
Appeal Decisions

Site visit made on 17 November 2020

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2020

Appeal A Ref: APP/A2525/W/20/3258203

11 Sluice Road, Saracens Head, Holbeach, Spalding PE12 8BH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Paul Bradley against the decision of South Holland District Council.
- The application Ref H09-0369-20, dated 18 April 2020, was refused by a notice dated 17 July 2020.
- The development proposed is use of site for keeping of more than 6 dogs.

Summary of Decision: The appeal is allowed.

Appeal B Ref: APP/A2525/C/20/3258376

Land at 11 Sluice Road, Saracens Head, Holbeach, Spalding PE12 8BH

- 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 Paul Bradley against an enforcement notice issued by South Holland District Council.
- The enforcement notice was issued on 3 August 2020.
- The breach of planning control as alleged in the notice is: Without planning permission, the change of use of the land from residential use to a mixed use of residential and the keeping of in excess of 6 dogs, which are over the age of 1 year old.
- The requirements of the notice are: Reduce the number of dogs, which are over the age of 1 year old, residing on the Land to a maximum of 6 dogs over the age of 1 year old.
- The period for compliance with the requirements is one calendar year.
- The appeal is proceeding on the grounds set out in section 174(2) (a) (c) and (d) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the formal decision.

Procedural Matter

1. After assessing the appellant's evidence, I consider that some of that evidence would reasonably be construed to apply to a ground (c) and a ground (d) appeal. The appellant and the Council have been given the opportunity to make further representations on those grounds, so neither party has been prejudiced. I have dealt with the appeal on that basis.

Appeal B on ground (c)

2. An appeal on ground (c) is that matters alleged do not constitute a breach of planning control. The issue is whether as a matter of fact and degree there was a material change in the use of the Land such as would amount to development requiring planning permission.¹ Whether an activity or business amounts to a material change of use is a matter of fact and degree, amongst the considerations being whether there has been a definable change in the character of the use of the Land, including whether there are any off-site impacts. In addition, ancillary or incidental uses have been held to be held those that are ordinarily associated with the primary use of the property. The onus is on the appellant to prove their case on this legal ground of appeal.
3. It is the Council's view that case law², and subsequent appeals support the view that up to and including 6 adult dogs at a residential property would be regarded as incidental to the residential use. Otherwise, the keeping of in excess of 6 dogs would dominate the residential use and would be no longer incidental to the enjoyment of the dwelling as such. Factors such as the relationship of the site to neighbouring residential properties, the number of dogs and the amount of land where the dogs are kept out of the total area have been taken into account in the Council's assessment. It is their view that the keeping of 13 dogs is not incidental to the residential use of the land and a breach of planning control has taken place.
4. The Land specified in the notice includes the residential dwelling known as 11 Sluice Road and its associated garden area. The property is a two-storey semi-detached dwelling. It has a relatively large area of land associated within it, including a drive/turning area, garden land, outbuildings and kennels/runs.
5. The appellant states that he and his wife have been housing more than 6 dogs since they moved into the property in 2009 and he is not aware of any legislation that says that having 6 dogs as pets is the maximum number of pet dogs you can keep. They do not run a commercial enterprise but have been involved in dog showing as a hobby for over 35 years and have gained awards at Crufts. On occasion, the odd litter has been bred to get the next show puppy. The appellant's wife is also a founding member of the Tibetan Mastiff Club of Great Britain. The rules of this club state that if you have bred a dog then you are responsible for that dog regardless of its age. Consequently, if a dog you have bred can no longer be looked after it comes back to the breeder until a new home can be found. There have been instances when a dog has been returned to the appellant for re-housing. Furthermore, because of the expertise and the care offered by the appellant and his wife, in relation to this breed of dog, they taken in dogs to re-home from Battersea Dogs Home, the RSPCA and the Northants' Police, although they no longer provide this rescue service.
6. I recognise that the appellant does not operate a business from his home. He is not a commercial breeder and the rescue service that he has provided in the past has not been a commercial enterprise. However, a material change of use may occur when, for example, the ancillary use generates additional noise, traffic and visitors and there is a change in the character of the use of the Land. There is no doubt that the appellant has always kept dogs at this

¹ In the terms of s55(1) of the 1990 Act.

² Wallington v SSE [1990] JPL 112 and [1991] JPL 942 (CoA).

property, and it seems that the number of dogs that have been kept at any one time has naturally fluctuated. Factors such as the raising of a new litter, temporarily re-housing previously bred dogs, rescue care and loss through natural causes or euthanasia have all had an influence on those numbers.

7. According to the completed Planning Contravention Notice there were fifteen dogs on the Land in January 2020. However, the appellant advises that they have now scaled down the activities, for example, they no longer intend to produce new litters or provide a rescue service. Furthermore, as part of the appeal documents the appellant advises that they now only have eight dogs on the premises as they have had some success in re-homing in recent months. That said, the keeping of 15 dogs in an area of the garden that has been specifically dedicated for that purpose, together with the breeding and preparing of dogs for showing and providing a rescue service, has to my mind contributed to a change in the character of this residence.
8. The appellant submits that many of the properties on Sluice Road, including their neighbour, also keep dogs, and therefore not all noise generated is by their household. Despite other background noise, there is no doubt that the concentration of dogs at the appeal site makes a noticeable contribution to ambient noise levels in the area. The noise associated with the barking of 15 dogs would not be the level of noise that would normally be emitted from a residential garden. Furthermore, despite the appeal property having a large garden associated with it, it is a semi-detached dwelling. The garden has a common boundary with that of its neighbour, and the dogs are kept within the garden area and not within the home which would more normally be the case with a family pet.
9. Despite the house itself remaining primarily in residential use, the character of the appeal site has changed to a significant degree. The use of the garden by a large number of dogs, the showing and providing of a rescue service has combined to make this change material. I appreciate that the appellant has only ever kept, bred and shown the dogs as a hobby. However, taking into account the large numbers of dogs kept at the premises, combined with the activities associated with the breeding, showing, and rescue service that have been provided, these are not activities which would normally be for any purpose incidental to the enjoyment of the dwellinghouse as such, within the meaning of section 55(2)(d) of the Act.
10. My conclusion is that the change in the character of the use has materially changed it from a use as a residential property to a mixed use of residential and the keeping of in excess of 6 dogs, which are over the age of 1 year old. Development took place for which no planning permission had been granted by the local planning authority. A breach of planning control occurred and the appeal on ground (c) fails.

Appeal B on ground (d)

11. In order for the appeal to succeed on ground (d) it has to be demonstrated that at the time the enforcement notice was issued it was too late to take enforcement action. In relation to a breach of planning control consisting of a material change in the use of the land the relevant time period is ten years (s171B (3)). The appellant must therefore show on the balance of probability that the use of the land changed to a mixed use of residential and the keeping of in excess of 6 dogs, which are over the age of 1 year old on or before the

20 August 2010, and that this use then continued for at least 10 years without significant interruption.

12. I do not doubt that the appellant has kept dogs at his property since he moved in over 10 years ago. However, on his own admission he has difficulty in providing any evidence to show that there have been more than 6 dogs on the Land, without significant interruption, during the required period. I recognise that his wife has gone to some considerable effort to try and recall the names of the dogs which they have housed and cared for since they moved into the premises in 2009. However, I have not been provided with any information which would substantiate the dates and time periods when those dogs were kept. Nor have I been provided with any evidence in the form of a Statutory Declaration, which would show that there have been more than 6 dogs over 1 year old on the Land without significant interruption since 20 August 2010.
13. Consequently, the circumstances of this case are such that I am not satisfied that the appellant's evidence is sufficiently precise to conclude on the balance of probability that the use in question is immune from enforcement action.
14. I conclude that the use of the Land as a mixed use of residential and the keeping of in excess of 6 dogs, which are over the age of 1 year old has not become lawful due to the passage of time. The appeal on ground (d) fails.

Appeal A and Appeal B on ground (a), deemed planning application

Main Issue

15. The deemed planning application (Appeal B) is for the change of use of the land from residential use to a mixed use of residential and the keeping of in excess of 6 dogs, which are over the age of 1 year old. Appeal A relates to the Council's decision to refuse to grant planning permission for the use of site for keeping of more than 6 dogs. The main issue in both of these cases is the effect of the development on the living conditions of neighbouring residents, with particular regard to noise and disturbance.

Reasons

16. The appeal site and Land comprise approximately 0.13 hectares. It is situated in an area of open countryside characterised by a flat agricultural landscape with sporadic clusters of residential ribbon development and isolated farmsteads.
17. No 11 Sluice Road is a semi-detached property which means that it has a close physical relationship with the adjoining property, No 12. Despite the appeal property having a sizeable garden area and buildings associated with it, the keeping of a large numbers of dogs in this location has the potential to cause noise and disturbance to neighbouring residents by reason of a high concentration of dogs barking, and also from the level of activity that could be associated with that use. For example, the keeping of dogs may include commercial breeding, as well as the circumstances in this case, which include dogs being bred for showing and a rescue and re-homing service. Indeed, it is clear from some of the letters of representation received from neighbouring residents in response to the original planning application, that there are concerns relating to noise generated from large numbers of dogs being kept in a location where there are residential properties close by.

18. However, the circumstances of this case are that the appellant and his wife have been keeping a significant number of dogs at 11 Sluice Road for a substantial number of years without complaints. From the evidence before me, it seems that there has only been one complaint which came about in 2018. According to the appellant, this complaint was resolved by putting a dog to sleep and relocating the kennel away from the neighbour's common boundary. The Council has not provided any evidence of other complaints and they have not disputed the ascertain made by the appellant that, prior to the complaint in 2018, there had been no other complaints relating to noise or waste management at this property. I also understand that the RSPCA have no concerns regarding dog welfare. Furthermore, I note that in a response to the retrospective planning application the subject of this appeal, the Council's Environmental Protection Officer expresses concerns about the potential impact of noise from dogs barking. There is no indication in this response that the existing use, which has been ongoing on the Land for many years, has historically caused the Council concerns.
19. The appellant's wife is a founding member of the Tibetan Mastiff Club of Great Britain. From the evidence before me, she is a lady who clearly has an affinity with this breed which has been recognised by Battersea Dogs Home, the RSPCA and the local constabulary who have sought and utilised her expertise to care for dogs which require re-housing. She has also earned awards for Best of Breed with her dogs at Crufts as well as shows in Europe. It is highly probable that the understanding and care she offers her dogs has contributed to the absence of complaints relating to noise or nuisance at this property in the past. In addition, this breed of dog only comes into season once a year and so it is not well suited to commercial breeding. Moreover, the appellants have been scaling back their hobby in recent months and they no longer offer a rescue service. However, the dogs which the appellant's wife has shown over the years continue to live with them as part of the family, and it is these dogs that the appellant wishes to keep until either they die of natural causes, or the appellant is no longer in a position to look after them and they are re-housed or put to sleep.
20. Planning Policy Guidance (PPG) advises that when used properly, planning conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects. The PPG further advises that the objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practical. It is important to ensure that conditions are tailored to tackle specific problems, rather than standardise or used to impose broad unnecessary controls.³
21. Planning permission usually runs with the land and it is rarely appropriate to provide otherwise. However, the circumstances of this case are such that the affinity the appellant and his wife have with this breed of dog, which they have kept, cared for, bred and showed for over 35 years, at least 10 of which have been at this property, has demonstrated that they are able to keep large numbers of dogs without resulting in significant harm to the living conditions of neighbouring residents. Furthermore, as set out above, the number of dogs on

³ PPG Reference ID: 21a-001-20140306

the site is reducing as the appellant and his wife are now scaling their hobby down due to their personal circumstances.

22. Taking into account all of the above, and in the circumstances of this case, I am satisfied that it is appropriate to limit the benefits of the planning permission to the appellant and his wife. The use of a planning condition to this effect would make the development acceptable, when for the reasons set out above, the keeping of large numbers of dogs in any other circumstances on the Land may not be appropriate. The condition would enable the appellant and his wife to continue their hobby and keep their dogs.
23. The Council has also suggested that the number of dogs on the site should be restricted to thirteen. This would prevent any intensification of use which may lead to noise nuisance in the future. During the appeal the appellant has advised that they have been able to reduce the number of dogs on the Land to eight, as they have had some success in re-housing in recent months. That said, I am mindful that there are instances when one of the dogs which they have bred are also returned to them for re-housing. I therefore consider restricting the number of dogs kept to 10 would strike the right balance and would be reasonable and necessary to protect the living conditions of neighbouring residents.
24. I conclude that, with the imposition of a planning condition that restricts the benefit of the planning permission to the appellant and his wife, the development would not have a harmful effect on the living conditions of neighbouring residents. There would be no conflict with Policies 2, 3 or 30 of the South East Lincolnshire Local Plan, 2019 which seek to ensure, amongst other matters, that new development would not lead to unacceptable adverse effects on the amenities of the area, taking into account impact on residential amenity and impacts of noise, odour and securing suitable mitigation measures if required. I also find no conflict with paragraph 127 of the National Planning Policy Framework which requires a high standard of amenity for existing and future users.

Conditions

25. The Council has suggested a condition relating to dog waste management. This is necessary to ensure that dog waste is removed from the site frequently to protect the living conditions of neighbouring residents. However, the Council's suggested requirement for further fencing and gates to be erected is not necessary as I have found that the existing site conditions to be acceptable.
26. The purpose of Condition 4 in the Schedule below is to require the appellant to comply with a strict timetable for dealing with the disposal of dog waste which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority ("LPA") or by the Secretary of State on appeal), and then implemented in accordance with an

approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the use would have to cease.

Overall Conclusions

27. For the reasons give above, and taking into account all other matters raised, I conclude that Appeal A should be allowed, and that Appeal B should succeed on ground (a). Planning permission is granted in the terms set out in the Formal Decisions below. The enforcement notice will be quashed.

Decisions

Appeal A Ref: APP/A2525/W/20/3258203

28. The appeal is allowed and planning permission is granted for use of site for keeping of more than 6 dogs at 11 Sluice Road, Saracens Head, Holbeach, Spalding PE12 8BH in accordance with application Ref: H09-0369-20, dated 18 April 2020, subject to the conditions set out in the Schedule below.

Appeal B Ref: APP/A2525/C/20/3258376

29. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under Section 177 (5) of the Act as amended for the development already carried out, namely the use of the Land as a mixed use of residential and the keeping of in excess of 6 dogs, which are over the age of 1 year old at 11 Sluice Road, Saracens Head, Holbeach, Spalding PE12 8BH as shown on the plan attached to the notice and subject to the conditions set out in the Schedule below.

Elizabeth Pleasant

INSPECTOR

Schedule of Conditions (Appeal A and Appeal B)

1. The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; Block Plan (with measurements).
2. The permission shall operate for the benefit of Mr P.M & Mrs A.J Bradley and the use hereby approved shall be terminated as such time as Mr P.M & Mrs A.J Bradley cease to occupy 11 Sluice Road.
3. The number of dogs on the site shall not exceed TEN at any one time.
4. The use hereby permitted shall cease within six months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i. Within two months of the date of this decision a scheme for the removal of dog waste shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii. If within six months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have

been made to, and accepted as validly made by, the Secretary of State.

- iii. If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, the scheme shall thereafter be maintained and remain in use.

In the event of a legal challenge to this decision, or to a decision made Pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

End of Schedule