



Appeal Decision

Site visit made on 18 November 2025

by **R Hitchcock BSc DipCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04th December 2025

Appeal Ref: APP/R0660/C/24/3350563

40 Newall Avenue, SANDBACH, CW11 4BJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Richard Whitehurst against an enforcement notice issued by Cheshire East Council.
- The notice was issued on 18 July 2024.
- The breach of planning control as alleged in the notice is 'Without planning permission, the material change of use of the property from a C3 dwelling to a mixed use of C3 dwelling and commercial use for the purposes of dog grooming including microchipping services, a dog fertility clinic, stud dog services, dog breeding and other associated uses and for the keeping of dogs. Erection/alteration of outbuildings A, shaded green on the attached Plan B and outbuilding B shaded blue on the attached Plan B located to the rear of the dwelling which are used in association with the unauthorised uses'.
- The requirements of the notice are to:
 - a) Cease the use of the Land for the purposes of dog grooming, microchipping, fertility, dog stud services, dog breeding and other associated uses.
 - b) Cease the use of the Land for the keeping of dogs.
 - c) Remove all stock, fixtures and fittings associated with the unauthorised business from the Land.
 - d) Demolish Building A shaded green with shown on the attached plan marked 'Plan B'.
 - e) Demolish Building B shaded blue shown on the attached plan marked 'Plan B', OR
 - f) Restore Building B to its former state before the breach of planning control took place.
 - g) Remove all resultant debris arising from compliance with requirements c), d) and e) or f) from the Land.
- The periods for compliance with the requirements are: a) 3 months, b) 4 months, c) 4 months, d) 5 months, e) 5 months, f) 5 months and g) 6 months respectively.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Decision

1. It is directed that the enforcement notice is corrected by:

The deletion of Paragraph 5a) and its substitution with 'Cease the use of the Land for a mixed use of a C3 dwelling and commercial use for the purposes of dog grooming including: microchipping services, a dog fertility clinic, stud dog services, dog breeding and other associated uses and for the keeping of dogs.'

and varied by:

The deletion of Paragraph 5b) and substitution with 'Reduce the number of dogs which are kept on the property to a maximum of 4 dogs at any one time.'

2. Subject to the correction and variation, the appeal is dismissed and the enforcement notice is upheld.

The Notice

3. Inspectors have a duty to try to get notices in order. If I consider the Notice is defective, I have broad powers under the provisions of s176(1)(a) of the Town and

Country Planning Act 1990 as amended (the Act) to correct any defect, error or misdescription in the enforcement notice, or to vary the terms of the enforcement notice. I can only do so, however, where I am satisfied that this will not cause injustice to either the appellants or the Council.

4. The Notice alleges a material change of use of the land to a mixed use. Where a mixed use is alleged, the requirement in the enforcement notice should match that allegation. Cessation of a mixed use which includes a lawful use within the mix does not prevent a return to the last lawful use by reason of s57(4). Accordingly, I find there would be no injustice to the parties if I were to amend the requirement at paragraph 5a) to specifically address the allegation in the Notice.

Ground (b)

5. To succeed on ground (b) the appellant must prove that the alleged use of the land identified in the Notice had not changed to include commercial canine business uses and the keeping of dogs. The burden of providing relevant facts in this ground of appeal rests with the appellant, and the test of the evidence is the balance of probability.
6. On 19 September 2023, prior to the issue of the enforcement notice, the Council served a Planning Contravention Notice (PCN). Amongst other things, the appellant's response confirmed Myaslujo K9 Services Ltd had been operating from the site since 6 April 2021. It also confirmed that, in addition to keeping 18 dogs, canine cytology, ultrasound scanning, artificial insemination, assisted mating, grooming and breeding services were taking place on the Land.
7. Although the response provided conflicting evidence in relation to whether dog breeding was taking place, the PCN responses suggest, as a minimum, artificial insemination and puppy rearing were being offered as services at the premises. The appellant's statement also confirms that breeding of his own dogs was taking place at that time. Whether this was for commercial gain, or otherwise, is unclear from the evidence.
8. There is no dispute between the main parties that outbuildings – Building A, a summerhouse-type building, and Building B have been erected and/or altered and are used in association with the canine activities on the Land.
9. From the evidence before me, I am satisfied on the balance of probability that the allegations stated in the notice have occurred as a matter of fact. I therefore conclude that the appeal on ground (b) should fail.

Ground (c)

10. An appeal on this ground is that the matters stated in the Notice do not constitute a breach of planning control. Again, the burden of proof lies with the appellant, and the test of the evidence is the balance of probability.
11. Whether or not a material change of use has occurred for the purposes of s55 of the Act depends on some significant difference in the character of the activities taking place on the Land compared to what had gone on previously¹.

¹ see *R (oao) Kensington and Chelsea RBC v SSCLG & Reis & Tong* [2016] EWHC 1785 (Admin)

12. The appellant's evidence suggests that 18 of his own dogs were kept primarily within the larger outbuilding as pets and working dogs, including four stud dogs of various breeds. There is little detail of the remainder in terms of breeds or their numbers. Home breeding is said to have taken place for some time.
13. In addition, customers dogs are brought to the site. The PCN confirms that up to 10 visitors per day might utilise the business services. This employs one resident and a part-time staff member. The business generates a healthy monthly revenue and generally operates between the hours of 0900 to 2000 for six days per week.
14. The alleged use relies on the outbuildings erected or extended to provide dog accommodation and the services offered. Buildings A and B occupy a significant proportion of the site area and cumulatively probably have a total footprint similar to that of the dwelling.
15. The extent of the services offered and associated comings and goings of customers, albeit on an appointment basis, is significant. In conjunction with the need to provide dedicated buildings on the modest site, receive occasional deliveries, and employ an additional staff member, the character of activity associated with the use of the site would be markedly different to the significant majority of the residential properties in the locality.
16. Commercial services aside, the keeping of 18 dogs as pets at a modest family property is, to my mind, beyond what could normally be regarded as incidental to the use of a dwellinghouse. Although home breeding may not be unusual, the high number of dogs kept and the necessity for a large building required to house them and provide for whelping facilities is. Such intensive keeping of dogs as pets (or working dogs) would not be typically characteristic of a domestic household use.
17. Furthermore, such uses are likely to give rise to a significant propensity for barking and potentially other unwelcome effects beyond the site boundaries. Although the appellant asserts that evidence provided to the Council demonstrated some dog noise was arising from elsewhere, there is little evidence before me to demonstrate that is the case. This claim conflicts with third-party representations from nearby neighbours and it did not prevent the Council from refusing two planning applications for the mixed use of the site.
18. Taking the above matters together, I find the use of a substantial part of the rear garden area with little private amenity space remaining, the extent of generated comings and goings, and the likely effects of housing and treating/grooming significant numbers of dogs, results in a material change in the character of the use of the property. As 'development' for the purpose of s55(1) of the Act, the use requires planning permission by virtue of s57(1).
19. The appellant describes the Buildings A and B as domestic type outbuildings. However, the appellant does not contest that Building A was extended, and Building B was erected for the purpose of the alleged mixed use of the site. Accordingly, the extension and erection of buildings within the curtilage of the dwellinghouse do not benefit from provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). This is because their use was in conjunction with the mixed use and cannot, therefore, be said to be incidental to the use of the dwellinghouse as required in the Order.

20. As substantial buildings with a high degree of permanence they are also within the Act's definition of 'development' and require the benefit of planning permission. In the absence of evidence to demonstrate that the alleged development has planning permission, or doesn't need it, the appeal on ground (c) fails.

Ground (f)

21. This ground of appeal is that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity caused by the breach.
22. In this case, the notice alleges that there has been a change of use, and it requires the unauthorised use to cease. Additionally, the notice alleges the extension/erection of buildings and requires that they are removed. The notice does not 'under-enforce' and the purpose of the notice must be to remedy the breach.
23. For that reason, and because the appellant was unable to appeal the Notice on ground (a) so that I could consider planning merits, I have no scope to consider whether the requirements of the notice are excessive to remedy any injury to amenity. The only case the appellant can make for ground (f) is that lesser steps would suffice to remedy the breach.
24. The appellant contends that Building A was erected as a summerhouse prior to being converted to a dog grooming salon. In acknowledging this position, the Council's Notice provides an option at paragraph 5f) to reinstate it to its condition prior to the breach taking place.
25. As above, there is little evidence that Building B was constructed for any other use than alleged in the Notice. Although the building may fall within the size limits specified in Class E of Part 1 of the GPDO, it has not been demonstrated that it was constructed for a purpose incidental to the dwellinghouse. Moreover, the provisions of the GPDO cannot be retrospectively applied. The appellant's suggested retention of that building would not remedy the alleged breach of planning control.
26. The wording of paragraph 5b) in the Notice seeks to prevent the use of the site for the keeping of dogs. However, any reversion to the lawful residential use of the site would allow for the keeping of domestic pet dogs on an incidental basis. Accordingly, without any saving, the Notice goes beyond remedying the breach and cannot require that use to be ceased entirely.
27. The Council have referred to the case of *Wallington*². It established that a use 'incidental to the enjoyment of a dwellinghouse' is to be construed objectively. The case concerned the hobby keeping of 44 dogs as pets and an enforcement notice requiring that number be reduced to six.
28. The court accepted that, in the context of enforcement proceedings, any imposition of a maximum number of dogs kept at a residential premises was somewhat arbitrary. Nevertheless, it was found not to be unreasonable for a fact and degree assessment to conclude on the likely point a material change of use of a premises might occur due to the number of dogs being kept. This must be objectively assessed on the individual case circumstances.

² *Wallington v SSW & Montgomeryshire DC* [1990] JPL 112; [1991] JPL 942

29. As a modest end-of-terrace property flanked by two houses within a residential street, the dwelling and surrounding amenity space are intimately associated with neighbouring properties. In such a setting, even the keeping of six dogs would likely be disproportionate to the residential use and have a propensity for disproportionate effects outside of the site, particularly from noise, such that a material change of use would probably arise. Although not determinative, being mindful that the *Wallington* case concerned a property some 34m distant from other houses, I find the use of the site for the keeping of more than four dogs would likely result in a material change to the character of the use of the site in the case circumstances.
30. The ground (f) appeal succeeds to the extent that the Notice is varied to allow for that saving.

Ground (g)

31. An appeal on Ground (g) is that the period for compliance with the requirements in the Notice falls short of what should reasonably be allowed. The appellant asserts that a 3-month period would enable evidence in relation to the effects of the development on noise and parking to be prepared and submitted.
32. The times for compliance as set out in the Notice provide for a minimum period of 3 months after the Notice comes into effect. It would therefore afford the appellant the opportunity to seek to pursue that stated action should the Council accept a further planning application for all or part of the development on the site.
33. Notwithstanding, in balancing the public and private interests bound up in this case, I find that the initial period of three months given for compliance with the opening requirement of the Notice does not fall short of what is reasonable. The appeal on ground (g) therefore fails.

Other Matters

34. I note the appellant's concerns in relation to the limited timescales imposed by the Council's service of the Notice. However, as a statutory imposition, that is not a matter for the appeal. Any advice heard by the appellant on Animal Welfare Act requirements is distinct from considerations under the 1990 Planning Act.

Conclusion

35. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variation.

R Hitchcock

INSPECTOR