



Appeal Decisions

Site visit made on 26 January 2021

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2021

Appeal Ref: APP/Z4718/C/20/3262494

The Sun, 137 Highgate Road, Lepton, Huddersfield HD8 0HJ

- 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 Donna Brayshaw against an enforcement notice issued by Kirklees Council.
 - The enforcement notice was issued on 23 September 2020.
 - The breach of planning control as alleged in the notice is without planning permission, The continued use of land as a pub garden and play area in breach of condition 1 of the planning permission carrying reference number 2018/92785, for the "change of use of land to pub garden a play area" which was granted on the 18th December 2018. Condition 1 states:
"The development hereby permitted shall be discontinued 6 months after the date of this decision."
 - The requirements of the notice are:
 - a. Cease the use of the land as a drinking establishment, pub garden and play area use.
 - b. Remove from the land all associated paraphernalia which facilitates the use including all garden furniture, tables, chairs, benches, climbing frame, swings, mini-golf course and play area soft surfacing.
 - The period for compliance with the requirements is 30 days in respect of both requirement (a) and (b).
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of 30 days and the substitution of two months as the period for compliance in respect of requirement b. Subject to this variation the enforcement notice is upheld.

The appeal on ground (f)

2. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity resulting from the breach.
3. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first s173(4)(a) is to remedy the breach of planning control which has occurred. The second s173(4)(b) is to remedy any injury to amenity which has been caused by the breach.
4. In this case the enforcement notice requires the use of the land as a drinking establishment, pub garden and play area to cease, and the associated

paraphernalia which facilitates the use to be removed. As such I find its purpose is to remedy the breach of planning control.

5. That purpose can only be achieved by ceasing the use and restoring the land to its condition before the breach took place. No lesser steps, other than those set out in the notice, would achieve that purpose.
6. The appellant suggested a lesser step, requiring only the childrens play equipment to be removed, on the basis that families would then be less likely to visit and use the facility and therefore result in a significant reduction in any perceived noise and disturbance. This is an argument which relates to planning merits.
7. However, where there is no appeal under ground (a) consequently there is no deemed application for planning permission, as such there can be no arguments about the planning merits of the development under ground (f). The only consideration is whether the requirements exceed what is necessary to achieve the identified purposes.
8. Since the purpose of the notice is to remedy the breach of planning control, no lesser steps other than those set out in the notice would achieve that purpose. Therefore, the appeal on ground (f) fails.

The appeal on ground (g)

9. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant's case on this ground is in respect of requirement b. only.
10. The purpose of the time period within an enforcement notice is to allow for the use to cease and the physical works associated with the notice to be removed. The appellant's submission largely relates to the value of the equipment and the cost of storage.
11. Where an appeal is made against an enforcement notice, regardless of the grounds, the appeal 'stops the clock' and the period for compliance does not start until the date of the appeal decision. If the appeal proceeds on ground (g) and other grounds, the appellant is entitled to assume success in the other grounds, and so it is necessary to start from the date of the appeal decision when considering what the 'reasonable' period for compliance would be. Consequently, it is not relevant that the appellant could have utilised the period between the appeal being made and the decision issued, to arrange the sale of or the removal and storage of the equipment.
12. The 'paraphernalia' are straightforward in terms of the nature of their construction and it seems unlikely that the skills of any specialist tradesperson would be required to dismantle or remove them. Nevertheless, there are a reasonable number of items and it seems likely, that they may have some resale value.
13. The appellant provided no evidence or explanation about the availability of storage space, the costs of such storage or, the likely time required to sell the items. Nonetheless, given the current exceptional circumstances associated with the COVID-19 pandemic, I consider that the requirement to undertake the works within 30 days would place a disproportionate burden on the appellant and that the period for compliance, in respect of requirement b., should be

extended to two months. However, there is no substantive evidence to support the appellant's request that the period for complying with the notice is extended to nine months.

14. A period of two months would be a proportionate response to the breach of planning control and would achieve an appropriate balance between the need to resolve the breach of planning control and the interests of the appellant and their business. To this extent, the appeal on ground (g) succeeds.

Other Matters

15. Whilst I acknowledge a third-party representation in support of the appeal, the matters raised relate to planning merits which are not relevant to the grounds of appeal in this case.

Conclusion

16. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Felicity Thompson

INSPECTOR