
Appeal Decision

No site visit made

by Paul Freer BA (Hons) LLM PhD MRTPI

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

Decision date: 12 March 2026

Appeal Ref: APP/J3720/C/25/3359453

Land adjacent to Tyburn Cottage, Tithe Barn Lane, Hockley Heath, Solihull B94 5DJ

- 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 Mr and Mrs Alan & Julia Wright against an enforcement notice issued by Stratford-on-Avon District Council.
- The enforcement notice, numbered 24/00132/DESCOU, was issued on 21 January 2025.
- The breach of planning control as alleged in the notice is, without planning permission, the change of use of Land from paddock (agricultural use) to a mixed use comprising:
 - (a) Stationing of single static caravan/mobile home for security purposes
 - (b) Storage of single static caravan/mobile home
 - (c) Grazing of horses; and
 - (d) Exercising and walking of dogs in connection with the business which operates from Tyburn Cottage and is known as 'Julianna's Kennels, Cattery and Grooming Parlour'

Without planning permission, the following associated operational development:

- i) The installation of metal gates
 - ii) The erection of a timber fence
 - iii) The importation and laying of aggregate material and paving slabs to create and area of hardstanding.
- The requirements of the notice are:
 - a) Remove the two static caravans/mobile homes from the Land
 - b) Remove the fencing and gates
 - c) Remove the hardstanding and paving slabs
 - d) Remove gas cylinders and timber pallets stored next to the caravans, and
 - e) Remove all materials arising from compliance with requirements b) to d).
 - f) Thereafter cease the use of the Land for the stationing and/or storage of caravans
- The period for compliance with the requirements is six months for requirements a) to e), and ongoing from six months for requirement f).
- The appeal is proceeding on the grounds set out in section 174(2) (b), (d) and (f) of the Town and Country Planning Act 1990 as amended.

Summary Decision: the appeal is dismissed and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision

Application for costs

1. An application for costs is made by Stratford-on-Avon District Council against Mr and Mrs Alan & Julia Wright. That application is the subject of a separate Decision.

Procedural Matters

2. I note that in his Statutory Declaration dated 11 April 2025 Mr Wright spells his forename as 'Alan' rather than 'Allan' as shown on the Appeal Form. I am content to put that down to a typographical error on the Appeal Form and have adopted the spelling in the Statutory Declaration in the header above.
3. In their Appeal Statement, the appellants cite the judgement in *Miller Mead v MHLG* [1963] 2QB 196 which they point out states that an enforcement notice must tell an appellant "fairly what he has done wrong, and what he must do remedy it". Although not expressly stated, on my reading the appellant's reliance on *Miller Mead* constitutes an assertion that the notice in this case is a nullity or is invalid. I have proceeded on that basis.
4. The appeal was originally made only on grounds (d) as set out in section 174(2) of the Town and Country Planning Act 1990 (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. On my reading of the appellant's evidence on that ground of appeal, the primary purpose appears to be an attempt to demonstrate that the use of the land subject to the notice as a domestic garden in association with Tyburn Cottage is lawful rather than to show that the breach of planning control alleged in the notice are now immune from enforcement action through the passage of time.
5. The breach of planning control alleged in the notice does not include the use of the land as a domestic garden in association with Tyburn Cottage. Whether that use is lawful in planning terms is therefore not before me. However, the appellant's evidence may also be read in places as constituting an appeal on ground (b) as set in section 174(2) of 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 responded to that evidence, albeit under a different heading, and I am satisfied that no injustice would be caused by considering those points as if an appeal had been made on ground (b).
6. For the reasons set out below, I also consider that some parts of the appellants' evidence may be read as constituting an appeal on ground (f) as set in section 174(2) of the 1990 Act namely 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. Again, the Council has responded to those points under a different heading, and I am satisfied that no injustice would be caused by considering those points as if an appeal had been made on ground (f).
7. The appeal is therefore now proceeding on grounds (b), (d) and (f) as set out in section 174(2) of the 1990 Act. The matters of fact in this case are mostly not in dispute: the main issues raised by this appeal are therefore whether the notice is a nullity and, if not, whether the use has occurred and, if so, is it immune from enforcement action. Those are questions that turn on the facts of the case together with my interpretation of the evidence and relevant case law. For that reason, there is no benefit to be gained from undertaking a site visit in this case and I have not done so.

The Enforcement Notice

8. The breach of planning control as alleged in paragraph 3 of the notice is, in summary, the change of the change of use of Land from paddock (agricultural use) to a mixed use, together with associated operational development. Several points arise.
9. The judgement in *Miller Mead* relied on the by appellants has now been superseded by judgment of the High Court in *Oates v SoCLG and Canterbury*¹, which drew extensively upon the preceding case law on the subject, including *Miller Mead*. The judgement in *Oates* states that the test in relation to nullity is best understood not as one of 'hopeless ambiguity' but rather as a failure to tell the recipient with 'reasonable certainty' what the breach of planning control is and what must be done to remedy it. I have approached the appellant's contention that the notice is a nullity having regard to the judgement in *Oates*.
10. In part, the appellants contend that the notice is a nullity on the grounds that the notice does not set out the relevant time periods for the breaches of planning control. As the appellant points out, ordinarily this would be found in paragraphs 1, 2 or 3 of a notice. In this case, mention of that period is completely absent.
11. The time limits for taking enforcement action are set out in section 171B of the 1990 Act, as amended by The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024). These provide that no enforcement action may be taken under s171B(3) of the 1990 Act where there has been a breach of planning control consisting in the carrying out without planning permission comprising of any other breach of planning control (which includes a material change of use), no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
12. That period of ten years for breaches of planning control consisting in the carrying out without planning permission of a material change of use has not changed has a result of The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024. It follows that from the outset there can be no uncertainty about the period of time required for the breach of planning control alleged in the notice to become immune from enforcement action, albeit I recognise that it would have been helpful to the recipients of the notice had that information been included in the notice.
13. More importantly, nowhere in the 1990 Act does it state that information about the relevant immunity period must be included in the notice, albeit it is undoubtedly good practice to do so.
14. Section 173(8) of the 1990 Act states that an enforcement notice shall specify the date on which it is to take effect. Section 173(9) of the same Act provides 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 and may specify different periods for different steps or activities; and, where different periods apply to different steps or activities, references in this Part to the period for compliance with an enforcement notice, in relation to any

¹ *Oates v SoCLG and Canterbury* [2017] EWHC 2716

step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased. In this case, the notice complies with both of those sections of the Act.

15. But nowhere in section 173 of the 1990 Act, or elsewhere in that Act, is it mandated that the notice must spell out the immunity period. It is necessary to go to section 171B of the 1990 Act for that information. It follows that the notice is not defective by not setting out the relevant immunity period.
16. The meaning of development for the purposes of the 1990 Act is defined at Section 55(1) of that Act as meaning:
...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land (emphasis added).
17. It follows that a 'change of use' of the land is not, in itself, development requiring planning permission for the purposes of section 55(1) of the 1990 Act. It is apparent that the appellant has nonetheless understood the breach of planning control that is purportedly alleged in the notice. I shall therefore correct the notice to refer to a material change of use as defined in section 55(1) of that Act.
18. The appellants criticise the identification of the hardsurfacing in paragraph 3 of the Notice as comprising "aggregate materials and paving slabs", explaining that there are in fact three types of hard surfacing on the site, two of which could be said to fall within the term 'aggregate'. Relying on the principles set out in *Miller Mead* (now *Oates*), the appellants consider that the notice should more clearly outline the specific materials to be removed so that they can understand fairly what must be done to remedy the breach of planning control.
19. To an extent, the appellant has a point. The breach of planning control alleged at paragraph 3(iii) of the notice is the importation and laying of aggregate material and paving slabs to create an area of hardstanding. The implication is that it is the combination of 'aggregate material' and 'paving slabs' that form the hardstanding. To my mind, that is both over-complicated and confusing especially where, as the appellant points out, there are three types of hard surfacing on the site.
20. Nevertheless, an obvious remedy immediately presents itself: simply delete the reference to aggregate materials and paving slabs, leaving just the description as an area of hardsurfacing. That avoids any confusion regarding the materials from which the hardsurfacing is constructed.
21. The salient point, however, is that area of hardsurfacing in question is defined in paragraph 3(iii) of the notice is the approximate area hatched in black on the plan attached to the notice. Consequently, even if the appellants were confused about the materials from which the hardsurfacing alleged in paragraph 3(iii) of the notice was said to be constructed, there can be no confusion over the area covered by the hardsurfacing attacked by the notice: that is patently obvious from the plan attached to the notice referenced in paragraph 3(iii). Consequently, I shall correct the notice by deleting the reference to "aggregate materials and paving slabs" in paragraph 3(iii) and to simply refer to the creation of an area of hardsurfacing. I shall also vary the requirement at paragraph 5(c) of the notice accordingly.

22. The requirement at paragraphs 5(b) of the notice is to remove the fencing and gates. The appellants consider this is not clear and, due to the ambiguity, has the potential to mean all fences and gates on the site. It is, however, necessary to read the notice as a whole, including any plan attached to the notice. The requirement at paragraph 5(b) is specifically to remove *the* fencing and gates: not all gates and fencing (emphasis added). That is a clear reference back to paragraphs 3(i) and (ii) of the notice, which specify the gates and fencing as being those shown in the approximate position marked 'C' and 'D' respectively on the plan attached to the notice. However, in the interests of clarity the Council has no objection to me varying the notice to refer to locations 'C' and 'D' as shown on the plan attached to the notice.
23. The appellants also consider that is disproportionate and cannot be considered expedient to require the removal of a gate without also requiring, as a minimum, its replacement with the previous gate or something identical. That is a point that properly ought to form an appeal on ground (f) as set out in section 174(2) of the 1990 Act, namely 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. The Council has responded to this point in its Final Comments, albeit under a different heading. I am therefore satisfied that I can deal with this point as if being made as an appeal on ground (f) without causing injustice the Council and do so below.
24. The requirement at paragraph 5(d) of the notice is to remove gas cylinders and 'timber pallets' stored next to the caravans. As the appellant points out, that requirement does not correspond with any part of the breach of planning control alleged on paragraph 3 of the notice. The appellant confirms that one of the gas cylinders has been hooked up to one of the caravans, but the others were empty. The appellant does not go on to explain whether the empty gas cylinders had previously been hooked up to the caravan(s) and the contents used up. The appellant also confirms that the 'timber pallets' (see below) were present on the site when the notice was issued but were present on a very temporary basis. The appellant does not indicate whether the pallets have subsequently been removed.
25. Section 173(4)(a) of the 1990 Act provides that an enforcement notice may require that the breach may be remedied by discontinuing any use of land or by restoring the land to its condition before the breach took place. Section 173(5) of the 1990 Act gives the power to require the alteration or removal of buildings or works, or the carrying out of any other operations. Accordingly, the courts have 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 enforcement notice may require that the 'ancillary' or 'incidental' works are removed in order that the site is restored to its previous condition and the breach is remedied. In that scenario, there is no requirement for works to be removed to be specifically referred to in breach of planning control that is alleged.
26. Given that at least one of the cylinders has been hooked up the caravan, and in all probability the others as well at one point in time, it is reasonable to conclude that the gas cylinders are ancillary or incidental to the material change of use that has occurred (i.e. the stationing of single static caravan/mobile home for security purposes). Evidence of this is to be found in the Statutory Declaration of Alan Wright, in which he indicates that four gas

bottles came with the caravan. That is a strong indication that the gas bottles/cylinders are ancillary to, and facilitate(d), the use of the caravan(s) alleged in the notice. I therefore take the view that the notice can require the removal of those gas cylinders. Accordingly, there is no need to vary the notice in that respect.

27. The position in relation to the 'timber pallets' is less clear-cut. There is no obvious reason as to why timber pallets would be required for purposes ancillary or incidental to the material change of use alleged in the notice. I am also mindful of the appellant's confirmation that the 'timber pallets' were only on site temporarily.
28. However, in its Final Comments, the Council explain that the 'timber pallets' are in fact picket fence panels that, when the land was used for the grazing of sheep, enclosed a section of the site in front of caravan 'A' as shown on the plan attached to the notice. A photograph taken on 19 April 2024 attached to the Council's evidence shows that picket fence in place.
29. I am content that the reference to 'timber pallets' in paragraph 5(d) of the notice is a mis-description and can be corrected without causing any injustice the appellants. The question then becomes whether that picket fence is ancillary or incidental the breach of planning control that is alleged in the notice.
30. The breach of planning control alleged in the notice includes the change of use of Land from paddock (agricultural use) to a mixed use that includes the grazing of horses. Given that the picket fence was deemed necessary when the field was used for the grazing of sheep, to my mind it seems equally necessary if the land is used for grazing horses, notwithstanding that the Shetland pony that occasionally grazes on the land appears to have been provided with its own means of enclosure. I therefore conclude that the picket fence is ancillary or incidental to the breach of planning control that has occurred, and that the notice can require it to be removed. Accordingly, there is no need to vary the notice further in that respect either.
31. The appellants point out that the policies in the development plan do not precisely correspond with the policies identified in the enforcement notice. Again, several points arise.
32. Firstly, the policies stated in the notice are those on which the Council relies in the event of an appeal being made on ground (a), namely that planning permission ought to be granted for the matters stated in the notice. The notice is very clear in setting out those policies in the development plan on which the Council relies. No such appeal on ground (a) has been made.
33. The development plan for the area appears to comprise the Stratford-on-Avon District Core Strategy (2011-2031). Copies of all the policies in the development plan that are cited in the notice are indicated as being provided with the Appeal Questionnaire.
34. The notice also cites policies in the Tanworth in Arden Neighbourhood Development Plan. It is not entirely clear to me whether this document formed part of the development plan at the time the enforcement notice was issued. The Planning Officer Report includes it in the section of that report setting out the development plan, but the Appeal Questionnaire includes a document

relating to the progress of the 'emerging plan'. If the latter is correct, then the Tanworth in Arden Neighbourhood Development Plan would not have formed part of the development plan at the time the notice was issued.

35. In any event, the main 'basket' of policies on which the Council relied in issuing the notice are clearly set out in the enforcement notice itself, as are the reasons for issuing the notice. Copies of the main 'basket' of policies were provided with the appeal questionnaire. Consequently, all the information was present to enable the appellants to make an informed decision as to whether to make an appeal on ground (a). They chose not to do so, such that the appellants' concerns about the policies that were provided/not provided with the Appeal Questionnaire is largely academic.
36. The appellants make the valid point that the letter which accompanied the notice did not set out the sections of the 1990 Act as required by regulation of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002. However, the enforcement notice itself is not rendered a nullity by this omission, particularly given that the appellants have been able to make a valid appeal. Consequently, the appellants suffered no injustice or prejudice by that omission.
37. Requirement at paragraph 5(f) of the notice is, having complied with the requirement at paragraph 5(a) of the notice to remove the two static caravans/mobile homes from the Land, to thereafter cease the use of the Land for the stationing and/or storage of caravans. Two points arise.
38. Firstly, 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, the requirement at paragraph 5(f) is wholly unnecessary. I shall therefore delete it.
39. Secondly, for the avoidance of any doubt, in the event that the notice is upheld and has been fully complied with, bringing the caravans back on to the land would constitute an offence for which the appellants could be prosecuted². This underscores the point above that the requirement at paragraph 5(f) is wholly unnecessary.
40. Section 176(1) of the 1990 Act provides that an Inspector may correct and/or vary the terms of the enforcement notice under s176(1)(b), where the Inspector is satisfied that doing so will cause no injustice to the appellant or the local planning authority. The appellants consider that the number of changes needed to put the notice in order risks prejudging either or both parties to the appeal.
41. However, the corrections and variations that I propose to make, whilst numerous, do not reveal any fundamental defect with the notice. None of the relatively minor defects identified above prevented the appellants from making informed choices about the grounds on which they might make an appeal, particularly the opportunity to make an appeal on ground (a). None of the corrections and variations that I propose to make defeat or undermine the scope and/or purpose of the notice. Consequently, I am satisfied that correcting and varying the notice as set out above will not cause any injustice.

² Clearly, in the event that the notice is upheld, not complying with the notice in the first instance would also constitute an offence for which the appellants could ultimately be prosecuted.

The appeal on ground (b)

42. 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 (a) form part of the breach of planning control alleged in the notice and (b) have occurred at some point.
43. The appellants' evidence on this ground of appeal, originally submitted to support an appeal on ground (d), comprises a total of seven Statutory Declarations, including Statutory Declarations made by the appellants themselves. All of the Statutory Declarations are properly formatted, signed, dated and witnessed, and include the wording set out in the Statutory Declarations Act 1835 to the effect that the signatories believe and solemnly declare the contents to be true. I therefore afford them all due weight. I have read all these Statutory Declarations in full but in the interest of conciseness I do not rehearse them in detail here.
44. In his Statutory Declaration, Alan Wright explains that he purchased the property in 1986 and that, since that time, he has used the land continuously as part of the garden to Tyburn Cottage. This has included walking/exercising their dogs, having picnics, socialising and hosting family weddings. It is explained that various items of domestic paraphernalia were sited on the land, including garden furniture, play equipment, a climbing frame, a slide, tents and a barbeque. This evidence is supported by photographs.
45. It is Mr Wright's evidence that on occasion the land is used for grazing by a Shetland pony, but no further detail is given.
46. It is also Mr Wright's evidence that the two caravans were first brought onto the land in or around September 2023. It is explained that the caravans are there to support the use of the land described elsewhere in his Statutory Declaration, including for security purposes.
47. It is indicated in Mr Wright's Statutory Declaration that the metal gate has been in place since 2021, with the metal sheeting added later that year. It is Mr Wright's evidence that the gravel has been in place since he purchased the property in 1986 but that the paving slabs/bricks were added in 2023/2024.
48. The Statutory Declaration of Julia Wright largely repeats and corroborates that of her husband, but it is no less important for that. Some further details are provided: for example, Mrs Wright puts the date on which the metal gate was erected as being at least May 2021. Furthermore, Mrs Wright confirms that since 1986 the land has never been used for growing crops.
49. The Statutory Declaration of Aimee-Louise Keitch confirms that she has been employed at Juliannas Kennels, Cattery and Grooming Parlour since 2019. Ms Keitch confirms that since starting work there, she continuously walked the boarded dogs as well as her own dogs on the land. She produces several photographs showing members of the Wright family, their dogs and their friends playing on the land, exercising, having picnics and socialising.

50. The Statutory Declaration of Amy Louise Hollingsworth confirms that she has been employed at Juliannas Kennels, Cattery and Grooming Parlour since 2001. Ms Hollingsworth also confirms that since starting work there, she continuously walked the boarded dogs as well as her own dogs on the land. She regularly witnessed the land being used by the family and explains that from 2001 onwards her own family have often been included in events such as barbeques, parties and picnics. Ms Hollingsworth also produces several photographs showing members of the Wright family, their dogs and their friends playing on the land, exercising, having picnics and socialising.
51. In his Statutory Declaration, Martyn Moseley indicates that he has lived in a nearby property on Tithe Barn Lane for over 20 years. During that period, Mr Moseley confirms that he has witnessed the land being used for pony grazing and dog walking, as well as part of the garden to Tyburn Cottage. He is also aware that the land has regularly been used for barbeques, family gatherings, weddings, charity events and the parking of cars.
52. Mr Moseley's Statutory Declaration is entirely silent in relation to Caravan 'A' but it is Mr Moseley's evidence that caravan 'B', which he recalls cannot be lived in, arrived with its various paraphernalia in mid-2023. It is Mr Moseley's opinion that, because caravan 'B' is not capable of human habitation, it does not meet the definition of a caravan for the purposes of the Caravan Sites and Control of Development Act 1960 (1960 Act)³. Technically, Mr Moseley may have a point: there is no evidence before me to suggest that the caravan has been for used for human habitation whilst stationed on the land.
53. However, photographs taken on 18 December 2024 included as part of the Council's evidence show the inside of caravan 'B'. The facilities provided include an oven, a sink, a dining area and at least one bed. The space appears to be heated and in good condition throughout. The photographs do not show a bathroom/toilet of any description, but the coverage is not complete, and I cannot discount the possibility that those facilities are provided. Looked at in the round, I consider that the caravan provides all the facilities necessary for human habitation. Consequently, I conclude that as a matter of fact and degree caravan 'B' is a caravan for the purposes of the 1960 Act.
54. It is also Mr Moseley's evidence that the previous gate was no longer secure and that it was replaced by the existing gate in March 2021.
55. The Statutory Declaration of Shelagh Moseley is in agreement with and corroborates that of her husband which, it is confirmed, she had the opportunity of reading beforehand. She also confirms in her own Statutory Declaration that the use of the land for pony grazing and dog walking, as well as part of the garden to Tyburn Cottage, has been taking place for the past 20 years at least.
56. In his Statutory Declaration, Nigel Boulton explains that he is related to the appellants and that over the last 20 years he has helped to maintain the lawns at Tyburn Cottage. This includes the land subject to the notice which, Mr Boulton explains, he has always considered to form part of the garden to Tyburn Cottage. In his Statutory Declaration, Mr Boulton explains that his

³ I am mindful that Mr Moseley is not the agent appointed to represent the appellants. However, given that Mr Moseley is giving evidence in support of the appeal made by the appellants, it is reasonable to conclude that the appellants have seen and agree with the point made by Mr Moseley. I am therefore inclined to consider the point that he makes.

family have used the land for walking/exercising the family dogs, for playing with family friends, exercising, having picnics and socialising. He goes on to confirm that, over the years, various items of domestic paraphernalia have been sited on the land, including a climbing frame, a slide and tents. This evidence is supported with photographs.

57. I have applied this evidence to the appeal on ground (b) and find, on the balance of probability, that:

- the evidence of Alan Wright, Julia Wright, Martyn Molesey and Shelagh Moseley shows that the stationing of a single static caravan/mobile home for security purposes as alleged in paragraph 3(a) of the notice has occurred.
- the evidence of Alan Wright, Julia Wright, Martyn Molesey and Shelagh also shows that the storage of a single static caravan/mobile home as alleged in paragraph 3(b) of the notice has occurred.
- all those of who made Statutory Declarations recall that a Shetland pony was occasionally grazed on the land. The use of the land for the grazing of horses as alleged in paragraph 3(c) of the notice has occurred.
- the evidence of Aimee-Louise Keitch and Amy Louise Hollingsworth shows that the exercising and walking of dogs in connection with the business which operates from Tyburn Cottage and is known as 'Julianna's Kennels, Cattery and Grooming Parlour, as alleged in paragraph 3(d) of the notice, has occurred.

58. In addition to the above, there is a considerable body of evidence to show that, on the balance of probability, that on occasion the land has been used as part of the garden to Tyburn Cottage and that this has occurred at some point(s). The evidence provided in the Statutory Declarations is compelling in that respect.

59. However, the question remains as to whether that use was active on the date the notice was issued. The photographs submitted with the appellant's evidence cover the entire span of the relevant period and beyond. These photographs clearly show the land being used as a domestic garden and for the walking/exercising of dogs, albeit none of the photographs submitted show the use as a domestic garden after 19 April 2024, that being the date of the Council's photograph several sheep grazing on the land.

60. The photographs submitted as part of the appellant's evidence do show the exercising and walking of dogs on the land, but it is not made clear whether they the dogs are family pets or dogs boarded at the kennels. The latter would be entirely consistent with the breach of planning control alleged in paragraph 3(d) of the notice but wholly inconsistent with a use for the grazing of sheep. It is therefore more likely than not that this use also ceased when the land was being used for the grazing of sheep.

61. The photograph taken on 19 April 2024 attached to the Council's evidence that shows the picket fence in place in front of Caravan 'A' also shows several sheep grazing on the land. That would be an agricultural use of the land. There is no evidence of the use of the land as a garden to Tyburn Cottage was taking place on that date. Similarly, there is no evidence of domestic paraphernalia being sited or stored on the land: the slide, climbing frame, play equipment, garden furniture and barbeque referred to in the appellants' evidence are all conspicuous by their absence in the photograph taken on 19 April 2024.

62. The same is true of photographs taken by the Council on 2 October 2024 and 18 December 2024, which reveal no evidence of the use of the land as a garden to Tyburn Cottage was taking place on those dates. There is no evidence in photographs taken during those site visits that the agricultural use was actively taking place at those times but, as the likely lawful use of the land, that use may have been dormant at the time. One photograph does show dogs being walked/exercised but it is not clear whether those dogs are family pets or boarded at the kennels.
63. Several of the Statutory Declarations refer to the grazing of the land by Polly the Shetland pony but are entirely silent about the use of the land for the grazing by sheep. The Statutory Declarations were made on 11 April 2025, and therefore after the date when sheep are known through photographic evidence to have grazed on the land. The omission of any reference to the grazing of sheep on the land in the Statutory Declarations casts an element of doubt over the reliability of that evidence in terms of not portraying the full picture of the use of the land to which the notice relates.
64. I recognise that the photographs taken on 19 April 2024 represent a snapshot in time and I cannot be certain that the active agricultural use was a regular occurrence albeit, as stated above, it is likely to be the lawful use of the land. Equally, I cannot be certain that the grazing of sheep on that day was not symptomatic of a regular or usual use of the land.
65. It is also highly relevant that there is no sign of the use of the land as a domestic garden taking place on any of the three days that Council officers made site visits. Furthermore, an email from appellants dated 9 January 2025 explains that the football posts and swing are normally in the field during the summer months, the clear implication being that they are not on the land during the winter months. This evidence is all symptomatic of an occasional use of the land for that purpose, for example on special occasions such as birthdays, weddings, family gatherings and summer picnics, rather than a continuous use of the land. It is also entirely consistent with the other evidence that is before me.
66. In an appeal on ground (b), the onus of proof is on the appellant. This is not a situation where the local planning authority has no evidence of its own to contradict that of the appellants or make their version of events less than probable. On the contrary, I find that the appellant's evidence is not sufficiently precise to counter the photographic and documentary evidence produced by the Council that there may have been an intervening agricultural use of the land. In that scenario, the enforcement 'clock' is effectively stopped each time the intervening use takes place.
67. On the evidence before me, at the very least the enforcement 'clock' stopped and was reset on 19 April 2024 with the intervention of the agricultural use. There is no evidence before me to suggest that the use as a domestic garden in association with Tyburn Cottage took place after that date, albeit the evidence suggests that walking/exercising of dogs did continue.
68. Having regard to the above, I am satisfied that the Council was perfectly entitled to allege in the notice that the 'from' use was a paddock in agricultural use and that the 'to' use is a mixed use comprising the stationing of one static caravan/mobile home for security purposes, the storage of one static caravan/mobile home, the grazing of horses and the exercising and walking of

dogs in connection with the business which operates from Tyburn Cottage and is known as Julianna's Kennels, Cattery and Grooming Parlour . In that respect, on the balance of probability, the breach of planning control alleged in the notice has occurred.

69. In reaching that conclusion, and whilst not strictly within the ambit of an appeal on ground (b), I am mindful of the provisions within section 55(2) (d) of the 1990 Act which provide 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 the development of land. This raises the obvious question as whether the land subject to the notice is within the curtilage of the dwellinghouse known as Tyburn Cottage.
70. 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 in a recent judgment of the High Court. In summary, those principles are:
- (a) The extent of the curtilage of a building is a question of fact and degree
 - (b) The three 'Stephenson' factors of physical layout, the ownership past and present, and the use or function of the land or buildings, past and present must be taken into account
 - (c) A curtilage does not have to be small, but that does not mean that the relative size between the building and its claimed curtilage is not a relevant consideration
 - (d) Whether the building or land within the claimed curtilage is ancillary to the main building will be a relevant consideration
 - (e) The degree to which the building and the claimed curtilage fall within one enclosure is relevant.
 - (f) The relevant date on which to determine the extent of the curtilage is the date of the application; but this will involve considering both the past history of the site, and how it is laid out and used at the time of the application itself.
71. Applying those principles to the facts of this case, I note firstly that the land has been in the ownership of the appellants since they purchased Tyburn Cottage in 1986. It is clear from the evidence before me that the land has been used, on occasion at least, in association with Tyburn Cottage throughout that time. It is equally clear, however, that there have been other intervening uses of the land (the agricultural use in April 2024, for example).
72. The determining factors in this case, it appears to me, are that the land is some distance from Tyburn Cottage and forms a separate enclosure. It is also a relatively large parcel of land compared to Tyburn Cottage itself. Consequently, on the date on which the appeal was lodged and as a matter of fact and degree, I conclude that the land subject to the appeal is not within the curtilage of Tyburn Cottage. The corollary is that the provisions within section 55(2) (d) of the 1990 Act do not apply in this case.
73. I conclude on the balance of probability that the matters alleged in the notice have occurred. Accordingly, the appeal on ground (b) fails.

The appeal on ground (d)

74. As a starting point, it is settled case law that where an enforcement notice alleges a single mixed use, as in this case, it is not possible to decouple elements of that mixed use. In such cases, the courts have held that the use is a single mixed use which comprises its component activities. It follows that to succeed on this ground the appellants must show, on the balance of probability, that all of the elements of the mixed use have taken place continuously over a period of ten years beginning with the date of the breach. I have approached this ground of appeal with that principle firmly in mind.
75. In considering this ground of appeal, I am again mindful that on my reading of the appellant's evidence the primary purpose appears to be an attempt to demonstrate that the use of the land subject to the notice as a domestic garden in association with Tyburn Cottage is lawful rather than to show that the breach of planning control alleged in the notice has become lawful through the passage of time. Nevertheless, it is possible to distil from that evidence several points that are relevant to this appeal on ground (d).
76. It is the evidence of Alan Wright, Julia Wright, Martyn Molesey and Shelagh Moseley that the stationing of a single static caravan/mobile home for security purposes as alleged in paragraph 3(a) of the notice took place in or around September 2023. That is less than ten years between the beginning of the breach of planning control and the issuing of the enforcement.
77. The evidence of Alan Wright, Julia Wright, Martyn Molesey and Shelagh Molesey also shows that the storage of a single static caravan/mobile home as alleged in paragraph 3(b) of the notice took place in or around September 2023, although the precise location of that static caravan/mobile home may have changed thereafter. That is also less than ten years between the beginning of the breach of planning control and the issuing of the enforcement.
78. All those of who made Statutory Declarations recall that a Shetland pony was grazed on the land. However, on the evidence before me, that use has been occasional and/or intermittent insofar as it relates to the grazing of a horse(s) not as part of an agricultural use. Because of the occasional/intermittent nature of that use, the enforcement clock is constantly resetting. Consequently, the appellants have not demonstrated through evidence that the use has been taking place continuously for a period of ten years beginning with the breach of planning control. However, given that the notice does not require this use to cease, that is of no consequence.
79. The evidence of Aimee-Louise Keitch and Amy Louise Hollingsworth shows that the exercising and walking of dogs in connection with the business which operates from Tyburn Cottage and is known as 'Julianna's Kennels, Cattery and Grooming Parlour, as alleged in paragraph 3(d) of the notice, has been taking place since 2019, that being the date on which Aimee-Louise Keitch commenced employment at the kennels (a couple of years prior to Amy Louise Hollingsworth commencing employment there). I am aware that the kennels began operating in or around 1990 and it possible that the walking/exercising of dogs on the land subject to the notice may have commenced at that time. Nevertheless, in contrast to the detailed Statutory Declarations of Aimee-Louise Keitch and Amy Louise Hollingsworth, there is no meaningful evidence to support that. Moreover, given that the notice does not require this use to cease, that is again of no consequence.

80. It is the evidence of Alan Wright, Julia Wright, Martyn Molesey and Shelagh Moseley that the metal gate was erected in 2021, clarified by Julia Wright as being in May 2021 and by Martyn Moseley as being in March 2021. The enforcement notice was issued on 21 January 2025. Taking either of those dates, the metal gate has therefore not been in situ for the requisite four years stated in section 171B (1) for operational development to become immune from enforcement action. The same applies to the timber fence.
81. It is the evidence of Alan Wright and Julia Wright that, whilst there has been gravel on the land since it was purchased in 1986, the paving slabs and larger bricks were added in 2023/2024. It is no part of the appellant's case that the laying of these paving slabs and larger bricks did not constitute an engineering operation for the purposes of section 55(1) of the 1990 Act and therefore requiring planning permission. It follows that the hardsurface (as I propose to correct and vary the notice) has not been in situ for the requisite four years stated in section 171B (1) for operational development to become immune from enforcement action.
82. I conclude on the balance of probability that, at the date on which the notice was issued, the Authority was in a position to take enforcement action in respect of the breach of planning control constituted by the matters stated in the notice. Accordingly, the appeal on ground (d) fails.

The appeal on ground (f)

83. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. 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. In this case, the requirements of notice (as I propose to correct and vary it) include to remove the two static caravans/mobile homes from the Land, to remove the fencing in gates at locations 'C' and 'D' as shown on the plan attached to the notice and to remove the hardstanding shown hatched in black on the plan attached to the notice. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred.
84. It is settled case law that the requirements of an enforcement notice must not purport to stop a developer from doing something they are entitled to do given their existing lawful use rights, including rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO)⁴. In this context, Class A, Part 2, Schedule 2, Article 3 of the GPDO provides that the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure is permitted development, subject to the limitations at Class A.1. One of the limitations at Class A.1 is that development is not permitted by Class A if the height of the gate, fence, wall or other means of enclosure erected or constructed adjacent to a highway would exceed one metre above ground level.
85. The first point to note is that the appellants have not appealed on ground (c) as set out in in section 174(2) of the 1990 Act namely that, in respect of any

⁴ The '*Mansi*' doctrine

breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. Not making an appeal on ground (c) is a tacit acknowledgement that the gates/fencing alleged in the notice constitute development requiring planning permission and as such constitute a breach of planning control.

86. Furthermore, examination of photographs showing the gate submitted as part of the Council's evidence show a metal framed gated fronting onto a highway used by vehicular traffic (Tithe Barn Lane) but set back from it. The gate clearly exceeds one metre in height above ground level. There is no definition of 'adjacent' in the GPDO itself, but the Oxford English Dictionary defines 'adjacent' as being near or next to something. Whilst in the absence of an appeal on ground (c) I make no formal determination on the point, it is reasonable to conclude from examination of the gate shown in the photograph and its position in relation to the highway that the gate is not permitted by Class A, Part 2, Schedule 2, Article 3 of the GPDO. No express planning permission has been granted for the gate and/or associated fencing. Accordingly, the Council was perfectly entitled to initiate enforcement action against the gate and the fence if considered expedient to do so (which the Council evidently considered it was).
87. Nevertheless, that does not mean that the appellants are not entitled to erect a gate and/or fence of some description in this position. The *Mansi* doctrine provides that rights under the GDPO still remain available to the appellants following compliance with the notice. But this comes with the proviso that any gate/fence erected accords with the limitation at Class A.1 of the GGPO in relation to its height.
88. The corollary is the concerns expressed by the appellants in relation to safety and security following the removal of gate/fence as required by the notice are not entirely well founded. There concerns can be largely addressed with the erection of a gate/fence that accords with the provisions of Class A, Part 2, Schedule 2, Article 3 of the GPDO, albeit not perhaps providing the same level of security as the gate/fence subject to the notice.
89. Section 173(4) of the 1990 Act provides for the remedying of the breach of planning control by restoring the land to its condition before the breach took place. It is therefore open to me to impose a requirement that the original field gate that existed prior to the breach taking place is reinstated. However, on the evidence available to me, it appears that the original field gate would accord with the provisions of Class A, Part 2, Schedule 2, Article 3 of the GPDO anyway, such that they could reinstate that gate if they so wished. But imposing a requirement to reinstate the original field gate would unduly limit the options open to the appellants. For that reason, I do not propose to impose that as a requirement.
90. I have considered whether there are any other suitable alternatives to the requirements stated in the notice which would achieve the purpose of the notice with less cost or disruption to the appellant, but none are obvious to me. I conclude that the requirements of the notice are not excessive. Accordingly, the appeal on ground (f) fails.
91. The notice does not require the grazing of horse(s) (the breach of planning control alleged in paragraph 3(c) of the notice) or the exercising and walking of dogs in connection with the business which operates from Tyburn Cottage and

is known as Julianna's Kennels, Cattery and Grooming Parlour (the breach of planning control alleged in paragraph 3(d) of the notice) to cease. Section 173(11) of the 1990 Act provides that (a) where an enforcement notice in respect of any breach of planning control could have required buildings or works to be removed or any activity to cease, but does not do so; and (b) all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A of that Act. Accordingly, planning permission will be granted for those uses provided, that is, that the notice is fully complied with (as I propose to correct and vary it).

92. Not so the use of the land as a domestic garden in association with Tyburn Cottage. That was not a breach of planning control alleged in the notice. As such, the provisions of section 173 (11) of the 1990 Act do not apply to that use. It remains open to the Council to initiate separate enforcement action against that use if considered expedient to do so, against which the appellants would have the normal rights of appeal.

Conclusion

93. For the reasons given above I conclude that the appeal should not succeed. I will uphold the notice with corrections and variations.

Formal Decision

94. It is directed that the enforcement notice is corrected by:
- in paragraph 3 of the notice, inserting the word 'material' before the words 'change of use'
 - deleting paragraph 3(iii) of the notice in its entirety and substituting there the words 'The creation of an area of hardsurfacing (in the approximate area hatched in black on the Plan)'
95. It is directed that the enforcement notice is varied by:
- in paragraph 5(b) of the notice, inserting the words '(in the approximate location marked 'D' on the Plan)' after the word 'fencing' and inserting the words '(in the approximate location marked 'C' on the Plan)' after the word 'gates'
 - in paragraph 5(c) of the notice, deleting the words 'and paving slabs'
 - in paragraph 5(d) of the notice, deleting the words 'timber pallets' and substituting there the words 'picket fence panels'
 - deleting the requirement at paragraph 5(f) in its entirety
96. Subject to the corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

Paul Freer
INSPECTOR