



Appeal Decisions

Site visit made on 11 February 2021

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

Decision date: 19 February 2021

Appeal Ref: APP/M1005/C/19/3234190 and 3234191

5 Brickyard Lane, Kilburn, Belper DE56 0LL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
 - The appeals are made by Mrs Julie Elliott (3234190) and Mr Wayne Elliott (3234191) against an enforcement notice issued by Amber Valley Borough Council.
 - The enforcement notice was issued on 27 June 2019.
 - The breach of planning control as alleged in the notice is without planning permission (i) The material change of use of the land from a residential use to a mixed use including residential use and a commercial dog breeding and animal sales operation; (ii) The construction of a single storey side and rear projecting extension to the property; and (iii) The construction of an outbuilding to the front of the property.
 - The requirements of the notice are (i) Cease the use of the land as a commercial dog breeding and animal sales business; (ii) Do not breed on the land more than 3 litters of dogs in any calendar year or part of thereof for the first calendar year; (iii) Remove the rear canopy extension (identified edged blue on the attached plan) including the Perspex roof, associated wooden roofing structure, support posts and metal cladding sheets from the land; and (iv) Remove the outbuilding (identified edged green on the attached plan) located to the front of the property from the land.
 - The period for compliance with the requirements is 6 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(b), (d) and (f) of the Act and the appeal by Mrs Elliott is also proceeding on the grounds set out in section 174(2)(a) of the Act.
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Decision

1. The ground (b) appeal partially succeeds, the ground (d) appeal succeeds, and the enforcement notice is varied by the deletion of:

1. '(i) The material change of use of the land from a residential use to a mixed use including residential use and a commercial dog breeding and animal sales operation' in section 3 of the notice; and,
2. Requirements (i) and (ii) in section 5 of the notice.

2. The ground (a) appeal succeeds in relation to the second breach of planning control and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for 'the construction of a single storey side and rear projecting extension to the property' at 5 Brickyard Lane, Kilburn, Belper subject to the following condition:

1. The metal cladding along the north boundary to Station Close shall be painted dark brown within two months of the date of this decision.

3. The ground (a) appeal is dismissed in relation to the third breach of planning control, planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended for 'the construction of an outbuilding to the front of the property', and the enforcement notice is upheld.

Reasons

Background information

4. 5 Brickyard Lane is a detached dormer bungalow with a front garden and driveway, and a rear amenity area. Within this area are dog kennels, with a canopy over, and other structures such as a container and open stores.

5. The appeals, dated 30 July 2019, were set up to be considered by the written representations procedure. Following a visit to the property by an Inspector on 10 February 2020 it was decided that the appeals would, instead, be heard at a Public Inquiry. Arrangements for the event were made but were cancelled due to the COVID-19 pandemic. Neither main party agreed to the Inquiry being carried out on a virtual basis, rather than face-to-face, so the appeals are being considered by the written representations procedure.

The ground (b) appeals

6. The ground (b) appeals relate to the first alleged breach of planning control; the material change of use of the land from a residential use to a mixed use including residential use and a commercial dog breeding and animal sales operation. The Appellants maintain that they have been breeding dogs at the property for in excess of ten years on a hobby basis. But the resulting puppies have been sold so there is, even if sales are not made to generate an income for either or both Appellants, a commercial element of this use of the land. A commercial dog breeding operation was, as a matter of fact, a use of the land on the date of issue of the enforcement notice.

7. The Council, with regard to animal sales, has claimed that "On the date the enforcement notice was served the outbuilding...to the front of the site contained birds". The Council has submitted a photograph of the outbuilding but there are no photographs of birds in it or any other evidence to corroborate their claim. They have claimed that "There were also ducklings present in hutches on the front garden", but there is no evidence to corroborate this claim, and that they "...still continued to receive complaints from local residents in 2019 that members of the public were continuing to visit the site to purchase animals", but there is no evidence, in the form of written notes or records of calls, to corroborate this claim.

8. The Appellants accept that small animals, such as guinea pigs, have been sold from the property. They claim, however, that the sale of small animals ceased in 2018. There are no photographs or records of any animals, other than dogs, being kept on, or sold from, the land, and there is therefore no reason not to accept this claim. On the date of issue of the enforcement notice animal sales was not, as a matter of planning judgement, a use of the land and, to this degree, the ground (b) appeal succeeds. The enforcement notice has thus been varied by the deletion of 'and animal sales' in sections 3(i) and 5(i) of the notice.

The ground (d) appeals

9. The ground (d) appeals relate to the varied first alleged breach of planning control; the material change of use of the land from a residential use to a mixed

use including residential use and a commercial dog breeding operation. For the ground (d) appeal to succeed the Appellants must demonstrate, on the balance of probability, that the change of use began more than ten years before the date of issue of the enforcement notice and continued, uninterrupted and without intensification, for the ten year period which started on 27 June 2009.

10. The Council does not dispute that the Appellants have been breeding dogs at the property for the ten year period prior to the date of issue of the enforcement notice. They maintain, however, that the use of the land intensified during the ten year period resulting in a material change in the use of the land. They have stated that "...the Council's Regulation Unit has records that in May 2015 the occupants had three dogs on site, including 2 breeding females. During a licensing visit on the site on 14th May 2019, fifteen adult dogs were present at the property". The records referred to have not been provided and there is no evidence of the visits, such as Officer notes or photographs.

11. The Appellants have explained that the three dogs recorded in May 2015 were in the dwelling and that this "...does not reflect the total number of dogs..." at the property at that time, and that the fifteen dogs recorded on 14 May 2019 were eight dogs and seven puppies. In the absence of any evidence to prove otherwise, there is no reason not to accept the Appellants' explanation. A perspex canopy was erected over kennels in the rear amenity area in 2017 and the Council claims that this coincided with an intensification of the use of the land. The canopy was erected to satisfy legislation relating to the breeding of dogs and, in particular, the requirement to maintain draft free kennelling and temperature within a specified range. The erection of the canopy was not, on the balance of probability, associated with any intensification in dog breeding.

12. The Council has queried why the Appellants did not apply for a license to breed dogs earlier than May 2018, if they were breeding at the level claimed throughout the ten year period. The Appellants have not addressed this matter and no licenses have been submitted in evidence. They have, however, provided evidence of insurance of puppies for the period 2011 onwards, provided by their insurers Pet Plan Limited, which corroborates their record of the numbers of puppies born during that period. The number of puppies born each year varies but has never been less than 21 and has been 30 on average. There is no evidence of the number of puppies born in 2009 and 2010 but the Council has not questioned this and there is no reason to suppose, given all other evidence, that puppies were not bred at the same level during those years. There is evidence, in fact, to indicate that Mrs Elliott began breeding puppies in 1979.

13. There is nothing in evidence to indicate that the use of the land for the breeding of dogs intensified in 2017 or at any other time during the ten year period. The breeding of dogs was a use of the land before 27 June 2009 and continued uninterrupted and at materially the same level up until the date of issue of the enforcement notice. The mixed use of the land, as alleged in the varied notice, including residential use and a commercial dog breeding operation, on the date of issue of the notice and on the balance of probability, had subsisted uninterrupted for ten years and was therefore immune from enforcement control. The ground (d) appeals thus succeed.

The ground (a) appeal

14. The deemed planning application which arises in this case applies to the breach of planning control set out in the varied enforcement notice. However, no

case is made by the Appellants with regard to the third breach of planning control. The outbuilding has, in fact, been removed from the land and no assessment of its merits can therefore be made. The deemed planning application with regard to the outbuilding must therefore fail.

15. The 'single storey side and rear projecting extension' that is the subject of the second breach of planning control has various elements; a single storey wooden extension is attached to the side of the house and attached to this is a rear canopy structure that has been created by the construction of a wooden frame connected to a portacabin which has been clad with metal sheeting. The canopy over the wooden structure is translucent perspex. The Council is underenforcing by only requiring the removal of the rear canopy structure. They are not seeking the removal of the portacabin and the single storey wooden extension.

16. The main issue is, with regard to the rear canopy structure, the effect of the development on the character and appearance of the area.

17. The triangular canopy structure occupies the rear part of the rear amenity area. Its south-west curved boundary is to a turning head at the end of a short residential cul-de-sac, Station Close. Its north boundary is mainly to a neighbouring property but is also to a parking area off the turning head. It is along this short section of the north boundary that metal cladding has been erected to obscure the rather scruffy portacabin in public views. Along the curved boundary is a dark brown stained close boarded fence about 2 metres high. The canopy rises above the fence by about 500mm and the gap above the fence has been infilled with timber boarding that has been stained to match the fence.

18. Approaching the property along Station Close the canopy structure is 'highly visible' as alleged in the reasons for issue of the enforcement notice because it adjoins the turning head. But, given its material and treatment, it appears to be no more than a fence that is slightly higher than that which would be associated with a residential property. It is not intrusive or prominent and is not inappropriate in size, design, or appearance. The metal cladding that hides the portacabin is shiny and somewhat intrusive but this could be overcome by imposition of a condition to require that it is painted dark brown. The perspex cladding will be visible from upper storey windows of dwellings but is flat and is unlikely to be visually harmful or prominent in the outlook from those windows.

19. The rear canopy structure does not, for the reasons given above and subject to the imposition of a condition, adversely affect the character and appearance of the area and does not therefore conflict with saved policies H12 and LS3 of the Amber Valley Local Plan 2006, or with design principles set out in the National Planning Policy Framework. The ground (a) appeal therefore succeeds in relation to the second breach of planning control and planning permission has been granted for 'single storey side and rear projecting extension' at 5 Brickyard Lane, Kilburn, Belper. The ground (a) appeal fails in relation to the third breach of planning control, for the reasons given above, and the enforcement notice will be upheld. The requirements of the notice will cease to have effect so far as they are inconsistent with the planning permission. The ground (f) appeals do not, given the aforementioned reasons and the overall conclusions, need to be addressed.

John Braithwaite

Inspector