



Appeal Decision

Site visit made on 30 April 2025

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1ST MAY 2025

Appeal Ref: APP/F2415/C/23/3321631

Land at Scotland Lane, Burton Overy, Leicestershire, LE8 9DR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Ms Tracey Gregson against an enforcement notice issued by Harborough District Council.
 - The notice was issued on 3 April 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from agricultural use to a dog care facility (sui generis).
 - The requirements of the notice are to a) cease the use of the land as a dog day care facility and (b) remove from the land all associated structures, fixtures and fittings associated with the dog care facility use.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (as amended). 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.
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Decision

1. 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 as amended.

Preliminary Matters

2. The National Planning Policy Framework was revised in December 2024 (the 2024 Framework). This replaces the previous version of the National Planning Policy Framework published in December 2023. The 2024 Framework has not materially changed in terms of the consideration of the ground (a) appeal main issues below. Therefore, it has not therefore been necessary for me to seek comments from the main parties about the implications of the 2024 Framework.

Breach of planning control and main issues

3. The appeal is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice.
4. The dog day care facility is located to the northwest of Thistle Cottage in part of a field. It comprises an area enclosed by fencing and measures about 34 metres by 24 metres. It is understood that there were previously two wooden buildings (one for sheltering dogs and one for staff) within the enclosure which facilitated the material change of use of the land. The evidence is that one of these buildings has now been removed and, in respect of this ground (a)

appeal, the appellant has submitted drawing No. 3882-01 Rev C which shows the provision of one 'shelter' building. For the purposes of considering the deemed planning application, I have therefore based my assessment on the appellant's request to have only one facilitating building on the appeal site.

5. It is understood that when the notice was issued, car parking provision was available within the curtilage of Thistle Cottage for visitors to the dog day care facility. However, Drawing No. 3882-01 Rev C, which accompanies the appeal, shows the creation of a new 'Grasscrete' or similar car parking area outside of the red edged appeal site area and directly opposite Thistle Cottage. The latter does not directly relate to the breach of planning control. However, to the extent that this land might be in the control and ownership of the appellant, and hence such car parking may be capable of being provided by condition, I have considered the provision of such facilitating car parking in both this area, and within the curtilage of Thistle Cottage in terms of my consideration of the various main issues relating to the deemed planning application.
6. The appellant has indicated that the number of dogs associated with the dog day care facility would be limited to no more than ten at any one time, and that the hours of use would be restricted to between 8am and 6pm Monday to Friday (excluding bank/public holidays). The evidence indicates that the business employs two people and that owners leave their dogs on either a full or half day basis.
7. The Council does not raise any objection to the dog day care use in this countryside location in land-use principle terms. Having considered the relevant development plan policies in the Harborough Local Plan 2019 (HLP) (in particular, policy GD3) and the countryside policies in the 2024 Framework, I do not disagree with this position. However, this does not mean that all such facilities are acceptable in countryside locations. It is necessary that such development is considered on its individual planning merits and against detailed policies in the development plan and the 2024 Framework.
8. I have considered the reasons for issuing the notice. In this regard, the main issues are the effect of the development on (i) the living conditions of the occupiers of neighbouring residential properties in respect of noise and disturbance; (ii) the safe movement and operation of vehicles in Scotland Lane; (iii) the character and appearance of the countryside; and (iv) the significance and setting of the Burton Overy Conservation Area (CA).

Reasons

Noise and disturbance

9. As part of the appeal, the appellant has submitted a Noise Impact Assessment (NIA) prepared by NoiseAir. The NIA concludes that based on background noise levels and noise readings while the dog day care facility was operational, the development would have a 'low impact' on the occupiers of nearby residential properties. The NIA indicates, at section six, that the low impact is subject to a noise management plan being prepared and approved, and an acoustic barrier being installed along the southern and eastern boundary of the day care facility. The appellant's noise consultant states that the acoustic barrier would be 1.8 metres in height.

10. No technical evidence has been submitted by the Council to refute the methodology used or the conclusions reached in respect of the NIA. I note the concerns raised by some third parties about the NIA. However, in this regard I am satisfied with the responses from the appellant's noise consultant as part of final comments. I do not therefore find that the NIA is flawed.
11. While the evidence is that noise exposure levels would be acceptable in planning terms (i.e., a low impact on nearest receptors), and based on use of the land for the care of up to ten dogs, I nevertheless do not doubt that barking would at least be audible for those that live in the nearby residential properties. While the actual level of noise may be acceptable in terms of exposure levels for those that live close to the appeal site, I find that the character of the noise from the intermittent barking of dogs, in this otherwise peaceful semi-rural location, would have the potential to cause some general disturbance or irritation for residents.
12. It was evident, as part of my site visit, that the eight dogs being cared for on the land had a propensity to bark as I approached the site, or when I walked down Scotland Lane/the adjacent track (the latter of which leads to public rights of way). The character of the noise from the barking dogs was in stark contrast to almost no background noise or disturbance at all in the locality. In fact, when the dogs were not barking, I was struck by how quiet the area was and with only bird song being audible.
13. The appellant states that dog walkers pass the site. I do not find that this justifies the development in disturbance terms. In fact, dogs being walked are more likely to become excited if they become aware of other dogs being looked after at the appeal site. I find that such events are likely to exacerbate a general feeling of disturbance for residents in the immediate locality because of the character and unpredictable nature of noise from the resultant barking of dogs. There is no objective evidence before me to suggest that prior to the unauthorised use occurring, there was already a problem in the area from barking dogs being walked by members of the public.
14. I find that for some nearby residents, the likely regularity, albeit unpredictable occurrence, of barking dogs, whether that be in connection with the use of the appeal site and/or arrival at the site in Scotland Lane, coupled with the increased comings and goings of customers and vehicles within this part of Scotland Lane, would be on such a scale that it would cause material harm to what is otherwise a relatively peaceful and tranquil residential environment. I do not doubt that even if levels of comings and goings, or the barking of dogs, was low or not occurring, the nearby occupiers of dwellings would have perceived fears about such disturbance occurring again.
15. In reaching the above findings, I acknowledge that this part of Scotland Lane includes four detached dwellinghouses and hence there will already be some comings and goings from visitors to the properties, as well as from people passing-by including dog walkers. However, and even with the use restricted to up to the care of ten dogs, and a restriction on the hours of use of the business, I find that unacceptable harm would be caused to the living conditions of the occupiers of nearby residential properties from a general disturbance point of view.
16. I therefore find that while noise exposure levels would be capable of being suitably controlled by the imposition of planning conditions, including the

provision of an acoustic fence (I also deal with this matter later on in this decision under the CA/character and appearance main issue), I nonetheless do not find that the harm caused to the living conditions of the occupiers of neighbouring properties would be adequately safeguarded from a general disturbance point of view. In terms of general disturbance, I conclude that the breach of planning control does not accord with the amenity requirements of policy GD8.1(e) of the HLP and paragraph 135(f) of the 2024 Framework.

Movement of vehicles in Scotland Lane

17. Scotland Lane is a narrow, single tracked road serving mainly residential properties. Subject to a restriction on the number of dogs that can be cared for at any one time in association with the business (i.e., up to ten dogs) and the provision of two appropriately dimensioned car parking spaces for customers, secured by way of the imposition of planning conditions, I do not find that the evidence demonstrates that the residual cumulative impacts on the road network would be severe, or that the development would lead to unacceptable highway safety impacts. I recognise that more traffic would use Scotland Lane because of the appeal development, but, in this case, the evidence does not support the contention that severe or unacceptable impacts would prevail.
18. I recognise the difficulties associated with car parking being provided within the curtilage of Thistle Cottage both in terms of this property being potentially sold off in the future, and whether customers would always use such spaces given their tight size, the concealed position away from the lane, and the narrow access drive which has the potential to lead to on-coming vehicular conflicts. Therefore, I find that two new car parking spaces and the associated turning area, as shown in drawing No. 3882-01 Rev C, would be more likely to be used by customers. Hence, concerns raised about vehicles reversing down the lane would likely be avoided.
19. Subject to the imposition of conditions, I find that the breach of planning control would not have an unacceptable impact on highway safety, or that the residual cumulative impacts on the road network would be severe. This is indeed a conclusion that was reached by the Highway Authority. In this regard, I conclude that the development would be capable of according with the car parking, highway safety and traffic management requirements of policies GD8.1(l) and IN2.2(a) of the HLP, policy DBE1 of the Burton Overy Neighbourhood Plan 2018, and paragraph 116 of the 2024 Framework.
20. In reaching the above conclusion, I have assumed that the appellant has ownership and control of the land where the new car parking area is proposed. Given my overall planning balance and conclusion it has not, however, been necessary for me to pursue this matter any further with the appellant.

Effect on the character and appearance of the countryside

21. The dog day care facility is positioned on land to the north of Scotland Lane and where there is a noticeable absence of built form. It is an area of countryside and marks the transition between built development in Burton Overy and open farmland.
22. I find that when the facilitating building and fencing are considered as a whole, the development has caused harm to the otherwise open and rural character

of land to the north of Scotland Lane. This harm would be compounded owing to the provision of the necessary acoustic fencing as outlined in the NIA. Such fencing would likely appear dominant and out of place in the landscape, particularly when viewed from the public right of way on higher ground. It would fail to assimilate well with the otherwise open and undeveloped countryside location. Such acoustic fencing would be more harmful than the existing post and wire fencing which has been erected around the dog care facility.

23. Moreover, the parking of two cars in a new car parking area (with turning facility) on land shown on drawing No. 3882-01 Rev C would further erode the rural and undeveloped character of the land to the north of the developed area of Burton Overy. In my judgement, the development as a whole would have the effect of unacceptably urbanising this part of the countryside and this harm would be experienced from public footpaths crossing the appeal site.
24. The appellant proposes to plant hedges around the dog day care facility. While hedges are a characteristic of the area, they tend to relate to field boundaries or are positioned alongside roads. The planting of hedges around the facility would, to some extent, soften the adverse urbanising effects of the development. However, I find that this planting would appear as being ad-hoc and irregular in shape when considered in the landscape as a whole. Furthermore, and, importantly, the hedges would take some time to reach maturity and, in any event, may not endure forever. In addition, any planting would not fully screen the harmful development when seen from the public footpath to the east which is elevated. I do not therefore find that the proposed landscaping would be sufficient to overcome the harm that has been and would be caused to the character and appearance of the countryside.
25. For the above reasons, I conclude that the development does not accord with the design, character, and appearance requirements of policy GD8.1(a) and (d) and HC1.3 of the HLP, policy DBE1(a) of the NP, and chapter 12 of the 2024 Framework.

Effect on the Burton Overy Conservation Area

26. The CA village has a tapering linear form 0.8km long with a long loop at its northern end and two significant loops at the wider southern base forming back lanes. Granite kerbs and brick walls are a feature on many of the village streets. The building development runs along Main Street, around the loops and along short cul-de-sac lanes leading off the main thoroughfares. The buildings of the CA display considerable variety in age, style, building materials and relationship with the streets. Some are close against the road and others are set back with front gardens.
27. Scotland Lane, which includes the appeal site, has a verdant character whether it be in the form of mature landscaped gardens or tall hedges/vegetation. It is a narrow lane and has a semi-rural character to it. The area is experienced as being generally peaceful and tranquil in the context of what is a predominantly residential environment. The appeal site falls within a part of Scotland Lane which is more rural in character given its close connection with areas of countryside to the north and west. The area outside or adjacent to the CA is predominantly of open and rural character and hence provides a soft edge to the setting of the CA boundaries. The above attributes add positively and distinctively to the significance of the CA as a whole.

28. The dog day care facility is located just outside the CA boundary and to the north of Scotland Lane itself. Owing to the facilitating development (including the building), and required acoustic fencing and car parking, I find that the development has/would cause harm to the otherwise undeveloped and rural character of land to the north of Scotland Lane which provides a distinctive soft and undeveloped edge to the setting of the CA. In this regard, I find that harm has been/would be caused to views experienced from Scotland Lane and out of the CA, and from views of the settlement when appreciated from public footpaths in the field close to the appeal site.
29. In addition to the above, I find that owing to the comings and goings of customers and staff, coupled with use of the site by dogs who are likely, from time to time, to bark, the unauthorised development causes harm to the otherwise peaceful and tranquil residential environment in Scotland Lane in what is a semi-rural location. In this regard, I find that the development causes harm to the significance of the character of this part of the CA.
30. I recognise that the appellant is proposing to plant hedges around the dog day care facility. However, for the same reasons as outlined above as part of my consideration of the character and appearance main issue, I do not find that this would fully address the harm that would be caused to the setting of the CA.
31. In the context of paragraph 215 of the 2024 Framework, I find that less than substantial harm has been/would be caused to the significance of the CA as a designated heritage asset. I find that there are no identified public benefits that outweigh the less than substantial harm caused to the significance of the CA. I therefore conclude that the breach of planning control would not be capable of according with the conservation and design requirements of policy GD8.1(c) and HC1.3 of the HLP, policy DBE1(a) of the NP, and chapters 12 and 16 of the 2024 Framework.

Other Considerations

32. I am mindful of other appeal decisions and planning permissions referred to by the parties. None of the decisions are directly analogous to the circumstances and issues that prevail in respect of this appeal. I have considered the deemed planning application on its individual planning merits.
33. I acknowledge that there are some supportive comments. However, it has been necessary for me to consider the breach of planning control in the context of relevant development plan policies and national planning policy. The supportive comments are not in themselves enough to justify granting planning permission.
34. The appellant asserts that the unauthorised development is not materially different from a horse or pony paddock seen adjacent to most villages in Leicestershire. I accept that horse or pony paddocks can be acceptable in land use principle in some countryside locations. However, that does not mean that they are acceptable in all areas or, indeed, that this justifies granting planning permission for the breach of planning control given the planning harm that I have identified.
35. I do not doubt that the development makes a positive contribution to the area in economic and job creation terms. Moreover, I note that the use provides a

useful facility for those dog owners who need someone to care for their pets on a full or part day basis. In this regard, I note the supportive comments made by other interested parties. These are matters to which I afford positive weight in the overall planning balance.

Planning balance and conclusion

36. Subject to the imposition of conditions, the development would not cause unacceptable harm in terms of noise levels for those that live near the site. However, owing to the character of the noise from barking dogs, coupled with the associated vehicular and pedestrian comings and goings from customers and staff, I find that the development has a materially harmful impact on the living conditions of the occupiers of those that live on this part of Scotland Lane from a general disturbance point of view. Prior to the unauthorised development occurring, I have no reason to disagree with the representations made by some third parties that the area was more peaceful or tranquil in terms of comings and goings and the character of background noise.
37. Moreover, I find that significant harm has been caused to the otherwise open and rural character and appearance of this part of the countryside owing to the use of the land as a dog day care facility and the associated facilitating structures. Such harm, which is apparent from nearby public footpaths, would be compounded owing to the location of the proposed new car park (even accounting for the use of Grasscrete) and the provision of the proposed and necessary 1.8-metre-high acoustic fencing. Overall, the development does/would unacceptably urbanise this area of countryside where there is a distinctive absence of development. For the reasons outlined, I do not find that this harm would be suitably overcome by the planting of hedges around the dog day care facility.
38. In addition to the above harm, I find the development has caused harm to the otherwise more peaceful part of Scotland Lane as it meets the open countryside. In this regard, I find that the peaceful character that is afforded to the significance of the CA has not been preserved. Moreover, Scotland Lane falls within the CA and I find that the development, which would include a facilitating building, fencing and new acoustic barriers, would, overall, detract from the otherwise open and rural character of the land that is positioned to the north of this part of Scotland Lane and, which prior to the unauthorised development occurring, formed a pleasing and undeveloped setting to the CA when experienced by passers-by. I find that harm has been and would be caused to the character of the CA and to its setting arising from the breach of planning control. This is an adverse matter to which I afford substantial adverse weight in decision making terms.
39. I conclude that the above harms are collectively of sufficient adverse weight that they are not outweighed by the other considerations outlined above. I conclude that the development does not/would not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the ground (a) appeal fails.

Overall Conclusion

40. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

D Hartley

INSPECTOR