



Appeal Decisions

Site visit made on 28 January 2026

by **AJ Steen BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 02 March 2026

Appeal A Ref: APP/A1530/C/25/3375258

Land rear of Rouval, Turnpike Close, Langham, Colchester CO4 5NG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mrs Cheryl Hayhoe against an enforcement notice issued by Colchester City Council.
- The notice was issued on 1 October 2025.
- The breach of planning control as alleged in the notice is without the benefit of planning permission, the change of use of land from agricultural to commercial dog/walking exercise area.
- The requirements of the notice are to cease the use of the land for dog walking/exercise and socialising.
- The period for compliance with the requirement is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Appeal B Ref: APP/A1530/W/25/3375126

Land rear of Rouval, Turnpike Close, Langham, Colchester CO4 5NG

- 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 Mrs Cheryl Hayhoe against the decision of Colchester City Council.
- The application Ref is 251458.
- The development proposed is use of land for dog exercising.

Summary Decision: The appeal is allowed and planning permission is granted subject to conditions.

Application for Costs

1. An application for costs was made by Mrs Cheryl Hayhoe against Colchester City Council in relation to appeal B. This application is the subject of a separate Decision.

Preliminary Matters

2. Section 180 of the Act states that where, after service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission. This would be relevant if I were to uphold the enforcement notice under appeal A and allow appeal B, thereby granting planning permission.
3. For clarity, the enforcement notice identifies the appeal site as the land to the rear of Rouval. Attached to the enforcement notice is a plan that identifies the land. This identifies an area comprising the access drive between Rouval and neighbouring Menabilly House, the predominantly grass area to the rear of Menabilly House and a smaller grass area to the rear of Rouval. The area to the

rear of Rouval is separated by two areas of grass surrounded by fences next to some single storey buildings. The buildings and those two areas of grass appear to be outside the site area as defined by the plan attached to the enforcement notice. The site plan for the planning application subject to appeal B is the same.

Appeal A on Ground (b)

4. An appeal on this ground is that the matters described in the notice have not occurred. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability.
5. The enforcement notice alleges that the previous use of the land was for agriculture. I understand that the single storey buildings were used, along with the surrounding land including site area, for the keeping of goats. The appellant draws my attention to an application for prior approval for the conversion of those buildings from agricultural buildings to two dwelling houses. I understand this was refused as the Council were not persuaded that the building was used solely for an agricultural use as part of an established agricultural unit. This indicates the Council did not consider that the land associated with those buildings, including the site subject of these appeals, may not have been in agricultural use at that time.
6. I understand that during consideration of that application for prior approval it was indicated that the previous use related to a hobby/interest for recreational purposes by the occupier of Rouval. It appears that the goats were kept on this land, so this indicates that the previous use of the land may not have been for agriculture but may have been related to the residential use of Rouval.
7. It is clear that the use alleged is commercial dog/walking exercise area. That would be a different use from either an agricultural use or residential use of the land, such that a material change of use has taken place in any event.
8. An enforcement notice alleging a material change of use does not need to recite the previous use, although it is better to do so in order to make it clear why there has been a material change. For the above reasons, there is some doubt as to the previous use. In these circumstances, I consider that it would be better to remove the previous use from the enforcement notice.
9. For these reasons, I conclude that the appeal under ground (b) should succeed to the extent that I will remove “from agricultural” from the breach of planning control alleged.

Appeal A on Ground (c)

10. An appeal on this ground is that “those matters” (the matters stated in the alleged breach of planning control) do not constitute a breach of planning control. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability.
11. There is no dispute that a material change in the use of land constitutes development within the meaning of Section 55 of the Act for which planning permission is required. No planning permission has been sought from or granted by the Council for the use of the land for dog walking/exercise and socialising.

12. The appellant indicates that the change in the use of the land was not material by reference to Planning Practice Guidance (PPG) at Paragraph: 011 Reference ID: 13-011-20140306. 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. This must be determined on the individual merits of the case.
13. The use of land involves bringing dogs to the site in two vans to exercise for an hour before returning them home in the vans. There are two sessions of this per day. This is a commercial operation. It differs significantly from the previous use of the land that was associated with the occupation of Rouval. Whether agricultural or as a hobby by occupiers of that house, it involved the keeping of goats. It did not involve vehicles coming and going from the site to the same extent. Neither did the care of the animals involve the degree of supervision required for the dogs.
14. The appellant refers to whether there is a perceptible harm to amenity considerations from the use. However, whether there is more or less harm is a different consideration as to whether the character of the activities has changed. In this case, the character of the activities is significantly different. The effect of the development on amenity is not a matter for a ground (c) appeal but, in this case, will be subject of consideration in appeal B.
15. Taking account of the above factors, and having regard to all other evidence before me, I conclude that, on the balance of probability, there has been a material change of use in using the site for dog walking/exercise and socialising. Since no planning permission has been granted for the development it thereby constitutes a breach of planning control.
16. For these reasons, I conclude that the appeal under ground (c) should fail.

Appeal A on Ground (f)

17. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek the use of the land for dog walking, exercise and socialising to cease. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.
18. The appellant suggests that walking and exercising dogs are normal and reasonable activities associated with dog ownership. It is normal for them to be walked away from their home, including on accessible private land. However, if the requirement of the notice were removed or varied it would no longer remedy the breach of planning control. For ground (f) to succeed it would be necessary to show that the requirements are excessive to remedy the breach.
19. As a result, I conclude that the requirements of the notice do not exceed what is necessary in order to remedy the breach of planning control. As such, the appeal fails on ground (f).

Appeal B

20. The main issue is the effect of the use of land for dog exercising on the living conditions of neighbouring occupiers of Menabilly House with particular regard to privacy, noise and disturbance.

Reasoning

21. Menabilly House comprises a two storey dwelling with a garden to the rear. A Harris fence is currently located to the rear of the garden that is covered to restrict views through the fence. A short distance to the front of the house is a raised section of the A12 that can be clearly heard from the property and provides the background noise to the area.
22. Part of the appeal site is located directly to the rear of Menabilly House and comprises an open area of grass. It rises up slightly from the house and forms part of the land used for dog walking, exercise and socialising. That use takes place for around 2 hours a day Monday to Friday with the dogs brought to the site and removed in vans. I understand that the dogs are accompanied during their visit by 2 staff from the company. It would be possible to limit the use to those 2 hours by condition.
23. Similarly, it would be possible to restrict the number of dogs on the site. The appellant has indicated that there would be a maximum of 8 dogs on site at any one time. I will consider the appeal on that basis.
24. Noise from the use comprises arrival to the side of Menabilly House by van, with potential for dogs to bark and people to shout. The sounds of dogs and people would be different and distinct from background noise in this area. Nevertheless, they are not likely to be significantly louder than that background noise. Neither is the sound of vans arriving and departing. It is unclear how often the dogs bark and people shout but it is unlikely to be significant and would be limited to the times when dogs are on the site. As such, the noise from the site would not result in material harm to the living conditions of occupiers of Menabilly House.
25. The area to the rear of Menabilly House may be used for exercising the dogs and those caring for the dogs would be in the area with them. The existing fence does little to block views between this land and the garden to the house, such that there would be a loss of privacy whilst the use is ongoing. Nevertheless, provision of an appropriate solid fence would restrict those views sufficient to overcome any harm in this regard. Provision of such a fence could be secured by condition.
26. Views from the land to Menabilly House are such that the rear first floor windows would remain visible over the fence. Nevertheless, this is a significant distance, such that any views into the rooms would be limited. Given the use proposed would be only for limited hours and during the day, this would not lead to material loss of privacy to users of the rooms served by those windows.
27. For these reasons, I conclude that the use of the land for dog exercising would not result in material harm to the living conditions of neighbouring occupiers of Menabilly House with particular regard to outlook, noise and disturbance subject to appropriate conditions. As such, it would not conflict with Policies DM5 and DM15 of the Colchester Borough Local Plan that seek development not to harm the

amenity of people living nearby including protecting living conditions in relation to privacy, overlooking, noise and disturbance.

Conditions

28. A condition restricting the times of the use is necessary as set out above. Conditions restricting the number of dogs on site and secure pre-booking are necessary to reflect the description of the use and protect the living conditions of occupiers of neighbouring dwellings. I have amended the hours of use suggested by the Council to reflect the times of use proposed by the appellant.
29. Condition 3 is imposed to ensure that details of fencing between the site and the rear of Menabilly House, along with details of waste storage and removal, are submitted, approved and implemented for the reasons set out above. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of the fencing before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.
30. Conditions relating to illumination of the site and restricting vehicular parking away from the field are necessary to protect the living conditions of occupiers of neighbouring dwellings.
31. A condition listing drawings is unnecessary as the use has already begun. A condition requiring a noise management plan is not necessary taking account of other conditions and the considerations set out above.

Conclusion

32. Taking account of all the above, I conclude that the use of land for dog exercising, subject to conditions, complies with the development plan such that the appeal should be allowed.
33. As a result, section 180 of the Act summarised in the preliminary matters may be relevant.

Formal Decisions

Appeal A

34. It is directed that the enforcement notice is varied by the deletion of “from agricultural” in the breach of planning control alleged. Subject to the variation, the enforcement notice is upheld.

Appeal B

35. The appeal is allowed and planning permission is granted for the use of land for dog exercising at land rear of Rouval, Turnpike Close, Langham, Colchester CO4 5NG in accordance with the terms of the application, Ref 251458, and the plans submitted with it, subject to the conditions in the attached schedule.

AJ Steen

INSPECTOR

Schedule of Conditions

- 1) The use of the site for dog exercising shall be restricted to 10:00 – 11:00am and 14:00 – 15:00 pm Monday to Friday and with no use on Saturdays, Sundays or Bank Holidays.
- 2) The number of dogs on site at any one time shall be limited to 8 and the use shall be restricted to pre-booking only.
- 3) Unless within 2 months of the date of this decision a scheme for the boundary fencing to the rear of Menabilly House and for waste storage and removal, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site for dog exercising shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the use of the site for dog exercising shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 4) There shall be no additional illumination of the site.
- 5) There shall be no vehicular parking or vehicular manoeuvring in the field within the application site and to the rear of Menabilly House in association with the approved use.