
Appeal Decision

Site visit made on 16 December 2025

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 19 January 2026

Appeal Ref: APP/A0665/C/24/3338390

Land at 35 Marsh Lane, Ince, Chester CH2 4NP

- 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 Mrs Abigail Findlay-Stankovic against an enforcement notice issued by Cheshire West and Chester Council.
 - The enforcement notice, numbered 22/00203/EMCOU, was issued on 8 January 2024.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land from agricultural use (field) and residential use (dwelling) to a mixed residential use and the keeping of dogs and the erection of a building.
 - The requirements of the notice are:
 1. Cease the use of the land for the keeping of more than six dogs.
 2. Permanently reduce the number of dogs kept on the land to a maximum of six.
 3. Remove the building
 4. Remove all building materials from 5.3 from the land.
 - The period for compliance with the requirements is 6 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: the appeal is dismissed and the enforcement notice is upheld with a correction and a variation

Procedural Matters

1. The appeal submitted by Mrs Sittu Ahmed against the issue of the same Enforcement Notice (APP/A0665/C/24/3338391) was subsequently withdrawn.
2. It is part of the appellant's grounds of appeal that the land subject to notice is not designated as "agricultural land" under the Agricultural Act 1947 but is more properly described as the ancillary garden to the dwelling known as 35 Marsh Lane. On my reading that amounts to an appeal on ground (b) as set out in section 174(2) of the Town and Country Planning Act 1990 (the 1990 Act), namely that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. The Council has already commented on that matter in its Appeal Statement, albeit under a different ground of appeal. I am therefore satisfied that I can consider this matter as if an appeal had been made on ground (b) without causing any injustice.
3. In addition, the appellant maintains that the breach of planning control alleged in the notice is 'out of scope' of planning enforcement under the 10-year rule as the 'ancillary garden' had been used by the prior owners as a 'garden' for over 60 years. Consequently, it is the appellant's view that using the land as a

garden for socialising, exercising and training of dogs for personal use has already taken place for a period of over 60 years.

4. On my reading, the above constitutes an appeal on ground (d) as set out in section 174(2) of the 1990 Act, namely that at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. Again, the Council has already commented on that matter under a different ground of appeal. I am therefore satisfied that I can consider this matter as if an appeal had been made on ground (d) without causing any injustice.

The Enforcement Notice

5. The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land from agricultural use (field) and residential use (dwelling) to a mixed residential use and the keeping of dogs and the erection of a building. The notice therefore alleges both a material change of use and operational development.
6. The requirement at paragraph 5.1 of the notice is to cease the use of the land for the keeping of more than six dogs. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. The purpose of the notice, as expressed in the requirement at paragraph 5.1 of the notice, must therefore be to remedy the breach of planning control that has occurred.
7. The requirement at paragraph 5.2 of the notice is to permanently reduce the number of dogs kept on the land to a maximum of six. Having regard to the provisions of Section 181(1) of the 1990 Act, which states that compliance with an enforcement notice shall not discharge that notice, complying with the requirement at paragraph 5.1 of the notice would itself be sufficient to achieve the purpose of the notice. I shall therefore vary the notice by deleting the requirement at paragraph 5.2 of the notice.
8. Section 176(1) of the 1990 Act provides that an Inspector may correct and/or vary the terms of the enforcement notice where the Inspector is satisfied that doing so will cause no injustice to the appellant or the local planning authority. I am satisfied that correcting and varying the notice as set out above will not cause injustice.

The appeal on ground (b)

9. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred. This ground of appeal is expressed in the past tense: i.e. that the matters have occurred. It is therefore not necessary for those matters to have been taking place on the date that the enforcement notice was served. It is sufficient that they have occurred at some point.
10. This ground of appeal relates only to whether the land that forms the cross of the 'T' shaped unit of occupation is or was in agricultural use when the

appellant began using the land for the keeping of dogs. For this purpose, it matters not whether the dogs were kept for breeding or for showing. It is purely a factual matter as to whether breach of planning control alleged in the notice (i.e. for the keeping of dogs on land that was previously in agricultural use) has occurred.

11. The appellant maintains that the land is clearly not designated as "agricultural land" under the Agricultural Act 1947. This defines land used for agriculture which is so used for the purposes of a trade or business, and includes any land so designated as land which ought to be brought into use for agriculture.
12. In support of her position, the points out that the land that forms the cross of the 'T' shaped unit of occupation is designated only to be used as an 'ancillary garden' to 35 Marsh Lane in Schedule 1, Part 2 of the Transfer of Part CH405560 & Plan Title Deed and Plan under CH533699. Copies of those documents have been produced to me, but nowhere do they state that the land is garden land associated with 35 Marsh Lane: it is simply described as land at the back of 33-37 Marsh Lane.
13. In addition, the appellant maintains that the 'ancillary garden' is subject to onerous restrictive covenants that precludes its use for anything other than an 'ancillary garden' and that is cross referred in the Title Documents at the Land Registry for 35 Marsh Lane under title CH236198. However, a careful reading of the Title Documents for CH236198 reveals no mention of the term 'ancillary garden'. Furthermore, the Title Plan for CH236198 does not include the 'T' shaped parcel of land subject to the notice.
14. The title documents provided by the appellant only confirm the transfer of the ownership of the land and nothing more. Whilst documents relating to the sale and/or transfer of land can in some cases be good evidence of the use of that land, such documents cannot in themselves define the lawful planning use of that land. More is needed.
15. The appellant also provides a Statutory Declaration dated 17 May 2004 from a previous tenant of the land, a Leslie Povey. At the time the Statutory Declaration was made, the author resided at 35 Marsh Lane. In that Statutory Declaration, the author confirms that they rented the land to which the notice now relates as an 'allotment' for upwards of 40 years. The Statutory Declaration is, however, entirely silent on how the 'allotment' was used and whether that use was ancillary or incidental to the occupation of 35 Marsh Lane as a dwellinghouse. It is perhaps reasonable to conclude that it may have been but without more detail about the use of the land that cannot necessarily be assumed.
16. The appellant provides a copy of the sales particulars of the property when offered for sale in or around 2021. These sales particulars make direct reference to land to the rear of the property and include a photograph of that land. In that photograph, the land appears to be well maintained and is clearly separate from the land to the rear and sides. The clear impression is that the land to the rear of the property formed part and parcel of the garden to the dwelling at that time. This is no evidence that the *lawful* planning use of the land was as a residential garden at that time but nevertheless points in that direction.

17. Similarly, the appellant provides a series of photographs of the land taken at various times. These photographs do not reveal much about the use of the land, other than perhaps indicating an equine use at some point. The keeping of horses can be an agricultural use but need not be so. These photographs are themselves of limited evidential value.
18. It is, nonetheless, necessary to consider the evidence as a whole. When looked at in the round, I conclude that on the balance of probability the lawful use of the land to the rear 35 Marsh Law is as a domestic garden. Accordingly, the appeal on ground (b) succeeds to that extent.
19. However, that does necessarily not mean that the appeal should be dismissed. Rather, it seems to me that the breach of planning control alleged in the notice should more properly be described as the material change of use of the land from a residential use to a mixed use comprising a residential use and use for the keeping of dogs. The Council has indicated that it would have no objection to the notice being corrected in this respect. I shall therefore correct the notice accordingly.
20. It follows that all the remaining grounds of appeal will be considered on the basis that the breach of planning control alleged in the notice is the material change of use of the land from a residential use to a mixed use comprising a residential use and use for the keeping of dogs, together with the erection of a building.

The appeal on ground (c)

21. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. An appeal on this ground is another of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.
22. In this case, there are two aspects to this ground of appeal: (a) whether the keeping of the dogs constitutes a material change of use of the property and (b) whether the kennel building is permitted development under Class E, Part1, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO)¹. It is convenient to consider the use of the property in the first instance.

Whether the keeping of the dogs constitutes a material change of use of the property

23. The appellant advises that she currently has 9 dogs. The appellant is/was seeking to rehome two young dogs that have health issues but this is proving difficult. The appellant's dogs are high value show dogs, some of whom are now retired. The appellant goes on to indicate that whilst it is usual practice for her to rehome a proportion of her retired dogs, due to the present economic climate, it has not been possible to do so. In that context, under the Appellant's Kennel Club Assured Breeder registration, the appellant is required

¹ The appellant does not make specific reference to Class E, Part1, Schedule 2 of the GPDO in her grounds of appeal. Nevertheless, it is apparent to me that is the Class of the GPDO on which the appellant was relying. The Council also picked up on that and has responded accordingly.

to have a contract that allows owners to return their dog should they be unable to keep it. In addition, the appellant also supports Bulldog Rescue, holds fundraisers and works with Phoenix French Bulldogs in occasionally fostering dogs on their behalf.

24. In terms of staffing levels, the appellant is the primary carer for her animals but usually has assistance on a daily basis from an experienced dog handler who has worked with her for 4 years. The appellant indicates that, due to her personal circumstances, she usually pays for help 5 days a week albeit at the time the appeal was submitted her assistant was on maternity leave, such that the appellant was mainly looking after her dogs herself. The appellant is an expert in brachycephalic breeds and encourages those studying Animal Welfare at various colleges to volunteer and learn from the experience. In that context, the appellant advises that she now has assistance from a University student two days a week on a self-employed basis.
25. Having regard to the above, it seems to me that the keeping of dogs by the appellant is something more than merely a hobby. Notwithstanding that the appellant has not bred a litter since March 2022, her registration as a Kennel Club Assured Breeder and the association with the Bulldog Rescue and Phoenix French Bulldogs organisations are all symptomatic of that. The personal circumstances of the appellant again notwithstanding, it is also relevant that the appellant pays others and/or seeks volunteers to assist her in caring for the dogs.
26. The number of dogs kept by the appellant is also a factor. There is no statutory limit on the maximum number of dogs that can be kept in a dwelling. The maximum of 6 dogs specified in the requirement at paragraph 5.1 of the notice is consistent with the findings of the Court of Appeal in *Wallington v the Secretary of State for Wales & Montgomeryshire District Council* [1991] JPL 942 but in my view this figure should not be applied slavishly. Rather, this should be approached flexibly depending on the circumstances of each case.
27. The question is whether a material change of use has taken place is a matter of fact and degree. The concept of a material change of use is not defined in statute or in any statutory instrument. The basic approach adopted by the courts is that, for a material change of use to have occurred, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree.
28. There is, however, a specific exception set out in Section 55(2)(d) of the 1990 Act that I need to consider at the outset. This states that the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such, shall not be taken to involve development of the land.
29. The first prerequisite of Section 55(2)(d) is that the land is within the curtilage of the dwellinghouse. In this case, the land to which the notice relates includes the dwelling and its garden. As indicated above, the garden includes the 'T' shaped parcel of land at the rear of the property.
30. There is no all-encompassing, authoritative definition of the term 'curtilage'. The matter has been the subject of extensive case law over the years, but the main principles derived from that case law have recently been distilled by the

High Court. In summary, those principles include physical layout; ownership; the use or function of the land or buildings; and the degree to which the building and the claimed curtilage fall within one enclosure. The High Court held that these factors are to be considered as matters of fact and degree.

31. Applying those principles to the facts of this case, the rear garden to the dwelling and the 'T' shaped parcel of land at the rear of the property form one enclosure. The land is all within one ownership and the use of the land is the same throughout. I am therefore satisfied that, as a matter of fact and degree, the rear garden and the 'T' shaped parcel of land at the rear of the property together comprise the curtilage of the dwelling.
32. The question then becomes whether the use is incidental to the enjoyment of the dwellinghouse as such. In *Wallington*, the Court of Appeal upheld an enforcement notice requiring the number of dogs to be reduced from 44 to 6. In doing so, the Court rejected the proposition that because a use is a hobby therefore it must follow that it is incidental to the enjoyment of a dwellinghouse. The court held that it was necessary to take into account factors such as the size of the dwelling, the nature and scale of the activity and the disposition and character of the occupier.
33. I fully recognise that the number of dogs kept by the appellant in this case is considerably lower than that in *Wallington*. There is no evidence before me that the dogs are bred primarily for profit. Rather, it seems to me that the dogs are kept primarily for their welfare: for example, in occasionally fostering dogs on behalf of Bulldog Rescue and/or Phoenix French Bulldogs. The appellant cannot manage this activity by herself and requires assistance from paid staff and/or volunteers. It is nevertheless apparent that the appellant has a genuine fondness for her dogs, as evidenced by the assessment from the Kennel Club in May 2022 and the RSPCA in September of that same year.
34. Looked at in the round, I consider that the scale and nature of the activity is a matter of fact and degree in excess of what might reasonably be considered to be incidental to the enjoyment of a dwellinghouse of this size and in this location. I therefore conclude that the use does not benefit from exception set out in Section 55(2)(d) of the 1990 Act.
35. The same considerations also lead me to the conclusion that, as a matter of fact and degree, there has been a significant difference in the character of the activities from what has gone on previously: i.e. when the dwelling was in previous ownerships. I therefore conclude that there has been a material change of use of the land.
36. My conclusion on these respects is reinforced by the findings of the Inspector in the appeal decision relating to a property in Breaston, Derbyshire (APP/N1025/C/16/3163408). Although the number of dogs kept at that property was somewhat greater than kept at the appeal property, the facts and circumstances surrounding that case were similar in many respects. I have also had regard to the appeal decision relating to a property in Barnet, North London (T/APP/C/95/N5090/636859). In particular, I note that the Inspector in that case found that the keeping of only eight dogs in a garage exceeded what might reasonably be regarded as incidental to the enjoyment of the dwellinghouse as such.

The kennel building

37. Class E, Part 1, Schedule 2 of the GPDO permits the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such. Development is permitted by Class E subject to the limitations set out at Classes E.1, E.2 and E.3.
38. I have already found that the land on which the building is sited is within the curtilage of the dwellinghouse. The remaining question is whether the building is required for a purpose incidental to the enjoyment of the dwellinghouse as such.
39. I have found that the scale and nature of the activity (the dog keeping) is in excess of what might reasonably be considered to be incidental to the enjoyment of a dwellinghouse of this size and in this location. The kennel building is required specifically in connection with that use. It therefore follows that the kennel building is not permitted by Class E, Part 1, Schedule 2 of the GPDO.
40. Section 57 of the 1990 states that planning permission is required for development. It is no part of the appellant's case that the kennel building does not constitute development for the purposes of Section 55(1) of the 1990 Act. There is no planning permission in place, deemed or otherwise, for the kennel building.

Conclusion on ground (c)

41. I conclude that, on the balance of probability, the breach of planning control constituted by the matters stated in the notice does constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

The appeal on ground (d)

42. In order to succeed on this ground, the appellant must show that the use had been continuous for a period of ten years beginning with the date of the breach. The test in this regard is the balance of probability, and the burden of proof is on the appellant.
43. The appellant indicates that she (and her co-owner) bought the appeal property in November 2021. This was obviously less than 10 years ago, such that use could not have gained immunity from enforcement action over that time period. It is therefore necessary to consider whether the use for the keeping of dogs was carried on by the previous occupiers of the dwelling/land. However, there is no evidence before me that this was the case. Moreover, even that was the case, there is no evidence before me to show that it was on the same scale as the appellant's use, to the extent that it was not incidental to the enjoyment of the dwellinghouse as such.
44. This is a situation where the local planning authority has no evidence of its own to contradict that of the appellant or make her version of events less than probable. Nevertheless, I find that the appellant's evidence is not sufficiently precise and unambiguous on its own to show, on the balance of probability, that the breach of planning control has been carried on without continuously and without significant interruption for a period of ten years before the notice

was issued. The appellant has therefore not discharged the burden that falls upon her.

45. I conclude that, on the balance of probability, on the date on which the notice was issued, the Council was in the position to take enforcement action in respect of the breach of planning control that may be constituted by those matters. Accordingly, the appeal on ground (d) fails.

The appeal on ground (a) and the deemed planning application

46. The ground of appeal 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. The appeal site is within the North Cheshire Green Belt. The Council has stated one substantive reason for issuing the enforcement notice, from which the main issues raised are:

- whether the breach of planning control alleged in the notice is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework and the development plan
- the effect on the openness of the Green Belt,
- the effect of the development, if any, on the living conditions of the occupiers of the surrounding residential properties, specifically in terms of noise disturbance and odours, and
- if the breach of planning control alleged in the notice is inappropriate development in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Whether the proposal is inappropriate development for the purposes of the National Planning Policy Framework

47. Paragraph 154 of the National Planning Policy Framework (Framework) indicates that, with some exceptions, the construction of new buildings is inappropriate in the Green Belt. One of those exceptions is material changes in the use of land, such as changes of use for outdoor sport or recreation, provided they preserve its openness and do not conflict with the purposes of including land within it. Paragraph 154(h) of the Framework the provision of appropriate facilities in connection with a change of use (including buildings) is not inappropriate in the Green Belt, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
48. It seems to me that the use of the land for the keeping of dogs would have little, if any, impact on the openness of the Green Belt beyond that associated with the ordinary use for residential purposes. However, the use for the keeping of dogs manifests itself in the erection of the kennel building². It is therefore necessary to consider whether the erection of that building preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.

² Together with the use of existing buildings on the land that are no subject to the notice.

49. The Courts have held that matters relevant to the openness of the Green Belt are a matter of planning judgement, and that openness can have both a spatial aspect as well as a visual aspect. The kennel building measures some 3m x 3m, with a height of approximately 2.20m. The front part of the building is predominantly open being comprised of metal bars. The appellant indicates that the kennel building is of a temporary nature. Nevertheless, it has clearly been on site for some time and therefore has a degree of permanence to it.
50. In spatial terms, by reason of its size, height and volume, the kennel building significantly erodes the openness of the Green Belt in this location. In visual terms, the kennel building is not visible from outside of the site. However, the appeal site itself is within the Green Belt. The kennel building is located beneath a tree, and this reduces the visual impact to some degree. Nevertheless, the kennel building is clearly visible from within the appeal site itself, from where it detracts from the openness of the Green Belt.
51. The Oxford English Dictionary (OED) defines to 'preserve' as meaning to maintain in its existing or original state. The kennel building detracts from openness of the Green Belt in both spatial and visual terms. It therefore fails to preserve the openness of the Green Belt in this location.
52. The purposes of the Green Belt are set out in Paragraph 143 of the Framework. These purposes include to *assist* in safeguarding the countryside from encroachment (emphasis added). To the extent that the development subject to the notice detracts from the openness of the Green Belt in this location it encroaches into the countryside. It therefore conflicts with a least one of the purposes of including land within the Green Belt.
53. I conclude that the breach of planning control alleged in the enforcement notice is inappropriate development in the Green Belt in the context of Paragraph 154 of the Framework. Paragraph 153 of the Framework confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. That paragraph goes on to confirm that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations

Living conditions

54. In its representation, Ince Parish Council explains that it has received numerous complaints from residents and neighbours in Marsh Lane linked to the noise, the smell, the disturbance and the nuisance being caused by the keeping of dogs at these premises and the associated activities involved³. No further detail is provided: for example, the term 'numerous' has not been quantified. No representations have been made by individual residents or neighbours.
55. At the time of my site visit, there were at least six dogs being kept on the land: three in the kennel building in the garden immediately to the rear of the dwelling, and three in one of the existing outbuildings in the T-shaped parcel of

³ The appellant argues that the representation from Ince Parish Council contains false and malicious information and should be rejected. However, there is no cogent evidence before me that views expressed by the Parish Council on behalf of residents is malicious and/or based on false information.

- land⁴. There were no dogs being kept in the kennel building subject to the notice but others may have been kept in the dwelling itself.
56. The dogs barked loudly when the door to the kennel/outbuilding was opened: up until that point, the presence of the dogs was not audible. I am also mindful that the noise of the dogs barking could have been amplified by the enclosed space in which they were being kept. Nevertheless, the loudness of the barking gives some credence to the complaints expressed by the Parish Council, particularly when a larger number of dogs were involved.
57. The appellant points out that no complaints have been upheld as being a Statutory Noise Nuisance. However, a Statutory Noise Nuisance falls under a different legislative regime, namely the Environmental Protection Act 1990. For the purposes of an enforcement notice issued under the Town and Country Planning Act 1990, the noise does not have to be of a level constituting a Statutory Noise Nuisance under the Environmental Protection Act 1990. The test is the lower one of residential amenity.
58. On that basis, taking the evidence provided by Ince Parish Council as the benchmark, I am persuaded that the keeping of dogs at the appeal property has caused unacceptable harm to the living conditions of surrounding residents. In that context, I am mindful that the T-shaped parcel of land runs across the back of the adjoining residential properties, and therefore close to rear gardens of those properties in which the occupiers are entitled to the quiet enjoyment of their homes.
59. At the time of my site visit, there was no overriding smell resulting from the keeping of the dogs. I did note that there were several dog faeces in the T-shaped parcel of land runs across the back of the adjoining residential properties. Not only is that evidence that dogs roam across this land and therefore have the propensity to cause noise disturbance from there, but it also points to the possibility (and I put it no higher than that) that this could lead to the creation of the smells referred to the representation from Ince Parish Council. That propensity obviously increases proportionally to the number of dogs kept on the land.
60. I conclude that the keeping of the dogs has unacceptably harmed the living conditions of the occupiers of the surrounding residential properties, specifically in terms of noise disturbance and odours. I therefore conclude that the breach of planning control is contrary to Policy SOC5 of the Cheshire West & Chester Council Local Plan (Part One) and Policy DM2 of the Cheshire West & Chester Council Local Plan (Part Two) which, amongst other things, state that development will only be supported where it does not result in a significant adverse impact upon the residential amenity of the occupiers of existing properties, including from noise and odour.

Other considerations

61. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise.

⁴ Albeit there may also have been dogs in the dwelling itself, which I did not enter.

I have found that the breach of planning control alleged fails to accord with the development plan in one respect. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

62. The appellant has set out in some detail the background to the use alleged in the notice and some of circumstances surrounding that use. In the interest of conciseness, I do not rehearse all those points here, albeit I have taken all of them into account. The key points raised are that the appeal is in the shadow of the former Shell Oil Refinery at Stanlow, with the background noise being clearly audible. The appeal property is also under the flight path of Liverpool Airport with planes taking off and landing regularly throughout the day and late into the night. Marsh Lane itself is in constant use by vehicles from a local farm business with on any given day tractors, farm vehicles & tankers moving effluent up and down the road. Furthermore, the farmer of the field at the rear of the ancillary garden carries out muck spreading (sometimes into the night) with the associated noise, light and odour pollution.
63. The point the appellant makes is that the area surrounding the appeal site is already subject to high ambient noise levels and a range of smells throughout the day and night. Any noise and smell generated by the keeping of dogs on the appeal site must be considered in that context. As a case in point, the appellant explains that there are two Leonburger dogs on the land to rear and that these dogs are out barking all day. The appellant believes that people could mistake their barking for her dogs. Furthermore, the appellant alleges that a hole has been cut in her fence and that the neighbour's dogs enter on to her land, agitating her own dogs and causing them to bark.
64. I fully acknowledge the points being made by the appellant: indeed, I experienced some of those causes of the noise and small pollution during my site visit (the farm vehicles & tankers moving effluent up and down Marsh Lane and aircraft from Liverpool Airport overhead). However, the salient point is that the noise and odour pollution resulting from the keeping of dogs by the appellant is in addition to the existing ambient noise levels and background smells. It has therefore exacerbated that issue rather than replace it. Moreover, the keeping of dogs by the appellant has been sufficient to be noticed by surrounding residents and to generate complaints to Ince Parish Council, notwithstanding that ambient noise level and background odours.
65. The appellant makes it clear that it is the number of dogs which is of greatest concern to her. She stresses that these dogs are not just 'ordinary' dogs: they have been winners⁵, have been very highly health tested and are now living out their retirement with her. The appellant also points out that the Royal Kennel Club have recently approached her to be on their Breeder Mentor scheme given her experience as an audited breeder so that her skills and talents can be used to assist others.

Green Belt balancing exercise and conclusion on the ground (a) appeal

66. In accordance with paragraph 153 of the Framework, I attach substantial weight to the harm to the Green Belt by reason of the inappropriate nature of

⁵ I assume of dog shows.

the development. I further conclude that the development subject to the enforcement would have an unacceptably harm the living conditions of the occupiers of surrounding residential properties, a matter to which I attach significant weight. These harms are inherent to the breach of planning control that has taken place and could not be overcome by the imposition of suitably worded conditions.

67. Against this, I attach moderate weight to the ambient noise levels and background odours pervading the appeal site as mitigating factors. I also attach moderate weight to the quality of the dogs and the experience/skills of the appellant as a dog breeder, this because neither are dependent upon location of the appeal site within the Green Belt.
68. Consequently, the harm by reason of inappropriateness and any other harm, is not clearly outweighed by other considerations, such that the very special circumstances necessary to justify the development do not exist.
69. For the reasons set out above, the breach of planning control alleged in the notice is also contrary policies in the development plan for the area. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan.

Part of the matters

70. In her Final Comments, the Appellant explains that the kennel building subject to the notice was extremely expensive and would be difficult to replace. The appellant therefore proposed that, as the numbers dogs kept on the land reduces, the kennel building subject to the notice replaces the old former stable building that is currently in the smaller garden to the appeal property.
71. I read that as an acceptance that the kennel building subject to the notice could replace the existing former stable building. This would result in there being no overall loss of openness to the Green Belt which, in my view, would have been acceptable in terms of Green Belt policy. I accordingly canvassed the views of the main parties as to whether the replacement of the former stable building with the kennel building subject to the notice would be acceptable.
72. As part of that, it would have been necessary to impose a planning condition preventing the erection of outbuildings permitted by Class E, Part 1, Schedule 2 of the GPDO to avoid the situation whereby the openness of the Green Belt was not subsequently eroded by the erection of further outbuildings⁶. I sought the views on the main parties on that aspect too, as well as on two other conditions that I would have been minded to impose in that scenario.
73. The Council suggested that an additional condition would be required specifying by when the kennel building should replace the existing former stable building located within the domestic curtilage. Subject to such a condition being in place, the Council was content that the proposal could overcome the concerns outlined within the Enforcement Notice in terms of the building when assessed in Green Belt policy terms.

⁶ This is in the event that the use of the land for the keeping of dogs reverted to a level such that it was incidental to enjoyment of the dwellinghouse, such that the lawful use of the property reverted to that of a dwellinghouse in relation to which permitted development rights granted by the GPDO became available.

74. The appellant explained that whilst there is a possibility of replacing the old stable in the smaller garden, it is currently not subject to planning control and it is not something she would be intending to do in the short term as there is a continued need to keep different groups of dogs separately. It was further explained that, if relocated, the kennels would not house the mix of dogs even if numbers were reduced and could potentially encourage noise adjacent to adjacent properties. The appellant also strongly resists having any kind of condition to remove permitted development rights put in place, indicating also that the co-owner of the property is highly unlikely to agree to such a proposal.
75. Section 177(1)(a) of the 1990 Act provides that, on determination of an appeal under Section 174, the Secretary of State may grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole *or any part of those matters* or in relation to any part of the land to which the notice relates (my emphasis). In my view, replacing the former stable building with the kennel building subject to the notice would have been entirely consistent with Green Belt policy and is a part of the matters stated in the notice for which I would have been minded to grant conditional planning permission.
76. However, in view of the strong objections now raised by the appellant (including on behalf of the co-owner of the property) I do not propose to impose that solution upon her. The corollary is that I am not in a position to grant planning permission for any part of the matters stated in the notice.

Conclusion on the appeal on ground (a) and the deemed planning application

77. Accordingly, I conclude that planning permission ought not to be granted for the matters stated in the notice in whole or in part, and that the appeal on ground (a) should be dismissed.

The appeal on ground (g)

78. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is six calendar months. Although not specifically stated, I deduce from her evidence that the appellant seeks a period of compliance of two years.
79. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with enforcement notice against the private interest bound up in the development subject to the notice. In so doing, the starting point is that I have found the use of the land subject to the enforcement notice for a mixed residential use and the keeping of dogs and the erection of a building (the kennel building) does cause the harm alleged in the reasons for issuing the notice. Indeed, evidence of the harm caused by the breach of planning control to the living conditions of the occupiers of surrounding residential properties is to be found in the representation by Ince Parish Council.
80. The appellant makes the point that the number of dogs kept on the Land is reducing organically and that she has a plan that the number of dogs kept on the land could be reduced to six in the next 2 years, albeit I have not had sight of that plan. The appellant makes the further point that it is not simply a

matter of 'getting rid' of her dogs within 6 months and that they are like a family to her. In response, the Council also makes the valid point that this does not take into account any dog which is returned by the new owners, should they be unable to keep it, thereby increasing the number of dogs on site to an unknown number. The number of dogs kept on the site therefore has the potential to fluctuate without any controls within that period.

81. I do not underestimate the importance and emotional attachment of her dogs to the appellant. Nevertheless, the difficulty with allowing the number of dogs kept on the Land to reduce organically is that there can be no certainty as to when the enforcement notice would be complied with. It could be within the 2 years envisaged by the appellant. Or it could take much longer than that, possibly many years. Throughout that time, the harm that I have identified in terms of the unacceptable harm to the living conditions of the occupiers of the surrounding residential properties would persist.
82. In this context, the language used in section 173(9) of the 1990 Act is important: namely, that an enforcement notice shall *specify* the period at the end of which any steps are required to have been taken or any activities are required to have ceased (emphasis added). The use of the word 'specify' in that section of the 1990 Act connotes a degree of precision not required elsewhere in the 1990 Act. This no doubt the onerous consequences of failing to comply with an enforcement notice.
83. The wording of ground (g) adopts the same terminology. The difficulty of allowing the number of dogs kept on the Land to reduce organically is that it would not accord with the language of section 173(9) of the 1990 Act or an appeal on ground (g). A specific period of time is necessary. In that context, I have been provided with no meaningful evidence as to why the number of dogs kept on land could not be reduced to six within the time period of six months specified in the notice.
84. In weighing the balance between the public interest in securing expeditious compliance with enforcement notice against the private interest bound up in the development subject to the notice, on the evidence before me I attach greater weight to safeguarding the living conditions of the occupiers of the surrounding residential properties. I am therefore not persuaded that there is any need to extend the period for compliance with the notice and am satisfied the period of compliance of six months specified in the notice is a proportionate response to the breach of planning control that has occurred. Accordingly, the appeal on ground (g) fails.

Conclusion

85. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Formal Decision

86. It is directed that the notice is corrected by:

- in paragraph 3 of the notice, deleting the words 'from agricultural use (field) and residential use (dwelling) to a mixed residential use and the keeping of dogs and the erection of a building' and substituting there the words 'from residential use (dwelling with garden) to a mixed use

comprising a residential use (dwelling with garden) and the keeping of dogs, and the erection of a building'

87. It is directed that the notice is varied by:

- deleting paragraph 5.2 of the notice in its entirety

88. Subject that correction and variation, the appeal is dismissed and the enforcement notice is upheld.

Paul Freer

INSPECTOR