



Appeal Decision

Site visit made on 28 January 2020

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 March 2020

Appeal Ref: APP/P4225/C/19/3231267

Land adjacent to 195 Wardle Road, Wardle, Rochdale OL12 9JB

- 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 Richard Lear against an enforcement notice issued by Rochdale Metropolitan Borough Council.
 - The enforcement notice was issued on 23 May 2019.
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission the material change of use of the land from agriculture to a mixed use compromising the kennelling of dogs and the parking and storage of vehicles, facilitated by: 1) the construction of kennel buildings; 2) the creation of a hard surface; 3) the erection of 1.8m high fencing around the Land, and 4) the formation of a vehicular access onto Wardle Road.
 - The requirements of the notice are:
 - (a) Demolish all the buildings on the Land;
 - (b) Dig up all of the hard surface on the Land;
 - (c) Remove all vehicles from the Land;
 - (d) Reduce the fencing fronting Wardle Road to 1m in height;
 - (e) Remove the gates fronting Wardle Road and replace with a 1m high fence;
 - (f) Cease the use of the Land for the kennelling of dogs;
 - (g) Cease the use of the Land for the parking and storage of vehicles;
 - (h) Erect a post and rail fence to the Wardle Road frontage in the location where the vehicular access point has been created. The fence shall match the immediately adjacent post and rail fence and form a continuous boundary with that fence and the stone wall;
 - (i) Seed the Land to grass; and;
 - (j) Remove all materials and all other items resulting from compliance with requirement (a) – (g) inclusive from the Land.
 - The period for compliance with the requirements is four months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 5 February 2020.

Decision

1. It is directed that the enforcement notice be varied by the deletion of the wording “and replace with a 1m high fence” in paragraph 5(e). Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

2. The appellant claims that he has owned the Land since 1987 and its use has never altered during this time. The appeal form also states that planning permission is not being sought because the Land is not being used for any purpose that requires consent. However, despite seeking clarification from the appellant on the grounds pleaded, no further information or evidence has been provided to support these claims and the appeal has been submitted only in relation to ground (f). I have therefore determined the appeal on that basis.

The Enforcement Notice

3. The notice includes a requirement at paragraph 5 (e) to remove the gates fronting Wardle Road and replace them with a 1m high fence. I have not been provided with any substantive evidence that would suggest that there was a fence in this location prior to the installation of the gates. Therefore, a requirement for a 1m high fence to be erected to replace the gates would be excessive. The requirements in this respect exceed what is necessary to remedy the breach of planning control and I shall therefore vary the notice to remove the requirement for a replacement fence. I am satisfied that this variation would not result in any injustice to the appellant or the local planning authority. It would not alter the purpose of the notice and is less onerous than the notice's original requirements.

Appeal on ground (f)

4. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
5. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose behind the notice is to remedy the breach of planning control.
6. The appellant has not provided any evidence in support of his appeal nor has he advised why the requirements are excessive to achieve the purpose of the notice. Therefore, there are no lesser steps available to me that would achieve the statutory purpose of the notice. The appeal on ground (f) must fail.

Conclusion

7. For the reasons given above, I conclude that the appeal should not succeed. I shall hold the enforcement notice with a variation.

Elizabeth Pleasant

INSPECTOR