



Appeal Decision

Site visit made on 7 March 2023

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2023

Appeal Ref: APP/J1535/C/22/3306221

Borders Farm, 155 Sewardstone Road E4 7PA

- 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 Haider Ahmed against an enforcement notice issued by Epping Forest District Council.
 - The enforcement notice was issued on 5 August 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from agricultural to the mixed use of agricultural and the keeping of dogs and the erection of an out building that facilities the mixed use.
 - The requirements of the notice are:
 1. Cease the use of the land for the keeping of dogs.
 2. Remove all dogs from the land as outlined on the attached plan.
 3. Demolish the outbuilding shown in the approximate position as hatched in black on the attached plan.
 4. Remove all resultant debris in compliance with step 3 above, from the land.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

Procedural Matters

2. The appellant states that the site address as described on the notice is incorrect, and that the correct address is "Borders Farm, Land Adjoining 'Fox and Hounds,' Sewardstone Road, E4 7BF". However, it is clear from the notice, including the site plan attached to the Notice, what the site is and the notice as a whole identifies the land correctly. Furthermore, the appellant's ability to appeal the Notice was clearly not affected. Therefore, there is no need to correct the Notice.
3. The appeal has only been lodged under ground (b). However, it is clear from the substance of their appeal submissions that the appellant is also seeking to appeal under ground (c), in so far as they consider that the keeping of dogs is not development and therefore there has been no material change of use. As the Council have provided comments on the appellant's grounds of appeal, I

am satisfied that neither party would be prejudiced by the inclusion of this. I have therefore determined the appeal on this basis.

4. At the time of my site visit, there was very little sign of the “keeping of dogs” use being active. However, as the appeal has been made under ‘legal grounds’ only I am required to consider the appeal on the date that the enforcement notice was served.

The appeal on Ground (b)

5. To succeed on this ground, the onus is upon the appellant to demonstrate on the balance of probabilities that the allegation has not occurred as a matter of fact. The appellant states that he does keep two dogs for security purposes, but these dogs are not kept in the appeal building. He also states that he looked after his brother’s dogs and kept them on a temporary basis in the appeal building, whilst his brother was in hospital.
6. The Council have provided detailed evidence of their site inspection, including photographs, of the appeal site where 16 dogs were kept either inside pens within the appeal outbuilding, in paddocks or tethered to Kennels. A representation from a nearby resident also confirms that the alleged mixed-use involving the keeping of dogs occurred. During my site inspection I also observed the outbuilding stated in the notice, which matches the one in the Council’s photographs.
7. As such, having carefully considered all of the evidence before me, I conclude, on the balance of probabilities, as a matter of fact and degree, the allegation in the notice had occurred when the notice was issued. There has therefore been a breach of planning control and the very limited evidence put forward in support of the contention that the breach has not occurred falls well short of discharging the burden of proof.
8. Accordingly, the appeal on ground (b) must fail.

The appeal on Ground (c)

9. Ground (c) arises where an appellant seeks to argue that the matters alleged by the enforcement notice do not constitute a breach of planning control. Like ground (b) the onus of proof lies with the appellant, the relevant test of the evidence being the balance of probability.
10. As outlined above, the appellant accepts that dogs were kept within the appeal site and building whilst his brother was in hospital. The appellant’s case is that this was temporary, and it is not the case that any ‘development’ involving the material change of use has taken place.
11. The concept of material change of use is not defined in statute or statutory instrument and therefore it is a question of fact and degree in each case. For there to be a material change of use, there needs to be some significant difference in the character of the activities from what has gone on previously.
12. The agricultural use of the site is a primary use taking place within the planning unit. Agriculture is defined in s336 of the Act and the keeping of a large number of dogs cannot be said to be an agricultural activity. From the evidence provided the keeping of 16 dogs appears to have substantially affected the character of the site. As such, this has gone beyond the scope of what could

reasonably be considered as being incidental or ancillary activities to the primary agricultural use and has involved another primary use within this same planning unit. This change is materially different from the previous use.

13. On the balance of probability and based on all the evidence before me it appears that a material change of use has occurred. Planning permission is required for such a change of use. There is none in place and the change of use is not permitted development. There has therefore been a breach of planning control and the appellant has not discharged the onus on him to demonstrate otherwise.
14. Accordingly, the appeal fails on ground (c).

Conclusion

15. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

R Satheesan

INSPECTOR