



Appeal Decision

Site visit made on 14 January 2025

by **A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC**

an Inspector appointed by the Secretary of State

Decision date: 21 January 2025

Appeal Ref: APP/X4725/C/24/3343002

Land on the north west side of Sandy Lane, Middlestown, Wakefield

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Terry Gill against an enforcement notice issued by Wakefield Metropolitan District Council.
- The notice was issued on 25 March 2024.
- The breach of planning control as alleged in the notice is the material change of use of land within the Green Belt from agricultural use to use for the kennelling and training of dogs within the last 10 years and the associated operational development consisting of the erection of two kennels in the approximate location shown hatched blue on the attached plan and a hard standing shaded orange on the attached plan, within the last 4 years.
- The requirements of the notice are to:
 - a) Cease the use of the land for kennelling and training dogs,
 - b) Demolish and remove the two kennels shaded blue on the attached plan,
 - c) Remove the hard standing shaded orange on the attached plan,
 - d) Restore the land to its previous condition by demolishing and removing the 3 kennels and 1 tool shed shaded black on the attached plan.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary of Decision: The Enforcement Notice is varied and upheld.

Appeal site and surroundings

1. The appeal site comprises a field situated adjacent to 56 Sandy Lane and an adjacent residential annexe. There are a number of buildings situated in the south-east part of the site and a large hardstanding area has been laid. The surrounding area is characterised by agricultural fields and ribbon residential development along Sandy Lane.

The appeal on ground (f)

2. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to remedy the purpose. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since in this case the Notice requires the use to cease, demolition and removal of two kennels, removal of the hard standing area and restoration of the land to its previous condition by demolishing and removing the three additional kennels and a tool shed, the purpose is clearly to remedy the breach. Leaving any part of the development in place would not achieve that purpose.
3. The removal of the three kennels and the tool shed shaded black on the enforcement notice Plan are the only requirements in dispute under ground (f). The appellant argues that one of the buildings is a converted garage which

benefits from planning permission, another is a former piggery now repurposed for dog training and the remaining two were built for storing equipment and feed in connection with the use of the land for agricultural purposes and were all completed more than four years ago. As such it is contended that those buildings are lawful by virtue of the passage of time. Although no appeal has been submitted on ground (d), the Council accepts this.

4. Case law¹ has held that where an enforcement notice is issued in respect of a material change of use, and works were carried out to facilitate that material change of use, the Notice may require that the ancillary or incidental works are removed to restore the land to its previous condition and the breach is remedied. However, the Court of Appeal in *Murfitt* did not consider the approach to be taken if there is some question as to whether the works were carried out for some other lawful use. It was held in *Bowring*² that, where a Notice alleges a material change of use and requires that certain works are removed, those works must have been integral to or part and parcel of the making of the material change of use. The Enforcement Notice cannot require the removal of works that were undertaken for a different and lawful use and which could be utilised in that other lawful use if the unauthorised use ceased.
5. In this case the buildings in question have been more recently used as part of the unauthorised material change of use, but they were not erected for that purpose but for other uses associated with the agricultural use of the land that was taking place before the material change of use to kennelling and training dogs started. That being the case it is unreasonable for the Council to require the four buildings to be removed because they were there before the unauthorised material change of use commenced and the works to build them were not integral to the making of the material change of use. Therefore, the overall requirement of the Notice to remedy the breach of planning control and to restore the land to its previous condition can be achieved by the lesser steps suggested by the appellant. Demolishing those buildings would exceed what is necessary to remedy the breach of planning control.
6. I see no reason why the buildings could not be utilised for purposes associated with the lawful agricultural use of the land for feed storage and tool storage, for example.

The appeal on ground (g)

7. The ground of appeal is that the time given to comply with the requirements is too short. The 6 months given would be sufficient to cease the use of the land for kennelling and dog training, demolish the two kennels shaded blue on the attached plan and remove the hard standing shaded orange. The 24 month compliance period suggested by the appellant would be excessive having regard to the ongoing harm caused by the use and its associated buildings. However, I consider the period should be extended to 9 months to allow sufficient time for the appellant to find suitable alternative homes for the dogs. In this respect the alternative period would strike an appropriate balance and not place a disproportionate burden on the appellant. To this limited extent the appeal on ground (g) succeeds.

¹¹ *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598

² *Bowring v SSCLG & Waltham Forest LBC* [2013] EWHC 1115 (Admin)

Formal Decision

8. It is directed that the enforcement notice is varied by:
 - a) the deletion from paragraph 5 of the words "d) Restore the land to its previous condition by demolishing and removing the 3 kennels and 1 tool shed shaded black on the attached plan;" and
 - b) the deletion from paragraph 6 of "6 months" and its substitution with "9 months" as the time for compliance.
9. Subject to the variations, the enforcement notice is upheld.

AA Phillips

INSPECTOR