



Appeal Decision

Site visit made on 1 February 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 March 2021

Appeal Ref: APP/R4408/C/20/3262593

Land on the South Side of Intake Lane, Cudworth, Barnsley S72 8ND

- 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 Crawford Dog Walking Services against an enforcement notice issued by Barnsley Metropolitan Borough Council.
 - The enforcement notice was issued on 23 October 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land to a base for an enclosed pet exercise and play area.
 - The requirements of the notice are:
 - (i) Cease the unauthorised change of use relating to the enclosed Paw Park at the Land and ensure that the only dogs present at the site are those registered to the landowners and their respective tenants. No further dogs should attend the site for any other purpose.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected in paragraph 5 (i) by deleting the wording "and ensure that the only dogs present at the site are those registered to the landowners and their respective tenants. No further dogs should attend o the site for any other purpose".
2. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Enforcement Notice

3. S173(3) of the 1990 Act requires an enforcement notice to specify the steps required to be taken or activities required to cease in order to achieve, wholly or partly, any purpose set out in s173(4) of the Act, to remedy the breach of planning control or remedy any injury to amenity. The requirements must be precise so that the recipient knows exactly what he is required to do or abstain from doing and relate solely to the alleged breach of planning control.
4. In this case the purpose of the notice is to remedy the breach of planning control and the breach is a material change in the use of the Land to a base for an enclosed pet exercise and play area. The minimum necessary to remedy the breach of control in this case is to require its use to cease as a base for an enclosed pet exercise and play area (the Paw Park). It is however excessive to

prevent the use of the land for any lawful purpose and to prohibit dogs not registered to the landowners and their respective tenants from utilising the Land. In the interests of precision and accuracy I shall therefore correct the notice. I am satisfied that this correction would not result in any injustice to the Council or the appellant as it does not alter the purpose of the notice.

Appeal on ground (c)

3. An appeal on ground (c) is that the matters alleged do not constitute a breach of planning control. The issue is whether 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. The onus is on the appellant to prove their case on this legal ground of appeal.
4. The appellant states that he has not erected any buildings and that there has not been a material change in the use of the land. From the evidence I have before me, there does not appear to be any dispute that the land, which was formerly open grassland, has been enclosed and is being utilised on a commercial basis as a pet exercise and play area known as Paw Park. The Paw Park can be booked by customers who are then able to utilise the land to exercise/train their dogs in an enclosed and safe environment. It is clear from the appellant's own evidence that the Paw Park is a popular attraction which since opening, has been well utilised by his customers.
5. From my own observations on my site visit I was able to see that fencing has been erected on the land to create a secure space for dog exercise. In addition, a number of play/exercise obstacles have also been provided on the land as well as receptacles for dog waste. The land is utilised for organised recreational activity. The park is booked for exclusive use during set hours within the day and consequently attracts customers and dogs to it on a regular basis. The utilisation of the land for recreation and dog training/play has significantly increased the level and concentration of activity on the land from its previous use. The Paw Park generates additional noise, traffic and visitors and there is a change in the character of the use of the Land
6. The evidence of the activities associated with the new use leads me to conclude that there is a significant difference in the character of the use of the Land from its previous use. A material change of use occurred and there is no record of a specific permission being granted for that change of use on this Land.
7. My conclusion is that the change in the character of the use is development for which no planning permission was granted by the local planning authority. This material change of use is not permitted development under any provision of the Town and Country Planning (General Permitted Development) (England) Order 2015. A breach of planning control occurred and the appeal on ground (c) fails.

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

Appeal on ground (f)

8. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
9. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose behind the notice is to remedy the breach of planning control.
10. The appellant considers that it is excessive to require trading at the appeal site to cease when they are providing a service to the community. They believe they could be asked to run the Paw Park without causing harm to residents and to improve communication and relationships with neighbouring residents. I have also noted the letters of support for the proposal from existing customers. However, in the absence of an appeal on ground (a), general planning considerations cannot be considered when determining an appeal on ground (f), and the notice cannot be varied to attack its substance. It is not therefore open to me to substitute lesser steps that would allow any element of the unauthorised use to continue. Those lesser steps put forward by the appellant would not remedy the breach of planning control and would not achieve the statutory purpose behind the notice.
11. The appeal on ground (f) therefore fails.

Conclusion

12. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Elizabeth Pleasant

INSPECTOR