



Appeal Decision

Site visit made on 17 June 2022

by Lewis Condé BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 February 2023

Appeal Ref: APP/X0360/W/22/3291510

Land Adjacent to Castle End Road, Hare Hatch, Reading, RG10 9TH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Sarah Nash (Nashers Day Care for Dogs) against the decision of Wokingham Borough Council.
 - The application Ref 213431, dated 14 October 2021, was refused by notice dated 10 January 2022.
 - The development proposed is 'Change of use of building and land to a mixed use of equestrian and dog day care (retrospective)'.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of building and land to a mixed use of equestrian and dog day care (retrospective) at land adjacent to Castle End Road, Hares Hatch, Reading RG10 9TH in accordance with the terms of the application, Ref 213431, dated 14 October 2021, subject to the conditions in the attached schedule.

Application for Costs

2. An application for costs has been made by the appellant and is subject to a separate decision.

Preliminary Matters

3. The appellant initially submitted Certificate A with the appeal (indicating that she was the sole owner of the application site). However, neighbouring residents have identified that the access road that forms part of the appeal site is within their ownership. I understand that notification under Certificate B subsequently took place (as it was for the original planning application). The neighbouring landowners have also provided representation as part of the appeal process. As such, I am satisfied that the relevant landowners have not been prejudiced by the delayed notification.
4. The main parties have both indicated that the application is retrospective in nature. I have therefore dealt with the appeal on this basis.
5. It has been brought to my attention that the appellant originally sought permission for the dog day care to operate from the site for only 2 days per week. However, through the appeal, permission is instead being sought for the use to operate for 3 days per week.
6. Annex M of the 'Procedural Guide: Planning Appeal – England' sets out that the appeal process should not be used to evolve a scheme as it is important that what is considered by the Inspector is essentially what was considered by the

local planning authority (LPA). However, where exceptionally, amendments are proposed during the appeal process it is for the Inspector to decide on which basis the appeal is to be decided, having regard to the principles established via the 'Wheatcroft' judgement¹.

7. In the Wheatcroft judgment the High Court considered the issue of amendments in the context of conditions and established that *"the main, but not the only, criterion on which... judgment should be exercised is whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation"*.
8. In this instance, the nature of the proposal would remain largely the same as applied for. The scheme has also not been amended or evolved to overcome the reasons why the planning application was refused. Whilst the proposed level of activity has been increased it would not conflict with the application's description of development. The Council and relevant interested parties have also had appropriate opportunity to consider and comment upon the relatively limited changes to the appeal proposal.
9. As such, having regard to the Wheatcroft Principles, I do not feel any party would be prejudiced by me determining the appeal based on the dog day care use operating for 3 days per week. I have therefore proceeded on that basis.

Main Issues

10. The main issues are:

- Whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
- The effect of the development on the openness of the Green Belt;
- Whether the development provides a suitable use within the countryside;
- If inappropriate development, whether the harm to the Green Belt by reasons 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 and effect on openness

11. The site lies within the Green Belt, where new development is strictly controlled. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
12. Policy CP12 of the Wokingham Borough Core Strategy Development Plan Document (2010) (Core Strategy) and Policy TB01 of the Wokingham Borough Adopted Managing Development Delivery Local Plan (2014) (the Local Plan) oppose inappropriate development in the Green Belt. In setting out what is

¹ Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37].

inappropriate development, Policy TB01 refers to an earlier version of the Framework. It therefore does not fully align with the latest national policy.

13. Consequently, whilst the development plan remains the starting point for the determination of the appeal, the updated Framework is an important material consideration. Given the Framework provides far more up-to-date policy intentions for the Green Belt, I give it significant weight in my determination of this appeal.
14. Exceptions to inappropriate development within the Green Belt are listed at Paragraphs 149 and 150 of the Framework. Of relevance to the appeal proposal is Paragraph 150 e), which provides an exception for material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds) where they preserve its openness and do not conflict with the purposes of including land within it.
15. Whilst examples of potential appropriate uses are included in Paragraph 150 e) the wording is clear that it does not provide an exhaustive list. The appeal scheme involves the change of use of land only, with no operational development proposed. Therefore, in consideration of whether it is inappropriate development it is necessary to assess whether the proposal harms the openness of the Green Belt, or conflicts with the purposes of including land within it.
16. The Framework also sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, with the essential characteristics of Green Belts being their openness and their permanence. Openness has generally been held to be the absence of development and it has both a spatial and visual aspect.
17. The comings and goings and parking of customer vehicles at the site, can give rise to visual impact, which in turn can affect openness. However, the appellant has outlined that a maximum of 10 dogs are kept on site, whilst operations are only to take place three days a week. These restrictions could be appropriately secured via conditions on a grant of permission. Despite concerns raised by a third party, I consider that conditions restricting the operations at the site would be suitably enforceable. The appellant has also indicated she is willing to accept such conditions.
18. The presence of vehicles at the site associated with the development is of a highly transient nature. This is due to customers only dropping off or collecting their dogs, while it is also likely to be limited to certain periods associated with owner's work patterns.
19. I understand that the existing menage and stables at the site have not previously been granted planning permission. It also appears that no certificate of lawfulness has previously been granted for these uses. Nevertheless, from the evidence before me, it appears that the Council is not contesting that such uses are immune from enforcement, due to the length of time they have been in existence. I have not been presented with any robust evidence to conclude otherwise.
20. The existing use of the stables would still generate associated vehicle movements, despite not having a use as a commercial livery. Indeed, it was evident during my site visit that the area proposed to be used for parking

already contained a trailer and a horse box. Furthermore, it seems there are currently no restrictions on the number or size of vehicles that can be parked or stored on the land in association with the current use of the stables. As such, even if each dog was to be dropped off/picked up by an individual owner, the level of vehicle activity (for highly temporary periods) is not deemed to materially change the characteristics of the site with respect to openness of the Green Belt.

21. The Council has also deemed the noise associated with the presence of dogs and vehicle trips to harm the openness of the Green Belt. No firm evidence of this harm has been provided. However, to support this position, it cites a Court of Appeal decision². In that case, Lord Justice Sales determined that the word 'openness' in the context of Green Belt policy is open textured, with a number of factors being capable of relevance when it comes to applying the particular facts of the case.
22. The Court of Appeal decision referred to was concerned with the conflated concepts of spatial and visual effects on the openness of the Green Belt. The case therefore indicated prominent considerations, other than visual impacts, which could affect openness. However, these other examples maintained a spatial or physical dimension, whilst noise was not a factor that was highlighted.
23. It is recognised that impacts on openness can be textured and are a matter of planning judgement. Be that as it may, noise does not have a spatial or visual quality. As such, I do not consider it can affect or cause harm to the openness of the Green Belt. However, even if noise were to be considered capable of affecting Green Belt openness, the appeal use involves only a small number of dogs and associated vehicle trips. I therefore consider that the magnitude of noise generated from the development is unlikely to be so significant as to affect openness. Particularly, when considering the existing noise context of the site (e.g. the site is located near to a vehicle highway, is already utilised for equestrian purposes, there are nearby residential and commercial uses). The lack of objection from the Council's environmental health officer on noise grounds further reinforces my view.
24. Therefore, from the evidence before me, the part use of the existing stables for dog day care preserves the openness of the Green Belt. I am also satisfied that the development does not conflict with the purposes of the Green Belt outlined at paragraph 138 of the Framework.
25. To conclude on this first main issue, the development is contrary to Local Plan Policy TB01. This is because the Council's Green Belt policies align with earlier versions of national policy in respect of what constitutes inappropriate development in the Green Belt. However, I give limited weight to the conflict due to the policy's inconsistencies with the updated Framework. Therefore, in respect of Green Belt matters, the Framework is a material consideration that justifies a decision other than in accordance with the Council's development plan.

² *Turner v Secretary of State for Communities and Local Government* [2016] EWCA Civ 466

Whether a suitable location having regard to development plan policies

26. The Council's decision notice also refers to policies CP1, CP3 and CP11 of the Core Strategy which together seek to protect the countryside from inappropriate development and/or encroachment. The Council's reason for refusal relates specifically to the additional traffic and noise impacts of the development on the Green Belt and countryside. The Council officer's report or appeal statement does not expand upon the reason for refusal in the context of the above policies. Instead, the Council has set out that the higher test in the determination of the application was the impact on the Green Belt.
27. Core Strategy Policy CP11 states that, subject to exceptions, development proposals in the countryside will not "normally" be permitted. The appellant argues that the proposal meets the exception of being a countryside-based enterprise that contributes and/or promotes recreation in, and enjoyment of the countryside. However, the appellant's case has identified that customers are only on-site to drop off or collect their dogs. I therefore do not consider that the proposal directly promotes recreation or enjoyment of the countryside.
28. Despite the proposal not directly aligning with any of the prescribed exceptions, the development still broadly maintain the objectives of Policy CP11 which are to preserve the separate identity of settlements and maintain the quality of the environment. This is in part due to no operational development being proposed.
29. I appreciate that the change of use involves additional vehicle traffic and potential noise disturbance from barking dogs and vehicle movements. However, the proposal is for a relatively small-scale operation, on limited weekdays and does not involve overnight kennelling, all of which could be appropriately secured via conditions. As such, I do not consider the extent of traffic or noise associated with the development results in any fundamental changes to the character of the area.
30. Similarly, the presence on site of various paraphernalia associated with the care of dogs, including agility training, is not deemed to harm the character of the area. This is due to the overall scale of the paraphernalia, its removable nature, and that views of the site from public vantage points are generally limited in nature. Additionally, where visible, such items would be seen in the context of the existing menage, whereby one may expect to view items such as jumps and associated equipment.
31. Furthermore, Paragraph 84 of the Framework identifies support for the sustainable growth of all types of business and enterprise in rural areas, both through conversion of existing buildings and well-designed new buildings. The proposal involves the use of an existing building and therefore is consistent with the Framework in respect of promoting business in this rural area. This is a matter that I give moderate weight.
32. I am therefore satisfied in this instance that the development represents a suitable use within the countryside, that does not cause undue harm to the character and appearance of the surrounding landscape including the Hare Hatch Area of Special Character. As such, the proposal accords with Core Strategy Policies CP1 and CP3, which set out general principles for development to ensure that the quality of the surrounding environment is maintained. The proposal whilst not satisfying the exact criteria listed under

Core Strategy CP11, nevertheless, meets its overall aims. In any case, the conflict with the precise criteria of Policy CP11 is deemed to be outweighed by the Framework's promotion for the sustainable growth of business and enterprises in rural areas.

33. Although not referenced on the Council's decision notice, attention has also been brought to Policy TB26 of the Local Plan. The policy relates to 'Area of Special Character', and amongst other matters seeks to retain the historical, local and special character of an area and its setting. Again, I am satisfied that the proposal does not harm the character of the Hare Hatch Area of Special Character and therefore accords with this policy.

Other Matters

34. The appeal site is located to the south of the Grade II listed Hill House. The Council did not refuse the application based on the effects of the development on the setting of the listed building. Nevertheless, I have a statutory duty, under 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.
35. The significance of Hill House appears to lie in its age and architectural qualities, as a fine example of a grand 18th Century Georgian house. The access drive to the appeal site is located adjacent to the boundary with Hill House's rear garden, although because of the size of its plot, the dwellinghouse is set some distance from the appeal proposal. Due to the separation distance and presence of mature boundary vegetation, there is relatively limited intervisibility between the appeal proposals and the listed building. Nevertheless, the appeal site contributes to the setting of the listed building.
36. From my observations, and the evidence before me, I am satisfied that the development does not result in harm to the setting of the listed building. This is because of the overall scale and nature of the use compared with the previous use of the appeal site, the lack of proposed operational development and the general relationship between the site and listed building. As such, the setting of the listed building is preserved. The appeal scheme therefore satisfies the requirements of Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 and the Framework insofar as it relates to conserving the historic environment.
37. A plan has been provided by the appellant to demonstrate that visibility splays requested by the local highway authority could be achieved at the site's access. However, the plan is not a detailed technical drawing and I am not entirely convinced that it is accurate. Instead, on site, it appeared that the relevant visibility splays are restricted by mature vegetation, and likely a fence, which are on third party land. The relevant third parties have provided evidence of landownership and has indicated that the visibility splays would need to cross their land, which they would be unwilling to allow. This has not been contested by the appellant.
38. However, I am mindful that the access to the site is existing and currently serves several residential properties, each of which will already attract various vehicle movements (e.g. from residents, visitors, deliveries, refuse vehicles etc). In addition, the appeal proposal only results in a small number of additional vehicle movements on limited days of the week. Given the

retrospective nature of the appeal these additional vehicle trips have already been occurring. Furthermore, I have not been presented with any details of vehicle accidents in the near vicinity of the site. There is also no evidence before me to suggest that the existing access arrangements have been a source of vehicle accidents.

39. From my observations on site, it appeared that the access was not on to a particularly heavily trafficked highway and that there was sufficient visibility to exit the site safely. Consequently, whilst the provision of the requested visibility splays may be desirable to improve sightlines, in this instance, I do not consider them to be necessary to uphold highway safety.
40. Issues relating to the potential parking on or blocking of the private drive by the appellant or their customers are civil matters between the relevant parties. Nevertheless, the appeal proposal also indicates that sufficient dedicated space can be provided for customers to park vehicles during pick-up and drop-off times. Subject to a condition requiring the implementation of on-site customer parking spaces, I am satisfied that the development can be suitably managed to avoid conflict between residents/refuse vehicles and customer vehicles utilising the private access drive.
41. Concerns have been raised that the appellant has not adhered to the operations proposed under the planning appeal (e.g. hours of operation) and that further intensification of the use may take place at the site. As previously indicated, I am satisfied that conditions restricting the operations at the site (e.g. hours of operation, number of dogs to be kept) are suitably enforceable. Any intensification of the appeal proposal beyond that permitted would require a separate planning permission. Any breaches of planning control would be a matter for the Council to determine whether to take action.
42. Previous breaches of planning control by the appellant, and her family, have also been brought to my attention. However, the appeal has been determined upon its own merits.
43. Neighbouring residents have raised various other concerns. These include the impacts on the living conditions of neighbours and concerns over the quality of the appellant's appeal submission. However, my decision does not turn on any of the other matters raised.

Conditions

44. The Council has suggested conditions in the event the appeal is allowed, which the appellant has commented upon. I have considered the suggested conditions and amended and reordered them as necessary in the interests of precision and clarity, as well as to comply with advice in the Planning Practice Guidance (PPG).
45. Given the retrospective nature of the appeal scheme, there is no need for the imposition of a time limit condition for commencement of development. Similarly, for reasons outlined above, I do not consider a condition requiring the provision of visibility splays at the site access is necessary in the interests of highway safety.
46. A condition requiring the provision of on-site customer parking spaces is necessary in the interest of highway safety. A condition restricting the operational hours of the dog day care is reasonable and necessary to reflect

the appeal submission and in the interests of the living conditions of neighbouring residents. The precise operational hours have been extended to commence from 08:00hrs in response to comments received from the appellant regarding customer drop off times. It is not considered that the additional hour of operation on Tuesday to Thursday mornings will lead to any material harmful impacts to neighbouring amenity.

47. A condition restricting the number of dogs to be kept on site at any one time is also reasonable and necessary to comply with the terms of the appeal proposal and in the interests of highway safety and the living conditions of neighbouring residents.

Conclusion

48. For the reasons outlined above, having regard to the development plan and all other material considerations, I conclude that the appeal should be allowed.

Lewis Condé

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted is in respect of the following approved plans: Location Plan received by the Council on 14 October 2021, Site Plan and Existing and Proposed Floor and Elevation Plans received by the Council on 28 October 2021.
- 2) Unless within 2 months of the date of this decision a scheme for the provision of on-site customer parking spaces, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval in writing, the use of the site for dog day care shall cease until such time as a scheme is approved and implemented.

Upon implementation of the approved parking spaces specified in this condition, the parking shall thereafter be retained for use.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 3) The use of the site for the dog day care hereby permitted shall only take place between the hours of 0800 – 1700 on Tuesdays to Thursdays and shall not operate at all on Mondays, Fridays, Saturdays, Sundays or Bank or National Holidays.
- 4) No more than 10 dogs are to be kept on site at any one time as part of the dog day care use hereby permitted.