The Planning Inspectorate

Appeal Decision

Site visit made on 24 March 2017

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 12 April 2017

Appeal Ref : APP/V1505/C/16/3161351
Land at 44 Vange Hill Drive, Basildon, SS16 4DE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Paul Allen against an enforcement notice issued by Basildon Borough Council.
- The notice was issued on 27 September 2016.
- The breach of planning control as alleged in the notice is (i) without planning permission the unauthorised change in the use of a residential property into a mixed use of residential occupation and the keeping of horses and (ii) without planning permission the unauthorised construction of a wooden building designed for the purpose of keeping horses (and hatched in blue on the plan attached to the enforcement notice).
- The requirements of the notice are (i) cease the use of the outbuilding/stables as stables accommodating horses, (ii) demolish the wooden building (as hatched blue on the plan attached to the notice) and (iii) remove all debris and waste from the site resulting from actions undertaken in step (ii) above.
- The period for compliance with the requirements is two, three and three months respectively for each step.
- The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed

Preliminary matter

1. Correspondence during the course of the appeal informed the Appellant that in the absence of receipt of supporting facts the ground (a) appeal lapsed. I have therefore determined this appeal on ground (c) only.

Ground (c) appeal

2. This ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development is set out in section 55(1) of the 1990 Act (as amended) and includes the carrying out of building, engineering, mining or other operations in, on over or under land or the making of any material change in the use of any buildings or other land.

3. The notice attacks two separate alleged breaches of planning control - the material change of use of the land to a mixed use of residential occupation and the keeping of horses and operational development comprising the erection of a wooden building for the keeping of horses.

4. Turning first to the use of the land. Section 55(2) (d) of the 1990 Act provides that the use of any building or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such shall not be taken to involve development.

5. There is no dispute between the parties that the horses are pet animals for the enjoyment of the occupants of the dwellinghouse and I have no reason to conclude otherwise. But it is established law that a purpose incidental to the enjoyment of a dwellinghouse should be interpreted as reasonably incidental and not on the unrestrained whim of the occupier. The nature and scale of activities as well as the relative size of a building can be important considerations in determining whether a use of a building is subordinate to the enjoyment of the dwellinghouse.

6. I consider that the provision of a building within the curtilage of a dwellinghouse for use for the keeping of horses could be for a purpose incidental to the enjoyment of a dwellinghouse but I must consider what is reasonably incidental taking into account the particular facts of this case.

7. The appeal site is an end of terrace dwellinghouse. The surrounding area is residential and generally high density. The rear garden is relatively small. The horses do not graze in the garden and are walked regularly through the garden to nearby land. The wooden building in which two horses are housed does not take up the majority of the garden areas but it is nevertheless a significant building in its residential context and highly prominent from and in close proximity to its residential neighbours. I have no reason to doubt the neighbour who describes the occasional negative impact of the close proximity of the horses on her living conditions by reason of odour. The potential exists for harm by reason of noise and disturbance. The keeping of horses in this location is out of character with the residential nature of the surrounding area and has a material impact on the character of the land.

8. I note the correspondence between the Council and the Appellant in which the planning service at the Council states that horses as pets are not prevented from being kept in a garden. But whilst I sympathise with the Appellant the Council is not bound by this advice and I must determine this appeal based on its particular facts. I also note the views of the RSPCA and have no doubt that the animals are well cared for but this does not alter my conclusion on the main issue. The fact that other pets could create more noise and disturbance does not alter my conclusions as each case must be considered on its own particular facts.

9. As a matter of fact and degree in the circumstances of this case the keeping of horses is not for a purpose incidental to the enjoyment of the dwellinghouse. It goes beyond what can reasonably be considered to be incidental to the enjoyment of the dwellinghouse taking into account the particular facts of this case. It therefore does not fall within section 55(2) (d) and comprises development.

10. Turning to the stable building - permitted development rights exist by virtue of Class E Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO) for buildings 'required for a purpose incidental to the enjoyment of the dwellinghouse as such' subject to certain specified conditions and limitations. For the purposes of Class E an incidental purpose is defined to include the keeping of pet

animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse.

11. The keeping of horses in the particular circumstances of this appeal is not a purpose incidental to the use of the dwellinghouse. Consequently, the stable building does not benefit from permitted development rights and requires planning permission.

12. Consequently, on the evidence before me I conclude as a matter of fact and degree that the keeping of horses in the stables in the rear garden of the appeal site and the erection of a building for the keeping of horses comprises development that requires planning permission.

13. For the reasons given above I conclude that the ground (c) appeal must fail.

Formal Decision

14. The appeal is dismissed.

S.Prail

Inspector