

Application No:	2020/0815	Application Type:	S73
Case Officer:	Aline Hyde	Ward:	Oxshott and Stoke D'Abernon Ward
Expiry Date:	01/07/2020		
Location:	Bruce's Doggy Daycare Woodlands Road Cobham Stoke D'Abernon Surrey KT11 3PU		
Proposal:	Removal of Condition: 2 (Personal Permission) and Variation of Condition 6 (Number of Dogs) of planning application 2018/1341 (Change of Use) to allow for a maximum of 200 dogs on the site.		
Applicant:	Bruce's Doggy Daycare		
Agent:	Mr Nicholas Cobbold Bell Cornwell Chartered Town Planners Bell Cornwell Unit 2 Meridian Business Park Osborn Way Hook RG27 9HY		
Recommendation:	Refuse Permission		

Representations: One letter of support.

R e p o r t

Description

1. The application site comprises a 3.25ha field located approximately 100m north of the M25 motorway and south of Woodlands Lane, within the settlement area of Stoke D'Abernon.

Constraints

2. The relevant planning constraints are:
 - Green Belt
 - Flood Zone 2
 - Surface water flood risk
 - 500m of trunk road
 - 'A' classified road

Policy

3. In addition to the National Planning Policy Framework and the National Planning Practice Guidance, the following local policies and guidance are relevant to the determination of this application:

Core Strategy 2011

CS10 – Cobham, Oxshott, Stoke D'Abernon and Downside

Development Management Plan 2015

DM1 – Presumption in favour of sustainable development

DM17 – Green Belt (development of new buildings)

DM18 – Green Belt (development of existing buildings)

Relevant Planning History

4. The table below contains details of applications not only relating the land specifically under consideration as part of this particular application, but also neighbouring sites affected by similar issues and under the control of the same operator. Applications pertaining to this particular section of land are denoted by asterisks*.

Reference	Description	Decision
2019/2234	Removal of Condition 2 (Personal Permission) of planning permission 2015/3327 (change of use)	Granted Permission
2019/2233	Removal of Condition 1 (Personal Permission) of planning permission 2013/4641 (change of use)	Granted Permission
2019/2232	Removal of Conditions 2 (Personal Permission) and 6 (Number of Dogs) of planning permission 2018/1341 (Change of use of land).	Refused Permission
2018/1341	Change of use of land from agricultural use to a sui generis use (mixed dog exercising and agriculture) as extension to adjacent dog care facility	Granted Permission
2015/3327	Change of use of land from agricultural use to sui generis (mixed dog exercising and agriculture) use	Granted Permission
2013/4641	Retrospective planning application for the change of use of land from agricultural use to a sui generis (mixed dog exercising and agriculture) use	Granted Permission

5. Application ref. 2019/2232 was refused permission for the following reason:
- The removal of Condition 6 (Number of Dogs) would result in potential harm to the amenities of neighbouring properties, highway capacity and the openness of the Green Belt and these impacts could not adequately be dealt with by other legislation. It would therefore be contrary to Policies DM2, DM7, DM17 and DM18 of the Development Management Plan 2015, Policy CS25 of the Core Strategy 2011 and the National Planning Policy Framework 2019.

Proposal

- Planning permission is sought for the removal of Condition 2 of planning permission ref. 2018/1341. This condition limits the use of the site to be operated only by the applicant named on the application form for the said permission.
- Permission is also sought for the variation of Condition 6. This condition limits the number of dogs to be present on the site at any one time to a maximum of 70. The applicant wishes to increase this number to 200.
- Following the registration of the application, the description of the development was amended. The applicant had initially proposed to remove Condition 6 altogether, but subsequently chose to amend the proposal to vary Condition 6 as described above. A re-consultation exercise was carried out.

Consultations

- Council's Environmental Health Officer – no objection, but noted that the existing licence covers up to 100 dogs so an application to vary this would need to be made.
- County Highways Authority – no objection.

Positive and Proactive Engagement

11. The National Planning Policy Framework requires local planning authorities to work with the applicant in a positive and proactive manner to resolve problems before the application is submitted and to foster the delivery of sustainable development. This requirement is met within Elmbridge through the availability of pre-application advice.
12. No formal pre-application advice was sought prior to the submission of this application.

Planning Considerations

13. The main planning considerations in the determination of this application are:

- The principle of the proposal

The principle of the proposal

14. Section 73 provides for the determination of applications to develop land without compliance with conditions previously attached. It only provides for the variation of conditions attached to an existing permission; it does not provide a means of varying the development permitted (other than through the imposition of new/varied conditions). Given the previous permission, the principle of the site's use as mixed dog exercising and agricultural is considered to be acceptable.
15. The first of the conditions in question reads as follows:

“PERSONAL PERMISSION
The use hereby permitted shall be carried on only by Mr Bruce Casalis and shall not endure for the benefit of the land nor for of any other person or persons for the time being having an interest therein. In the event that the dog day centre run by the aforementioned person shall cease, all structures (temporary or other) including the field shelters on site shall be removed from the land (including all associated paraphernalia) and the use of the land shall revert back to agricultural use.

Reason: The Borough Council is only prepared to grant this permission personal to the applicant as a Very Special Circumstance to allow inappropriate development within the Green Belt as required by the National Planning Policy Framework 2018.”
16. The applicant argues firstly that the condition is unreasonably restrictive as it names only a single individual who may carry out the approved use. It is argued that the condition should, at the very least, be amended to remove the name of this individual and replace it with the trading name of the company operating on the site, of which the individual named by the condition is a director. Whilst the applicant's point is understood, the Planning Practice Guidance states that “A condition limiting the benefit of the permission to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company.” (Paragraph: 015 Reference ID: 21a-015-20140306)
17. The applicant further argues that the condition should be removed in its entirety, as it would fail to satisfy the tests of necessity, relevance, enforceability, precision and reasonableness as set out in paragraph 55 of the revised National Planning Policy Framework 2019. The applicant notes that the Planning Practice Guidance advises that personal permission conditions are rarely justifiable, and that the officer's report produced in relation to application ref. 2013/4641 provides scant reasoning for the condition's imposition.
18. It is considered that the use of the site is adequately controlled by the remaining conditions, and that any additional operational development would require express planning permission. As such, the removal of the condition as proposed by the applicant, in isolation, is considered

to be acceptable. However, this assessment is made subject to the existing condition to limit the number of dogs remaining in force.

19. Condition 6 reads as follows:

“NUMBER OF DOGS

The maximum number of dogs on the site at any one time shall not exceed 70.

Reason: To preserve the reasonable amenity of neighbouring residents in accordance with Policy DM2 of the Development Management Plan 2015.”

20. The applicant previously argued that the number of dogs on the site could be adequately controlled by the licensing scheme operated by the Council's Environmental Health team. During the consideration of the previous application, this position was acknowledged but it was noted that the licensing scheme would not provide an adequate alternative to assessment against the local plan and other material considerations relevant to planning.
21. To partially overcome the reason for the refusal of the previous application, the applicant has submitted a Noise Impact Assessment. This document concludes that appropriate internal and external noise levels for nearby residential properties can be comfortably maintained. The document also includes management actions to reduce the likelihood of dogs barking. It is considered that, subject to a condition to ensure compliance with these measures, the impact on the amenities of neighbouring properties would be acceptable. The first part of the reason for refusal of the previous application has therefore been overcome. The Council's Environmental Health Officer has reviewed the proposal and advises that the existing operational licence restricts the use of the site to up to 100 dogs: as such, an application to vary the licence would be required. An informative to bring this to the applicant's attention could be added to the decision notice.
22. The applicant has also submitted a Transport Statement. This document advises that there would be an additional twenty-four daily vehicle movements associated with the increase in the number of dogs at the site. The County Highways Authority has reviewed the proposal and concluded that there would not be a significant impact on the safety and operation of the local highway network. Accordingly, the second part of the reason for refusal of the previous application has been overcome.
23. This leaves the impact of the proposal on the Green Belt. The applicant argues that there would not be any spatial impact as the proposal would not result in an increase in infrastructure (such as fences, buildings, etc) beyond what has already been approved.
24. The applicant goes on to argue that there would not be a material change in the visual openness of the site. It is stated that the play equipment would not itself be development requiring planning permission, and could be removed from the land at any time. It is further stated that the play equipment would have a natural, rustic appearance which would be appropriate to the site's rural feel.
25. It is first necessary to consider whether or not the development would be appropriate within the Green Belt. The proposal does not fall within any of the exceptions to inappropriateness set out in paragraphs 145 and 146 of the National Planning Policy Framework, and accordingly it must be considered to be inappropriate.
26. It is further considered that the greater intensity of the site's use would have an impact on the openness of the Green Belt arising from the presence of the dogs, the additional play equipment that would be required to occupy the dogs, and the additional vehicles that would be parked at the site. The applicant's attempts to blend the additional equipment in visually are noted, but the fact remains that this equipment would be present on the site and this itself would have a negative impact on openness, as would the parking of additional vehicles on the site as required to move the increased number of dogs. It is noted that the vehicles would not be present at the site at weekends, but this does nothing to limit the impact of their presence on weekdays.

27. Paragraph 144 of the National Planning Policy Framework states that “When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt.” In this case, it is acknowledged that the harm to the openness of the Green Belt would be relatively limited. Regardless of this, the NPPF requires that substantial weight is given both to the harm to the openness and the inappropriateness of the development.
28. Paragraph 143 advises that development which would be harmful to the Green Belt “should not be approved except in very special circumstances.” Paragraph 144 goes on to say 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 considerations.”
29. The applicant has not advanced any very special circumstances. Whilst it is not for the local planning authority to attempt to identify any such circumstances on the applicant’s behalf, it is acknowledged that the proposal would have some benefit in respect of number of staff employed at the site (an increase of twelve) and contribution to the local economy. This is given moderate weight, but is insufficient to outweigh the substantial harm to the Green Belt by reason of inappropriateness and impact on openness identified in the preceding paragraphs. Accordingly, the removal of the Condition 6 is unacceptable in principle.

Matters raised in Representations

30. The material planning considerations have been addressed within the above report.

Conclusion

31. The removal of Condition 6 (Number of Dogs) would result in harm to the Green Belt by reason of inappropriateness and impact on openness and no very special circumstances have been advanced or are apparent which would clearly outweigh these impacts. It would therefore be contrary to Policies DM17 and DM18 of the Development Management Plan 2015 and the National Planning Policy Framework 2019.

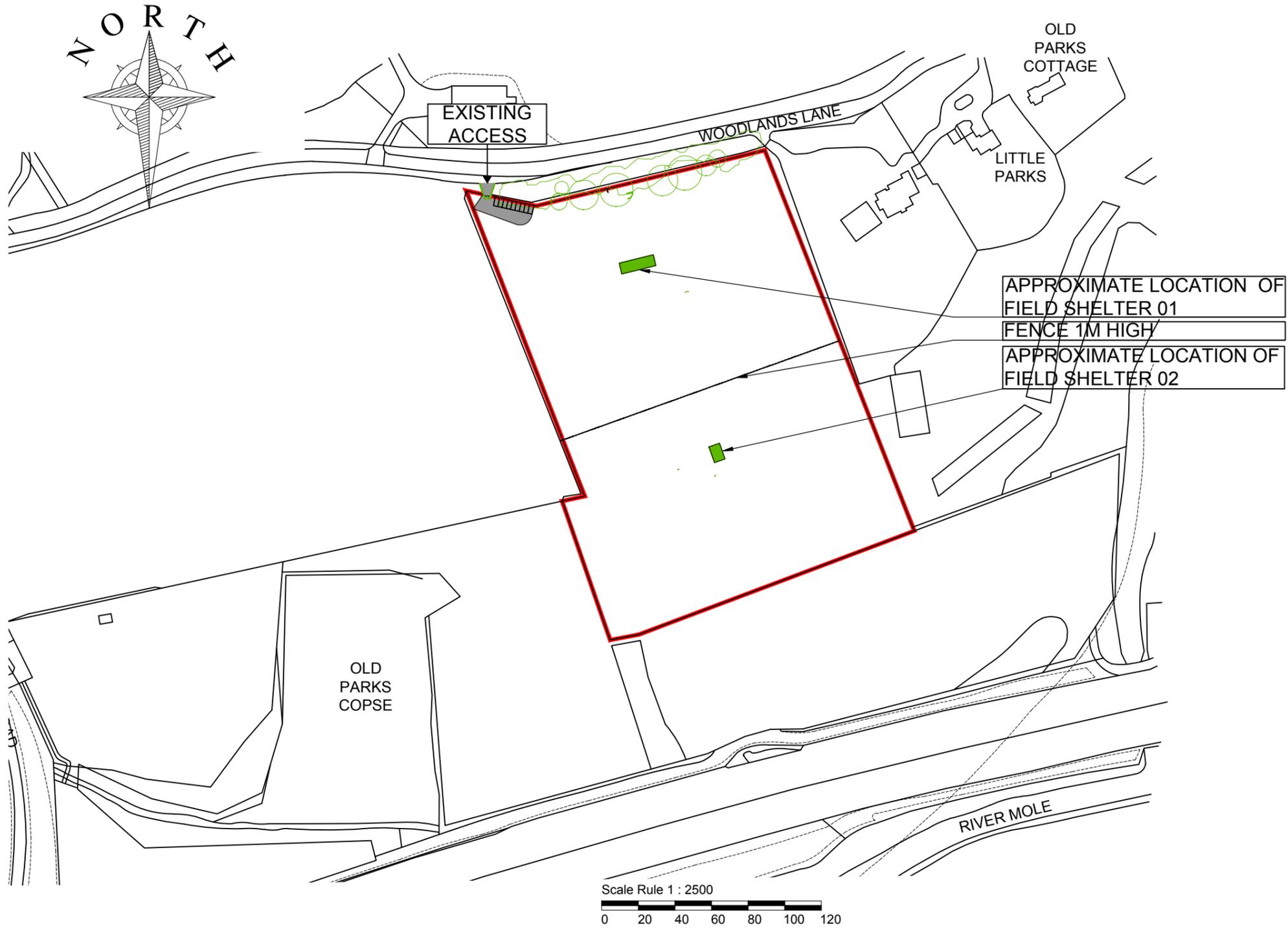
The proposed development does not require a CIL payment.

Recommendation: Refuse Planning Permission

Reasons For Refusal

- 1 The removal of Condition 6 (Number of Dogs) would result in harm to the Green Belt by reason of inappropriateness and impact on openness and no very special circumstances have been advanced or are apparent which would clearly outweigh these impacts. It would therefore be contrary to Policies DM17 and DM18 of the Development Management Plan 2015 and the National Planning Policy Framework 2019.

Key	
	New building(extensions)
	Applicant's site boundary



Proposed Site / Location Plan
Scale 1:2500

NOTES

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THIS DRAWING IS TO BE READ IN CONJUNCTION WITH THE FOLLOWING DRAWINGS 01, 02, 03, 04, 10, 11, 12

Rev	Date	By	Ck	Comment
K	27/07/2018	SAA	SJ	general revisions.
L	15/08/2018	DP	SJ	Layout Update
M	21/08/2018	DP	SJ	Client Amendment
N	22/08/2018	DP	SJ	Client Amendment



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Drawing Title
**Existing Site &
 Location Plans**

Status
Planning

Scale	1/2500 @ A3	Date	24/04/2018
Designed by	SJ	Drawn by	SAA
Checked by	SJ	Approved by	-

Drawing No.	742/SAA/11/1	Rev.	N
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