



Appeal Decisions

Site visit made on 19 November 2024

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 6th January 2025

Appeal A Ref: APP/W0530/C/23/3324256

Appeal B Ref: APP/W0530/C/23/3324257

Appeal C Ref: APP/W0530/C/23/3324258

Appeal D Ref: APP/W0530/C/23/3324260

Cherry Trees, Iram Grove, Priest Lane, Willingham, CB24 5HZ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Ms Mary Howe (Appeal A), Mr Billy Hancock (Appeal B), Miss Niamh Finlay Howe (Appeal C) and Mr Anthony Finlay (Appeal D) against an enforcement notice issued by South Cambridgeshire District Council.
 - The notice was issued on 17 May 2023.
 - The breach of planning control as alleged in the notice is: The change of use of the land from residential to a mixed use residential and dog rescue organisation; and the erection of dog kennels for the housing of rescue dogs.
 - The requirements of the notice are [to]: (i) Cease the use of the land as a Dog Rescue Organisation; (ii) Remove two (2) dog kennel blocks comprising ten (10) individual kennels from the land, shown hatched in red on the attached Plan B; and (iii) Remove all rescue dogs from the land.
 - The period for compliance with the requirements is 6 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (d), (f), (g) 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.
 - Appeal B, C and D are proceeding on the grounds set out in section 174(2)(d), (f), (g) of the Town and Country Planning Act 1990 (as amended).
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Decisions

1. The appeals are dismissed, the enforcement notice is upheld and, in respect of Appeal A, planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Applications for costs

2. An application for costs was made by Ms Mary Howe against South Cambridgeshire District Council. This is the subject of a separate decision.

Preliminary Matters

3. Cherry Trees is a detached dwelling in the countryside outside Willingham. It is one of two such properties sited either side of the access to a former farmyard, now in use as an equestrian centre. Both dwellings were formerly connected with the farm and Cherry Trees remains subject to an agricultural occupancy condition. A separate enforcement notice was issued alleging occupancy of the dwelling in breach of that condition. That notice was also appealed¹ and is the

¹ Appeal Ref. APP/W0530/C/23/3324211

subject of a separate decision. That appeal was made by the appellant in Appeal B, Mr Hancock, the property owner. The other appellants in this case also appealed that notice, but subsequently withdrew their appeals. I mention this because some of the matters raised in the withdrawn appeals relate more to the notice the subject of these appeals, namely a claim that the kennels, being mobile structures, are not operational development, and that they do not require planning permission because they are below planning permission height.

4. On the first point, even structures that are mobile in the sense of not being affixed to the ground may still be considered to be buildings for planning purposes. It is a matter of fact and degree, the relevant considerations being size, the degree of permanence, and physical attachment. The kennels are arranged as 2 blocks facing each other within a gated and fenced compound. They sit on a raised concrete base. Each block is easily large enough to comprise a building, and I understand that the kennels were assembled and erected on the site. Being contained within a secure compound, and on a bespoke base, they are unlikely to be moved to a different part of the site and have been in the same place since they were erected, indicating a significant degree of permanence. While the kennel structures may be capable of being moved from the concrete base, the base itself is a permanent structure and the whole should be considered as a single operation. Overall, as a matter of fact and degree I am satisfied that the kennels are buildings and hence development for the purposes of the 1990 Act.
5. The reference to building height was not elaborated upon, but I take it to be a reference to Class E of Part 1, Schedule 2 of the GDPO² which grants planning permission for certain buildings and structures within the curtilage of dwellinghouses, subject to limitations which include a height limit. However, Class E buildings must be required for purposes incidental to the enjoyment of the dwellinghouse as such, and I do not consider that the provision of kennels for the housing of rescue dogs in the manner and intensity that has occurred here can reasonably be considered to be incidental to the dwellinghouse use. It is a separate primary use of the land. In short, the kennels complex does not benefit from GDPO permitted development and requires express planning permission.

Ground (d) – all appeals

6. This ground is that it is too late to take enforcement action. It is made in respect of the operational development element of the notice, that is the erection of the kennels. Section 171B(1) of the 1990 Act provides that no enforcement action may be taken against operational development after the end of the period of four years beginning with the date on which the operations were substantially completed. The current notice was issued on 17 May 2023, so, ignoring a notice which was issued on 14 March 2022 and subsequently withdrawn, the kennel complex would have had to have been substantially completed by 17 May 2019 to be immune. No evidence has been provided to support that proposition, and there is no evidence of the presence of the kennels in aerial imagery with an indicative date of May 2020 provided by the Council. In an appeal on this ground the burden of proof is on the appellant, and it clearly

² The Town and Country Planning (General Permitted Development) (England) Order 2015

has not been discharged in this case. The appeals on this ground cannot therefore succeed.

Ground (a) – Appeal A

7. This ground is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.
8. The main issue is the effect of the development on the living conditions of the neighbouring residential property in terms of noise and disturbance. This property, Hemsall View, also formerly a dwelling associated with the farm and erected at the same time as Cherry Trees, is on the other side of the former farmyard access. The kennels are sited close to the access, such that they are about 15m m from the rear garden of Hemsall View and about 25 m or so from the dwelling itself. The kennels were not in use at the time of my site visit, but in view of the relative proximity and the number of dogs involved I consider that when in use there is a significant likelihood of dog barking being noticeable in the neighbouring property and of that being at times intrusive, disturbing and harmful to the living conditions of the occupiers, all the more so given the quiet and tranquil nature of this part of Iram Drove.
9. I understand that a noise abatement notice was issued by the Council and subsequently prosecuted on the basis of non-compliance, but that the court found no case to answer. However, that is a different regulatory regime. Under the planning regime, a proposal that may potentially have adverse impacts on the local environment should be able to show that it would not. In this case the introduction of the rescue dogs facility close to an unrelated residential environment is the agent of change, and it is reasonably foreseeable that there may be adverse impacts. In such circumstances I consider that it is for the developer to show that the proposal would not be materially harmful, or that it can be satisfactorily mitigated. However, I have no evidence before me to show that the development can co-exist harmoniously with the established separate residential environment.
10. I acknowledge that measures have been taken to reduce the magnitude and frequency of noise generation, such as rudimentary insulation and inter-visibility screening of the kennels, but there is no quantitative or qualitative evidence to show that these measures would be effective in preventing adverse impacts on the amenity of the neighbouring property.
11. I acknowledge also that dog ownership for personal purposes, though there is not a 6-dog level as suggested, would in most circumstances be incidental to the use of the dwellinghouse as such and hence not a breach of planning control, but that does not justify this development which has led to a material change of use and hence development for the purposes of the 1990 Act.
12. I find accordingly that the development is contrary to Policy SC/10 of the South Cambridgeshire Local Plan 2018 which aims to ensure that development does not have an unacceptable adverse impact on the indoor and outdoor acoustic environment of existing or planned development. It would also conflict with Policy HQ/1 which expects new development to be of high quality design that makes a positive contribution to its local and wider context, including protecting the health and amenity of occupiers and surrounding uses.

13. The development comprising the material change of use is thus contrary to the development plan read as a whole. While there are benefits in terms of animal welfare and the provision of an important service, these are not sufficient to justify the harm identified and the development plan conflict. The operational development is solely for the purposes of the rescue facility use and as new built development without lawful purpose in the relatively undeveloped countryside it fails to make a positive contribution to its local context and is thus also in conflict with Policy HQ/1 and the development plan as a whole. The appeal on this ground cannot therefore succeed, and planning permission must be refused.

Ground (f) – all appeals

14. In these circumstances this ground is that the requirements of the notice exceed what is necessary to remedy the breach. However, no lesser steps have been proposed that might remedy the breaches. As far as I can see the steps required are the minimum necessary to remedy the breaches and restore the land to its condition before the breaches occurred. The appeals on ground (f) cannot therefore succeed.

Ground (g) – all appeals

15. An unspecified extension of the time for compliance was sought on the basis that the rescue dogs would have to be re-homed. However, since the kennels are not currently in use I am satisfied that the time for compliance is reasonable and appropriate.

Paul Dignan

INSPECTOR