



Appeal Decisions

Site visit made on 24 June 2025

by Mr James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 18 July 2025

Appeal A Ref: APP/A1530/W/24/3345018

Petalo Lodge, Boxhouse Lane, Dedham CO7 6HZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by S Stubbs against the decision of Colchester City Council.
- The application Ref is 232290.
- The development proposed is new kennel, existing wash room with new roof, existing garage with new cladding and roof tiles.

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

Appeal B Ref: APP/A1530/C/24/3345020

Appeal C Ref: APP/A1530/C/24/3345021

Petalo Lodge, Boxhouse Lane, Dedham CO7 6HZ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Mr S Stubbs (Appeal A) and Ms J Sillett (Appeal B) against an enforcement notice issued by Colchester City Council.
- The notice was issued on 25 April 2024.
- The breach of planning control as alleged in the notice is “*Without the benefit of planning permission, the construction of a brick kennel with tiled pitched roof*”
- The requirement of the notice is to (i) Demolish/dismantle/remove the brick built kennel with pitched roof from the land (for the avoidance of doubt this is the kennel, outlined in red on the attached plan).
- The period for compliance with the requirement is four calendar months from the date the notice takes effect.
- The appeals are proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

1. The appellants sought planning permission for a kennel, together with alterations to an existing wash room and garage. This application was refused by the Council in March 2024, principally due to the effects of the kennel. Appeal A relates to this refusal. The Council subsequently issued an enforcement notice in respect of the kennel alone, and Appeals B and C relate to this enforcement notice.
2. There are several other appeals concerning the same appeal site, which include the construction of a field kennel, boundary treatments and a garage. These applications are the subject of separate decision notices.
3. The appeal site is located within the Dedham Vale Area of Outstanding Natural Beauty (AONB). The National Planning Policy Framework (2024) (Framework) is clear that great weight must be given to conserving and enhancing the landscape and scenic beauty in National Landscapes, which include AONBs. I have determined these appeals accordingly.

APPEAL A (PLANNING REFUSAL)

Main Issues

4. The main issues are:

- the effect of the development on the character and appearance of the area; and
- the effect of the development on the living conditions of neighbouring occupiers, with particular regard to noise.

Reasons

Character and Appearance

5. The appeal site is located along the western side of Boxhouse Lane and comprises a detached dwelling set within a large plot of land. There are several outbuildings close to the house, which include a stable block, a hay barn, a garage and a home office. Together with the house, these buildings are all sited within the northern part of the appeal site.
6. The kennel, which is relatively modest in size, is situated between the washroom and haybarn, and infills a gap between the row of buildings along the northern perimeter of the site. Its positioning ensures it integrates effectively within the existing built fabric of the property, without exacerbating the cumulative sense of built form within this part of the site. Its use of sympathetic materials, which are consistent with the tone and palette of those used elsewhere on the site, also ensures it complements the prevailing character of built form across the site as a whole.
7. In turn, I am satisfied that the development does not harm the character and appearance of the area. It also conserves the landscape and scenic beauty of the Dedham Vale AONB. In this regard, the development is consistent with Policy SP7 of the Council's Local Plan (Section 1 – 2013-2033) (Section 1 LP), which requires development to respond positively to its local character and context. The development is also consistent with Policies OV2, ENV1, ENV4, DM13 and DM15 of the Council's Local Plan (Section 2 – 2017 – 2033) (Section 2 LP). Together, these policies require development to achieve high quality design which complements local character. They also require proposals to protect the borough's natural environment and countryside, and to safeguard the special qualities and tranquillity of the AONB. Finally, the development is consistent with the design objectives set out in the Framework, including those which seek to preserve and enhance the special quality of Natural Landscapes.

Living Conditions

8. The kennel is located along the northern boundary of the appeal site, and backs on to a farm which includes a domestic dwelling and garden. The kennel accommodates up to four dogs at a time, which undoubtedly introduces some noise impact, owing to intermittent barking at various times of day and night. Given the proximity of the kennel to the neighbouring property, it seems likely that this noise would adversely affect the living conditions of the occupiers of this property. At times, it would also adversely affect the tranquillity of the AONB. The appellants have presented little evidence to suggest otherwise.

9. In turn, the kennel conflicts with policies DM13 and DM15 of the Section 2 LP, insofar as they seek to ensure development safeguards neighbouring amenity, including with regard to noise. Policy SP7 of the Section 1 LP has similar objectives. The development also conflicts with Policy ENV4 of the Section 1 LP, insofar as it seeks to protect the tranquillity of the AONB.

Fallback

10. Notwithstanding this harm, the appellants say they could construct a kennel in the same location, pursuant to the permitted development rights afforded by Class E of Part 1, Schedule 2, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Subject to certain conditions, Class E permits the construction of a building required for a purpose incidental to the enjoyment of the dwelling house. The appellants contend that the noise impact of a kennel constructed pursuant to these permitted development rights would be the same as from the one constructed, as it would accommodate the same number of dogs.
11. Class E is explicit that the keeping of pet animals is a purpose incidental to the enjoyment of a dwelling. Whilst there is suggestion that the appellants' security business encompasses dog provision, the appellants say the dogs kept on site are pets, and there is little tangible evidence before me to demonstrate otherwise. Similarly, there is insufficient evidence to demonstrate the number of dogs has resulted in a material change of use of the site. On the available evidence, it therefore seems that the kennel's use for the keeping of pets is incidental to the enjoyment of the dwelling, and within the remit of Class E.
12. To be permitted by Class E, no part of the building can be situated on land forward of a wall forming the principal elevation of the original dwellinghouse. Prior to renovation of the main dwelling, it is understood that the main entrance to the property was along the eastern elevation of the property, facing the road. This is reflected in the pre-existing drawings submitted in conjunction with renovation application (Ref 211945). These show the front door within the porch, facing outwards towards the road.
13. The Technical Guidance on Permitted Development Rights for Householders says *"in most cases, the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house"*. The guidance also says the principal elevation will often include the main architectural features of the house, which may include a porch serving the main entrance into the house. Reflecting this guidance (and the plans referenced above), it therefore seems likely that the eastern elevation constituted the principal elevation of the original dwellinghouse. The kennel in this instance is sited to the north of the property, and does not sit forward of this eastern elevation. In turn, it would meet this criterion of Class E.
14. Overall, the evidence therefore suggests that the appellant could construct a kennel in the same location pursuant to the Class E rights. Whilst it may be smaller than the kennel constructed, it would likely accommodate the same number of dogs. This means the noise impact would be similar. There is no reason to doubt the appellants would pursue this option if the appeals were dismissed, and so it therefore represents a legitimate fallback.

Planning Balance

15. Whilst the development does not harm the character and appearance of the area nor the landscape or scenic beauty of the AONB, it does cause harm to the living conditions of neighbouring occupiers and to the tranquillity of the AONB. However, if implemented, the fallback would likely result in the same level of harm. If permission is granted for the as-built kennel, conditions can be secured which will help ensure neighbouring amenity is protected as far as possible. The same would not be possible if a kennel was built pursuant to permitted development rights.
16. Overall, the fallback, and the ability to secure conditions if granted, are both material considerations which carry significant weight, and on balance, indicate a decision should be made otherwise than in accordance with the development plan.

Other Matters

17. For completeness, whilst the Council does not appear to object to the washroom or garage alterations, I am satisfied that these elements of the development achieve good design, which complement the character and appearance of the rest of the site. Subject to a condition restricting external lighting, there is also no reason to suggest they cause any particular amenity concerns. In turn, these components of the scheme are also consistent with the development plan.
18. Comments regarding other appeal decisions relating to the appellants' former properties are noted. However, each case must be determined on its own merits, with regard to its individual site context. These appeal decisions therefore carry little weight in the present case.

Conditions

19. I have included a plans condition to ensure certainty over the development permitted (condition 1).
20. I have included a condition which restricts the number of dogs which can be kept in the kennel at any one time (condition 2). This is to safeguard (as far as possible) neighbouring amenity, particularly in terms of noise. For similar reasons, I have included a condition which precludes the kennel from being used for commercial purposes, or in any way which is not ancillary to the residential use of the dwelling (condition 3).
21. Finally, I have included a condition which restricts external lighting within the development. This will help protect neighbouring amenity and also ensure no detriment to the dark skies which help to characterise the AONB.

Appeal A - Conclusion

22. Whilst the development conflicts with the development plan, material considerations indicate a decision should be made otherwise than in accordance with the plan. Appeal A therefore succeeds, and planning permission is granted in the terms set out below in the Formal Decision.

APPEALS B AND C (ENFORCEMENT NOTICE)

23. Notwithstanding the outcome of Appeal A, I have still addressed the enforcement appeals in full. However, in practice, the outcomes will be of little consequence, as planning permission has been granted for the development.

24. Pursuant to ground (f), the appellants say that the steps required to be taken in the notice exceed what is necessary to remedy the alleged breach of planning control. As per s173(4) of the Town and Country Planning Act 1990, the purpose of the notice is to remedy the breach of planning control and the requirements must achieve this purpose.
25. The appellants have suggested that a lesser requirement to amend the kennel in compliance with available permitted development rights would be more appropriate. However, in the absence of more detail (such as alternative plans), any such alternative requirement would not be sufficiently precise. In turn, the requirement to remove the kennel is a proportionate step, which goes no further than remedying the breach. The appeals on ground (f) therefore fail.
26. Appeals B and C should therefore not succeed, and I shall uphold the enforcement notice. However, notwithstanding the outcome of the enforcement appeals, planning permission has been granted on Appeal A for the totality of the development alleged in the enforcement notice. In these circumstances, pursuant to s180(1) of the 1990 Act, the enforcement notice will cease to have effect.

Formal Decisions

Appeal A

27. The appeal is allowed and planning permission is granted for a new kennel, existing wash room with new roof, existing garage with new cladding and roof tiles at Petalo Lodge, Boxhouse Lane, Dedham CO7 6HZ in accordance with the terms of the application, Ref 232290, subject to the following conditions:
- 1) The development hereby permitted shall be retained in accordance with the following drawings: 1328/K5 (Location Plan); 1328/K1 (Existing Wash Room with New Roof); and 1328/K2 (New Kennel).
 - 2) No more than four dogs shall be kept in the kennel at any one time.
 - 3) The development hereby permitted shall not be occupied or used at any time other than for purposes ancillary to the residential use of the dwelling known as Petalo Lodge, Boxhouse Lane, Dedham, nor for any commercial purpose.
 - 4) No external lighting fixtures shall be constructed, installed or illuminated unless approved in writing by the Local Planning Authority.

Appeal B

28. The appeal is dismissed and the enforcement notice is upheld.

Appeal C

29. The appeal is dismissed and the enforcement notice is upheld.

Mr James Blackwell

INSPECTOR