



Appeal Decision

Site visit made on 4 February 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 March 2020

Appeal Ref: APP/X1355/C/19/3227317

Land at former Scout Hut, Colliery Road, Willington, Crook DL15 0EX

- 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 Mrs June Archer against an enforcement notice issued by Durham County Council.
- The enforcement notice was issued on 20 February 2019.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land for the kennelling/keeping of dogs with incidental residential supervision.
- The requirements of the notice are:
 - a. Permanently cease the use of the Land as dog kennelling and for the keeping of dogs, removing all animals, enclosures, cages or pens from the building and grounds of the Land.
 - b. Permanently remove from the Land the metal fencing panels and adaptations to the original boundary treatment.
 - c. Permanently remove from the Land the timber framing and side panels erected at the roadside pedestrian gate in the north east corner of the site.
 - d. Clear the Land of all waste, debris, rubbish and accumulations.
- The period for compliance with the requirements is 18 weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees were not paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under s177(5) of the 1990 Act as amended has lapsed.

Summary of decision: The appeal succeeds in part and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matter

1. The appellant made an appeal on ground (a) – that planning permission ought to be granted for the matters alleged in the notice. However, the prescribed fees were not paid within the specified period consequently, ground (a) has lapsed and no application for planning permission is deemed to have been made under s177(5) of the 1990 Act.

The appeal on ground (f)

2. An appeal on ground (f) is a claim 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 resulting from the breach.
3. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first s173(4)(a) is to remedy the breach of planning control which has occurred. The

second s173(4)(b) is to remedy any injury to amenity which has been caused by the breach.

4. In this case the enforcement notice requires the use of the land for the kennelling and keeping of dogs to cease and the removal of all fixtures and fittings, including boundary treatments and waste associated with the use. As such I find its purpose is to remedy the breach of planning control.
5. That purpose can only be achieved by ceasing the use and restoring the land to its condition before the breach took place. No lesser steps, other than those set out in the notice, would achieve that purpose.
6. The appellant has not suggested what lesser steps would remedy the breach of planning control but instead has put forward arguments relating to planning merits. Including, amongst others, that the Council have granted planning permission for other kennels in residential areas, that the dogs barking was a consequence of anti-social behaviour and the noise generated is not classed as a nuisance.
7. However, where there is no appeal under ground (a) there is no deemed application for planning permission and, as such, there can be no arguments about the planning merits of the development under ground (f). The only consideration is whether the requirements exceed what is necessary to achieve the identified purposes.
8. Since the purposes of the notice are to remedy the breach of planning control, no lesser steps other than those set out in the notice would achieve that purpose. Therefore, the appeal on ground (f) fails.

The appeal on ground (g)

9. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant stated that finding a property with kennelling for the number of dogs kept would be extremely difficult and asked for the compliance period to be extended to 12 months.
10. In March 2019 the appellant, in response to a Planning Contravention Notice (PCN) issued by the Council stated that she had 22 dogs and that they all belonged to her. I have some sympathy with the appellant as undoubtedly rehoming 22 dogs would be difficult and would cause some stress. However, in such cases it is necessary to weigh the personal interests and wishes of the appellant against the harm caused by the activities the subject of the notice.
11. The use enforced against is causing harm to the living conditions of nearby residents in respect of noise and disturbance, as evidenced by third party representations and weight must be attached to this harm. Such harm should not be permitted to continue for any longer than absolutely necessary.
12. On the basis of the evidence before me and my own site observations it seems there would not be a significant amount of work involved, nor would it be likely that the services of specialist tradesmen would be required to remove any fixtures and fittings in connection with the use. Although it appears that the appellant occasionally stays overnight in her car on the site, her parents address is given as the postal address in the response to the PCN. Other than this, I have no information or explanation about where the appellant currently lives and whether the dogs could be rehomed with her.

13. The Council's decision to enforce was legitimate and in the public interest, given the harm caused by the development. I conclude, however, that even if account is taken of the pressing need to remedy the harm, the notice does not afford the appellant reasonable time to look for alternative accommodation for the dogs. Looking at the case in the round, the requirements to cease the use, and undertake other works all within 18 weeks would place a disproportionate burden on the appellant.
14. Taking all these matters into account I conclude that the period for compliance should be extended, but to six months rather than the 12 sought. An extension for any longer than six months would blunt the urgency of taking action. A period of six months would be a proportionate response to the breach of planning control and would achieve an appropriate balance between the need to bring this inappropriate and harmful development to an end and the interests of the appellant and her dogs. To this extent, the appeal on ground (g) succeeds.

Other Matters

15. I have considered the appellant's comments regarding the actions of the Council. However, this is a matter that is between the appellant and the Council and it is open to her, should she wish, to make use of the Council's own complaint procedure to resolve the matter. Similarly, I have no power to require the Council to assist the appellant to find alternative accommodation.

Formal Decision

16. It is directed that the enforcement notice is varied by the deletion of 18 weeks and the substitution of six months as the time for compliance. Subject to this variation the enforcement notice is upheld.

Felicity Thompson

INSPECTOR