



Appeal Decision

Site visit made on 29 September 2020

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 November 2020

Appeal Ref: APP/V2635/C/20/3250334

Land at 9 Lime Grove, Gayton, King's Lynn, Norfolk PE32 1QU

- 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 Natasha Price against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
- The enforcement notice was issued on 6 April 2020.
- The breach of planning control as alleged in the notice is without planning permission, 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 boarding of dogs for a commercial purpose.
- The requirements of the notice are:
 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 boarding 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) and (f) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

1. The breach of planning control alleged in the notice describes a mixed use of the land for domestic/residential, the keeping of dogs and the boarding of dogs for a commercial purpose. For the purposes of the appeal, this comprises the use alleged.
2. I note that the appellant states that they also breed one litter of puppies per year and this is not specifically mentioned in the alleged breach. As this is not disputed by the Council, I have taken that into account in coming to my decision.
3. An appeal against the refusal to grant planning permission at the property was dismissed under reference APP/V2365/W/19/3235888 on 9 December 2019. This related to development described as a change of use required following enforcement action, for breeding and boarding of dogs following all licences obtained. Up to 5 dogs boarding and 12 working dogs (out working from September to February). I have taken this into account, insofar as it is relevant, in coming to my decision.

The Appeal on Ground (c)

4. An appeal on this ground is that “those matters” (the matters stated in the alleged breach of planning control) do not constitute a breach of planning control. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability.
5. The main issue in this case is whether the matters stated in the alleged breach of planning control comprise development as defined by Section 55 of the Town and Country Planning Act 1990 as amended (the Act). In particular, whether the mixed use of the land for domestic/residential, the keeping of dogs and the boarding of dogs for a commercial purpose comprises development.
6. The Council accept that the keeping of dogs may be incidental to the enjoyment of the dwellinghouse. The appellant suggests that the commercial boarding business for day boarding of up to six dogs on an average of 180 days per year, although a separate use from the use as a dwellinghouse, does not amount to a material change of use.
7. However, the appellant suggests she and her husband have kept up to approximately 18 dogs at the property in addition to operating the commercial boarding business. My attention has been drawn to the judgement in the case of *Wallington v Secretary of State for Wales et al* [1991] 62 P&CR 150 which concerned the keeping of 44 dogs at a dwellinghouse. In that case, the court held that keeping of dogs in large numbers would not be considered incidental to the enjoyment of a dwellinghouse, such that it would amount to a material change of use. Whilst the number of dogs in this case is significantly below the 44 dogs kept in *Wallington*, it is well above the six that was accepted as incidental to the dwellinghouse use in *Wallington*.
8. I accept that the number of six in *Wallington* should not be taken as defining the level at which a material change of use would take place, but that this limit was not excessive in the circumstances of that particular case. The number of dogs that might lead to a material change of use is a matter of fact and degree to be considered in each individual case.
9. My attention has been drawn to a planning permission recently granted by the Council under reference 19/01795/CU for the change of use of a house for the keeping of up to 12 adult dogs at a property.
10. The number of dogs kept at 9 Lime Grove is substantial. Taking all the above into account, the level of use is above what could be described as incidental. Consequently, the total number of dogs kept at the property means that this resulted in a material change of use. The commercial boarding business results in an additional use, leading to the mixed use described in the notice. That constituted a further material change of use. Given that only one litter of puppies is bred per year, this is incidental to that mixed use so does not affect my conclusion.
11. Taking account of the above factors, and having regard to all other evidence before me, I conclude that, on the balance of probability, the mixed use of the land for domestic/residential, the keeping of dogs and the boarding of dogs for a commercial purpose constitutes development within the meaning of Section 55 of the Act.

12. Since no planning permission has been granted for the development it thereby constitutes a breach of planning control.
13. For these reasons, I conclude that the appeal under ground (c) should fail.

The Appeal on Ground (d)

14. An appeal under this ground is that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control which may be constituted by those matters. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability. Case law indicates that evidence does not need to be corroborated by independent evidence to be accepted, but does need to be precise and unambiguous, even if there is no evidence to contradict it.
15. The date of issue of the notice was 27 February 2020. A breach of planning control consisting of a material change of use would become lawful were it to have continued for 10 years beginning with the date of the breach. It is common ground that the part of the mixed use relating to the boarding of dogs commenced in 2013. Consequently, that part of the mixed use, and hence the use as a whole, did not commence until that date.
16. I note that the keeping of dogs has continued since 2003, albeit there may have been some fluctuations in terms of the number of dogs kept. The kennels were constructed in 2005. In addition, one litter of puppies have been bred per year since 2006. However, none of these factors affect my conclusion that the mixed use has not continued for a period of 10 years since the date on which the material change of use commenced.
17. Taking all the above into account, at the date when the notice was issued, enforcement action could be taken in respect of the breach of planning control constituted by the mixed use of the land for domestic/residential, the keeping of dogs and the boarding of dogs for a commercial purpose.
18. For these reasons, I conclude that the appeal under ground (d) should fail.

The Appeal on Ground (f)

19. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek to remedy the breach of planning control, by discontinuing the use of the land. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.
20. The appellant suggests that the first requirement of the notice relating to the number of dogs kept at the property should be removed or that it should be varied to specify a precise number of dogs that are able to be kept.
21. Since an appeal on ground (a) has not been made there is no deemed application for planning permission before me, and hence I am unable to consider granting planning permission for part of the existing development to remain. Allowing part of the use to remain would not fully remedy the breach

- of planning control. Consequently, the requirement does not exceed what is necessary to remedy the breach.
22. The Council have not specified the number of dogs in order to provide flexibility in defining the requirements. As set out above, the number of dogs that would be incidental to the use of the property as a dwellinghouse is a matter of fact and degree to be considered in each individual case. The Council suggest that relevant considerations include the disposition of the owner of the dogs, which could vary according to the occupier of the dwelling, and the size of the dwelling and its garden. I see no reason to disagree. I note that in the case of *Wallington* referred to above, a figure of six was considered appropriate and that the Council granted planning permission for up to 12 adult dogs under reference 19/01795/CU.
23. Were I to specify a numeric limit in a revised requirement, this would in effect under enforce against an unlawful component of the mixed use. Once complied with, Section 173(11) of the Act would grant an unconditional planning permission for that mixed use. This might mean that the owner would be entitled to that numeric limit as part of the mixed use in addition to whatever their entitlement might be as incidental to the dwellinghouse.
24. My attention has been drawn to Article 1 of the First Protocol of the European Convention on Human Rights that is enacted through the Human Rights Act 1998. This protects a person's rights to peaceful enjoyment of their possessions. I accept the requirement may interfere with the appellant's rights under Article 1, but it does not follow that this would be a violation of their human rights. However, I consider that this requirement is not a disproportionate remedy when balanced against the need to uphold the operation of the planning system, which includes the requirements of development to accord with the planning policies of the Council's statutory Development Plan; that being made and applied in the wider public interest.
25. Taking account of all these factors I consider the requirement is appropriate in this instance.
26. As a result, I conclude that the requirements of the notice do not exceed what is necessary in order to remedy the breach of planning control. As such, the appeal fails on ground (f).

Formal Decision

27. The appeal is dismissed and the enforcement notice is upheld.

AJ Steen

INSPECTOR