



Appeal Decision

Site visit made on 17 March 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 22 May 2020

Appeal Ref: APP/W1905/C/19/3232398

41 Denny Gate, Cheshunt, Herts EN11 0JB

- 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 Bull against an enforcement notice issued by Broxbourne Borough Council.
 - The enforcement notice was issued on 24 June 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the change of use of the property's garage to a sui generis dog grooming business.
 - The requirements of the notice are to:
 - (i) Cease the use of the property for all dog grooming related business.
 - (ii) Remove all equipment associated with the change of use of the property's garage for dog grooming business.
 - The period for compliance with the requirements is **1** month after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Formal Decision

1. The appeal is allowed and the enforcement notice is quashed.

Matters concerning the Enforcement Notice

2. The enforcement notice, under its paragraph 1, in referring to s171A(1)(a) of the 1990 Act, indicates the carrying out of development without planning permission which, given that the notice is in respect of an alleged unauthorised change of use, is correct. However, paragraph 4.1 states *"It appears to the Council that the above breach of planning control has occurred in the 4 years"*.
3. Presumably this should read *"the past 4 years"* but, even so, as s171B(1), which relates to operational development cannot apply, and as s171B(2), which is in respect of a change of use of any building to use as a dwellinghouse does not apply, the actual time period for immunity is, in accordance with s171B(3), actually 10 years.
4. The enforcement notice is thereby defective and, were I minded to uphold the notice, it would require correction.

Background

5. Following an investigation as to the use of the domestic garage at 41 Denny Gate for the purposes of a dog grooming business the owner submitted a

retrospective planning application in an attempt to regularise the use. However, planning permission was refused on two grounds. First, the Council considered that the use gave rise to increased on-street parking pressures and, second, that it resulted in noise and disturbance which adversely affected the living conditions of neighbouring occupiers.

6. In connection with the first reason it is noted that, when planning permission was granted for the wider housing development of which the appeal property forms part, a condition was imposed requiring that the associated domestic garages shall be retained and made available for the "housing of non-commercial vehicles only."
7. By way of a letter dated 15 May 2019, from the Council to the property's owner, it was indicated, from a site visit carried out on 10 June 2019, that the sink and table, associated with the dog grooming use had been removed. Accordingly, the letter states that "*...the grooming business has currently ceased.*" From the photographs provided by both main parties these items, especially the large specialist sink, are substantial and were clearly essential to the business. Any other fittings would have been relatively incidental. At my site visit I noted that neither the sink nor the table had been re-installed.
8. The letter which, given reference to the site visit, should have instead been dated 15 June 2019, goes on to mention the breach of condition relating to the use of the garage and, saying that the dog grooming use should not recommence, comments that the garage should be reinstated by 8 August 2019.
9. The enforcement notice was subsequently issued on 24 June 2019.

The Appeal on Ground (b)

10. The appeal on ground (b) is whether the matter alleged to be a breach of planning control has occurred as a matter of fact. The appellant must show on the balance of probability that those matters have not occurred. The relevant date is that of the issue of the notice.
11. Crucial to this case is the Council's letter above. Although the site visit on 10 June had found that the use had ceased there has been no further correspondence nor any written indication from the Council provided to suggest that the use had recommenced between this date and 24 June when the enforcement notice was issued.
12. I note also that the second part of the letter is specifically concerned with the breach of condition as, despite the removal of the sink and table, it had been assessed that the garage was still not available for parking purposes. As such, although the letter indicates that a Breach of Condition Notice could be served by the Council, it seems to me from the evidence provided that the enforcement notice issued, whether out of expediency or otherwise, was used as a vehicle to attempt to regularise the planning position in respect of the garage's availability for parking within. However, as I have not been presented with any evidence to suggest that the dog grooming use had recommenced at the date the enforcement notice was issued, this was clearly the wrong approach for the Council to take in this particular instance.
13. In light of the circumstances I have described I can only assume that, at the date the notice was issued, and on the balance of probabilities, the breach of

planning control comprising a dog grooming business was no longer occurring, having previously ceased.

14. The appeal on ground (b) therefore succeeds.

The Appeal on Ground (a) and the deemed planning application (DPA)

15. This ground of appeal effectively seeks planning permission for the alleged breach specified in the notice. However, as I have found that the use was not occurring on the date it was issued, it is not necessary for me to explore this ground of appeal further. The planning merits and impacts of the development are, for the purposes of this appeal, not a relevant consideration.

Overall Conclusion

16. I conclude, for the above reasons, that the appeal should be allowed and the enforcement notice quashed.

Timothy C King

INSPECTOR