contribution to the surrounding countryside and landscape.
7. Policy LPP7 of the Braintree District Local Plan 2013-2033 (Local Plan) provides support for rural enterprises, including small-scale commercial developments, subject to meeting a number of criteria.
8. The proposed development is for the change of use of the land to provide a 'dog day-care facility'. Three welfare buildings and a reception building are proposed. Whilst the buildings may only amount to a small proportion of the land being developed, nevertheless, they introduce new built development onto the land, which is currently open and undeveloped. The buildings would have a functional, single storey, timber design, not dissimilar in appearance to stables that are often found in rural locations. Nevertheless, the introduction of the built development on the land would result in unacceptable harm to the open character and beauty of the landscape in the countryside setting.
9. The proposed development would result in hardstanding areas, parking, paraphernalia for exercise and play, subdivision and boundary treatments to provide a secure environment for dogs, thereby urbanising the site and eroding its contribution to the countryside. Whilst external materials could be conditioned to soften the visual appearance of the proposal, for the reasons stated, there would be a negative effect upon the open, rural character.
10. Additionally, there would be a range of vehicles associated with the use parked on site during operating hours and additional vehicle movements to and from the site. Together, these elements would mean the character and appearance of the site would be much more urban than it is currently.
11. Furthermore, it would be reasonable to expect external lighting to be required for operational needs due to the times of use proposed, particularly in winter months. I have limited information before me in this regard. Whilst I accept that low level lighting for car parking could be accommodated without detriment to the visual amenities of the locality, lighting to the paddocks would be an incongruous feature within the locality and would have a harmful impact upon the rural character of the area.
12. I recognise that the site is fairly well contained due to the presence of existing vegetation along parts of some boundaries. While existing and proposed landscaping would afford some screening of the development it would not suitably overcome the concerns that I have identified.
13. For the reasons set out above the proposed development would be harmful to the character and appearance of the area. It would conflict with Policies SP7, LPP1, LPP7, LPP27, LPP52 and LPP67 of the Local Plan which collectively, amongst other things, require development to respond positively to local

character and context to preserve and enhance the quality of existing places and their environs and that there is no unacceptable impact on the character of the site or the surrounding countryside and its landscape value. It would also conflict with the Framework which expects development to be sympathetic to local character, including the surrounding built environment and landscape setting and recognises and safeguards the intrinsic character and beauty of the countryside.

Sustainable location

14. I acknowledge that the Council has concerns that the location means that there would be a reliance on the use of private motor vehicles, albeit there would not be a highway safety concern related to this.
15. The appeal site is located in a rural area and would be accessed by narrow rural lanes. Station Road is unlit and has no footways. It is accepted that the likelihood of customers using public transport, as well as cycling, would be low. Access is therefore likely to be dependent on private transport due to the location of the appeal site relative to the nearest settlements.
16. The Transport Assessment¹ (TA) states that the proposal would generate a total of 24 vehicle movements per day, when at full capacity, stating that the use of private vehicles to access the site will be heavily mitigated by the doggy shuttle bus and will increase the sustainability of the site significantly. However, from the evidence before me, the proposal could potentially generate up to 112 vehicle movements per day. The appellant submits that 95% of trips would utilise the dog shuttle bus, whereby dogs are picked up from their homes and brought to the site and returned home utilising this service. In addition, the appellant states that for those users who do not utilise the shuttle service they would be required to book 15 min drop off/pick up periods to minimise the number of vehicles at the site at any given time.
17. The Framework states that planning decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. Whilst I recognise the environmental benefits of this service and the convenience to users, I consider it would be difficult to restrict such transport arrangements by a planning condition. I am satisfied that the hours of operation could be adequately controlled by planning condition. However, notwithstanding the intended financial incentive to customers to utilise the shuttle service, to enforce such trips to minimise vehicle movements to and from the site, and the specific time slots for drop-off/collection would be difficult to monitor and enforce. If the shuttle bus service failed, including low uptake, the proposal would generate a significant number of private vehicular trips. While this is not necessarily unusual in rural areas, the site is not what could be considered a sustainable location.
18. I recognise that a dog day care use may be difficult to locate within a built-up area. Nevertheless, the siting of the proposed use would be inconsistent with the objectives of the Local Plan and Framework which seek to promote sustainable development in terms of location and accessibility. Conflict therefore arises with Policies SP1 and SP7 of the Local Plan and the Framework insofar as it seeks to promote sustainable development.

¹ Cottee Transport Planning dated July 2022

Agricultural Land

19. The Framework guides development away from the best and most versatile (BMV) agricultural land, which is defined as land in Grades 1, 2 and 3a of the Agricultural Land Classification. The PPG² sets out that planning decisions should take account of the economic and other benefits of the best and most versatile agricultural land.
20. The evidence before me indicates that the appeal site extends to approximately 10 acres and is classed as Grade 2. The appellant asserts the loss of grade 2 agricultural land is justified by the creation of up to 9 jobs. The appellant further submits that there would not be a permanent loss as the majority of land would remain grassland, and areas of hardstanding could be re-instated with soil, to enable agricultural activity if the business ceased.
21. Having regard to the size of the appeal site there is nothing before me to indicate that its loss to local agricultural production would be much more than negligible. Nevertheless, this would still be a loss, weighing against the proposal. There would therefore be minor conflict with Paragraph 180 of the Framework in this regard.

Living Conditions

22. There are sporadic residential properties within the locality, with the nearest being approximately 300m away on Station Road. An area of dense woodland is present between the appeal site and the B1018 road, to the north. Vegetation is present along the western side of Station Road and parallel to the railway line which is a significant distance beyond the appeal site to the south.
23. Although only a snapshot of time, during my visit I observed the immediate roads to be lightly trafficked and background noise levels to be low and characteristic of a rural location.
24. I accept that where a number of dogs are gathered together it is very likely that there will be some barking and from the nature of the proposed use there are also likely to be raised voices. Despite the assurances of the appellant, the noise from the dogs has the potential to be highly variable and unpredictable. These behavioural effects are not entirely within the control of the operator/staff. Although there are no dwellings directly adjoining the area that is used for dog exercise and training, both barking and raised voices will carry over some distance. That being said, I observed mature vegetation along boundaries and the railway line to the south and the B1018 highway to the north.
25. Notwithstanding the above, the Noise Impact Assessment (NIA)³ concludes that the noise impact from the operation of the doggy day care is predicted to be 'None/Not significant' at the Noise Sensitive Receptors even when factoring in potential uncertainty. Furthermore, the Noise Management Plan (NMP) suggests a number of measures whereby potential noise and disturbance might be controlled. Amongst others, these include feeding and exercise regimes.
26. The Council refers to the need for a solid acoustic screen around the dog pens and recommends a condition to that effect. The appellant has confirmed that

² Paragraph: 001 Reference ID: 8-001-20190721

³ Healthy Adbode Acoustics ref HA/AD977/V1.1 and V1.2

they would not agree to such a condition. Based on the evidence before me there is no substantive evidence that the Council's request is reasonable or necessary.

27. With regard to noise from vehicle movements, this would be expected to occur only at the beginning and end of the sessions. Even with a shuttle bus in operation, the comings and goings of vehicles, people and dogs would increase the extent of noise and disturbance from the appeal site compared to the current agricultural land. Be that as it may, given the reasonable distances between the appeal site and the nearby residential properties I am satisfied that such movements would not be materially harmful in itself, or in combination with other activities at the site, such that it would diminish the overall living conditions of the occupiers of nearby properties.
28. The proposed use would give rise to an increase in noise when compared to the existing situation. However, owing to the distance to the neighbouring properties, the presence of intervening mature vegetation and that the number of dogs and that operating times could be restricted by planning conditions, the proposal would not adversely affect the living conditions of existing occupiers to a degree that would warrant planning permission being refused on such grounds.
29. For these reasons, the proposal would not have an unacceptable effect on the living conditions of the occupiers of existing properties, having regard to noise. Accordingly, the proposal would comply with Policy LPP70 of the Local Plan which amongst other things, seeks to prevent unacceptable harm from all emissions and other forms of pollution, including light and noise pollution.

Other Matters

30. My attention has been drawn to other examples of similar proposals⁴ which the appellant considers lend support for the appeal scheme. From the limited information before me it is understood that the examples differ in terms of location, access and buildings already being *in situ*. As such, it appears that there are clear material differences between the two schemes. In any event, I have determined the appeal on its own merits.
31. Further to concerns regarding odour from dog faeces I am satisfied that a suitably worded condition would address waste management at the site should I be minded to allow the appeal.
32. I recognise that it may be difficult to locate the proposed use close to built up areas and that the business model is based on the dogs having outdoor space. Nevertheless, the evidence presented does not show that this particular site is the only option available.
33. The absence of harm to highway safety and the letters of support are neutral matters, that weigh neither for, nor against, the proposal.
34. The development would provide employment opportunities and would provide a service for dog owners in the locality. The appellant submits that Covid saw an increase in dog ownership and that dog thefts are prevalent as a result of dogs now being left at home all day when owners returned to their workplace. It is

⁴ Including Buddies Doggy Day Care, Hertfordshire, Bruce's Doggy Day Care, Ditchling and the Doggy Lodge, Braintree

recognised that doggy day care provides support for households and allows clients to work whilst their dogs are being cared for. Therefore, there would be some modest associated economic and social benefits. Overall, I accept that the business would result in some economic growth, but this would be modest in terms of the wider economy. As such, the modest benefit would not outweigh the unacceptable harms identified.

35. The appellant makes reference to having made pre-application enquiries to the Council. I note that the proposal has been amended in an attempt to overcome the issues that were raised during the course of pre-application advice, including reducing number of dogs from 100 to 50. However, this does not have any influence on my considerations of the planning merits of the specific proposal that is before me.
36. I have considered all other matters raised by interested parties. However, as I have found the development to be unacceptable for the reasons given, it is not necessary for me to reach a conclusion on these matters.

Conclusion

37. Whilst I am satisfied that the proposal would not materially harm the living conditions of existing residents with particular regard to noise, this does not outweigh the harm I have identified in respect of character and appearance, location or the loss of Grade 2 agricultural land.
38. The proposed development conflicts with the development plan taken as a whole. There are no material considerations, including the policies of the Framework, that indicate the decision should be made other than in accordance with the development plan.
39. For the reasons given above, I conclude that the appeal should be dismissed.

R Gee

INSPECTOR