



Appeal Decisions

Site visit made on 30 July 2019

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2019

Appeal A: APP/N4205/C/19/3222009

Land at 5 Hazelwood Road, Smithills, Bolton BL1 6ER

- 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 Ms Rebecca Simms against an enforcement notice issued by Bolton Metropolitan Borough Council.
 - The enforcement notice was issued on 14 January 2019.
 - The breach of planning control as alleged in the notice is: without planning permission, the material change of use of the land and buildings from residential use to a mixed use as residential and use as a commercial dog grooming facility.
 - The requirements of the notice are:
 - Cease the use of the land and buildings for commercial dog grooming; and
 - Remove from the land those items which facilitate the unauthorised commercial dog grooming to include the grooming table, the sink, the blow dryers and the chest with utensils.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/N4205/C/19/3222010

Land at 5 Hazelwood Road, Smithills, Bolton BL1 6ER

- 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 Morgan Dodds against an enforcement notice issued by Bolton Metropolitan Borough Council.
 - The enforcement notice was issued on 14 January 2019.
 - The breach of planning control as alleged in the notice is: without planning permission, the material change of use of the land and buildings from residential use to a mixed use as residential and use as a commercial dog grooming facility.
 - The requirements of the notice are:
 - Cease the use of the land and buildings for commercial dog grooming; and
 - Remove from the land those items which facilitate the unauthorised commercial dog grooming to include the grooming table, the sink, the blow dryers and the chest with utensils.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) and (f)
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Decisions

1. Appeal A is dismissed and the enforcement notice is upheld.
2. Appeal B is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The Dog House was constructed to facilitate a dog grooming business which is being undertaken at this property. Whilst there is some dispute between the main parties about whether or not the building, by reason of its size, would have been permitted development by virtue of Schedule 2, Part 1, Class E of the Town and Country Planning (General Development) (England) Order 2015 (as amended), the enforcement notice does not allege a breach of planning control relating to operational development. The notice relates solely to an alleged material change of use of the land and buildings from a residential use to a mixed residential and use as a commercial dog grooming facility. It is on this basis that I have determined the appeal.
4. I understand that the appellant has concerns over some alterations that have taken place to the boundary fence which is located along the common boundary of the appeal site with the neighbouring property, No 3. I have also noted the allegations made with regard to how the Council has conducted itself whilst investigating complaints in relation to the alleged breach. However, these matters are not for my consideration in this appeal which relates solely to the breach of planning control alleged in the notice.

Reasons

Appeal on ground (c)

5. The ground of appeal is that the matters alleged do not constitute a breach of planning control. The appellant does not dispute that a dog grooming business is operating from a purpose built shed ('The Dog House') in the rear garden of No 5 Hazelwood Road, but contends that this is not a material change of use of this residential property such as would amount to development requiring planning permission.¹
6. It is not uncommon for people to work from home and indeed national planning policy² is supportive of this type of working practice. In this case the appellant's business operates from a shed located in the back garden of a semi-detached residential property. The appellant uses the shed to groom client's dogs. Although on my site visit I was unable to gain access to the building, there is no dispute that it includes a dog grooming table, sink, dryers and other grooming utensils, including clippers, as well as a sofa for waiting clients. The entrance to the building for clients is via a side garden gate and there is space on the front drive of the property for the parking of two cars.
7. There has been no physical change to the exterior of the property, and the dwelling, shed and garden generally maintain a domestic appearance, in keeping with their location in a residential neighbourhood. For a breach of planning control to have occurred, the change from what was previously a solely residential use would need to be material and requires an assessment as to whether there has been a definable change in the character of the use made of the land and buildings.
8. The appellant indicates that she works alone and generally handles three dogs a day, although on some occasions there maybe five if a client has two dogs. The hours of use are indicated as being between 1000hrs and 1700hrs, and

¹ In the terms of ss55(1) of the 1990 Act

² Section 6, National Planning Policy Framework

occasionally this may extend to 1900hours. She does not work on Sundays or Bank Holidays.

9. Hazelwood Drive is a relatively narrow street in a residential neighbourhood. The appeal site is situated in a part of the street where there is unlikely to be much through traffic. I appreciate that some clients may walk to the business, however assuming an average of three dogs attending each week day, from different locations, this could result in up to 60 trips per week if owners leave their dogs for grooming, and at least 30 if they were to remain on site. This would exclude any deliveries that may be made to the business. Whilst not a large number in absolute terms, it would be noticeable in what is a relatively quiet location such as this.
10. In addition, the business is not being carried out within the dwelling itself. People with dogs will park on the drive if there is space available, or the road in front of property and then walk down the side passage to the 'Dog House' which is located at the bottom of the rear garden.
11. In terms of impact on the character of the use made of the property, the additional vehicle movements associated with the business result in increased noise from vehicle engines and car doors opening and closing. There is also, to varying degrees with each visitor, potential for the noise of human voices and dogs barking. I appreciate that noise made by cars, people and dogs is a common characteristic of residential areas. However, even taking into account the appellant's suggested numbers of dogs groomed per day, as set out above, and which are less than those recorded by third parties in a diary of events submitted to the Council³, in my judgement there would be a noticeable increase in the amount of daytime comings and goings, above those generated by a solely residential use of No 5.
12. A further consideration is the noise from the grooming activity within the rear garden and shed. The evidence from the Council's Technical Officer, Pollution Control Unit⁴ suggests that when dog grooming takes place with the doors of The Dog House open, which has been the case during hot weather, the noise from the dryer is clearly audible to neighbouring residents. The nature of residential back gardens is that they are generally quite locations. Whilst I appreciate that the appellant has sought to conduct her business in a responsible manner, it seems to me inevitable that a use such as this, in a shed in a private rear garden whose means of access is so close to the neighbouring property at No 3, gives rise to noise and disturbance.
13. When a change of use by the introduction of a new use occurs, it is helpful, in assessing whether or not that change is material in planning terms, to consider the effect of the use on the people nearby. Whilst I appreciate that it is a matter of fact and degree to be determined in each case, there is enough evidence, even on the basis of the information provided by the appellant, to conclude that, on the balance of probability, the scale and impact of the business has resulted in the material change of use alleged. That material change of use did not benefit from planning permission, and so a breach of planning control has occurred. The appeal on ground (c) must therefore fail.

³ Appendix 1, Statement of Case, Local Planning Authority.

⁴ Letter dated 25 May 2018 Bolton Council, Regulatory Services Department.

Appeal on ground (f)

14. The purpose of an appeal on ground (f) is to maintain that the requirements of the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by any breach.
15. In this case the steps required are to cease the use of the land and buildings for commercial dog grooming and to remove from the land those items which facilitate the unauthorised dog grooming, to include the grooming table, the sink, the blow dryers and the chest with utensils. It seems clear to me that the purpose of the notice is to remedy the breach of planning control.
16. The onus is on the appellant to state the precise details of any lesser steps. The appellant has not identified any lesser steps and from the evidence before me I do not consider that the steps required in the notice are excessive to remedy the breach of planning control. The appeal on ground (f) therefore fails.

Other Matters

17. The appellant has raised concerns regarding the effect on her Human Rights, particularly in view of her personal circumstances, health, wellbeing and livelihood. However, I am satisfied that any interference in this case is justified, proportionate and necessary in the circumstances and does not result in a violation of Human Rights. In addition, the expediency of issuing an enforcement notice is a matter for the Council and is not in my remit.

Conclusion

18. For the reasons given above I conclude that the appeals should not succeed, and the enforcement notice is upheld.

Elizabeth Pleasant

INSPECTOR