Planning Inspectorate

Appeal Decision

Site visit made on 21 October 2026

by A U Ghafoor BSc (Hons) MA MRTPI FCMI fCMgr

an Inspector appointed by the Secretary of State

Decision date: 23rd November 2026

Appeal Ref: APP/C3620/C/25/3376128
Land to east of Brook Willow Farm, Woodlands Road, Leatherhead, Surrey, KT22 0AN

- 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 "Act").
- The appeal is made by Mr Ivan Vargas on behalf of Kiras House Limited against an enforcement notice issued by the Mole Valley District Council.
- The enforcement notice was issued on 21 October 2025.
- The breach of planning control as alleged in the notice is the material change of use of the land to use for dog day care and all the associated development facilitating the material change of use which includes I) the formation of an area of hardstanding II) siting of two portable buildings and III) erection of boundary fencing in the approximate position highlighted in blue on the notice plan.
- The requirements of the enforcement notice are to: i) Cease the use of the Land for dog day care, ii) Remove completely from the land the two portable buildings and hard surfacing from the approximate area highlighted in green on the notice plan, iii) Either remove the boundary fence and supports outlined in blue on the attached plan from the site, or reduce them in height to one metre or less above the adjacent ground level, and iv) To restore the land to its former condition before the breach took place.
- The period for compliance with the requirements is 2 months for step i), and 6 months for step ii) to iv).
- The appeal is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Act.

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

Matters concerning the notice

1. In the context of ground (f), the appellant raises concerns about the notice and reference is made to *Egan v Basildon Borough Council* [2011] EWHC 2416 (QB). The case confirms that a notice complies with s173(1)(a) of the Act if it enables any person on whom a copy of it is served to know what those matters are and, as *Miller Mead* demonstrates, the notice must be drafted to tell the recipient fairly what they have done wrong and must do to remedy it[1].

2. The nub of the argument is that the issued notice is flawed because the red line covers a larger area including a dwelling and associated land to the north. However, I observed that the area identified on the site plan attached to the issued notice does not include the dwelling or a livery use and it forms a separate and self-contained parcel of land. There is no mixed use of the land, and the notice clearly describes the breach and states the associated development that needs removing. The steps required are stated as is a period of compliance, reasons for issuing the notice and effective date. I will return to consider if the steps required are excessive later, but I find the notice is not ambiguous nor unclear as it tells the recipient what has gone wrong and what needs to be done to put things right.

[1] *Miller-Mead v MHLG* [1963] 2 WLR 225.

Ground (c)

3. In this ground of appeal, the evidence needs to show that the alleged matters do not constitute breaches of planning controls. The onus is upon the appellant, and the test is the balance of probability.

4. The site is roughly triangular and is located to the east of Berry Farm. The area outlined on the plan attached to the issued notice includes grassed areas where there are various structures placed on the land and used in connection with canine exercise or care. The land's use is clearly linked to the dog day care business. No positive argument is made about the material change in use of the land for dog day care and I concur the latter is significantly different in character.

5. The appellant is concerned about the erection of a close-boarded timber boundary fence, which is outlined in blue on the notice plan, and has been erected between the site's boundary and grass verge running along the A245 Woodlands Road. They argue that the fence does not require express planning permission, because it is permitted development by virtue of article 3, schedule 2, part 2, class A to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO"). The appellant makes much of a previous decision and says the Inspector neither denied nor confirmed the fence as being permitted development[2]. However, such a determination would fall outside the scope of a planning appeal, because the appointed Inspector was considering whether planning permission should be granted for the proposed change of use of land to dog day care use and associated works, stationing of cabins and hardstanding for parking.

6. The GPDO, part 2, class A grants planning permission for, amongst other things, minor operations such as the erection of a fence. The permission is subject to conditions and limitations. For example, paragraph A.1 sub-section (a)(ii) states development is not permitted if the height of any fence erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed 1 metre above ground level. According to the appellant, at its closest the fencing is situated 3.5 metres from the edge of Woodlands Road on the northern side, and at its furthest it is 8.2 m from the public footpath to the south.

7. The Courts have held that the word "adjacent" does not mean that the fence must be abutting or touching the highway[3]. Furthermore, it is unnecessary to try and draw a distinction between the pavement and the carriageway used by vehicles. I consider that the verge itself forms part of the highway used by vehicular traffic. In that context, the close-boarded timber fence and posts are above 1 m. The grass verge has a row of trees, but they are spaced out and the close-boarded fence panels are clearly noticeable from the highway. The grass verge does not form a wide gap between the highway and the fence. The strip is, in my assessment, too narrow to provide significant separation between the fence and highway. There are adequate sightlines at the junctions where existing accesses to the north and south meet the main highway. However, because the fence has been erected adjacent to Woodlands Road, the maximum height permitted under the GPDO is exceeded.

8. There is an added complexity. The issued notice describes associated facilitating development such as the erection of boundary fencing. The fence is functionally linked to the material change in the use of the land because it encloses and secures the land for

[2] Appeal ref APP/C3620/W/25/3358715 dated 17 July 2025.
[3] *Simmonds v Secretary of State for the Environment and Rochdale Metropolitan Borough Council* [1981] JPL 101.

use as a dog day care facility. Given the reasons for the fence and its limited scale, it can reasonably be described as facilitating development and integral to the material change in use of the land.

9. Pulling all the above threads together, express planning permission is required for the erection of the fence, and it has not been obtained. Therefore, the alleged matters constitute a breach of planning control and ground (c) must fail.

Ground (f)

10. In this ground of appeal, it is necessary to consider if the steps required to be taken exceed what is necessary to remedy the breach of planning controls. The appellant argues that the issued notice does not specify which buildings need to be removed. However, the notice requires the unauthorised use to cease, which includes the removal of two portable buildings. The steps required specify the removal of the hard surfacing, which is clearly identified in the approximate area highlighted in green on the notice plan. Section 5 sub-section (iii) provides an option to either remove the fence or reduce the overall height to 1 m. To my mind, the notice seeks to remedy the breach, and the appellant would be best placed to know the condition of the land prior to the introduction of the dog day care activity. The steps required, as set out in section (5) to the issued notice, are clear and precise. The notice tells the recipient what has gone wrong and what needs to be done to put things right.

11. The appellant argues that the notice should be varied to give effect to the previous Inspector's planning assessment of the development in terms of visual effect. However, such a variation would result in a form of under-enforcement that would defeat the purposes behind the notice. Nothing short of compliance achieves the notice's purposes and the steps required are not excessive nor unreasonable or disproportionate. Ground (f) fails.

Ground (g)

12. The challenge is that the period of compliance is too short. A staged period of compliance has been specified in the notice, but the appellant takes advance bookings from customers and would need to find an alternative site. However, a period of 12 months would be too long given the reasons for issuing the notice and the breach should not be allowed to continue more than necessary.

13. Nonetheless, the steps required would add significant pressure on the business; there is a need to find an alternative site, to arrange the work and the removal of two portable buildings as well as the hardstanding. Compliance with step 5(iii) will also require demolition or careful reduction of the boundary fence, which will need some degree of advance planning and specialist expertise. In my judgment, all this is likely to take time.

14. Instead of imposing a staged period of compliance, I consider that a single period of compliance would be better. A single 6-month period is a proportionate response and strikes the right balance between private and public interest in this specific case. It might allow some breathing space for the appeal parties to resolve the planning difficulties. Ground (g) succeeds to this limited extent only and I will vary the period of compliance.

Other matters and conclusions

15. The appellant refers to matters that go to expediency and are not of relevance in this appeal. A revised scheme has been submitted to the Council for its consideration and that alternative scheme seeks to address shortcomings identified in the s78 planning

appeal decision, but it seems that application was also refused planning permission[4]. Nevertheless, the planning merits of the whole development have been assessed by the previous Inspector. In the absence of a deemed planning application, I cannot consider the planning merits of the alternative scheme.

16. The Council has issued a licence for the business, and the appellant makes much of the dog care use's planning merits and considers conditions could be imposed to regulate the activity. However, in this appeal against the notice, these arguments are not relevant to the grounds of appeal pleaded.

17. For the reasons given above and having considered all other matters raised, I conclude that the appeal on ground (c) fails because the matters alleged constitute a breach of planning control. Ground (f) fails because the steps required are not excessive. Ground (g) succeeds as I will vary the period of compliance.

Formal decision

18. I direct that the enforcement notice is varied by the deletion of all the text in section 6: time for compliance and the substitution therefor by the following text: *"6 (six) months after the notice takes effect".* Subject to this variation, the appeal is dismissed and the enforcement notice is upheld as varied.

A U Ghafoor

INSPECTOR

[4] Taken from the appellant's final comments dated 16 March 2026.