
Appeal Decision

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9TH July 2021

Appeal Ref: APP/Z2505/C/20/3260998

Land at Red House Farm, 58 Marsh Road, Sutterton, Boston PE20 2LR

- 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 Rosaline Reynolds against an enforcement notice issued by Boston Borough Council.
- The enforcement notice, numbered PENF0107/18 (Number 3), was issued on 15 September 2020.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of land to a dog park available for public use and the holding of events and dog shows and the use of buildings for providing dog training classes, dog grooming services and dog wash facilities and other uses associated with the use of the land as a dog park and the stationing of a static caravan for use as an office in connection with the use of the land as a dog park.
- The requirements of the notice are (1) Cease the use of the land as a dog park for public use and the holding of events and shows; (2) Cease the use of buildings to provide dog training classes, dog grooming services and dog wash facilities and other ancillary uses associated with the use of the land as a dog park; and (3) Remove the static caravan.
- The period for compliance with the requirements is 28 days from the date the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Summary decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. A site visit was not held in view of Government advice to avoid non-essential travel to reduce the spread of Covid-19.
2. There are 2 static caravans at Red House Farm. It was clarified that the notice only affects the one furthest from Marsh Road, numbered 6 on the plan forming appendix 1 to the Council's statement of case.

The Notice

3. The first requirement of the notice is to cease the use of the land as a dog park and to cease holding events and shows on the land. While the dog park is understood to operate throughout the year, the appellant states that events have been held on 1 to 2 days in a calendar year. No other evidence suggests that events such as dog shows have been held other than temporarily.
4. Within Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order), Class B of Part

- 4 (Class B) permits temporary uses of land for not more than 28 days in total in any calendar year and there is no evidence that this right has been removed.
5. The Council suggests that events including dog shows are ancillary to the use of the land as a dog park. However, and regardless of whether the dog park is in operation, the right to use the land temporarily for events and shows remains, as conferred by Class B.
6. The first requirement of the notice should therefore be varied to avoid conflict with the Order. However, as Class B does not permit temporary uses of buildings, the second requirement of the notice does not conflict with it.

Reasons

7. The question to be determined in the appeal on ground (d) is whether the use of the land as a dog park, the use of buildings for ancillary uses associated with the dog park, and the stationing of a static caravan for use as an office in connection with the dog park are lawful by reason of the passage of time.
8. It is therefore necessary for the appellant to demonstrate, on the balance of probability, that the uses described in the notice began on or before 15 September 2010 (the relevant date), 10 years before the notice was issued, and continued thereafter without significant interruption. If this can be demonstrated, those uses would be immune from enforcement action.

The use of land as a dog park

9. Although a precise date when the use was instituted is not given, an aerial image provided by the appellant indicates that objects that appear to be dog training equipment were on the land prior to the relevant date. However, there is some ambiguity in this evidence because, while the image is dated 1 January 2009, it shows trees in full leaf and must therefore have been taken at another time. Furthermore, the aerial image cannot demonstrate whether the equipment was being used in connection with a dog park or was incidental to the appellant's occupation of Red House Farm.
10. The appellant indicates that she discussed her intentions with the Council in 2004, shortly after the site was bought. Her description of that discussion indicates it was limited to holding an annual show and converting outbuildings for kennels for her own dogs. Contemporary records have not been provided; however, an annual show may have been considered permitted development¹ and kennelling for the appellant's dogs may have been considered incidental to her occupation of Red House Farm.
11. The appellant indicates that Council officers visited the site in the following years, approximately 2007-2009, and met other dog owners there. However, this statement does not, of itself, demonstrate that other people were using the site as a dog park at that time. The use of the site was known and photographed by other organisations in 2009 or 2010, presented to the Spalding version of Dragons Den, and discussed with the Council at around the same time. However, no photographs or other corresponding documentary evidence has been provided. While discussions with the Council and the Department for Work and Pensions in 2011 are referred to, that was after the

¹ Permitted at that time by Article 3 and Class B of Part 4 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995

- relevant date. Furthermore, those discussions do not appear to have been about the operation of the dog park, so this evidence is of limited assistance.
12. Of 39 letters or statements from members of the public, only 10 describe activity on or before the relevant date. Of these, only 3 specifically mention the appeal site. 2 others indicate that a dog park had been in existence for periods exceeding 10 years, one referring to an undefined 12-year period and another comprising comments from 2009 with a 2017 update, although the appeal site is not named.
 13. A neighbour states that she has lived next to the site for over 10 years and that the dog park opened in 2017. An October 2017 article on the Lincolnshire Live web site quotes the appellant and gives a clear indication that the park had recently opened, not least in the headline "New park for 'scaredy dogs' opens in Lincolnshire". An article in the Boston Standard from November 2017, also quoting the appellant, states that the park officially opened earlier that year. Complaints to the Council's environmental health team about noise from dogs on the site are recorded from January 2017 onward and the site was registered for business rates in December 2018.
 14. The absence of supporting documentary evidence and the lack of detail in the site user's comments detract from the appellant's claim to have initiated the use on or before the relevant date. While there is no reason not to believe the evidence of dog owners from before the relevant date, they are few and their evidence lacks detail and context, particularly as most do not identify the site.
 15. The overall impression given by the appellant's evidence is that, prior to 2017, any dog-related activity on the site, over and above her own, was informal, by invitation, and limited. It has not been demonstrated that this was different in character from the appellant's own use, incidental to the occupation of Red House Farm.
 16. In contrast, there is substantial evidence of a significant change in the character of the use from 2017 onward. This is evident in terms of the promotion of the dog park in the press and on Facebook, the provision of facilities and services, more users, and noise complaints. As a matter of fact and degree, this was a material change of use and it was not instituted on or before the relevant date. Consequently, and on the balance of probability, the use as a dog park has not been demonstrated to be immune from enforcement action.

The use of buildings

17. As described in the notice, this comprises use for dog training classes, dog grooming services and dog wash facilities and other uses associated with the use of the land as a dog park. None of the submissions from members of the public providing evidence from on or before the relevant date refer to buildings, although one mentions a walk-in dog wash that may have been inside a building. Neither party has suggested that the activities described in the notice commenced before the dog park or are independent of it. Thus, as it has not been demonstrated that the dog park is immune from enforcement action, the same must equally apply to any associated use of buildings.
18. Furthermore, aerial images indicate that the timber building numbered 7 on the plan forming appendix 1 to the Council's statement of case was erected

between 12 August 2015 and 30 August 2016. Any unauthorised use of this building would need to occur over a 10-year period to acquire immunity, which cannot be shown.

19. The use of the buildings has therefore not been demonstrated to be immune from enforcement action.

The stationing of a static caravan used in connection with the dog park

20. The appellant has not indicated when this caravan was brought onto the site, although 2 members of the public providing evidence of activity prior to the relevant date mention a caravan. One of them is the occupier of the caravan outside the red line on the plan accompanying the notice and is clearly referring to that caravan. The other only refers to "the caravan" and it is unclear which one they mean.
21. The earliest firm evidence of the static caravan within the red line is in an aerial image of 24 September 2018 provided by the Council. As noted, the use of the land as a dog park has not been demonstrated to be immune from enforcement action and, as with the use of buildings, this must equally apply to the stationing of the caravan in association with that use. It has therefore not been demonstrated to be immune from enforcement action.

Conclusion

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

Decision

23. It is directed that the enforcement notice is varied in section 5 I. by the deletion of the words "and the holding of events and shows".
24. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

Mark Harbottle

INSPECTOR