
Appeal Decisions

Accompanied site visit made on 11 October 2016

by Felix Bourne BA(Hons) LARTPI Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 November 2016

Appeal ref: APP/T1410/C/16/3144452 & 3144858

4 Nuthatch Road, Eastbourne, BN23 7RN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Eastbourne Borough Council.
- The appeals are made by Mr Pettengell (3144452) and Mrs Pettengell.
- The notice was issued on 25 January 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the keeping of pigeons at the address, housed within purpose made structures within the rear garden of the property, which due to the size of the flock (up to 50 pigeons including breeding and racing stock), the size of the structures within the curtilage of the property and the location of the property within the suburban area, is considered excessive, and not incidental to the enjoyment of the dwellinghouse.
- The requirements of the notice are as follows: Reduce and maintain the number of pigeons kept at the property to a maximum of 20. Reduce the capacity of the structures as identified as A, B & C on the plan entitled 'POSITION OF PIGEON LOFTS' (to be read in conjunction with the associated 'Location Plan') attached to the Notice, or the number of structures A, B, or C, resulting in the reduction in overall capacity of the remaining identified outbuildings for the purpose of accommodating no more than 20 pigeons thereafter.
- The period for compliance with the requirements is three months.
- The appeal made by Mr Pettengell is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. The appeal by Mrs Pettengell is proceeding on grounds (f) and (g).

Summary of decision: The appeals are dismissed and the Notice upheld.

Preliminary matters

1. An application for costs has been made by the appellants against the Council. This is the subject of a separate letter.

The appeal on ground (a) and the deemed application

2. Section 55(2)(d) allows for uses on a scale and of a nature incidental to the reasonable enjoyment by an occupant of the normal residential use of the buildings and land which comprise the dwellinghouse and its curtilage as such. The activity must be considered in the context of the primary residential use, having regard to the type and size of the dwellinghouse and the curtilage concerned. Indeed this is clear from the appeal decisions cited. The keynote is reasonableness.

3. Whilst on the one hand seeking to argue that the use is an “incidental” one, no appeal has been lodged on ground (c), which would suggest that the appellant has recognised that the scale of his use is one which requires planning permission. That is, in the circumstances of this appeal, a sound judgement and the main issue is, therefore, the effect of the use, as described in the enforcement notice, on the living conditions of neighbouring residents, with particular reference to noise and to the deposit of excreta.
4. I appreciate that the number of pigeons kept by the appellant is not vast in absolute terms. However, in a relatively densely developed area which is, notwithstanding the proximity of a shopping centre, primarily residential in nature, it is sufficient to cause distress to a significant number of nearby residents. That is clear from the number of representations submitted and, whilst I note that there was one letter of support at the time that the question of enforcement action was considered by Committee, this seems to have come from an address over 100 yards away from the site.
5. Were there only occasional complaints, or complaints from one or two sources, it might be possible to conclude that problems had arisen only on isolated occasions or that a particular neighbour was unusually sensitive to the use. In this case, however, and having inspected the site, I am satisfied that the use at the scale described in the Notice causes significant problems to neighbours both in terms of noise and in relation to deposits of excreta from pigeons being exercised. Indeed, the appellants seem to accept that the use has an adverse effect on immediate neighbours, as the application for costs states that it was to be anticipated that neighbours immediately to the rear, and on either side of the appeal site, would complain.
6. Whilst the pigeons individually may not be especially noisy, the numbers involved in this case have clearly disturbed nearby residents. There are also complaints about sawing, banging, and drilling and, whilst the appellants’ agent claims that these are either nothing to do with the keeping of pigeons or arose during construction of the lofts, it would seem likely that at least some must be connected both with the construction and with maintenance of the pigeon lofts. As to the problem of excreta, some may arise from other birds, but the proximity of a large number of pigeons in such close vicinity is likely to exacerbate the situation. These drawbacks, therefore, bring the use at its current level into conflict with policies HO20 of the Eastbourne Local Plan, which requires new development proposals and extensions to existing buildings to respect residential amenity, and with Policy B2 of the Eastbourne Core Strategy, which seeks to create an attractive, safe and clean environment with a sense of place that is distinctive and reflects local character.
7. The use appears to be that of a hobby rather than a business but local residents have also expressed concern about mice, rats and wild wood pigeons in the area, which they take to have been attracted by the use. I have not identified these as a main issue, as it is difficult to know the precise link between one and the other: however, it seems likely that there is some relationship between them and the existence of these further problems therefore reinforces me in my conclusion on the main issues.
8. In the light of the above I conclude that the use at the level enforced against causes disturbance to nearby residents in terms of noise and excreta.

Accordingly the appeal on ground (a) must be dismissed, and planning permission must be refused, including in relation to the deemed application.

The appeals on ground (f)

9. The appellants' agent argues that the requirement to reduce the number of pigeons to 20 is not valid and is, indeed, unenforceable. That view is misconceived. The number of pigeons kept will inevitably make a difference to the impact of the use on neighbours. The Council could have required the use to cease but have, instead, chosen to "under-enforce", presumably in recognition of the terms of section 55(2)(d) and in an attempt to allow the appellant to continue his hobby at a more reasonable level. The requirement to limit the number of pigeons to 20 is therefore the equivalent of a planning condition, had a formal planning permission been granted, and is perfectly valid. The appeals on ground (f) are accordingly dismissed.

The appeals on ground (g)

10. The stated period for compliance is three months. The appellants requested an extension of the period for compliance to six months, to allow any alterations to be carried out after the end of the 2016 racing season. As it is now November 2016 such an extension is no longer necessary and the appeals on ground (g) are therefore also dismissed.

Other matters

11. The appellants argue that the position of Lofts A and C are incorrectly shown. However, the relevant plan, read in conjunction with the rest of the Notice, is sufficiently clear and no formal correction is therefore required.

Formal decisions

12. The appeal on ground (a) is dismissed and planning permission is refused, including in relation to the application deemed to have been made under section 177(5) of the 1990 Act as amended. The appeals on ground (f) are also dismissed, as are the appeals on ground (g). The enforcement notice is upheld.

Felix Bourne

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INSPECTOR