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# Appeal Decision

Site visit made on 25 February 2013

by **D H Brier BA MA MRTPI**

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

Decision date: 26 March 2013

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**Appeal Ref: APP/K2420/C/07/2061498**

**Upper Grange Farm, Ratby Lane, Markfield, Leicestershire LE67 9RJ**

- 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 P Godden against an enforcement notice issued by Hinckley & Bosworth Borough Council.
- The Council's reference is 07/00031/UNAUTH.
- The notice was issued on 6 December 2007.
- The breach of planning control as alleged in the notice is change of use of the land from a use ancillary to the kennels and cattery to a sui generis use comprising organised commercial and competitive dog shows, dog agility classes, dog flyball, working trials, dog obedience training, behaviour modification, tracking and dog tournaments and entertainments in addition to the use for the exercising the dogs boarded at the kennels.
- The requirement of the notice is cease the use of the land for organised commercial and competitive dog shows, dog agility classes, dog flyball, working trials, dog obedience training, behaviour modification, tracking and dog tournaments and entertainments.
- The period for compliance with the requirement is one month.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- This decision supersedes that issued on 6 October 2008. That decision was remitted for re-determination by consent order of the High Court. The re-determination is limited in scope as set out below. All the other findings of the Inspector in the 2008 decision remain valid.

**Summary of Decision: The appeal is dismissed and the notice is upheld with a correction and variation.**

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## Scope of the Redetermination

1. The consent order referred to in the preamble above is dated 27 July 2009. A further consent order dated 10 October 2011 limited the redetermination of the appeal to the ground which gave rise to the appeal under section 289 and the remittal by the Court, namely whether the enforcement notice should be extended to cover the indoor dog training building in addition to the open land covered by the notice. My decision therefore will focus on this matter. In particular, mindful that paragraph 4 of the statement of reasons in the 2011 consent order includes the words "*having regard to the fact that the Inspector's findings and conclusions in relation to the open land do not need to be re-opened*", I do not propose to revisit the other findings and conclusions that gave rise to the 2008 decision.

## Background

2. The plan attached to the enforcement notice shows the site edged in red, but the enforcement action effectively focuses upon the parts of the site within the

red line that are shown coloured blue on the plan. In particular, the blue area excludes a building for which planning permission was granted in 1998, the description of the development being, the "*erection of indoor dog training building*". This is the building to which the 2011 consent order refers.

3. My attention has been drawn to 3 matters concerning parts of the site that have occurred since the 2008 decision. Firstly, planning permission was granted for the change of use of land and building for dog training and dog shows on 8 November 2012, (reference 12/00761/COU). The building concerned is the previously approved indoor dog training building. Subsequently, on 26 February 2013, a variation of condition 2 attached to the 2012 permission to apply to outside dog shows only was approved (reference 13/00002/CONDIT). The effect of this is that the condition in question, which limits the number of days on which dog shows can be held, only applies to outdoor dog shows.
4. Secondly, planning permission for the change of use of land to dog training was granted on 23 December 2009 (reference 09/00770/COU). The land to which this permission relates covers parts of 2 fields that form the north-western part of the land that lies within the 'blue' area. Thirdly, the ownership of 3 adjoining parcels of land, also within the 'blue' area, that border onto the rear of several of the houses on Thornton Lane has been transferred to residents of the Thornton Lane properties.
5. While the first of these matters has a direct bearing on the terms of the October 2011 consent order, the second and third do not. But, as the latter involve parts of the 'blue' area, I shall have regard to the representations that have been made concerning them.

## **Reasons**

### *The 2012 Planning Permission*

6. Irrespective of the matters which gave rise to the previous Inspector correcting the notice so that the indoor dog training building was expressly referred to in the allegation and the 'blue' area was extended to include it, my view is that the 2012 planning permission and the subsequent variation of condition 2 constitute significant and highly material changes of circumstances. The result is that insofar as the building is concerned, the uses attacked by the notice are now permitted, in which case to bring the building into the ambit of the notice would be perverse and inappropriate.
7. The site to which the 2012 permission relates, as indicated by the red line on the application plan, appears to include some of the 'blue' area to the north and north-west of the building. This is one of the areas of 'blue' land that the appellant requests be excluded from the ambit of the notice, as indicated on the appellant's amended plan that it is suggested should be substituted for the one attached to the notice. I acknowledge that this approach is not without merit as it could, as is contended, help to add a degree of clarity to the notice. Beneficial though this may be, however, I am not satisfied that such a step is necessary in this instance, as the grant of planning permission brings the provisions of section 180 of the 1990 Act into play.

### *The 2009 Planning Permission*

8. The 2009 permission also represents another material change in circumstances in that it covers another part of the 'blue' area. It authorises some, at least, of the activities that the notice is directed at, but the description of the development permitted is silent insofar as dog shows are concerned. In the light of this, while section 180 would also apply to the use permitted, as the permission does not authorise all the activities to which the notice is directed, I do not consider it would be appropriate to exclude the land in question from the ambit of the notice as the appellant's amended plan proposes.

### *Changes in Land Ownership*

9. The 3 adjoining parcels of land conveyed to Thornton Lane residents are now physically distinct from the rest of the appeal site in that they have been separated from it by high close boarded boundary fences and their largely grass surface has been tended so that the land resembles areas of lawn. These changes mean that this land is readily distinguishable from the rest of the appeal site. Moreover, its current use, which, judging by the presence of items that include a greenhouse, a raised planting bed and a seat, appears to have an air of domesticity about it, seemingly is unrelated to the rest of the 'blue' area.
10. Given the changes that have occurred, I can well appreciate why it is contended that this land should also be excluded from the enforcement notice, as the appellant's plan shows, but I do not find these changes provide particularly compelling reasons for so doing. As I see it, the apparent absence of any link with the uses being enforced against nowadays simply points to the terms of the notice having been complied with insofar as this part of the appeal site is concerned. I am not satisfied therefore that the notice needs to be corrected in the manner suggested.

### **Overall Conclusions**

11. While the appeal is fairly wide ranging in that it involves several grounds of appeal together with a deemed application for planning permission, the remit of the redetermination as proscribed by the October 2011 Court Order is relatively narrow. As far as it is concerned, for the reasons given above, I am not satisfied that the notice should be extended to cover the indoor dog training building in addition to the open land covered by the notice. And, although the other matters raised by the appellant fall outside the remit set by the Court, I see no need for the notice to be corrected by deleting parts of the 'blue' areas from it, as suggested, in any event.
12. The 2008 appeal decision addressed a variety of matters. Other than those that have a direct bearing on current proceedings, I see no reason to take issue with them. But, as it was confirmed at the site visit that there is no cattery on the land, my view is that the reference to it should be deleted from the allegation - a correction that I am satisfied would not give rise to injustice to the parties. In addition, mindful that the extension of the period for compliance to 6 months under the appeal on ground (g) in the previous decision was not called into question, it would still be appropriate to vary the notice accordingly.
13. Overall, therefore, the appeal is dismissed and the notice is upheld with a correction and variation.

### **Formal Decision**

14. I direct that the enforcement notice be:

A. Corrected in section 3(a) by the deletion of the words "and cattery".

B. Varied in section 7 by the deletion of "One month" and the insertion of "Six months".

15. Subject to the above correction and variation, I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the deemed application.

*<D J[ <Brier*

Inspector