



Appeal Decisions

Site visit made on 22 September 2020

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 30 October 2020

Appeal Ref: APP/V2635/C/20/3250794

20, The Avenue, Brookville, Thetford IP26 4RF

- 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 by George Kyriacou against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
 - The enforcement notice, ref. 19/00181/UNAUTU, was issued on 2 March 2020.
 - The breach of planning control alleged in the notice is the material change of use of the Land from a domestic/residential use to a mixed use of domestic/residential the keeping of dogs and the breeding of dogs for a commercial purpose.
 - The requirements of the notice are to:
 1. Reduce the number of dogs kept on the land to a level incidental to the enjoyment of the dwelling house.
 2. Cease the use of the land for the breeding of dogs for commercial purposes.
 - The period for compliance with the requirements is six months
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (f) and (g) 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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Appeal Ref: APP/V2635/C/20/3250420

20, The Avenue, Brookville, Thetford IP26 4RF

- 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 by Cheri Moore against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
 - The enforcement notice, ref. 19/00181/UNAUTU, was issued on 2 March 2020.
 - The breach of planning control alleged in the notice is the material change of use of the Land from a domestic/residential use to a mixed use of domestic/residential the keeping of dogs and the breeding of dogs for a commercial purpose.
 - The requirements of the notice are to:
 1. Reduce the number of dogs kept on the land to a level incidental to the enjoyment of the dwelling house.
 2. Cease the use of the land for the breeding of dogs for commercial purposes.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (d), (f) and (g) 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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Decision

1. I find the notice to be a nullity, and no further action will be taken in connection with this appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the Act.

The enforcement notice

2. When the Council investigated the appeal site in October 2012 they found 14 dogs there. They decided this number could be considered as incidental to enjoyment of the dwelling, and wrote to Ms Moore accordingly warning at the same time that a future reassessment might be made if the number increased.
3. In June 2015 a Council enforcement officer found 17 dogs being kept on the site but decided to take no further action and closed the investigation. In April 2019 the Council sent a letter to Mr Kyriacou inviting him to make a planning application in respect of the material change of use of the land. No application was received, and no agreement was reached on any plan to reduce the number of dogs to a level acceptable to both parties. The enforcement notice was then issued in March 2020. I understand there may have been as many as 28 dogs kept on the site on occasions.
4. S.173 of the Act sets out amongst other things that an enforcement notice shall state the matters which appear to the local planning authority to constitute the breach of planning control; and that a notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease in order to achieve, wholly or partly, the purposes of the notice.
5. It is long-standing law that an enforcement notice should tell the recipient fairly what he has done wrong and what he must do to remedy it. In this case the allegation of a material change of use clearly explains what the Council consider the appellants have done wrong, so the first part of that test is met.
6. However, the first requirement of the notice is to '*reduce the number of dogs kept on the land to a level incidental to the enjoyment of the dwelling house*'. What that level might be is nowhere defined in the notice.
7. The situation at the time of this appeal is that the appellants would like to keep up to 18 dogs, while the Council consider the number should be 14. Given this continuing dispute it is all too clear that the notice does not tell the appellants fairly what they must do to remedy the allegation, in that no specific number is defined. Nor can any specific number be inferred from within the 'four corners' of the notice. The second part of the test therefore fails, and the notice cannot be said to comply with the requirements of s.173.
8. I have wide powers to vary and/or correct enforcement notices. However, if I were to decide that the appropriate number would be 14 dogs, that would cause significant injustice to the appellants. Similarly if I were to decide on 18 dogs, there would be significant injustice to the Council. Given this uncertainty and non-compliance with the requirements of s.173 I have come to the conclusion that this notice is a nullity, and I shall take no further action.

Conclusions

9. I have concluded that the notice is a nullity and in these circumstances the appeals under the various grounds set out in section 174(2) to the 1990 Act as amended do not fall to be considered.

Stephen Brown

INSPECTOR