



Appeal Decision

Site visit made on 13 October 2020

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 October 2020

Appeal Ref: APP/A2335/C/19/3242434

22 Middleton Road, Middleton, Morecambe, Lancashire LA3 3JS

- 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 Jill Leslie against an enforcement notice issued by Lancaster City Council.
- The enforcement notice was issued on 4 November 2019.
- The breach of planning control as alleged in the notice is the change of use of a residential dwellinghouse (C3) to a mixed use constituting a residential dwellinghouse and the keeping of dogs and bitches, along with commercial uses including the breeding of puppies and the grooming of dogs and bitches (Sui Generis).
- The requirements of the notice are:
 - i. Cease the use of the Land for the operation of dog breeding for commercial purposes.
 - ii. Cease the use of the Land for the keeping of dogs and bitches that are not incidental to the enjoyment of the dwellinghouse by reducing the number of dogs and bitches, to no more than five in total.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The enforcement notice is quashed.

Procedural Matter

1. The enforcement notice alleges the change of use of a residential dwellinghouse to a mixed use constituting a residential dwellinghouse and keeping of dogs and bitches, along with commercial uses including breeding of puppies and grooming dogs and bitches. The requirements specify cessation of the use for commercial breeding and cessation of the use for keeping dogs and bitches that are not incidental to the enjoyment of the dwellinghouse by reducing the number of dogs and bitches. However, it is significant that the requirements do not refer to grooming, even though that is part of the alleged breach of planning control.
2. Although the evidence before me indicates that dog grooming no longer takes place at the appeal site it remains part of the alleged breach. Since ground (a) is that planning permission should be granted for what is alleged in the notice, planning permission is being sought for the grooming of dogs and bitches through this appeal. That is also the Council's understanding.
3. Section 173(11) of the Act provides that where an enforcement notice in respect of any breach of planning control could have required any activity to cease, but has stipulated some lesser requirement, (under enforcement), which has been complied with, then, so far as the notice did not so require, planning

permission shall be deemed to be granted by virtue of s173A in respect of that use. Consequently, since there is no remedy in the enforcement notice for grooming, planning permission shall be deemed to be granted under s73A for that use permission should the requirements of the enforcement notice be complied with. In these specific circumstances I consider that there would be injustice to either the appellant or interested parties if the enforcement notice is upheld, varied or corrected and subsequently complied with.

Conclusion

4. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the steps required to remedy the alleged matters which constitute the mixed use of the land. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeal under grounds (a), (f) and (g) as set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

Formal Decision

5. The enforcement notice is quashed.

A A Phillips

INSPECTOR