

PLANNING COMMITTEE

Thursday 21 February 2019

ENFORCEMENT OF PLANNING CONTROL – SEVEN SPAR HALL, SANDY LANE, LETHERINGHAM, SUFFOLK, IP13 7QN (PC 09/19)

Report of the Head of Planning and Coastal Management

ENF/2016/0354/COND - Seven Spar Hall, Sandy Lane, Letheringham, IP13 7QN

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Is the report Exempt?	Open or Open
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EXECUTIVE SUMMARY

- 1 This report relates to the non-compliance with condition 7 of planning permission DC/14/3661/VOC.
- 2 It considers the planning merits of the development against Government advice, Human Rights and the powers available to the local planning authority under the Town and Country Planning Act 1990, as amended, to determine the expediency of formal action against the unauthorised use.
- 3 The report advises the Committee that it is not considered expedient to take any further action in relation to this enforcement breach.

Wards Affected:	Letheringham.
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For further information, please contact Peter Thompson, Assistant Enforcement and Planning Officer, on 01394 444297 or peter.thompson@eastsoffolk.gov.uk

1. Introduction

- 1.1 The alleged breach of planning control relates to the non compliance with condition 7 of planning permission DC/14/3661/VOC. The nature of the alleged breach is that boarded dogs are being exercised outside the hours of 19:00 and 07:00, contrary to the agreed time periods and locations within the approved planning permission.

1.2 Site Description

- 1.3 This report relates to Seven Spar Hall, Sandy Lane, Letheringham. It is located in the countryside between the villages of Charsfield and Letheringham.
- 1.4 The main access is via Sandy Lane to the north on a surfaced, single road track. The site lies adjacent to Seven Spar Farm, a commercial farm (mainly pigs and poultry), with farm buildings to the south and a farm house within 65 metres.

2. Planning History

- 2.1 Planning permission C02/1918 was granted in 2003 for a change of use of existing stables to a boarding kennels.
- 2.2 Planning permission C/10/1445 was granted in 2010 for a change of use of land and buildings for kennels, outside dog runs and exercise areas (some land and buildings to be used as temporary basis only).

- 2.3 A further planning permission DC/14/3661/VOC was granted in 2014 for a variation of Condition 1 of Planning Permission C10/1445. Condition 7 on this planning permission states:

“Boarded dogs shall not be exercised outside of the kennel buildings within any part of the premises known as Seven Spar Hall, Sandy Lane, Charsfield, between the hours of 19:00 and 07:30 except in a case of genuine emergency.

Reason: In the interests of residential and rural amenity.”

3. Enforcement History

- 3.1 There have been three enforcement cases logged on the site between 2009 and 2016.

EN/09/0200 – This case relates to a breach of conditions and was closed on the 17th of January 2013, due to a planning application C/10/1445 for the change of use of land and buildings for kennels, outside dog runs and exercise areas (some land and buildings to be used as temporary basis only) having been approved.

ENF/2013/0139/COND – This case related to works not in accordance with C10/1445. New building erected, not in compliance with conditions 7 & 8 of C10/1445.

ENF/2016/0354/COND – This case relates to a breach of condition relating to dogs being exercised outside of the agreed hours.

4 Planning Considerations

- 4.1 Condition 7 on planning permission DC/14/3661/VOC states: *Boarded dogs shall not be exercised outside of the kennel buildings within any part of the premises known as Seven Spar Hall, Sandy Lane, Charsfield, between the hours of 19:00 and 07:30 except in a case of genuine emergency.*
- 4.2 The condition is being breached because it is alleged that boarded dogs are being exercised between 19.00 and 07.30 hours.
- 4.3 When the condition was originally included on the 2010 planning permission and subsequently added to the 2014 planning permission it was deemed to be acceptable because it was meant to protect residential and rural amenity. The site's only close neighbour is Seven Spar Farm and Farmhouse.
- 4.4 If this application were to be submitted now, it is unlikely that this condition would have been included because it would be deemed to be unreasonable and imprecise and therefore unenforceable due to the fact that the condition only prevents boarded dogs from being exercised between the stated hours of 19:00 and 07:30, but It does not prevent the personal dogs of the owner or friends and family being exercised between these hours. The

enforcement case officer is aware that the owner/occupiers of the site have numerous dogs of their own.

- 4.5 The tests that planning conditions need to fulfil have evolved over time and the wording of condition 7 of DC/14/3661/VOC falls short of what would be expected of current planning conditions and obligations as set out in section 55 of the NPPF, which states:

“Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.”

- 4.6 As previously stated, the condition is not one which we would attach to a planning permission today because it would not meet the tests required by the NPPF. However, we also need to consider whether we could enforce against any current non-compliance.
- 4.7 To enforce against a condition that would in today's terms not meet the tests required by the NPPF, does not necessarily mean that we couldn't enforce against it, however, we would then need to decide whether it was expedient or in the public interest to pursue.
- 4.8 The site can only accommodate boarding kennels for 7 dogs and an isolation kennel, therefore it must be considered that there is a realistic potential for there to be as many non-boarded dogs on the site as boarded dogs taking into account the owner/occupiers own dogs which are allowed to run freely around the site. This alone would make monitoring the site difficult because evidence collected would need to be able to differentiate between boarding and non-boarded dogs over a consistent period of time.
- 4.9 Information provided to the Council by the complainant was not able to make this distinction, and therefore the Council would need to employ investigative methods that could be deemed to be intrusive, excessive and costly. Furthermore the effect on residential amenity is restricted due to limited residential properties in the near vicinity.
- 4.10 The National Planning Policy Framework (NPPF) states “Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary and local planning authorities should act proportionately in responding to suspected breaches of planning control”.
- 4.11 In Planning Practice Guidance – Ensuring Effective Enforcement, it states “Nothing in this guidance should be taken as condoning a wilful breach of planning law. Enforcement action should, however, be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Where the balance of public interest lies, will vary from case to case. In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal action where there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area; development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development”.

- 4.12 Whilst Planning Policy Guidance 18: Enforcing Planning Control, is now extant it made a useful statement in relation to unauthorised development, it stated that ‘While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement notice should not normally be issued solely to “regularise” development which is acceptable on its planning merits, but for which permission has not been sought’.
- 4.13 The Council has considered the human rights of the owners and occupants of the building. Article 1 of the First Protocol to the Convention may protect a person’s Right to peaceful enjoyment of his possessions but does not prohibit the enforcement by the authorities of laws deemed necessary to control property in the public interest.

5. Representations

- 5.1 The original complaint came from a local resident on the 20th of September 2016.

6. Conclusions

- 6.1 In conclusion whilst it is felt that the condition falls short of what is expected for a planning condition as set out in section 55 of the NPPF, because the wording of the condition is considered unreasonable, and imprecise in today’s terms, does not on its own render the condition as written unenforceable, however, the extensive, costly and likely intrusive method of investigation that would need to be employed to prove any breach of condition would render it neither expedient or in the public interest to pursue.
- 6.2 For the above reasons it is considered that taking further action would not be expedient or in the public interest to pursue.

7. Recommendation

- 7.1 That the Head of Planning and Coastal Management be authorised to take no further action.

BACKGROUND PAPERS

Enforcement File Ref:-, EN/09/0200, ENF/2013/0139/COND, ENF/2016/0354/COND