



Appeal Decisions

Hearing held on 7 February 2023

Site Visit made on 7 February 2023

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03/05/2023

Appeal A Ref: APP/J0540/C/21/3278099

Buffingham Kennels, Waterworks Lane, Glinton, Peterborough PE6 7LP

- 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 L Greenhow against an enforcement notice issued by Peterborough City Council (the LPA).
- The enforcement notice was issued on 16 June 2021.
- The breach of planning control as alleged in the notice is, without the necessary planning permission, the unauthorised material change of use of the land to a mixed use for dog breeding and the stationing of residential caravan including timber outbuildings, associated infrastructure and fencing.
- The requirements of the notice are:
 1. Cease the unauthorised use for the breeding of dogs and the stationing of a residential caravan.
 2. Remove permanently from the land the residential caravan, other caravan, fencing, timber buildings and hardstanding areas.
 3. Demolish all the structures and internal fences on the land and permanently remove the debris from the land.
 4. Remove all resultant debris and level the land with top soil seed with grass.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (e) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decision.

Appeal B Ref: APP/J0540/W/21/3276906

Buffingham Kennels, Waterworks Lane, Glinton, Peterborough PE6 7LP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Ludovic Greenhow against the decision of Peterborough City Council.
- The application Ref 20/01275/FUL, dated 28 September 2020, was refused by notice dated 4 February 2021.
- The development proposed is described as the proposed continuation of use of land and siting of mobile home in connection with and use of land kennels and associated fencing as licenced establishment for breeding dogs and erection of additional timber kennel.

Summary of Decision: The appeal is allowed and planning permission is granted in the terms set out below in the Formal Decision.

Appeal A – Preliminary Matters

1. The appellant confirmed at the Hearing that they no longer wished to pursue Appeal A on ground (c). I therefore take no further action in respect of the ground (c) appeal.

Appeal A – The Enforcement Notice

2. The use of the word permanently on two occasions within the requirements of the notice is unnecessary, having regard to the provisions of section 181(1) of the 1990 Act which states that compliance with an enforcement notice shall not discharge the notice. The notice can be corrected to delete the word without injustice to the appellant or the LPA.

Appeal B – Preliminary Matters

3. The description of the development in the heading above is taken directly from the application form. The parties agreed a revised description prior to the determination of the application. That description was, “proposed continuation of use of land and siting of mobile home in connection with and use of land, kennels and associated fencing as licensed establishment for breeding dogs and erection of additional timber kennel, as well as formation of vehicle access and associated car parking”.
4. However, the continuation of use of land is not an act of development defined in section 55(1) of the 1990 Act. The parties thus agreed at the Hearing that the appropriate description is, “the proposed material change of use of the land to a licenced establishment for breeding dogs and siting of a residential mobile home including kennels, associated fencing, additional timber kennel, formation of vehicle access and associated car parking”. I have therefore determined the appeal on that basis.

Appeal A on ground (e)

5. An appeal on ground (e) is made on the basis that copies of the enforcement notice were not served as required by section 172 of the 1990 Act.
6. The appellant argues that the pedestrian access serving the site is not shown within the Land to which the notice relates on the attached plan. The appellant believes that this access should have been included within the Land and the owners of that land notified of the service of the enforcement notice accordingly.
7. However, I see no reason why the adjacent Land ought to have been included within the plan attached to the notice. The alleged breach has taken place entirely within the Land edged in red. The notice does not allege any breach of planning control relating to pedestrian access to the Land.
8. All those with an interest in the Land have been served with a copy of the notice and, on the evidence before me, the notice was served as required by section 172 of the 1990 Act.
9. The appeal on ground (e) therefore fails.

Appeal A on ground (d)

10. In the appeal on ground (d), it is necessary for the appellant to demonstrate, on the balance of probabilities, that at the date the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.
11. The relevant timescale for consideration under section 171B(3) of the Act is 10 years. Thus, the focus for the appeal on ground (d) is whether the material change of use took place on or before 16 June 2011 and the mixed use continued uninterrupted for a period of 10 years thereafter.
12. It is said that the use of the site for the breeding of dogs commenced in 2010 when the site was fenced, enclosed and a number of runs were established for use in connection with dog breeding, together with the siting of a caravan for use in whelping. It is therefore contended that the use has been extant for more than ten years before the enforcement notice was served.
13. However, the residential use of the Land did not commence until 2015. The appellant would therefore need to show that the material change of use to the mixed use of residential and dog breeding occurred more than ten years before the date of the enforcement notice and that the mixed use continued for the ten year period, regardless how long the original use continued for unchanged. Thus, the material change of use to a mixed use of dog breeding and residential would have taken place in 2015. Clearly a ten year period could not be demonstrated.
14. In any event, planning permission was granted for the change of use of the Land to dog breeding business, including residential mobile home, on 13 March 2017¹. That permission was granted on a temporary basis with a condition requiring the use to cease on 17 March 2019. Therefore, between 13 March 2017 and 17 March 2019, there was no breach of planning control under section 171A(1)(a) of the 1990 Act as the mixed use of the Land for dog breeding and residential benefitted from planning permission. Consequently, when the use continued post the 17 March 2019 expiration of the permission, a fresh breach of planning control, that being development without planning permission, would have started and the 10 year clock reset. A ten year continuous breach prior to the notice being issued can not therefore be demonstrated. Enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters at the date the notice was issued.

15. The appeal on ground (d) fails.

Appeal A on ground (a) and Appeal B

Preliminary Matters

16. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act. The terms of the deemed planning application are derived directly from the wording in the allegation. Planning permission may only be granted for those matters, in whole or in part, as corrected or varied where necessary.

¹ LPA Ref: 17/00022/FUL

17. The development for consideration in respect of Appeal A is thus the material change of use of the land to a mixed use for dog breeding and the stationing of residential caravan including timber outbuildings, associated infrastructure and fencing. The development in respect of Appeal B is essentially the same, albeit it includes the proposed formation of vehicle access and associated car parking on the adjacent land. I have thus dealt with the two appeals in the round although individual conclusions and decisions have been reached on each.

Main Issues – Appeal A and B

18. The main issues are:

- the effect of the development on highway safety;
- whether there is an essential need for a rural worker to live at or near their place of work in the countryside; and,
- the effect of the development on the character and appearance of the area.

Reasons – Appeal A and B

Highway Safety

19. In respect of Appeal A, the LPA's reason for issuing the notice in respect of highway safety was that the mixed use gives rise to the use of a passing bay on Waterworks Lane for parking. In respect of Appeal B, the LPA's reason for refusing planning permission on highway safety grounds was because the LPA believed it had not been demonstrated that vehicles could enter and leave the site in a forward gear.
20. Waterworks Lane is a largely single-track road with, it is said, a speed limit of 60mph. I was able to see from my site visit that it is a long, straight and relatively flat road with excellent visibility of oncoming traffic in both directions. Whilst it generally serves a predominately rural area, there are a number of residential and commercial premises along the road, including premises which utilise heavy goods vehicles. Nevertheless, I saw from my site visit that traffic volumes are relatively low with vehicles travelling only intermittently along the highway. I have no reason to believe my observations were not representative of typical highway conditions.
21. Given the width of the highway, for most of its length two vehicles are unable to pass one another in opposite directions without conflict. Thus, there are several passing places along Waterworks Lane to allow vehicles approaching one another to pass safely. One such passing place sits adjacent to Woodcroft Grange to the front of the Land. I could see at my site visit that the passing bay is large enough to accommodate 2-3 vehicles.
22. The appellant uses the passing bay to park their own vehicle. In addition, it is used for parking by customers when they carry out viewings on the puppies which they may wish to purchase. The appellant indicated at the Hearing that around 95% of viewings are done on Saturdays and Sundays. Viewings are said to be by appointment only and there are never two appointments at any one time.
23. If two or three cars were parked in the passing bay, this would likely result in conflict between vehicles approaching one another on this part of Waterworks

Lane. Cars parked in the bay would prevent vehicles from the east yielding to those from the west, as they would be unable to move to the side to provide sufficient space to pass. Whilst my observations indicated that traffic movements along the road are not frequent, given the visibility and road conditions, vehicles travelling along the road are likely to do so at high speeds. The fact that traffic is light and sporadic on Waterworks Lane does not necessarily reduce the risk of collisions. Drivers travelling along the road at high speeds may have their awareness of oncoming vehicles reduced by the perceived low probability of there being oncoming traffic. I note that there is no existing injury accident data for Waterworks Lane. Nevertheless, I consider there is an increased risk of collision between oncoming vehicles as a result of the use of the passing bay for parking associated with the mixed use.

24. The proposed access and parking arrangements shown on the parking layout plan form part of the development in respect of Appeal B. They do not form part of the development in respect of Appeal A, nevertheless, the appellant has submitted the parking layout plan in respect of Appeal A on the basis that it would overcome the highway safety harm alleged in the notice.
25. The plan shows the site would be accessed via a new opening in the existing hedgerow, adjacent to the existing access to Woodcroft Grange. The submitted parking layout plan shows a 5m wide access would be created. This would serve a parking area which would provide for three spaces to be shared between the residential use and the dog breeding business. The parking area would be set back 5m from the highway. Each space would be 2.5m wide and 5m deep. There would be 6m depth between the spaces and the opposite edge of the parking area.
26. The LPA, on advice from the Local Highway Authority, argue that the most southerly of the three spaces could not be used if the other two spaces are occupied, and thus the scheme would provide an insufficient number of spaces to prevent parking on the highway. In addition, vehicles would be unable to exit the site in a forward gear, resulting in potential collisions with vehicles on the highway.
27. However, the appellant has provided a plan which shows vehicle tracking. The plan shows that there is sufficient space within the parking area for cars to exit the first space and leave the site in forward gear. No tracking is shown for the second or third spaces. However, it seems to me that at 6m, there will be sufficient space for a car to reverse out of those spaces and turn to exit the site in forward gear. Whilst it may require a number of points to the turn, I am satisfied that drivers would be capable of doing so. Moreover, I am satisfied that the spaces would not be unusable to the point they would deter drivers from parking in the area.
28. Thus, I am satisfied that each of the three spaces could be used. Consequently, the scheme provides for three off-street parking spaces which will avoid vehicles parking in the layby on the highway. Moreover, the arrangements would ensure that sufficient off-road parking is provided and that vehicles would be able to exit in forward gear safely. This would thus satisfactorily overcome any harm that would arise to highway safety from vehicles parking in the passing bay or exiting the site in reverse gear.
29. In respect of Appeal A, the land on which the proposed parking and access is proposed is not owned by the appellant. It sits outside the Land to which the

enforcement notice relates as shown by the red line on the plan attached to the notice. The owner of the Land was not served with a copy of the enforcement notice as a result. Consequently, it would not be open to me to impose a condition requiring cessation of the use and demolition of the buildings if the car park and access was not carried out within a certain time period as the appellant would be bound by the decisions and actions of the landowner. Since non-compliance with an enforcement notice is a criminal offence, I consider such an approach would be substantially prejudicial to the appellant. Thus, as the provision of the car parking and access could not be provided through the deemed application under Appeal A on ground (a), then the measures proposed therein would not overcome the highway safety harm which arises as a result of the development subject of Appeal A.

30. In contrast, in Appeal B the land in question is within the red line of the application site shown on the submitted plans. Moreover, the landowner was notified of the application and the appellant has completed Certificate B of the application forms advising as such. As a result, I am satisfied that it can be reasonably assume the landowner is aware of the proposal and the appellant has a degree of control over it as it forms part of the application.
31. I conclude, therefore, that the development in respect of Appeal A will have a harmful effect on highway safety, in conflict with Policy LP13 of the Peterborough Local Plan 2016-2036 (2019) (the LP) which states that permission will only be granted where appropriate provision has been made for safe, convenient and sustainable access and following appropriate mitigation the development would not result in a residual cumulative severe impact on any element of the transportation network including highway safety following appropriate mitigation.
32. I conclude that the development in respect of Appeal B will not have a harmful effect on highway safety, in accordance with LP Policy LP13.

Essential Need

33. The Land lies in the open countryside, adjacent to a single dwelling and surrounded by open fields. Policy LP11 of the LP states that planning permission for a permanent dwelling in the countryside to enable workers in enterprises where a countryside location is an essential requirement to live at, or in the immediate vicinity of, their place of work will only be granted subject to several criteria. They include: where there is a clearly established existing functional need; the need relates to a full-time worker; the unit and activity concerned has been established for at least three clear years, has been profitable for at least one of them and is currently financially sound with a clear prospect of remaining so; and, the functional need cannot be fulfilled by an existing dwelling, or the conversion of an existing building in the area, or any other existing accommodation in the area which is suitable and available.
34. Policy LP11 is broadly consistent with the National Planning Policy Framework (the Framework) which states at paragraph 80 that planning policies and decisions should avoid the development of isolated new homes in the countryside unless there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.
35. The appellant originally ran the adjacent Woodcroft Grange boarding kennels from 2008, where they subsequently began breeding dogs which in turn led to

their purchase of the Land. It is said that the appellant thereafter began breeding dogs on the Land from 2010. Kennels were erected first in 2012 and subsequently in 2013. In 2013 the appellant left Woodcroft Grange and moved around 6.5 miles away, returning to the Land daily to care for the dogs. The appellant thereafter moved onto the Land into a caravan in 2015 and has continued to breed dogs for sale on the Land since.

36. As set out above, the LPA granted planning permission for the change of use of the Land to dog breeding business including residential mobile home in March 2017. The permission was granted on a temporary basis to allow the business time to demonstrate it was financially sound, albeit the temporary period was for two years rather than the maximum three years which LP Policy LP11 allows for in such circumstances.
37. At the Hearing, the LPA accepted that it is essential for the dog breeding enterprise to be located in the open countryside given the potential noise issues that will arise. On that basis, there is no dispute regarding the suitability of the location for the dog breeding enterprise. Moreover, the LPA accepted at the Hearing that there is a functional need for a full-time worker employed in the dog breeding business to live on the appeal site to ensure the proper functioning of the enterprise, principally for reasons of security and animal welfare. Similarly, there is no dispute between the parties that the functional need cannot be fulfilled by an existing dwelling, or the conversion of an existing building, or any other existing accommodation which is suitable and available. I see no reason to conclude otherwise.
38. The dispute therefore lies solely on that part of LP Policy LP11 which requires permanent dwellings the countryside to demonstrate that the unit and activity has been established for at least three years, has been profitable for at least one of them and is currently financially sound with a clear prospect of remaining so. The LPA does not believe that there is sufficient evidence to demonstrate that is the case. In contrast, the appellant says that the business has been established and financially sound for well in excess of three years. Nevertheless, it was said at the Hearing that a new business model was introduced around March 2020 to increase the number of dogs being bred on the site, along with the erection of additional kennels. It is said this was done in response to the LPA's concerns that the business did not then support a full-time living wage.
39. There is no dispute between the parties that a dog breeding business on the Land has been established for several years. The LPA acknowledge it has been ongoing since at least 2016. The appellant argues that the business has been profitable in all of the last three financial years. The last three financial years being 2019/20, 2020/21 and 2021/22.
40. Profit and loss accounts for 2019/20 show a net profit of £6,842. However, LP Policy LP11 is clear that the enterprise must support a full-time worker. Whilst I recognise the appellant's personal preference to live a modest lifestyle, a profit of £6,842 would fall substantially short of supporting the wage of a full-time time worker, whether considering national minimum wage, national living wage or agricultural minimum wage. The business needs to support a sufficient full-time wage regardless of the lifestyle choices of the appellant.

41. In 2020/21, the accounts show an increased net profit of £11,452 which, whilst an increase on the previous year's net profit, still falls short of supporting a wage for a full-time worker.
42. Following submission of the appeal, the appellant provided updated financial information in June 2022. This included a profit and loss account for 2021/22. The account shows a substantial increase in net profit, with it increasing to £23,938 which would sufficiently support a full-time worker. However, whilst the accounts state they were prepared by a company, they are not signed nor is there any indication they were independently verified. Nevertheless, the LPA accepted at the Hearing that the figures presented looked reasonable and they had no reason to believe that the business had not been profitable in at least one of the last three years. I see no reason to disagree.
43. Nonetheless, it is clear that the appellant achieved such a significant increase in profit down to the new business model which involves breeding and selling dogs in more varied breeds and increased amounts. Thus, it seems to me that the breeding and selling of dogs at the current level is materially different from that which went on before since it involves new breeds and has been facilitated by new buildings. Therefore, the current business operating from the Land ought to be considered as a newly established enterprise in the context of LP Policy LP11. Given that it only commenced in March 2020, and was subsequently delayed as a result of the Covid-19 pandemic, it follows that the enterprise cannot have been established for at least three years and profitable for one of them. As a result, the development would not meet the requirements for a permanent dwelling under LP Policy LP11.
44. LP Policy LP11 does state that planning permission will not be granted for a new permanent dwelling in association with a proposed or newly established enterprise in the countryside. However, if a functional need is demonstrated, there is clear evidence of a firm intention and ability to develop the enterprise and there is clear evidence that the enterprise has been planned on a sound financial basis, permission may be granted on a temporary basis for no more than three years for a caravan, mobile home or wooden structure which can easily be dismantled.
45. The LPA pointed out at the Hearing that Policy LP11 states that, after a three-year temporary permission has expired, permission will only be granted if the criteria has been met and a further temporary period will not be permitted. Given that a previous temporary planning permission for a residential caravan has been granted on the Land, the LPA says a further temporary permission would conflict with the policy. However, it seems to me that if one considers the new business model a materially different enterprise such that it cannot meet the requirements for a permanent dwelling under LP Policy LP11, then it follows that it is a materially different enterprise for consideration under the temporary element of the policy. It is not therefore the same enterprise for which a temporary planning permission was granted in March 2017. I therefore take the view that it is open to me to consider the development as a newly established enterprise in the context of LP Policy LP11.
46. As set out above the LPA accepts that functional need for a dwelling on the Land associated with the enterprise has been demonstrated. The appellant has bred dogs on the Land for a number of years. There is no dispute over that. Furthermore, the LPA considered in the previous grant of planning permission

- that the appellant had an intention to develop a dog breeding enterprise on the Land. The appellant made clear at the Hearing that there is a commitment from them to develop the enterprise in the future. As a result, I am satisfied that there is clear evidence of an intention and ability to develop the enterprise.
47. As set out above, the financial accounts submitted show a healthy net profit of £23,938 for the last financial year 2021/2022. The LPA accepted at the Hearing that the figures in the accounts looked reasonable and did not query any of the figures within the accounts.
48. Looking ahead, updated projections were provided at the Hearing by the appellant. They showed estimates for the financial year 2022/23 and projections for 2023/2024. For 2022/23, the appellant anticipates an income of around £37,450. When questioned at the Hearing, the appellant indicated at the net profit for 2022/23 would be similar to the net profit for 2021/22. This was on the basis of cost of sales of circa £10,000 and expenses of around £7,500.
49. In terms of 2023/24, the appellant indicated at the Hearing that, at present, there they had one Sealyham Terrier and two Cocker Spaniels currently with puppies in gestation which would be born in the financial year. Once sold, it is said those litters would generate sales income of around £24,000 from around 10 puppies. In addition to that, the appellant has plans to breed nine litters of Mini Schnauzers which will average five puppies per litter. Based on a reasonable estimate of £1,300 sale price per puppy, that would generate additional income in 2023/24 of £58,300.
50. The appellant accepted that it would be difficult to estimate costs for 2023/24, however, they did indicate that cost per puppy in 2022/23 amount to £97 from birth to sale. That included food, testing, chipping and registration. Assuming the same costs for 2023/24, that would result in cost of sales of around £5,335, leaving an estimated net profit of £76,965. That is a substantial increase above the net profit of £23,938. However, the appellant explained at the Hearing that they had incurred substantial capital costs to construct a new shed, install double glazing and install green mesh fencing in addition to internal fencing which I was able to see on my site visit. The appellant also indicated at the Hearing that they had imported two stud dogs from overseas at a cost of around £4,000, albeit this was incurred in 2021/22. Nevertheless, the appellant indicated that such capital costs would not necessarily need to be incurred in 2023/24, hence the increase in net profit.
51. Moreover, the three litters currently in pup were anticipated to be delivered in the 2022/23 financial year, which would have increased the net profit of 2022/23 by £24,000, reducing the 2023/24 figure accordingly. However, the Department for Environment, Food and Rural Affairs introduced new guidance which increased the breeding age of dogs for breeders with a five star licence (such as the appellant). As a result, those litters were pushed back into the 2023/24, hence the stark contrast between the £23,938 net profit in 2022/23 and the net profit of £76,965.
52. The LPA indicated at the Hearing that they had some doubt over the projections given the lack of invoices and receipts provided and that there was lack of firm evidence over the costings. However, the LPA did not provide any specific evidence which cast doubt on the credibility of the appellant's projections. Ultimately, projections will not be accurate but I have no reason to

believe they have not been made on a sound financial basis. As a result, I am satisfied there is clear evidence that the enterprise has been planned on a sound financial basis.

53. I conclude, therefore, that in respect of both Appeal A and Appeal B, there is an essential need for a rural worker to live at or near their place of work in the countryside. On the evidence before me, the developments accord with LP Policy LP11 insofar as it states that planning permission may be granted on a temporary basis for no more than 3 years for a caravan, mobile home or wooden structure to support newly established enterprises in the countryside where there is a functional need.

Character and Appearance

54. The Land lies in an area which is predominately rural in character. The surrounding landscape is characterised by flat, open fields and hedgerows, interspersed with farmsteads and agricultural buildings. In addition, there is a large gasworks compound to the south of the Land.
55. The enforcement notice in respect of Appeal A cites the effect of the caravan, sheds and other business infrastructure on the character and appearance of the area as a reason for issuing the notice. However, at the Hearing the LPA confirmed that its sole concern on character and appearance grounds was the effect of the removal of hedgerow on Waterworks Lane as a result of the proposed access and parking which is solely part of the development in Appeal B.
56. Given that the buildings on the Land are relatively low level, largely screened by fencing and planting and of similar size and design to other such structures in the area, I agree that the development subject of Appeal A will not have a harmful effect on the character and appearance of the area.
57. In terms of Appeal B, the proposed access arrangements would result in the removal of around 5m of established hedgerow. However, I was able to see from my site visit that the hedgerow is sporadic in part and gaps within hedgerows are a common feature in the surrounding landscape, particularly where they serve access points. As a result, I am satisfied that the removal of the hedgerow to facilitate the access would not unduly diminish the rural nature and character of the lane.
58. The LPA also states that the car parking would be an unacceptable encroachment of hard landscaping into the open countryside. I accept that the provision of the access and parking arrangements would result in the loss of part of an open field to hard surfacing. However, it would be a relatively small part of the overall field. Moreover, it will sit adjacent to the existing built form of Woodcroft Grange. Furthermore, areas of hardstanding to facilitate access and parking are not an uncommon feature in the area. This area would be relatively well screened from surrounding views by the existing boundary treatments.
59. I conclude, therefore, that in respect of both Appeal A and Appeal B, the developments will not have a harmful effect on the character and appearance of the area. As a consequence, both developments will accord with Policy LP16 of the LP which states that all development proposals are expected to positively

contribute to the character and local distinctiveness of the area and create a sense of place.

Human Rights – Appeal A

60. The loss of a person's home would be an infringement of their rights under the Human Rights Act 1998 (HRA). I have also had regard to the Public Sector Equality Duty (PSED) enshrined in the Equality Act 2010, insofar as the appellant considers themselves to have a disability which is a protected characteristic. The cessation of the use of the Land for residential purposes would amount to interference and would engage the right for respect for private and family life, home and correspondence set out in Article 8 of the HRA. This is a qualified right, whereby interference may be justified if in the public interest, applying the principle of proportionality.
61. I acknowledge that the consequence of dismissing the appeal would be that the appellant and his wife would lose their home. However, the notice, as varied, provides a 12 month compliance period which would allow them time to find an alternative home. Moreover, there is no indication that those persons would necessarily be made homeless beyond that date. In any event, as a result of my decision to grant planning permission for the residential use of the Land in respect of Appeal B, the requirements insofar as they relate to the requirement to cease the use of the Land for residential purposes would cease to have effect under section 180 of the 1990 Act.
62. As a result, the planning harm I have identified is of such weight that upholding the notice as varied would be a proportionate and necessary response that would not violate those persons rights under Article 8 of the HRA and having regard to the PSED. The protection of the public interest cannot be achieved by means that are less interfering of their rights.

Other Matters – Appeal A

63. I note that the appellant has made efforts to improve biodiversity on the Land through a programme of planting. However, such benefits would not outweigh the harm which arises to highway safety.

Conditions – Appeal B

64. In light of my findings in respect of the main issue of essential need, it is necessary to impose a condition restricting the period for the permission to 3 years in accordance with LP Policy LP11 and to prevent unjustified residential development in the open countryside. Likewise, for the same reason, it is necessary to impose a condition to restrict the occupation of the dwelling to a person employed in the dog breeding business. In addition, it is necessary to require compliance with the approved plans in respect of the parking and access arrangements to prevent harm to highway safety.
65. A condition requiring compliance with the approved plans is not necessary as the development has already been carried out, apart from the access and car parking provision. A condition has nevertheless been imposed requiring the access and car parking to be carried out in accordance with the submitted details within 6 months to prevent harm to highway safety.
66. The LPA suggests a condition requiring the Land to be restored within 3 months if the uses were to cease is necessary. However, I consider such a condition

would not be necessary, given the potential for a person other than the appellant to carry out the uses within the scope of the permission to be granted.

Conclusions – Appeal A

67. Whilst I have found that there is an essential need for a rural worker to live at or near their place of work in the countryside and that the development subject of the notice will not have a harmful effect on the character and appearance of the area, I have found there will be harm to highway safety. That is the prevailing consideration.
68. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Conclusions – Appeal B

69. For the reasons given above I conclude that the appeal should be allowed.

Overall Conclusions

70. In light of my decision to refuse planning permission on the deemed application and dismiss the appeal on ground (a), the enforcement notice will be upheld and, subject to the outcome of the appeal on ground (f), the requirements of the notice will remain. Nevertheless, planning permission will be granted as a result of my decision to allow Appeal B.
71. Thus, the appellant can rely on section 180 of the 1990 Act which states that, where after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that planning permission, the enforcement notice shall cease to have effect so far as inconsistent with that permission.

Appeal A on ground (f)

72. An appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary. Section 173(4) of the 1990 Act sets out that the purpose of an enforcement notice can be: (a) remedying the breach of planning control; or (b) remedying any injury to amenity which has been caused by the breach.
73. Both parties stated at the Hearing that they consider the purpose of the notice is to remedy the breach. Given the notice requires the use to cease and the removal of the caravans, fencing, timber buildings and hardstanding areas, I am satisfied the purpose of the notice is to remedy the breach of planning control in accordance with section 173(4)(a) of the 1990 Act.
74. As such the requirements to cease the use, remove all caravans, fencing, buildings and hardstanding areas which have facilitated the mixed use do not go beyond what is necessary to remedy the breach. It seems to me that the siting of the caravans, the buildings and hardstanding have all been done to facilitate either the residential or dog breeding elements of the mixed use. On that basis it is not excessive to require their removal in order to remedy the breach.

75. However, the LPA indicated at the Hearing that the requirement to remove fencing from the Land related only to the internal fencing which has been erected within the site, and not the fencing which has been erected around the boundary. Whilst that is clear from requirement 3 of the notice, requirement 2 of the notice refers to fencing. I will therefore vary the notice to delete the word fencing from requirement 2, since requirement 3 will suitably deal with the internal fencing.

76. Otherwise, the appeal on ground (f) fails.

FORMAL DECISIONS

Appeal A

77. It is directed that the enforcement notice is corrected by the deletion of the word "permanently" from section 5(2) and 5(3) of the notice and varied by the deletion of the word "fencing" from section 5(2) of the notice.

78. Subject to the corrections and variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

79. The appeal is allowed and planning permission is granted for the proposed material change of use of the land to a licenced establishment for breeding dogs and siting of a residential mobile home including kennels, associated fencing, additional timber kennel, formation of vehicle access and associated car parking at Buffingham Kennels, Waterworks Lane, Glinton, Peterborough PE6 7LP in accordance with the terms of the application, Ref 20/01275/FUL, dated 28 September 2020, and the plans submitted with it, subject to the following conditions:

- 1) The residential use hereby permitted shall be for a limited period being the period of 3 years from the date of this decision. The residential use hereby permitted shall be discontinued and the land restored to its former condition on or before 3 years from the date of this decision.
- 2) The occupation of the residential mobile home, as illustrated on the drawing 'Site Location Block Plan General Arrangement', shall be limited to a person solely or mainly employed, or last employed, in the dog breeding business hereby permitted, or a widow, widower or surviving civil partner of such a person, and to any resident dependents.
- 3) The uses hereby permitted shall cease and the building operations hereby permitted shall be demolished to ground level and all equipment and materials brought onto the land for the purposes of such use and materials resulting from the demolition shall be removed within 28 days of the date of failure to meet the requirements set out below:
 - i) Within 6 months of the date of this decision, the vehicle access and parking provision as shown on the approved plan "Proposed Site Layout Plan V2a Revised Parking" shall be implemented in full and the parking spaces laid out for vehicles to park and turn clear of the public highway at all times.

Upon implementation of the approved access and parking scheme specified in this condition, the scheme shall thereafter be maintained and retained as such.

In the event of a legal challenge to this decision the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

J Whitfield

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

John Dadge – Agent
Ludovic Greenhow – Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Matt Thomson – Senior Planner, Peterborough City Council
Lee Walsh – Planning Enforcement Officer, Peterborough City Council

DOCUMENTS

- 1 Updated Financial Information