



Appeal Decisions

Inquiry commenced on 5 June 2007

Site visits were made on 5 June and 25 July 2007

by **Graham Dudley BA (Hons) Arch Dip**
Cons AA RIBA FRICS

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:

12 SEP 2007

Appeal A: APP/D1780/C/06/2025878 492 Winchester Road, Southampton SO16 7BG

- 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 Sean Knowlson against an enforcement notice issued by Southampton City Council.
- The Council's reference is 06/00039/ENF.
- The notice was issued on 25 August 2006.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a detached kennel, store and deck structure, to facilitate the unauthorised use of the land as a mixed use of a dwellinghouse and operation of a security business.
- The requirements of the notice are (i) to remove the kennel, store and deck structure and the materials resulting from the demolition of the structure from the land and refrain from siting them anywhere else on the land, (ii) reinstate the land as garden.
- The period for compliance with the requirements is twenty eight days.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b) & (c) of the Town and Country Planning Act 1990 as amended. However, since the prescribed fees have not been paid within the specified period, the ground (a) aspect and application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Appeal B: APP/D1780/C/06/2025877 492 Winchester Road, Southampton SO16 7BG

- 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 Sean Knowlson against an enforcement notice issued by Southampton City Council.
- The Council's reference is 06/00039/ENF.
- The notice was issued on 25 August 2006.
- The breach of planning control as alleged in the notice is without planning permission, change of use of the land from a dwellinghouse to a mixed use of dwellinghouse and operation of a security business.
- The requirements of the notice are (i) cease to use the land for the purpose of operating a security business, (ii) remove from the land all dogs other than one working dog, handled by the owners of the land, and up to three pet dogs, (iii) allow no more than one van or vehicle, used in connection with the security business to be kept on or parked on the site at any one time.
- The period for compliance with the requirements is twenty eight days.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (c) of the Town and Country Planning Act 1990 as amended. However, since the prescribed fees

have not been paid within the specified period, the ground (a) aspects and the application for planning permission deemed to have been made under section 177(5) of the Act as amended do not fall to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Procedural Matters

1. The inquiry sat on the 5 June and the 25 July 2007.
2. At the Inquiry applications for costs were made by Southampton City Council against Mr Sean Knowlson and by Mr Sean Knowlson against Southampton City Council. These applications are the subject of separate decisions.
3. Evidence was taken on oath.

Reasons

Appeal A Ground (b)

4. The appellant does not argue about the existence of the kennels, store and deck, (the site visit shows them to be in place), but that no breach has occurred, because the site is not in mixed use and therefore the structure is permitted development. Permitted development is considered under ground (c). I find as a matter of fact that the detached kennel, store and deck have been constructed and this aspect of Appeal A fails on ground (b).

Appeal A Ground (c) and Appeal B Grounds (b) and (c)

5. The appellant's case in relation to all these grounds is that the use of 492 Winchester Road has remained residential and therefore, in relation to Appeal A, the structure benefits from permitted development rights associated with a dwellinghouse.
6. There is no argument that, as with police dogs, it is normal for the handler's individual working dog to remain with the handler and be housed at the handler's home and that this type of use would be considered incidental to the use as a dwellinghouse. The council's requirements would allow that type of use to continue. There is also no dispute that the appellant has separate office accommodation used in connection with the security business. The company is a member of the National Association of Security Dog Users and The British Institute of Professional Security Dog Trainers and tested and certified in accordance with the associations' requirements.
7. There is no argument that a broken-down van belonging to the security business was parked in Butterfield Way for a long time. This was taxed and insured and legally parked, but it seems strange to me that the van was not kept at one of the business premises. The appellant noted that it could cause some problem with the use of busy parking spaces and the landlord would be unhappy to have a broken-down vehicle parked there. To my mind it is clear that a location close to the appellant's home was seen as a logical place to keep the vehicle. While the van broke down in this location, had there been another suitable location to store it as was later found at the dog training area, I consider it likely that it would have been moved there.

8. The kennel structure at 492 Winchester Road has three very similar enclosed spaces, two identified as kennels and the third as a store, and above this is a timber deck with balustrade. There is a timber stair to the side that provides access from the deck down to the kennels and store and lower part of the garden.
9. Soon after occupation of 492 Winchester Road by the appellant, the council received complaints about dogs barking, which were investigated by council officers in the Pollution and Safety Service. The council received about 160 complaints from 19 different residents relating to noise from barking dogs. I acknowledge, because the planning merits are not an issue in this case, that noise per se is not the main issue, but to my mind the scale of complaints associated with noise and disturbance is likely to be an indicator of the extent dogs are kept at the appeal site. However, I also accept that the appellant keeps a number of pet dogs at the site, currently one associated with his business and two family pets and clearly noise emanating from the site could also be from pets.
10. Neighbours living nearby, who complained to the council and police about the dogs, were advised to keep a log of the incidents and this was done. This is a comprehensive list of activities with times and dates of the incidents kept over a long period, and dispatched to the council at about monthly intervals. While the appellant endeavours to cast doubt over the motivation for this record and its content, given that the advice to produce the record was from the council and police, was contemporaneous and that it would have taken a great deal of effort to produce over this period of time, I attach considerable weight to it.
11. I acknowledge that one discrepancy has been identified between the neighbour's log and CCTV evidence produced by the appellant. To some extent this appears to be in relation to timing as the minibus described in the log does appear to be in the CCTV footage, but not at the time noted and clearly it is delivering a bed. The CCTV evidence also illustrates the disturbance caused by a dog. There is no independent verification of the CCTV footage timing. There might be some slight error, either in CCTV timing or timing given in the log. However, in my opinion, while careful interpretation of the log is necessary, this does not significantly reduce the amount of weight I attach to this evidence, which has been presented by the witnesses and subjected to cross-examination.
12. The normal situation is that each dog is kept with its handler, which is essential to ensure that a proper bond and trust forms between the dog and the handler. These handlers have kennels at their homes for these dogs and these are independently inspected. However, there is a relatively large turn-over of staff, identified at the inquiry to be about 30% a year. When a handler leaves, the dog is, if possible, passed directly on to the next handler, so that bonding and training can commence. However, it was noted that this was not always possible and one employee was looking after two dogs. The appellant also noted that there were a couple of occasions when he had accommodated dogs overnight at his home. As a back-up, a commercial kennel can be used, but no receipts or invoices were made available to indicate the extent of its use.
13. However, even accepting this as the normal arrangement, there are a considerable number of incidents recorded where vans arrive and dogs are

dropped off and taken to the kennels, sometimes very late at night. Neighbours saw people wearing jackets with the words security written across their backs. In considering the extent of activity I am aware that neighbours would not be able to monitor all activity at the site. I also accept the evidence of the appellant's witnesses, that they have not visited the property in association with work, and that some of the vans seen at the site and appearing on the log would have been driven to the site by the appellant and members of his family and not associated with business use. However, it is quite clear from the pattern of use described in the logs, that this property and the kennels were being used in association with keeping dogs for the business and that others have visited the site to return and fetch dogs from the kennels.

14. I acknowledge that some of the noise and disturbance logged will probably have emanated from the legitimate working dog/pet dogs kept at the appeal site. However, the extent of nuisance has been substantial, resulting in council involvement and court proceedings. I consider that the additional use has caused substantial nuisance to neighbouring occupiers and as a matter of fact and degree is highly unlikely to be that normally or reasonably incidental to use as a dwelling house, even where about three dogs are kept. It also likely that these kennels, because of their size and arrangement, were constructed at least partially for the purpose of mixed use by the appellant's working dog/pets and other working dogs associated with the business.
15. I conclude at the time that the enforcement notice was issued that the property was in mixed use and permitted development rights associated with a dwellinghouse would not apply. Therefore, whether or not the structure would be permitted development within the curtilage of a dwellinghouse, it is not permitted development in association with the mixed use formed.
16. Taking into account all these factors, I conclude that what is alleged in the notices has occurred as a matter of fact. There has been a change of use to a mixed use and operational development has been carried out, without the benefit of planning permission. Consequently a breach of planning control has occurred. In these circumstances the appeals on grounds (b) and (c) are unsuccessful.

Estoppel

17. The appellant effectively argues that the council should be prevented or 'estopped' from issuing an enforcement notice because officers confirmed on site and in writing on the 23 August 2005 that the kennel/store did not require planning permission. In order to confirm the advice, the appellant choose to make a formal application for determination as to the lawfulness of the development under s191 of the Act and at that stage in determining that application the council confirmed its 'official' view on this matter. While I appreciate the position of the appellant in relation to the original officer's advice, in these circumstances, taking into account *R v East Sussex CC ex parte Reprotech (Pebsham) Ltd*, I do not consider that the council was estopped from serving the enforcement notices.

Human Rights

18. Submissions were made by the appellant, relating to interference with his human rights under the ECHR. I recognise that if the appeals are upheld it

would interfere with the way that the appellant currently uses his home in relation to his business. However, this consideration must be balanced against the rights and freedoms of others. In the light of my conclusions above and the impact that the current use has on neighbours, I am satisfied that the effect on the appellant of upholding the enforcement notices would not be disproportionate or unreasonable.

Conclusion

19. For the reasons given above and having regard to all other matters raised, I consider that the appeals should not succeed.

Formal Decisions

Appeal A: APP/D1780/C/06/2025878 and

Appeal B: APP/D1780/C/06/2025877

20. I dismiss the appeals and uphold the enforcement notices.

Graham Dudley

INSPECTOR

21. APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr T Ward	Of Counsel, 12 College Place, Fanvelle Buildings, Soton, Instructed by Mr M Heath of Southampton City Coucil,
He called	
Mr A Sayle BSc BTP MRTPI	Paris Smith and Randall LLP, 1 London Road, Soton

FOR THE APPELLANT:

Mr S Knowlson	
He called	
Mr D Russell	Director of RICS registered firm of RICS Surveyors, 37 Chapel Road, West End, Soton SO30 3FG
Mr K Long	Flat 4, 68 Arthur Road, Shirley, Soton SO15 5DU
Mr R Deakin	25 Borrowdale Road, Soton SO15 9DT
Ms P Cain	492 Winchester Road, Soton SO16 7BG
Mr P Potsides	45 Cumbrian Way, Millbrook SO16 4AT
Mr F Swanborough	1 Iris Road, Bassett, Soton SO16 3GU
Ms K Swanborough	1 Iris Road, Bassett, Soton SO16 3GU
Richard Stowell	49 Cambraian Way, Millbrook SO16 4AT
Ms J Robison	33 Purbrook Road, Fratton, Portsmouth PO1 5BH
Mrs E Read	47 Pennine Road, Millbrook, Soton

INTERESTED PERSONS:

Mr S House	480 Winchester Road, Bassett, Soton SO16 7BG
Mr R Yorke	2 Underwood Close, Bassett, Soton SO16 7DA
Mrs D McInally	3 Underwood Close, Soton SO16 7PA

DOCUMENTS SUBMITTED TO THE INQUIRY

Document	1	Notification letter
	2	Photograph - Appellant's ref 21
	3	Copy of previous decisions relating to keeping of dogs and storage/parking of commercial motor vehicles
	4	Plan showing various measurements from house to the structure
	5	Three DVDs of CCTV footage and accompanying notes submitted by the appellant
	6	Council's supplementary evidence responding to the CCTV footage
	7	Photographs from Mr S House
	8	Photographs from Mrs McInally
	9	DVD (A)