

ITEM 7

Case Officer: Chris Wright File No: CHE/19/00048/OUT
Tel. No: (01246) 345787 Plot No: 2/415

OUTLINE APPLICATION FOR PLANNING PERMISSION FOR ONE DWELLING TIED TO THE EXISTING BOARDING KENNELS AT BROOMHILL FARM, BROOMHILL ROAD, OLD WHITTINGTON, S41 9EA

Local Plan: Green Belt
Ward: Old Whittington

1.0 **CONSULTATIONS**

DCC Highways	No objection subject to condition
Environmental Services	No objection subject to condition
Planning Policy	Comments as provided generally in relation to previous application.
Design Services	No objection, require additional information during reserved matters application.
Tree Officer	No objections
Urban Design Officer	No comments received
Coal Authority	Material Consideration – see report
Ward Members	Application called to Committee by Councillor Peter Barr.
Site Notice / Neighbours	Three objection letters received

2.0 **THE SITE**

2.1 The application site is the central section of land within Broomhill farm, including access off Broomhill Road. The overall site is positioned to the north of Broomhill Road in Old Whittington. There is a care home to the west, a large housing area to the south and open countryside to the north and east. There are numerous buildings on the overall site, with 3 separate owners of numerous businesses; this includes a pet sanctuary, two catteries, two private dog kennels, a stray dog kennels, a country store/shop, some agricultural buildings, a gun shop and three dwellings. The three dwellings include the original farmhouse (which is being demolished and re-built), a residential unit sited above JJ's Cattery and a dwelling conversion that was given planning permission on

condition that it was directly related to Broomhill Farm Kennels. This dwelling is not currently utilised as a dwelling, but also this part of the site has been split from the application site.

- 2.2 The application site includes the shared access road and the proposed site of the house within the red line and within the blue line the reception area of some of the catteries and kennels, one of the private dog kennels and some of the additional land surrounding the proposed dwelling site.
- 2.3 The application site is part of an overall site that was previously known as Broomhill Farm. The overall site still retains this name, but within the farm it has 3 separate owners, with Broomhill Farm Kennels Ltd and Broomhill Farm Ltd owning the vast majority of the land to the north, with a small section of the site to the south under the ownership of JJ's Cattery. Figures 1 and 2 are drawings that were provided by the applicant to demonstrate the ownership of the site during the previous application, and these are considered helpful and relevant again in this application. Within figure 2 the two separate blue sections are different shades of blue, but it is considered that these are meant to represent the same ownership. Figure 1 represents part of the site that used to be solely under the business name of Broomhill Farm Kennels Ltd. Figure 2 shows part of the site under the ownership of Broomhill Farm Ltd.

Figure 1

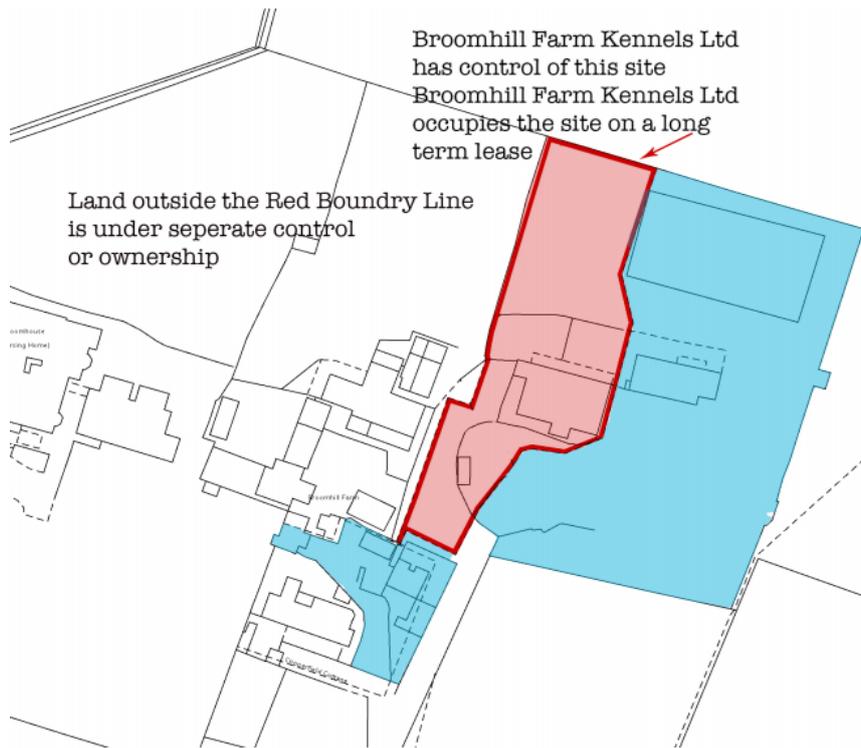
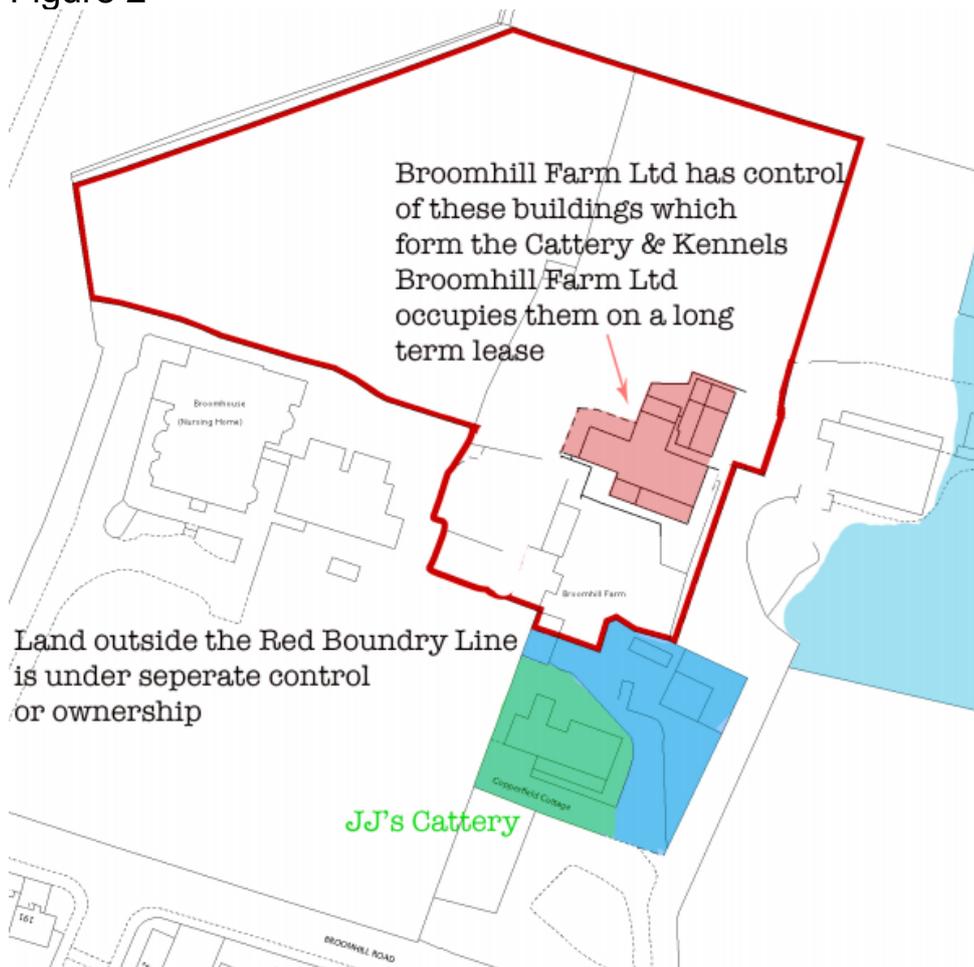


Figure 2



2.4 The overall site has a complicated planning history which is of relevance. The site history and ownership are background information that helps to provide context for the site, but fundamentally the applicant is applying for one dwelling within green belt land, so the main focus will be on the potential impact on openness and what the arguments are for very special circumstances.

3.0 **RELEVANT SITE HISTORY**

3.1 CHE/18/00307/FUL – Demolition of dwelling and erection of replacement dwelling was approved subject to conditions on 29th August 2018.

3.2 CHE/17/00839/OUT – Outline application for planning permission for one dwelling tied to the existing boarding kennels – Refused – 15.03.18

3.3 CHE/12/00579/FUL - Conversion of an Existing Animal Charity Shop and Bedroom to a Kennel Operator Dwelling tied to existing Kennel Business – Conditional Permission – 10/12/13. This dwelling was related to Mrs Joan Bentley, the previous owner of Broomhill Farm Kennels, and a condition was included to ensure the use of this dwelling was tied to the kennels and the animal sanctuary

3.4 CHE/0201/0072 - Alterations to cattery building to create cottage and office and conversion of office to cat pens at Broomhill Farm. GRANTED 11.4.2001.

3.5 CHE/0399/0149 - Outline application for erection of one dwelling – Refused – 18/05/99

3.6 CHE/0394/0162 - Change of use of agricultural building to additional cat pens. GRANTED 15.06.1994

3.7 CHE/0690/457 - Change of use from cow sheds to cattery at Broomhill Farm. GRANTED 13.08.90 subject to conditions requiring formalised parking and turning and improvements to visibility.

3.8 There are numerous historical applications relating to the site which were refused; some being dismissed at appeal.

3.9 It is accepted that there are buildings on the site which are unauthorised but which may have become immune from any enforcement action because they have existed for more than 4 years.

4.0 **THE PROPOSAL**

4.1 The application submitted seeks outline planning permission for a dwelling with all matters reserved for the proposed development of the site located on land within Broomhill Farm, on Broomhill Road. Notwithstanding the fact that access is reserved for consideration at a later date, access to the development is indicated as being proposed from Broomhill Road which adjoins the site on its southern boundary and would be via the existing access point and driveway.

4.2 The application submission is accompanied by the following plans / documentation / reports:

- Site Location Plan
- Block Plan
- Elevations
- Drainage Plans
- Planning Statement
- Supplementary Planning Statement
- Coal Mining Risk Assessment
- Additional Information from Agent re drainage (04/03/19)
- Additional Information re company profits (14/02/19) – not publicly accessible.

5.0 **CONSIDERATIONS**

5.1 **Planning Policy Background**

5.1.1 The site the subject of the application lies on the edge of the built settlement of Old Whittington north of Broomhill Road on land allocated as Green Belt. Having regard to the nature of the application proposals policies CS1, CS2, CS9, CS10 and CS18 of the Core Strategy and the wider revised National Planning Policy Framework (NPPF) apply. In addition the Council's Supplementary

Planning Document on Housing Layout and Design 'Successful Places' is also a material consideration.

5.1.2 Policy CS1 (Spatial Strategy) states that the Green Belt will be maintained and enhanced.

5.1.3 Policy CS2 (Principles for Location of Development) states that when assessing planning applications for new development not allocated in a DPD, proposals must meet the following criteria / requirements:

- a) adhere to policy CS1
- b) are on previously developed land
- c) are not on agricultural land
- d) deliver wider regeneration and sustainability benefits
- e) utilise existing capacity in social infrastructure
- f) maximise walking / cycling and the use of public transport
- g) meet sequential test requirements of other national / local policies

All development will be required to have an acceptable impact on the amenity of users or adjoining occupiers taking into account noise, odour, air quality, traffic, appearance, overlooking, shading or other environmental, social or economic impacts.

5.1.4 Policy CS9 (Green Infrastructure and Biodiversity) states that development proposals should not harm the character or function of the Green Belt, should conserve or enhance the local distinctiveness and character of the landscape, and should protect and increase tree cover in suitable locations.

In addition to the above, paragraphs 143, 144 and paragraph 145 of the revised NPPF (2019) state:

- *Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.*
- *When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. '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.*

- *A local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are:*
 - a) buildings for agriculture and forestry;*
 - b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) 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;*
 - c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;*
 - d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;*
 - e) limited infilling in villages;*
 - f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and*
 - g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:*
 - not have a greater impact on the openness of the Green Belt than the existing development; or*
 - not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.*

5.1.5 Policy CS10 (Flexibility in Delivery of Housing) states that planning permission for housing-led greenfield development proposals on unallocated sites will only be permitted if allocated land has been exhausted or if annual monitoring shows that there is less than a 5-year supply of deliverable sites and where: a) they accord with the strategy of 'Concentration and Regeneration' as set out in policy CS1 and the criteria set out in policy CS2; or b) a specific housing need can be demonstrated that can only be met within a particular location.

5.1.6 Policy CS18 (Design) states that all development should identify, respond and integrate with the character of the site and its surroundings and development should respect the local character

and the distinctiveness of its context. In addition it requires development to have an acceptable impact on the amenity of neighbours.

In addition to the above, the revised NPPF places emphasis on the importance of good design stating:

'In determining applications, great weight should be given to outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.'

- 5.1.7 In addition to the above, in July 2013 the Council adopted 'Successful Places' which is a Supplementary Planning Document which guides Sustainable Housing Layout and Design. The development proposed should be assessed against the design principles set out in this supporting document.

5.2 **Principle of Development**

- 5.2.1 **Comments of Planning Policy Team from the previously submitted application (CHE/17/00839/OUT) with minor changes to NPPF paragraph numbers and some minor editing –**

The site is within green belt. The Chesterfield Borough Council currently has no intention to review green belt within the Borough's boundary as currently no exceptional circumstances are deemed to exist to warrant such a process. Whilst North East Derbyshire District Council has carried out a review of green belt this did not assess the application site and so has not demonstrated any exceptional circumstances and overriding need to remove the application site from green belt. Given that the site is not on PDL the proposed new housing development would represent inappropriate development in green belt. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances (NPPF 2019 para 143).

- 5.2.2 *Accordingly substantial weight should be given to the harm to green belt by reason of inappropriateness, of the proposed development for such a development to be agreed. Very special circumstances need to be demonstrated by the applicant that*

would clearly outweigh the harm by inappropriateness and any other harm from the development.

5.2.3 Local Plan Spatial Strategy –

The site is within reasonable walking and cycling distance of a local centre and has reasonable access to bus services to Chesterfield. As such the proposal would be located appropriately in relation to Core Strategy (CS) policy CS1 notwithstanding green belt considerations. The proposal would accord with the majority of criteria in CS policy CS2 with the exception of it not meeting criterion (b), in that the site is not within the definition of previously developed land (PDL).

5.2.4 *The site's exclusion from the definition of PDL is significant in that CS policy CS10 applies and also because the proposal would be inappropriate development in green belt as assessed against the NPPF. CS policy CS10 would prevent housing development on this 'greenfield' site unless the proposal is an exception under CS policy CS2(i) i.e.*

(i) needs to be in a specific location in order to serve a defined local catchment or need, to access specific resources or facilities (including transport connections) or to make functional links to other, existing uses;

5.2.5 Flexible Housing Supply

The purpose of policy CS10 is to ensure a supply of housing that meets the overall aims of the Core Strategy. Policy CS10 only permits housing-led greenfield development in the absence of a deliverable 5 year housing land supply and where proposals accord with the Local Plan spatial strategy or a specific housing need is to be met. Currently the Council can demonstrate a deliverable 5yr supply of housing land and given this the proposal would not accord with CS policy CS10, despite being in a location compatible with the spatial strategy of 'concentration and regeneration' set out in CS policy CS1.

5.2.6 Air Quality

The issue of air quality is currently in focus given the Government's recent commitment as part of a zero emission vehicle alliance to ensure that 'almost every car and van is a zero emission vehicle by 2050'. Core Strategy policy CS20 expects development such as that proposed to demonstrate the provision of opportunities for charging electric vehicles where appropriate. Provided there are no

overriding material considerations such as viability, a charging point should be secured by condition as required by policy CS20. Core Strategy policy CS8 lends further weight to the requirement for provision of a charging point, given that cumulatively such small scale development is likely to materially increase vehicular emissions within the borough sufficiently to prejudice the aims of local and national air quality strategies, unless mitigation is put in place.

5.2.7 Biodiversity

Core Strategy policy CS9 requires a net increase in biodiversity where possible and the site would appear likely to be an opportunity for bird nesting and bat roosting provision should permission be granted for a dwellinghouse. The Development Management Officer should be satisfied that the site does not require further investigation of its biodiversity significance.

5.2.8 Conclusions

The development is in a location that accords with the Core Strategy in terms of the overall strategy of concentration and regeneration. If the development is clearly required for an existing land use with no realistic alternatives the site would broadly be in accordance with CS policy CS2(i), and it would be an exception to the requirements of CS policy CS10, having regard to the small amount of development and its accessible location however within the green belt the development of a new dwelling is inappropriate development (by definition) and it is necessary to consider whether any exceptions should apply.

5.2.9 Case for 'Very Special Circumstances' - Planning Policy Comments

The supporting documents to the application put forward a case for very special circumstances which broadly includes arguing a functional requirement, changed personal circumstances within the context of changes in ownership and economic and social benefits related to a boarding kennels. The considerations arising from the proposal bear similarities to those present where an agricultural workers' dwelling has been proposed in Green Belt. In this vein there appears to be little evidence of how alternative appropriate developments to meet any functional requirement (such as conversion and/or redevelopment of previously developed land) have been ruled out. It is not clear from the submission why

temporary accommodation has not been proposed initially or conversion or extension of existing buildings on the site.

5.2.10 **Principle of Development – Development Management**

5.2.11 The revised NPPF states that limited infilling of previously developed sites, where the development would not have a greater impact on the openness of the Green Belt can be accepted. Notwithstanding this however the development proposals detail a new built footprint in an area of the site not previously developed within the area, and therefore the provisions of this exception are not met.

5.2.12 **Openness of the Green Belt:**
Paragraph 133 of the revised Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Therefore, its openness is an essential characteristic of the Green Belt. Broomhill Farm has many small to medium sized buildings upon it, with numerous outbuildings related to the businesses or main dwelling on site. The area of land to the north of the site is the most open part of the site and this therefore currently contributes more significantly to the openness of the Green Belt.

5.2.13 This is an outline application with all matters reserved; an indicative drawing has been provided to show where the dwelling would be sited and how it would be designed. It is considered that if the applicant wanted some of reserved matters e.g. access, appearance, landscaping, layout or scale, to be included in this application then these items could have been part of this proposal, but they are not. The officer can only consider what is applied for, and as all items put forward with the indicative drawing would be dealt with via a reserved matters application at a later date then little weight can be attached to this information. If this proposal was approved then the proposed indicative drawing would hold no weight and a future reserved matters application could not be refused just because it is substantially different in any way to the drawing provided in this application. As this is the position then the proposal is assumed to be an average sized building in roughly the location proposed. This would introduce a larger building than the small outbuildings currently in the vicinity and present on site and thereby reduce its openness. Accordingly, the proposal would cause harm to the openness of the Green Belt.

- 5.2.14 Paragraph 134 of the Framework identifies one of the five purposes of the Green Belt is to safeguard the countryside from encroachment. The site is on the edge of the countryside as it adjoins open countryside to the north, east and west. Whilst there are many buildings within the most densely built part of the site including a dwelling which is being reconstructed, this proposal would lead to the continued expansion of the built form of the site. As such the proposed development would encroach into the countryside area, thereby harming one of the primary purposes of the Green Belt. Although the proposal is for only one house, due to the importance attached to Green Belts and the need to keep the land within them permanently open, as set out in the Framework, significant weight is attached to the harm the proposals would cause to the openness and purposes of the Green Belt.
- 5.2.15 The development can therefore only be concluded as being contrary in principle to the provisions of paragraph 145 of the NPPF which sets out acceptable development in the green belt area and those set out in criteria (a) and (e) of policy CS9 of the Core Strategy.
- 5.3 The case for Very Special Circumstances is now considered.
- 5.3.1 *Up until 2011 the application site and areas to the east and west of the application site formed part of the wider Broomhill Farm site operated by a mother and son Mrs Bentley and Mr Goldman providing boarding accommodation for both dogs and cats and also at that time had a contract with the Local Authority to house stray dogs.*
- 5.3.2 *The kennels were initially established in 1992 and there is a long history of other uses including animal sanctuary and charity shop.*
- 5.3.3 *In 2011 the site was split and Mr Goldman retained the land and buildings to the west of the current application site, with Mrs Bentley retaining the remainder. In 2013 Mrs Bentley was granted planning permission to convert one of the buildings to residential with a condition linking it to the private boarding kennel business and/or the animal sanctuary.*

- 5.3.4 *This permission reference: CHE/12/00579/FUL provides a very detailed account of the planning history and commentary on the lawful uses of the site, will be referred to within this Statement.*
- 5.3.5 *Unfortunately, Mrs Bentley died in 2016, however before she died, she sold the current application site to Mr Goldman.*
- 5.3.6 *The remaining land to the east of the current application site and the L-shaped building and associated land to the south of the application site (the L-shaped building being the building related to in CHE/12/00579/FUL) was transferred to Mrs Bentley's other son (ie not the son residing at Broomhill Farm).*
- 5.3.7 *Mr Goldman who resides at Broomhill Farm has operated the kennels within the current application site to this present day, together with his wife and son in law.*
- 5.3.8 *The kennels within the application site have been operated under a separate business known as Broomhill Farm Kennels Ltd and separately from Mr Goldman's business of dog boarding and cattery at Broomhill Farm Ltd, to the west of the current application site. Mr Goldman and his wife have provided on-site residential cover for this separate business, however, he is now at a point in his life where he and his wife wish to scale back their involvement in dog boarding to the extent where their own business based on Broomhill Farm Ltd (to the west of the current application site) will be their main business interest, and even this will be scaled back to an extent where boarding will only take place during summer months, leaving them free to concentrate on home education projects for their two children during winter months.*
- 5.3.8 *Broomhill Farm Kennels Ltd will be primarily operated by their son in law, who lives off-site and travels to the site currently.*
- 5.3.9 *Consequently, to enable the Broomhill Farm Kennels Ltd business to continue, it requires a presence on site on a 24/7 basis in order to comply with the licensing requirements, hence the need for a dwelling and for this planning application.*
- 5.3.10 *It is acknowledged that a dwelling connected to a boarding kennels would not conform to any of the exceptions detailed in paragraphs 145 and 146, and as a consequence the starting point would be*

that the proposal represents inappropriate development in the Green Belt.

- 5.3.11 *Notwithstanding, paragraph 143 refers to “inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.”*
- 5.3.12 *This application seeks to demonstrate that there are indeed very special circumstances.*
- 5.3.13 *The NPPF makes provision for agricultural and forestry buildings being an exception to inappropriate development, however, does not make provision for uses that equally require and are more appropriate to locate in more rural locations. Boarding kennels being a case in point.*
- 5.3.14 *Planning permission was granted under CHE/12/00579/FUL for the conversion of an existing building within the complex to be converted to a residential use, tied to the existing kennel business. Clearly, at this point in time, the Council acknowledged that there was a need for a dwelling on the site. Indeed, it is a requirement of the licensing conditions issued by the Borough Council Environmental Services at paragraph 86 that “a competent person must always be present to exercise supervision and deal with emergencies whenever dogs are boarded at the premise.” Paragraph 87 goes on to state that “dogs must be visited at regular intervals, as necessary for their health, safety and welfare.”*
- 5.3.15 *On a previous application CHE/399/149, planning permission was refused for the erection of a dwelling on land south of the cattery at Broomhill Farm as being contrary to Green Belt policy, however, on appeal the Inspector whilst agreeing that the development was inappropriate development in the Green Belt considered that the licence and scale of business meant that living accommodation had to be provided on site. He considered that the applicant’s family house requirement was a personal preference and not a functional need of the business. The Inspector however, considered that the cattery business at that time could be supervised by a person living over the cattery building and subsequently dismissed the appeal. Unfortunately, the option of converting a building is not available as all of the buildings are not of a permanent construction that lends them to be easily converted.*

- 5.3.16 *A subsequent application (CHE/0201/0072) for alterations and extensions to create a cottage and office were subsequently approved with the officer report at that time acknowledging the Inspector's comments that some form of residential accommodation at the site was accepted, with the report going on to state:
"Since the residential accommodation on this site could be accepted as the very special circumstances referred to in the Green belt policy, the development is not contrary to the Local Plan."*
- 5.3.17 *When considering applications for agricultural dwellings in the countryside and Green Belt, the need for a 24/7 presence on site is often governed by the care and welfare of animals and in particular to be within "sight and sound" of the animals.*
- 5.3.18 *The care and welfare of dogs that are boarded is equally an important requisite as highlighted by the conditions within the licence issued by Environmental Services.*
- 5.3.19 *The need for a new dwelling has arisen out of changes in ownership within the site, with the previous approval for the conversion to residential now being in separate ownership to the actual boarding kennels. The boarding kennels, the subject of the application, were originally acquired by Mr Goldman but are effectively a separate site and company from that operated by his wife and himself from Broomhill Farm Ltd. The company operating the application site is Broomhill Farm Kennels Limited of which Mr Goldman is a shareholder. His son in law has become more involved in the day to day operation in preparation for taking full control of the business this coming winter. Mr Goldman and his partner have been able to provide the out of hours cover to ensure that the kennels comply with the terms of the licence. Mr Goldman's son in law will take full control of the business at a point when he is able to live on site.*
- 5.3.20 *Circumstances, however, are now changing whereby Mr Goldman and his wife wish to scale back their operations at Broomhill Farm Ltd to offer boarding during the summer months only and be able to concentrate on home education projects for their two children during the winter months away from the premises. Broomhill Farm Kennels Limited who operate the application site however, still*

intend to continue offering a year round service and require that level of on-site presence. The business continues to expand and currently employs three staff all of which reside in the Chesterfield Borough Council Area. Such is the current demand for their services, the business operates 7 days a week 365 days per year.

- 5.3.21 *The residential conversion is no longer available having been separated from the application site, yet there remains a need for an on-site presence. It is against this background that these very special circumstances exist and are considered to be an exception to the normal circumstances applying to appropriate development in the Green Belt.*
- 5.3.22 *In more recent times, the need for a dwelling with a functional link to the boarding kennels was acknowledged by the Council in granting planning permission for the conversion of the existing building in December 2013 ref: CHE/12/00579/FUL.*
- 5.3.23 *Having established a functional need for a dwelling, the special circumstances are the ability to continue a successful rural business.*
- 5.3.24 *Paragraph 83 and 84 of the NPPF states that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. The first bullet point of paragraph 83 refers to:*
- 5.3.25 *“Enable the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well-designed new buildings;”*
- 5.3.26 *The last bullet point refers to:*
“Enable the retention and development of local services of community facilities in villages, such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship.”
- 5.3.27 *The existing boarding kennels provides a valuable service, and whilst being in planning terms within a rural area, it is closely related to the urban areas of Chesterfield, making its location highly sustainable.*

- 5.3.28 *Indeed, Core Strategy Policy S3 – Presumption in Favour of Sustainable Development echoes the NPPF, in particular paragraphs 7 and 11.*
- 5.3.29 *Paragraph 8, of the NPPF refers to there being three dimensions to sustainable development: economic, social and environmental.*
- 5.3.30 *The economic role refers to contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right type to support growth and by identifying and coordinating development requirements, including the provision of infrastructure.*
- 5.3.31 *The social role involves supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being.*
- 5.3.32 *The environmental role involves contributing to protecting and enhancing our natural, built and historical environment; and, as part of this, helping to improve the biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.*
- 5.3.33 *The existing boarding kennels provides an important economic role in providing a valuable service to the community and is well located close to the urban areas of Chesterfield. Its existence and potential growth can only happen if there is a 24/7 presence on the site, therefore, economically it is important to ensure that this happens by the provision of a dwelling.*
- 5.3.34 *In terms of a social role, dogs as pets provide an important role in today's society ensuring people are active and also providing social benefits for persons living alone and the elderly. Providing a boarding kennel facility for when people are away is a valuable asset, and again its location in close proximity to the urban area is highly sustainable.*

- 5.3.35 *In terms of the environmental role, the siting of the proposed dwelling would be such that it forms part of the existing building group thereby minimising any impact on the open character of the Green Belt. It is further intended that the ultimate dwelling would achieve high levels of energy efficiency and be designed to be a low carbon house.*
- 5.3.36 **Supplementary Planning Statement:**
- 5.3.37 Functional Requirements:
- 5.3.38 *Ultimately, it is about the functional requirements of the businesses and not the personal preferences of the persons involved and this supplementary statement seeks to address the functional needs.*
- 5.3.39 *Advice and policy does not exist in terms of specific uses such as boarding kennels, however, paragraph 79 of the NPPF refers to the essential need for rural workers to live permanently at or near their place of work in the countryside, being a special circumstance.*
- 5.3.40 *Paragraph 145 of the NPPF also refers to buildings for agriculture and forestry being an exception to inappropriate development in the Green Belt.*
- 5.3.41 *As the boarding kennels are neither for agriculture or forestry, the proposal would be inappropriate development in the Green Belt and very special circumstances would need to exist to be permissible.*
- 5.3.42 *The functional requirements have been considered to amount to very special circumstances in the past by both the Council and the Planning Inspector.*
- 5.3.43 *Notwithstanding, it is appropriate to amplify this issue.*
- 5.3.44 *The NPPF and Planning Practice Guidance offer little in the way of guidance, however, it is reasonable to take the view that boarding kennels are an appropriate rural use due to the potential for noise and there is also an animal welfare issue for requiring 24/7 cover as reinforced by the Environmental Health Licence for both establishments, which require 24/7 cover on site.*

5.3.45 *Previous advice on agricultural workers' dwellings was established under the Annexe to PPS 7 and it is a reasonable starting point for addressing functional need and in turn very special circumstances that may exist.*

5.3.46 *This previous guidance involved:*

- *Demonstrating a clearly established functional need for a full time worker to live on site.*
- *Showing that the agricultural operation has been active for three years, profitable for at least one of them, and is likely to remain financially sound going forward.*
- *Establishing that there is no other suitable dwelling or accommodation on site or in the area.*
- *Satisfying other planning requirements for example relating to access, or environmental impact.*

5.3.47 *Dealing with these criteria in turn;*

5.3.48 ***Demonstrating a clearly established functional need for a full time worker to live on site***

5.3.48.1 *This is related primarily to animal welfare and having sufficient man hours to equate to two full time employees of the business where a second dwelling is proposed.*

5.3.48.2 *Both James Goldman and his wife work full time on the dog boarding and cattery businesses. In addition, they employ an additional 3 full time workers and 2 part time workers, to the extent where there are a minimum of 4 workers on site during the day. Customers are leaving their prized pets in the expectation that they are well cared for and someone is on hand if they are taken ill or distressed. The Council Boarding Kennels Licence requires a check to be made on the dogs between the hours of 18:00 to 08:00am, and logically a time for this check is towards 22:30*

5.3.48.3 *This emphasis on animal welfare is recognised by the Council and is a requirement of the licence that a competent person is on site at all times.*

- 5.3.48.4 *The two businesses are subject to two separate licences, and without a further presence on site the business could not be sold and still comply with the licence.*
- 5.3.48.5 *In terms of man hours, these are as follows:
Broomhill Farm Kennels Ltd – man hours currently for both owners are 112 hours per week
Full time staff 112 hours
Part time staff 56 hours*
- 5.3.49 **Showing that the operation has been active for three years, profitable for at least one of them, and is likely to remain financially sound going forward**
- 5.3.49.1 *Because of the commercial sensitivity surrounding the business accounts, these are to be provided separately and are requested to be kept out of the public domain. The accounts of the two businesses have been do however demonstrate a healthy turnover of the two businesses.*
- 5.3.49.2 *Profitability does not necessarily mean large sums of money and indeed investment in buildings and infrastructure are also examples of remaining financially sound.*
- 5.3.50 **Establishing that there is no other suitable dwelling or accommodation on site or in the area**
- 5.3.50.1 *In terms of converting another building on site, all of the existing buildings are in use in connection with the businesses and many of which are unsuited due to their temporary form of construction.*
- 5.3.50.2 *On the previous application the Forward Planning Team stated that “The site is within Old Whittington, a settlement that would not justifiably be described as a rural village, its character being that of a settlement that has merged to a greater degree with the town of Chesterfield.”*
- 5.3.50.3 *The inference being that this could not be defined as a community facility in a village as per paragraph 83 of the NPPF or indeed “the sustainable growth and expansion of all types of business in rural areas”. This is somewhat perverse, the site is either in the Green Belt or it is not. Green Belt does meet the urban fringe, that is what it was designed to do, to prevent coalescence etc. In planning*

policy terms, the site would be regarded as in a rural area, if it is deemed to be part of the urban area then surely the principle of development is acceptable. Of course it is not, it is within the Green Belt and to indicate otherwise is perverse.

5.3.50.4 Irrespective of location, it does provide a service and not being located in the depths of the countryside, but close to a significant urban population, demonstrates its sustainable credentials.

5.3.50.5 In terms of a permanent worker occupying a house in the nearby urban area, this would not satisfy the licence requirements, nor would it be within "sight and sound" for animal welfare purposes.

*5.3.51 **Satisfying other planning requirements, for example relating to access, or environmental impact***

5.3.51.1 The previous application provided a Coal Mining Risk Assessment which addressed the risks from former coal mining activity and is included again with this submission.

5.3.51.2 The existing access was previously considered acceptable by the Highway Authority.

5.3.51.3 The siting of the proposed dwelling is as previously, but additional plans are submitted to demonstrate how this would be "dug into" the existing embankment, which together with the existing substantial planting to the north eastern and south eastern boundaries would ensure the impact on the openness of the Green Belt is safeguarded.

5.3.51.4 This area has previously been tipped on when the site was owned by Mrs Bentley. The tipping took place approximately 10 years ago and is arguably previously developed 'brownfield'.

5.3.51.5 Another important factor, to note is that the proposed siting is alongside the existing fenced dog exercise area which has been in existence since 1992 and as such is part of the "brownfield" area of the site.

5.3.51.6 *A recent High Court case, Euro Garages Ltd v SOS for Communities and Local Government (2018 Case no: CO/145/2018), involved a green belt case where Mrs Justice Jefford found that a greater impact on openness must involve something more than a mere change of environment. The judge considered that the inspector had approached the matter on an erroneous assumption that any change had a greater impact on green belt openness, rather than considering whether any material impact or harm had actually been wrought by the change.*

5.3.51.7 *As described, the proposed siting lies alongside an existing dog walking area and close to other buildings associated with the business. A substantial tree screen separates the site from the wider 'open' character of the green belt, beyond, to the north. Combined with the scheme to build into the embankment minimises the visual impact on the green belt to a position where the 'openness' is preserved.*

5.3.52 **Conclusions**

It is acknowledged that by definition, the proposal would be considered 'inappropriate development', however this application together with the submitted information on the previous application has sought to demonstrate that very special circumstances do exist in terms of a functional requirement to ensure that the business(es) can continue and sustainably develop.

Para 83 of the NPPF refers to planning policies and decisions enabling:

- "a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings;*
- b) the development and diversification of agricultural and other land-based rural businesses;*
- d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship."*

Para 84 of the NPPF states:

"Planning policies and 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" "The use of

previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.”

In planning policy terms, the site is within the Green Belt, and from that it is entirely reasonable to consider that it is for planning purposes in the rural area. If it is not, the alternative is that it is within the urban area. To comment that it is more related to the urban area is irrelevant for planning purposes, there has to be a dividing line between the urban area and the rural area and the council has established this by defining a Green Belt boundary. The case being made is that the proposal represents inappropriate development in the Green Belt but there are very special circumstances, namely, the functional needs of the business that outweigh the usual unacceptability of inappropriate development in the green belt.

Put simply, the Council and a planning inspector have previously considered that the operation of the business required an on-site presence, in addition to the presence of Broomhill Farm.

Nothing has changed other than a change in ownership of the business, and the functional requirements remain the same as when essentially two dwellings were considered necessary.

5.3.53

In summary the applicant considers (officer assessment):

- The principle of an additional dwelling upon the site has been approved previously.
- That the proposal is sited within a rural location, and that rural planning policies are relevant in this case. Planning policies should support economic growth in rural locations. Agricultural workers and functional requirements on site.
- Licence conditions stipulate that a competent person is required to live on site to meet the needs of the animals.
- His personal circumstances have changed, where he wishes to spend more time with his family to help home educate his children. This requires an additional person to work full time, and then reside permanently on site.
- That the proposal supports the continued growth of the business.
- That the refusal of the dwelling may lead to closing of the business and the loss of jobs.
- That the dwelling would have a minimal environmental impact.

5.4 **Very Special Circumstances – Planning Officer Assessment**

5.4.1 The applicant has stated what are considered to be the very special circumstances and these are considered below:

5.4.2 Previous planning permission on site

Within the overall site of Broomhill Farm (excluding JJ's Cattery) there was up to 2011 one dwelling on site and one business. After 2011 the business appears to have been split in two and the part of the site without a dwelling sought permission to convert an existing building into a dwelling and this received approval. After 2016 the site was split into three, with the previously permitted dwelling no longer being utilised for accommodation relating to the (kennels ltd) business. The original dwelling on site now functions as the residence for the licence holder related to all the private catteries and kennels on the northern part of the site for the farm ltd and kennels ltd businesses. The animal sanctuary and other parts of the site that were previously attached to land owned by Mrs Joan Bentley no longer use the dwelling on site.

5.4.3 The previous permission on site for a dwelling (CHE/12/00579/FUL) was associated to the change of use of an existing building which was associated with the Animal Sanctuary and Shop on the overall site and this application was within the middle of the overall site and did not require the development of a new building. This was not considered to impact upon the openness of the greenbelt and was justified on special circumstances of requiring 24 hour presence to meet licensing requirements. This building has reverted to its previous use related to the animal sanctuary for a café/shop/reception area, but the owners of this part of the site have not sought planning permission for this change of use. This part of the site does not require a permanent on-site presence, but as the permission for a dwelling was related to the animal sanctuary and kennels business it can continue to be a dwelling on site if required, unless it is considered that this usage has lapsed. The areas shown in blue within Figure 1 (land attached to the animal sanctuary) does not have a licence attached to the running of the organisation, or conditions or requirements that necessitate 24/7 presence on this part of the site.

5.4.4 Definition of the site in a rural location and agricultural workers

Within chapters 83 and 84 of the 2019 revised NPPF it states that:

Planning policies and decisions should enable:

- a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings;*
- b) the development and diversification of agricultural and other land-based rural businesses;*
- c) sustainable rural tourism and leisure developments which respect the character of the countryside; and*
- d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.*

Planning policies and 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. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.

5.4.5 Within the comments received from the Forward Planning Team they stated that *“The site is within Old Whittington, a settlement that would not justifiably be described as a rural village, its character being that of a settlement that has merged to a greater degree with the town of Chesterfield. The 2011 Rural-Urban Classification of Local Authorities and other geographies gives Chesterfield a classification of Urban with City and Town”*. The definition of an area as rural in character is related to levels of population in the local area, not specifically related to one site.

5.4.6 The site adjoins a housing estate that would have been part of a village previously (Old Whittington), but over time this suburb has merged with the town of Chesterfield and could now be defined as a suburb or area of the town. So although it may historically have been rural in nature in the sense that it was a farm on the edge of a village, this is no longer the case as it is within the urban fringe of a large town, with a population of over 100,000. This ensures that

national planning policy comments in relation to rural businesses are not relevant in this case. This is also not considered to be a business that would be defined as a community facility in a village, as stated in paragraph 83 of the NPPF, for the previously stated reasons.

- 5.4.7 The applicant/agent has stated that as the site is within Green Belt it must also be defined as being in a rural location. The officer considers that Green Belts were necessary around large urban areas to restrict urban sprawl (as well other reasons), and this means that sites within the green belt are likely to be within the vicinity of a large urban area, rather than being isolated and rural in definition. The delineation of the siting of the green belt is not a line of where the urban area starts and ends, it is a line for where planning policy changes and how sites are treated differently in the concept of the vision to control uncontrolled urban sprawl. The site is called a farm and has open land to the north, but these aspects alone do not define the site being rural in nature or in planning terms. The officer considers the site to be within the urban fringe, and its use suitable and common for a location such as this one, as it is not closely surrounded by dwellings.
- 5.4.8 In relation to policies for agricultural workers – the site is not utilised for an agricultural use and as such is not staffed by agricultural workers. A dog kennels business is suitable to be placed in a rural location, but that has no bearing on how this particular site is defined in terms of urban/rural.
- 5.4.9 Licence Stipulations
The planning officer has sought clarification as to the exact situation of the licence for the business. It does appear to be the case that a competent person is required to be “on site” at all times.
- 5.4.10 Mr James Goldman is registered as the sole director of the Broomhill Farm Kennels Ltd and Ms Jenny Mark is registered as the Company Secretary, as well as being considered as the competent person on site in relation to the business’s licence.
- 5.4.11 Within the licence for this business in terms of supervision conditions 86 and 87 are relevant to this application:

86. *A competent person must always be present to exercise supervision and deal with emergencies whenever dogs are boarded at the premise.*
87. *Dogs must be visited at regular intervals, as necessary for their health, safety and welfare. (Regular intervals for visiting means intervals not less than 4 hours starting at 8am to 6pm. An evening visit may be appropriate but must be balanced against the possibility of disturbing the dogs and causing a noise nuisance).*

- 5.4.12 A “competent person”, in terms of a manager of the business on site, would need to be assessed as being competent by the Chesterfield Borough Council Licencing Team to ensure the person was suitable in all aspects of the licence conditions. The competent person for Broomhill Farm Kennels is Jenny Mark, with James Goldman the Company Director. No other people are currently authorised as competent people.
- 5.4.13 The applicant has stated that they are prepared to operate the kennels and cattery attached to Broomhill Farm Ltd during the summer months, but in reference to the kennels attached to Broomhill farm Kennels Ltd they do not wish to reduce its hours to the summer months, instead they wish for this to be kept open permanently. They plan to spend time away from site during the winter months; this means that they require on-site cover during these periods. The applicant is aware that this is not possible unless there is a competent person on site at all times and this would require some form of overnight accommodation to undertake their duty.
- 5.4.14 The person whom the applicant wishes to manage the kennels currently has other employment and works part time at the kennels when required. They are not presently listed as a competent person for the kennels and have no stakes in the ownership of any of the businesses on site. They are named as a “son-in-law” within the planning statement. As they are not named on the application it is fair and realistic to assume that the projected future management of the kennels could change.
- 5.4.15 Personal Circumstances
The applicant has stated that their personal circumstances have changed whereby they wish to spend more time with their family. His son has special requirements and he wishes to concentrate on

his children's home education. Part of this involves travelling on educational trips. This would require another person to manage the dog boarding business on a full time basis for the business to adhere to the licence conditions. The applicant/agent states that it is clear that the two businesses on site cannot operate from one dwelling, although no information has been provided to show why not. The site has been split in separate areas, with different businesses on different parts of the site. In terms of Broomhill Farm Ltd and Broomhill Farm Kennels Ltd this is considered to operate as one site and run as one business on a day-to-day basis. These businesses are separate due to the history on site, and are considered as separate in relation to this application in seeking planning approval for a dwelling, but in reality this application is for an additional worker/cover for one business.

- 5.4.16 It is considered that it is not clear why the two businesses cannot operate from one dwelling, how often the proposed educational trips would be and whether these would be day trips or more lengthy excursions?
- 5.4.17 Additional information has not been requested or sought, but it is not clear exactly what the requirements are for the applicant's children, and why their requirements cannot be dealt via the educational system. It is considered that the applicant has decided that he no longer wishes to maintain the full time management of a business he purchased 3 years ago; it is considered that the businesses and existing house could be sold to another person/business who wishes to run them both and arrange alternative cover on site when required without the need to build another house on site.
- 5.4.18 Potential closing of the business and the loss of jobs
It is accepted that the success of the proposal may lead to the continued development of the businesses on site, but it is considered that there are a variety of options available to the applicant in terms of solutions that would still lead to the business meeting the requirements of the licence requirements. No alternative options have been presented that demonstrate the feasibility of those other options, this includes the purchase or renting of a dwelling within the neighbouring Old Whittington area and having a more temporary accommodation on site such as an annex to the existing dwelling or a caravan. When the applicant purchased the business he was aware that 24/7 on-site provision

was required to meet the licence conditions; why did he choose to buy a business that required something that he no longer wished to offer?

5.4.19 It is considered that the site has a long and varied history and has numerous types of business on site, and that if the applicant wished to retain the kennels business he could find a way to maintain it without building a new dwelling on site; this is just the most preferable option to them. In terms of the loss of the availability of private dog kennels on site; there are numerous other kennels businesses within the local area for people to utilise.

5.4.20 Minimal environmental impact of dwelling

This is an outline application and indicative details have been provided in terms of the approximate size of the house, likely materials to be used and possible eco-credentials the proposed house may or may not have. Whilst this is considered to be a low energy dwelling built into the existing landscape, it would still be a change to the existing landscape and it is considered that the building of all houses has an environmental impact in terms of the loss of open land, increased energy use and the sourcing of materials for the building process. Some plans have been provided that demonstrate some of the proposed eco-friendly design credentials but no reserved matters have been included as part of this proposal, this ensures that little weight can be attached to the potential positive environmental aspects in terms of sustainable development. At a reserved matters stage all aspects of the indicative drawings could be changed, with a more standard design house replaced with this. As the principle for a dwelling would have already been decided this would no longer be part of the considerations.

5.4.21 Conclusions

It is considered that insufficient evidence has been provided which demonstrates that the very special circumstances have been met. There are alternative options to building a dwelling on site whilst still meeting the requirements of the licence. A previous 2012 planning application on the farm for a dwelling did conclude that a dwelling was, on balance, required for the business in place at the time. At this time, the applicant had no other accommodation on site, and the plan was to convert an

existing building within the middle of the built part of the site. It did not have a significant impact upon the openness of the green belt. It is accepted that the Licence conditions do require a competent person to be on-site 24/7, but this condition can be met in many ways, without the building of a new dwelling.

5.4.22 In reference to the change in personal circumstances - the officer raises the point that the applicant has an existing dwelling on site and during periods of time when their family would not be present on site this would be empty. Also, the proposed new manager of this part of the business is proposed to be a family member (“son-in-law”); is it not reasonable and more cost effective that during the periods of time when the applicant would be off site that their family members reside in the existing house, or an annex of it? If not, would it not a reasonable option to consider temporary accommodation such as the use of a caravan on site during these periods of time, whilst also retaining a residence elsewhere, when not required?

5.4.23 In conclusion it is clear in this case that:

- The site is in the green belt where a new dwelling is inappropriate development by definition and which is considered to be contrary to policy;
- A new dwelling extends the built up area of the site to the north onto elevated land and which would be prominent and would have an adverse impact on the openness of the area;
- It is accepted that special circumstances can arise to outweigh the policy objection to the development however it appears in this case that the applicant has control over the whole site but has split the business activity, for whatever reason, and now wishes to step back and allow others to manage the licence whilst he travels as part of his son’s education. Whilst this may be the case no evidence has been supplied which shows that the following alternatives have been considered:
 - Conversion or extension of an existing building
 - Occupation of the existing dwelling on the site whilst the competent person is travelling
 - Temporary accommodation on the site such as a caravan
 - Alternate location of the dwelling within the built settlement of the site.

5.4.24 On balance it is not considered that very special circumstances exist such that the harm to the green belt implicit in the proposal can be offset.

5.5 **Design & Appearance (inc. Neighbouring Impact / Amenity)**

5.5.1 The application seeks outline planning permission with all matters reserved and consideration of the issues would therefore be undertaken at reserved matters stage.

5.6 **Highways Issues**

5.6.1 The application was referred by the Local Highways Authority (LHA) to their comments; they stated that they had the same comments as in the previously refused 2017 application, these were their comments:

The development plot is served by an existing access onto Broomhill Road which is a busy classified road. There is no fronting footway at this location.

As you are aware this Authority has raised concerns regarding any intensification in use of this substandard access. However it is noted that various developments have been granted consent and the uses of the access have increased.

The applicant is proposing a dwelling ancillary to the kennel operations at this location. Whilst the existing access does not conform to current design criteria it is not considered that the proposed ancillary dwelling would result in any significant increase in traffic movements over and above existing . There are several other premises served by the access.

In light of the current planning guidance this Authority does not consider that the proposed ancillary dwelling would result in a significant increase in traffic movements over and above those that could be reasonably generated by the current uses of this access. Even where it can be demonstrated levels of traffic may be increased as a result of the development proposals, the Highway Authority still has to have evidence to demonstrate that the harm caused by the extra traffic would be so severe as to require intervention (either by mitigation or rejection of the proposals).

In this instance the Highway Authority is not aware of any existing highway safety issues that would justify a reason for refusal that could be substantiated at appeal.

On-site parking and turning will be required. Given the classified nature of Broomhill Road and the distance of the plot from the highway an area of at least 9m x 9m or other such turning facility as demonstrated by means of swept paths should be identified on revised/future drawings, clear of all parking provision.

The applicant will need to consult with the relevant refuse collection department to ascertain details of what will be acceptable to them in terms of number and location of bins and means of access. Bin storage should not obstruct the private drive access, parking or turning provision. Additionally a dwell area for bins should be provided, clear of the public highway, for use on refuse collection days.

- 5.6.2 Notwithstanding this the application is seeking outline permission with all matters (including access) reserved, highways considerations are limited to securing an agreement that a point of access could be achieved to serve the development. The site location plan shows that the proposed site would utilise the existing exit off Broomhill Road. Visibility would need to be designed into a reserved matters layout commensurate to this type of route. An appropriate driveway width and length and visibility splays would need to be accommodated for a single dwelling to meet the requirements of the LHA and the provisions of policies CS2, CS18 and CS20 of the Core Strategy; this would be dealt with in a reserved matters application. The Highways Authority do not object to the principles of the scheme, as they do not consider it to lead to a significant increase on the local highway network.

5.7 **Flood Risk & Drainage**

- 5.7.1 The application submission is not within a high risk flood zone. In terms of drainage it is considered that this can be dealt with during the reserved matters stage. Information has been submitted by the agent regarding the options available; it is considered that this would be dealt with at a reserved matters stage.

5.8 **Land Condition / Contamination**

5.8.1 The site the subject of the application comprises of previously worked land and therefore land condition and contamination need to be considered having regard to policy CS8 of the Core Strategy.

5.8.2 In respect of land condition the **Coal Authority (CA)** were consulted on the application submission (which included a Coal Mining Risk Assessment) and provided the following response:

“I have reviewed the proposals and confirm that the application site falls within the defined Development High Risk Area; therefore within the application site and surrounding area there are coal mining features and hazards which need to be considered in relation to the determination of this planning application.

The Coal Authority records indicate recorded and unrecorded coal mining at shallow depth. In addition, our records indicate that the application site falls within the boundaries of a site where coal has been extracted using surface mining methods.

The applicant has submitted a Coal Mining Risk Assessment Report (Midland Surveying & Engineering Ltd, November 2017) which is informed by appropriate coal mining information. The Coal Authority has seen this report before for another planning application on the same application site. The report correctly identifies that the application site has been subject to past coal mining related activities.

Specifically, the report identifies “the possibility of unrecorded workings and differential settlement in the vicinity of the opencast high wall poses a risk to the development” (section 5.1). The report recommends intrusive site investigations to determine the location of the high wall and the presence of any workings.

5.8.3 The Coal Authority Recommendation to the LPA
The Coal Authority concurs with the conclusions and recommendations of the Coal mining Risk Assessment Report (Midland Surveying & Engineering Ltd, November 2017). The exact form and extent of intrusive site investigations needs to be agreed with the Permission Section of The Coal Authority as part of the applicant’s permissions process. These intrusive site investigations need to be prepared and conducted by a suitably competent person and findings used to inform an appropriate scheme of

remedial measures if necessary. In addition, it would be prudent if consideration as given to the risk posed by mine gas to application site and proposed development.”

5.8.4 Having regard to the comments detailed above from the CA appropriate conditions can be imposed to this effect, if permission is granted, to ensure compliance with policy CS8 of the Core Strategy and the wider NPPF in respect of land condition.

5.8.5 In addition to the comments of the CA, the Council's **Environmental Health Officer** (EHO) also provided the following response having regard to potential land condition:

“I have inspected the above application, and have no objection to the proposed end use. However, I note that the site was subject to opencast mining. With that in mind I request a contaminated land assessment with regard to the backfilling of the opencast void, and ask that the following condition be added to any permission granted: (Land Contamination)”

5.8.6 Having regard to the comments of the EHO above and the provisions of policies CS2 and CS8 of the Core Strategy / NPPF it is considered appropriate that the matters raised in respect of potential land contamination can be addressed through the imposition of planning conditions which will require appropriate studies to be undertaken. In respect of land contamination these can be required prior to the commencement of development.

5.9 **Community Infrastructure Levy (CIL)**

5.9.1 Having regard to the nature of the application proposals the development comprises the creation of new dwelling and the development is therefore CIL Liable. The site the subject of the application lies within the medium CIL zone and therefore the full CIL Liability would be determined at the reserved matters stage on the basis of a cumulative charge of £50 per sqm (index linked) of gross internal floor area created.

6.0 **REPRESENTATIONS**

6.1 The application has been publicised by site notice and by neighbour notification letters.

6.2 As a result of the applications publicity there have been three letters of representation received as follows:

Resident of no.175 Broomhill Road - They object to the proposal having regard to its impact upon highway safety on Broomhill Road and the continued encroachment of buildings on site. They consider that the site has been the subject of numerous applications over the last 27 years and that what has occurred on site has had a negative impact on the views, with the loss of mature trees and habitat for wildlife. In regards highways they consider that Broomhill Road is a busy road and that the area in front of this site is a bottle neck for traffic including HGV traffic.

Anonymous local resident – They object to the proposal on the grounds of the impact of the continued development of the site on local utilities in the area such as drainage, gas and water. They also consider that it will have an impact on highway safety in the area as Broomhill Road is utilised by several large local businesses in the area including HGV traffic. It will also further impact the green belt. They also consider that there are numerous businesses of different ownerships on site.

Resident of Broomhill Mews – They are concerned about the possible impact of the proposal on the access for existing users. They have concerns that the large range of separate businesses on site already lead to a situation that could lead to highway safety issues, and that the proposal would exacerbate the issue. They have raised several inconsistencies in the submitted information in relation to the history of the site also.

6.3 ***Officer Response: Noted.***

7.0 **HUMAN RIGHTS ACT 1998**

7.1 Under the Human Rights Act 1998, which came into force on 2nd October 2000, an authority must be in a position to show:

- Its action is in accordance with clearly established law
- The objective is sufficiently important to justify the action taken
- The decisions taken are objective and not irrational or arbitrary
- The methods used are no more than are necessary to accomplish the legitimate objective
- The interference impairs as little as possible the right or freedom

7.2 It is considered that the recommendation is objective and in accordance with clearly established law.

7.3 Whilst, in the opinion of the objectors, the development affects their amenities, it is not considered that this is harmful in planning terms, such that any additional control to satisfy those concerns would go beyond that necessary to accomplish satisfactory planning control

8.0 **STATEMENT OF POSITIVE AND PROACTIVE WORKING WITH APPLICANT**

8.1 The following is a statement on how the Local Planning Authority (LPA) has adhered to the requirements of the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 in respect of decision making in line with paragraph 38 of the February 2019 National Planning Policy Framework (NPPF).

8.2 Given that the proposed development subject to conditions would conflict with the revised NPPF (February 2019) and with 'up-to-date' Development Plan policies, it is not considered to be 'sustainable development' and there is not a presumption on the LPA to seek to approve the application. The LPA has been sufficiently proactive and positive in proportion to the nature and scale of the development applied for.

8.3 The applicant / agent and any objector will be provided with copy of this report informing them of the application considerations and recommendation / conclusion.

9.0 **CONCLUSION**

9.1 The proposal is considered to be an inappropriate development within the green belt for which no very special circumstances have been provided to outweigh the harm to the openness of the green belt. As such the proposal is contrary to paragraph 143-145 of the revised NPPF (2019) and Policy CS1 and CS9 of the Chesterfield Local Plan: Core Strategy 2011-31.

10.0 **RECOMMENDATION**

10.1

It is therefore recommended that the application **REFUSED** for the following reason:

1. The development proposed does not meet or satisfy any of the 'exception' criteria as set out in paragraph 145 of the National Planning Policy Framework and there are no very special circumstances which can be accepted which outweigh the harm to the green belt area and the proposal is therefore considered to be unacceptable. The development by virtue of its siting would adversely impact upon the openness of the Green Belt within an area of the site which has previously remained open and undeveloped. It is considered that the development proposals will introduce a pattern of built form which is uncharacteristic of the area and therefore imposes an adverse degree of visual harm upon the openness of the Green Belt contrary to the provisions of Policy CS1 and criteria (a) and (e) of Policy CS9 of the Chesterfield Local Plan: Core Strategy 2011 – 2031 and the requirements of the National Planning Policy Framework.