



Appeal Decision

Site visit made on 3 March 2025

by **L Clark BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 April 2025

Appeal Ref: APP/J4525/W/24/3357435

Land off Back Lane, Penshaw, Houghton Le Spring, Tyne and Wear

Grid Ref Easting: 432980 Grid Ref Northing: 554049

- 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 Alan Smiles against the decision of Sunderland City Council.
- The application Ref is 24/00625/FUL.
- The development proposed is change of use of agricultural land to a secure dog field, new access from Back Lane, track and parking area.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. An amended version of the National Planning Policy Framework (the Framework) was published in December 2024, with further minor updates in February 2025. The Council's evidence refers to paragraph 155(e) of the Framework, which is now paragraph 154(h) within the updated version. The appellant's evidence does, however, refer to the updated paragraphs. Given the paragraphs most pertinent to this appeal are unchanged other than their numbering, neither party is prejudiced by a lack of consultation on the revised Framework.
3. The grid reference in the banner heading is taken from the application form. This locates the site as shown on the submitted drawings, which is accessed from Back Lane and has been added for completeness.
4. I saw that a post and wire fence of approximately 0.9 metres in height was located around the boundary to the proposed dog walking field and car parking area, and that a pedestrian gate was present within the boundary adjacent to the Public Right of Way (PROW). Any breaches of planning control do not fall within my assessment of the appeal scheme. As neither the proposed access nor the access track had commenced, I have determined the appeal on the basis that planning permission is being sought.

Main Issues

5. The main issues of this appeal are:
 - whether the proposed development would make adequate provision for biodiversity (BNG);
 - whether the proposal would comprise inappropriate development in the Green Belt, having regard to the development plan and the Framework, and the effect upon the openness; and,

- whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Biodiversity (BNG)

6. The site falls within an identified Wildlife Corridor and is within the impact risk zone of Dawson's Plantation Quarry, Site of Special Scientific Interest (SSSI).
7. The submitted Preliminary Ecological Appraisal (PEA) identifies the site as being dominated by modified grassland, with the wider landscape comprising of extensive areas of agricultural land, with a mosaic of pockets of woodland and residential development. From the evidence before me, the Council's Ecologist is satisfied that the baseline habitat and I have no reason to take a different view.
8. The PEA recommends compensatory measures. This includes planting native shrubs around the northern and eastern boundary and species-rich grassland in the northeast sections of the site, and a precautionary working method with regard to hedgehogs during the proposed works.
9. Policy NE2 of the Sunderland Core Strategy and Development Plan 2015-2023 (Core Strategy) relates to biodiversity and geodiversity. Criterion 1. states that, where appropriate, development must demonstrate how it will: i. provide net gains in biodiversity; and ii. avoid (through locating on an alternative site with less harmful impacts) or minimise adverse impacts on biodiversity and geodiversity in accordance with the mitigation hierarchy.
10. There is no dispute that the proposed mixed scrub and modified grassland would equate to approximately 13.53% net habitat change, or that this would be significant when compared to the baseline. The dispute is therefore whether the mitigation measures can be achieved and maintained.
11. The appellant's Habitat Management and Monitoring Plan (HMMP) was submitted alongside their application. While it may be a national mandatory requirement, it is nevertheless a key document before me and is therefore a material consideration in my assessment.
12. The Site Proposals Plan in the HMMP shows all the proposed habitats to be retained, created or enhanced. The HMMP also details how the created enhanced habitats would be established and states that additional steps, such as signage or redirecting footfall away from the affected areas, are required to minimise disturbance and ensure successful delivery of the target habitats.
13. The field proposed for dog walking would be largely open, and it is the appellant's intention for dogs to roam freely. Given the extent to which the dogs and their owners would utilise the field and vehicles within the parking area, even if the BNG Metric shows that the required habitat net gain could be achieved, and I were to agree that a condition could secure the habitat creation, I am not satisfied that the created habitats could be maintained for the desired period and to the same value, without being diminished through use.
14. Furthermore, I note there are figures within the BNG Metric and HMMP with regard to the extent of mixed scrub which do not match. Whilst this may be an error, it is

nevertheless a discrepancy within a key document. Moreover, I have no evidence to demonstrate that the HMMP was completed with the assistance of a competent person.

15. With regard to the nearby SSSI, the PEA contends that due to the scale of the proposed development and the distance of the appeal site, the proposed development would have no impact on the designated site. From the evidence before me, I have no reason to take a different view.
16. For the reasons given above, I conclude that the proposed development would fail to provide adequate provision for BNG. Accordingly, it would conflict with Policy EN2 of the Core Strategy which, amongst other matters, seeks to enhance and manage the city's biodiversity.

Whether the proposed development is inappropriate development in the Green Belt and the effect upon the openness

17. Criterion 2 of Policy NE6 of the Core Strategy states that inappropriate development in the Green Belt will not be approved except in very special circumstances; Criterion 3 clarifies that development in the Green Belt will only be permitted when it is consistent with the exception list in national policy, subject to all other criteria being acceptable.
18. The Framework states that the essential characteristics of Green Belts are their openness and permanence, and when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt, including harm to its openness. Therefore, it not only relates to a proposal's size or visibility from the surrounding area but also its purpose and intensity of its use. Openness in any particular case is, however, a matter of planning judgement.
19. Paragraph 154 of the Framework sets out that development in the Green Belt is inappropriate other than in a few exceptions. This includes criterion b) the provision of appropriate facilities (in connection with the existing use of land or a change of use), including buildings, for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. It also includes criterion h) v. material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds), provided it preserves its openness and does not conflict with the purposes of including land within it.
20. The Council does not dispute that the use of a field for the purposes of dog walking falls within the definition of outdoor recreation. While complying with criterion b), under criterion h) v, it is necessary to assess whether the proposed development would preserve the openness of the Green Belt or conflict with the purposes of including land within it.
21. The appeal site comprises an agricultural field given over to grass. Ground levels within the site rise from Coxgreen Road towards the PROW leading to Penshaw Hill and from Back Lane towards the proposed area of car parking, parallel to the PROW. Ground levels also rise outside the appeal site from Back Lane and up Penshaw Lane. The surrounding land is characterised predominantly by a mix of open fields, with clear views from the site towards Back Lane, Coxgreen Road and Penshaw Wood. The nearest residential property, located on the same side as the

appeal site, is set back from the road by a garden with hedging located along its boundary with the PROW. Together with the change in levels, this separates and partially screens the appeal site from views down Penshaw Lane.

22. The proposal use would involve very limited permanent features. The Council contend that the use of the field in isolation would have no effect on the openness of the Green Belt, and I have no reason to take a different view. The dispute between the parties relates to the fencing, the access track, the car park and operational use.
23. The post and wire fence would be appropriate for the intended purpose, to provide a safe and secure environment for dogs. Its design is not dissimilar to agricultural fencing that is installed in rural locations, which allows views to pass through it and consequently ensures the site appears open. Given its height and design, the fencing would not cause harm to, and would thereby preserve, the openness of the Green Belt in both spatial and visual terms.
24. The proposed parking area would be adjacent to the PROW and located beyond the access track. Its size is intended to accommodate around 2 vehicles per hour between the hours of 08:00 and 19:00 or dusk, whichever is sooner. The area appeared largely laid to grass with loose chippings only visible around the access with the PROW. Given the topography of the car park, the surface treatment was largely obscured by rising ground levels from Back Lane and the hedging to the PROW. I acknowledge that the parking of vehicles has the potential to harm openness in both visual and spatial terms; however, only a limited number of vehicles would be parked on what is a relatively small area and only between certain times of the day. During these times, it would result in limited change to the appearance of the site. The proposal would therefore not cause harm to, and would thereby preserve, the openness of the Green Belt in both spatial and visual terms.
25. Turning to the proposed access track, the appellant contends that it would be laid out in 'grasscrete' or an equivalent surface to limit the appearance of any additional hardstanding and to allow grass to grow within the voids. An area of hedging would be removed, and further vegetation cut back to create the access and visibility splays. I note the Council's concerns regarding the possibility of vehicle tracks being left along its length, which could result in the perforated surface being visible within the Green Belt and from the wider landscape. Whilst the effectiveness of such systems can vary, the Council states that the perforated surface would allow grass and vegetation to grow through the gaps, allowing it to blend into the landscape to a degree and merge with adjacent grassland. While no specific details of the access track have been provided, a condition could be used to secure its specification, which would ensure grass coverage and longevity in surface treatment. Subject to a suitably worded condition, I am satisfied that the access track would therefore not cause harm to, and would thereby preserve, the openness of the Green Belt in both spatial and visual terms.
26. Having regard to the purposes of including land within the Green Belt, the proposed development would result in a limited change in the appearance of the site and would retain its open rural character. Due to the nature of the proposed use, it would not lead to encroachment of the countryside, nor would it result in urban sprawl.
27. For the above reasons, I conclude that the proposed development would preserve the openness of the Green Belt and would not conflict with the purposes of including

land within it. As such, it is not inappropriate development and so accords with Policy NE6 of the Core Strategy and the requirements of the Framework.

Other Considerations

28. Given that the proposed development would not amount to inappropriate development in the Green Belt, there is no need for me to assess other considerations or whether very special circumstances exist to justify the development.

Other Matters

29. The appeal site is situated within the setting of Penshaw Monument, a Grade I listed building. As such, I have a duty under S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The Council has not raised any particular concern with regard to the works in relation to the impact on the significance of Penshaw Monument. Given the development relates to the change of use only and does not propose any buildings, and based on the evidence before me and observations on site, I have no reason to raise concern in this regard.

Planning Balance and Conclusion

30. I conclude that whilst I have found the proposed development would not be inappropriate development in the Green Belt, and therefore would not conflict with the purposes of including land within it, the proposal would fail to demonstrate that the necessary BNG could be suitably maintained. The lack of harm to the Green Belt is therefore neutral in my overall balance and does not outweigh the subsequent harm to the wildlife corridor.
31. For the reasons set out above, the proposed development would therefore conflict with the development plan taken as a whole and material considerations do not indicate that the decision should be made other than in accordance with it. I therefore conclude the appeal should be dismissed.

L Clark

INSPECTOR