

PLANNING COMMITTEE – 16 April 2013

REPORT OF THE DEPUTY CHIEF EXECUTIVE (COMMUNITY DIRECTION) RE: APPEALS LODGED AND DETERMINED



Hinckley & Bosworth
Borough Council

A Borough to be proud of

Wards affected – Markfield.

1. PURPOSE OF REPORT

To inform Members of appeals lodged and determined since the last report.

2. RECOMMENDATION

That the report be noted.

3. BACKGROUND TO THE REPORT

Appeals Lodged

There have been no new Appeals lodged since the previous report.

Appeals Determined

Appeal by Mr P Godden against an enforcement notice issued by the Council at Upper Grange Farm, Ratby Lane, Markfield.

The original Enforcement Notice was issued in 2007 to cease the use of 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 Enforcement Notice did not include the indoor dog training building within its requirements. Mr Godden appealed this Notice.

The original Appeal Decision dated October 2008, dismissed the appeal and also broadened the Enforcement Notice to include the indoor dog training building, which Mr Godden then appealed against. A Consent Order was issued in July 2009 by the Court remitting the original Appeal Decision to the Secretary of State for redetermination.

A further Consent Order was issued in October 2011 limiting the redetermination of the Appeal, giving rise to the Appeal under section 289 and the remittal by the Court as to whether the Enforcement Notice should be extended to cover the indoor dog training buildings in addition to the open land already covered by the notice.

The Inspector considered that the decision should focus on the matter above and was mindful of the previous statement of reasons in the 2011 Consent Order including 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”, the Inspector therefore concluded that there was no need to revisit the other findings that gave rise to the 2008 decision.

The Inspector considered 3 matters concerning parts of the site that have occurred since the 2008 decision. Firstly, the granting of the change of use of land and building for dog training and dog shows in November 2012 (12/00761/COU), the building to which this permission relates was previously the indoor dog training building. A subsequent Section 73 application was then granted (13/00002/CONDIT) to vary the condition in the 2012 permission to limit the number of days on which dog shows can be held, to apply to outdoor dog shows only.

Secondly, the granting of the change of use of land to dog training in December 2009 (09/00770/COU), this includes two areas of land that lie within the original blue edge. Thirdly, the ownership of three adjoining parcels of land, which were also originally within the blue edge, have now had ownership transferred to the residents of Thornton Lane properties.

The 2012 Permission

The Inspector considered that irrespective of the matters that arose previously which led to the inclusion of the indoor dog training building into the Enforcement Notice, the 2012 planning permission and the subsequent Section 73 application, constitute significant material changes in circumstances. The Inspector stated that the uses attacked by the notice are now permitted and that to bring the building into the ambit of the notice would be perverse and inappropriate.

The 2009 Permission

The Inspector considered that this permission also resulted in material change in circumstances in that it authorised some of the activities that the Notice was directed at; however, not the dog shows. The Inspector noted that as the permission does not authorise all of the activities directed in the Notice, it would have been inappropriate to exclude the parcel of land in question from the ambit of the Notice, as requested by the appellant’s amended plan.

Change in Land Ownership

The Inspector noted that the parcels of land conveyed to the residents of Thornton Lane are now physically distinguishable from the rest of the appeal site, by high close boarded fencing and tended lawn areas which appear domestic in nature and unrelated to the rest of the area.

The Inspector also noted that given the changes that have occurred, it was understandable why the appellant wished for these parcels of land to be excluded from the Notice, however, there was no compelling reason to do so. In the view of the Inspector, the absence of any link with the uses being enforced against, simply results in them complying with the Notice and therefore it was considered that the Notice needed no amendment in the manner suggested.

Conclusion

The Inspector concluded that although the appeal was wide ranging, involving several grounds of appeal along with the deemed application for planning permission, the remit of the determination prescribed in the 2011 Court Order, was relatively narrow. The Inspector concluded that it was not considered satisfactory that the Notice be extended to cover the indoor dog training building in addition to the open land and that any other matters raised by the appellant fall outside the remit of the Order and therefore there was no need for the Notice to be corrected, deleting parcels of land.

The Inspector also concluded that it was not necessary to take issue with the matters in the 2008 Appeal Decision that did not have a direct bearing on current proceedings. It was, however, concluded that as there was no cattery on the site this should be removed from the wording and in addition, the Inspector considered that the period for compliance should be extended to 6 months.

The Appeal was therefore dismissed and the Notice upheld with a correction and variation.

4. FINANCIAL IMPLICATIONS [PE]

None arising directly from this report.

5. LEGAL IMPLICATIONS [MR]

There are no legal implications arising from this report as the report is for noting only.

6. CORPORATE PLAN IMPLICATIONS

This document contributes to Strategic Aim 3 of the Corporate Plan

- Safer and Healthier Borough.

7. CONSULTATION

None

8. RISK IMPLICATIONS

It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

The following significant risks associated with this report / decisions were identified from this assessment:

Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner
None	None	Tracy Miller

9. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

This report is for information purposes only to draw member's attention to recent appeals lodged with the Authority and appeal decisions issued by the Planning Inspectorate. As this report is not seeking a decision it is envisaged that there are no equality or rural implications arising as a direct result of this report.

10. CORPORATE IMPLICATIONS

By submitting this report, the report author has taken the following into account:

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|---------------------------------|------------------------------|
| - Community Safety implications | None relating to this report |
| - Environmental implications | None relating to this report |
| - ICT implications | None relating to this report |
| - Asset Management implications | None relating to this report |
| - Human Resources implications | None relating to this report |
| - Voluntary Sector | None relating to this report |

Background papers: Committee Reports and Appeal Decisions:

Appeal decision APP/K2420/A/C/07/2061498 – Upper Grange Farm, Ratby Lane, Marfkfield

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