



Appeal Decision

Site visit made on 19 April 2016

by Julia Gregory BSc (Hons), BTP, MRTPI, MCMi

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

Decision date: 25 April 2016

Appeal Ref: APP/K2420/C/16/3143780

The Land at 231 Shaw Lane, and Land to the side and rear of 231 Shaw Lane, Markfield, Leicestershire, LE67 9PW

- 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 Mrs Julia Newton Winfield against an enforcement notice issued by Hinckley & Bosworth Borough Council.
 - The notice was issued on 7 January 2016.
 - The breach of planning control as alleged in the notice is without planning permission the use of the Land for a dog breeding establishment and the keeping of dogs (other than animals which are incidental to the personal enjoyment of the dwelling at 231 Shaw Lane).
 - The requirements of the notice are a) Cease the use of the Land for the operation of a dog breeding establishment and/or for the keeping of dogs that are not incidental to the enjoyment of the dwelling house.
 - The period for compliance with the requirements is one month.
 - 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.
 - Therefore the appeal is proceeding only on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.
-

Preliminary matters

1. It is the duty of the Inspector to correct the notice if that can be done without injustice. Amongst other matters, this allows the appeal to be determined on the basis of the correct allegation.
2. According to the Council the land referred to in the address is all within the curtilage of No 231 Shaw Lane. Although I note there was planning permission granted in 2001 for change of use of the property to a mixed use of residential and the operation of a landscape gardening business¹, I have no information to demonstrate that the planning permission was implemented. Furthermore, I saw nothing in representations or on site to indicate such use.
3. The allegation as given in the enforcement notice is as detailed in the banner heading above. There is no suggestion that the property is not also being used as a dwellinghouse and indeed the breach and the requirement both refer to the keeping of dogs in association with the dwellinghouse. The Council refer to this mixed use in a delegated report provided with their questionnaire.² The appellant confirms that she lives at the property in her statement. There is no allegation that the use of the land as a dog breeding establishment and the

¹ Council reference 01/01120/COU

² Council reference 15/00780/COU

- keeping of dogs is being carried out as anything other than as a mixed use with the dwellinghouse, which is also confirmed by the appellant's statement.
4. Therefore the breach should allege "without planning permission, a material change of use from a dwellinghouse to a mixed use as a dwellinghouse and for a dog breeding establishment and the keeping of dogs (other than animals which are incidental to the personal enjoyment of the dwellinghouse at 231 Shaw Lane)." I consider that the notice can be corrected without injustice to either main party since this correction, reflects the actual use, statements in representations and does not affect the requirements.
 5. For the avoidance of doubt, I shall delete "a)" from the requirements of the notice in paragraph 5 since there are no further steps in the notice.
 6. I acknowledge various matters raised by the appellant in her appeal statement about the planning merits of her case. These include a dispute about whether the use causes noise and odour and the comparison of the location of similar uses elsewhere, but as the fee has not been paid and the deemed application has lapsed, it is not for me to reach any conclusion on these matters or determine whether planning permission should be granted.

Ground (g) appeal

7. This appeal is on the grounds that the period for compliance specified in the notice falls short of what should reasonably be allowed. The notice gives one month for the requirements to be complied with. The appellant does not specify any longer period of time for me to consider. However the property is her home and place of work and so she is able to look after her disabled daughter and earn a living together with ensuring the happiness and welfare of her dogs.
8. The Council says that they have considered the appellant's human rights in determining the time period specified for compliance. However they considered the time period to be proportionate in accordance with the National Planning Policy Framework paragraph 207. The Council has been seeking to resolve the situation since 2011, but planning permission has been refused for the use³. Also the Council's Environmental Health Department has refused a licence to breed "this amount of dogs" although precise details of numbers have not been provided. The appellant is a tenant and the owner is seeking possession of the property under the Housing Act 1988, Section 21(4)(a). I understand from the Council that this is being challenged in the courts by the appellant.
9. I acknowledge that the Council wishes to resolve the unauthorised use that has been going on for many years. That use they argue in their reasons for issuing the notice causes noise from barking dogs and odour. I have had due regard to those concerns.
10. Nonetheless, I saw when I visited the site the obvious attachment and affection that the appellant has for her animals. I note her concern for their happiness and welfare. It seems to me that one month in the circumstances where there are currently some 18 or so dogs at the property as seen on my site visit would be excessively short to find suitable new homes for animals not incidental to the enjoyment of the dwellinghouse.

³ Council reference 15/00780/COU

11. I am also mindful of the personal circumstances of the appellant. It may take some time to find alternative sources of income or employment to support herself and her family including her disabled daughter. I consider in all the circumstances that 3 months would be a more proportionate time period to require compliance with the notice, striking a balance with the expediency for issuing the notice.
12. That the owner is seeking repossession of the property has little bearing on this conclusion, since that is subject to separate legislation upon which it would be inappropriate for me to comment.

Conclusion

13. For the reasons given above I conclude that a reasonable period for compliance would be 3 months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Decision

14. It is directed that the enforcement notice is corrected by deleting the breach of planning control alleged in paragraph 3 and replacing it with the words "without planning permission, a material change of use from a dwellinghouse to a mixed use as a dwellinghouse and for a dog breeding establishment and the keeping of dogs (other than animals which are incidental to the personal enjoyment of the dwellinghouse at 231 Shaw Lane)."
15. It is also directed that the enforcement notice is corrected by deleting "a)" at the start of paragraph 5.
16. It is directed that the enforcement notice is varied by deleting the words "One month" in the time for compliance in paragraph 6 and replacing them with the words "Three months".
17. Subject to these corrections and variation the appeal is dismissed and the enforcement notice is upheld.

Julia Gregory

Inspector