

ENGLAND AND WALES / JUDGMENT

Colin Malcolm v Hart District Council

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Neutral Citation Number: [2025] EWHC 642 (Admin) IN THE HIGH COURT OF JUSTICE KING'S BENCH DIVISION PLANNING COURT Case No: AC-2024-LON-002540 Royal Courts of Justice Strand, London, WC2A 2LL Date: 18/03/2025 Before : TIM SMITH (sitting as a Deputy High Court Judge)

- ----- Between : THE KING (on the application of COLIN MALCOLM)
Claimant
- and – HART DISTRICT COUNCIL Defendant
- and – MATT SIMS Interested Party
- ----- Kate Olley (instructed by Kingsley-Smith LLP) for the Claimant Jack Parker (instructed by the Legal Department of Basingstoke & Deane Borough Council) for the Defendant The Interested Party did not appear and was not represented Hearing date: 11th February 2025
- ----- Approved Judgment This judgment was handed down remotely at 10.00am on 18/03/2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives. Approved Judgment Colin Malcolm v Hart District Council AC-2024-LON-002540 MR TIM SMITH (sitting as a Deputy High Court Judge):

Introduction

1. 2. 3. By this claim the Claimant challenges the decision of Hart District Council “(the Council”) to grant a planning permission dated 14th June 2024 (“the Permission”) to the Interested Party. The Permission is for the change of use of one of the units (“Unit 5”) in the commercial premises on the Bramshot Farm Barns complex, near Fleet (“the Complex”), allowing it to be used as a dog grooming studio. The Interested Party owns Unit 5 and is the proprietor of the dog grooming studio that has now relocated to it. Lying at the heart of this challenge are the Claimant’s concerns about the adverse impacts of the dog grooming studio on the residential amenity enjoyed at his property, in particular by reason of noise associated with the grooming operation and associated activities. The Claimant in particular alleges that, in reaching its decision to grant planning permission, the Council erred in law in how it treated his concerns expressed through formal objections to the planning application. He therefore seeks the quashing of the Permission. Background facts 4. 5. 6. 7. 8. Unit 5 was previously in use as offices. On 5th April 2024 a planning application was made

by the Interested Party to change its use. The proposal was described in the application as follows: “Change of use of business unit from office (Land Use Class E(g)(i)) to a flexible use comprising office (Land Use Class E(g)(i)) or a dog grooming business (Land Use Class sui generis)” Although the proposed change of use would strictly result in an expansion to the permitted uses of Unit 5 beyond the current office use, rather than substituting an alternative for the office use, it is common ground that the purpose underlying the application was to allow Unit 5 to be used as the new base for a dog grooming studio. The Interested Party had operated a dog grooming business under the name “Upper Hound Dog Grooming” from a unit in a shopping parade in Farnborough town centre. The business has already relocated to Unit 5 following the grant of the Permission and, as I have seen from representations submitted to the Court by the Interested Party, has commenced operations. Unit 5 is one of eight separate units in the Complex. The aerial photograph put in evidence shows the eight units to be configured in a single continuous built structure on almost four complete sides of a square, arranged around a central courtyard that is used for parking vehicles. Planning permission for the Complex was granted in 1994. The officer’s delegated report on the latest planning application confirms this date but it does not give any details of the development that was permitted. However, Mr Parker (who appeared Approved Judgment Colin Malcolm v Hart District Council AC-2024-LON-002540 9. 10. 11. 12. for the Council) took instructions and was able to confirm during the course of the hearing that the 1994 permission was restricted to what was then Use Class B1(a) of the predecessor to the current Use Classes Order. A Class B1(a) use is office use. Mr Parker was also willing to acknowledge that the case officer assessed the existing permitted use of Unit 5 as being restricted to offices and not a wider range of uses that would be included within an unrestricted Class B1 use (for example light industrial or research and development uses). It is common ground between the parties that both the Complex and the Claimant’s residential premises are in a rural area. The Claimant’s residential premises are sited on a large plot. The main residential accommodation is located some seventy metres away from Unit 5 but there is also a separate residential building located at the bottom of the garden which is physically attached to Unit 5 and shares a party wall with it. The separate building is referred to throughout the papers as the “Annexe”, but to be clear the annexation is to Unit 5 and not the main residential premises. Nevertheless for ease I continue to refer to this separate building as “the Annexe” in this judgment. The Claimant has submitted that members of his family regularly stay in the Annexe and that it is in continual use. This evidence is unchallenged. Similarly the Claimant’s evidence that he is frequently to be found in his garden close to the Annexe is also unchallenged. The Claimant was concerned at the impact which noise from a new dog grooming studio may have on the enjoyment of the Annexe and of his garden. He instructed specialist planning solicitors, Messrs Kingsley-Smith, to write a letter of objection on his behalf. A letter was written on 7th May 2024. The salient part of the objection letter, focusing (as I have recorded above) on the constant use of the Annexe and of the garden, stated as follows: “A dog grooming salon is a very noisy place. Dogs barking all day long (being in an unfamiliar environment with other unfamiliar dogs) loud machinery running, raised voices to overcome the previous two problems, and possibly

music as well, such an establishment would shatter the peace and quiet client and family have enjoyed for many years (and are entitled to continue to enjoy). It was for that very peace and quiet that they moved here. The incidental use of the annexe is regular, by any one of [the Claimant's] five children at different times. Having a dog grooming salon through the wall (and unacceptable commotion outside or via open windows) would render the annexe unusable other than in the evenings and on Sundays due the constant noise from the dog grooming salon through the wall and outside. Client reports that they spend a lot of time outside in the gardens and having all that noise from the dog grooming salon constantly, six days per week, would render the gardens unusable. The applicant's current salon causes unbearable outdoor noise according to a neighbour. Our client and family would likely have to sell the house, assuming they could find a buyer if this were permitted. To be Approved Judgment Colin Malcolm v Hart District Council AC-2024-LON-002540 clear, they do not want to move, they love it here, they just don't want a dog grooming salon or anything else that's noisy within earshot" 13. 14. Other planning points were raised in the objection letter but the above extract captures what was said about the noise concerns. On 15th May 2024 Messrs Kingsley-Smith wrote a supplemental letter of objection to the Council. This was prompted by a detailed letter from the Interested Party on 9 th May in support of his application and responding to the Claimant's first objection letter. The Interested Party's letter had addressed a number of points relevant to this claim, including the Interested Party's appraisal of the noise mitigation qualities already present at Unit 5 and of the fact that no additional measures were proposed as part of the application. 15. The 15th May response included the following passage: "The fact is the applicant presents zero noise attenuation evidence. It is surprising to read a glass partition has insulating properties. Opening just one window would be seriously harmful and the applicant's letter does not engage with commotion externally. He has no answer to this. A few PINS decisions [that is to say appeal decisions from the Planning Inspectorate concerning other proposals] are attached which highlight why such external noise is unacceptable, given the applicant has no control (despite platitudes otherwise). The council knows from experience that dog grooming is a seriously noisy activity, dogs in unfamiliar location meetings [sic.] unfamiliar dogs causes barking, raised voices etc. The applicant denies seeking more than 5 days a week; but his application form says otherwise. His letter effectively admits 6 days a week, his argument is factually wrong" 16. 17. The letters from the Claimant's representatives were the only objections to the Application. The Council proposed to determine the application by the case officer acting under delegated powers. There is no suggestion that this was a route unavailable to the Council under its scheme of delegation. The case officer, Mr Martinez, wrote a "delegated report" ("the Report") on the application which serves as a record of the factors which he took into account when reaching his decision on the application. There are several aspects of the Report to which my attention was drawn. 18. Having recorded the Claimant's objection to the Application the Report summarised the noise objections in these terms, under the heading "Neighbouring Amenity": "- Noise arising from a dog grooming salon (all-day barking, loud machinery running, raised voices and possibly music) Approved Judgment Colin Malcolm v Hart District Council AC-2024-LON-002540 - The proposal would

render an incidental residential annex adjoining the subject premises unusable other than in the evenings and on Sundays.

- Residential garden adjoining the subject premises would also be rendered unusable. - - Salon causes unbearable outdoor noise. The applicant presents nothing regarding sound proofing.
- People coming and going outside, people shouting would be impossible to overcome/attenuate. - - Sound proofing to avoid noise transferring through walls is not 100%. Scale of noise levels and disturbance effective will be wholly inappropriate to this location causing significant harm to amenities.” 19. The section of the Report assessing the “Impact on Neighbours Amenity” states as follows: “Policy NBE11 of the HLP32 and Saved policy GEN1(iii) and GEN6 of the HLP06 along with Paragraph 135 of the NPPF 2023 all seek to protect and/or achieve a high standard of amenity for existing and future users and also do not undermine quality of life for communities. The subject business unit adjoins the grounds of a residential property. The main house is located 70m away from the subject site. However, there are two ancillary/incidental buildings on the grounds of this neighbouring residential property. One of them adjoins the subject site/unit ('the annexe') and the other is sited on a southwest direction from the subject unit, 40m away. An objection received from this adjacent neighbouring property, states that residential occupiers spend most of the time gardening and enjoying their outdoor space and that family stays in the annexe regularly. Strong concerns have been raised citing that unbearable levels of noise would arise from the proposal rendering the use of the annex only possible in the evenings and on Sundays. However, the objection is not accompanied by any substantial evidence to back up such assertions. It is not uncommon to find such business in town centre locations where there is a tighter grain of premises in different uses, including residential. In fact, the current location of the subject business in a small shopping parade in Approved Judgment Colin Malcolm v Hart District Council AC-2024-LON-002540 Farnborough with residential uses above, opposite and to the side which demonstrates that such use is compatible with land uses of different nature, including residential. It is noted that the objection submitted states that an existing neighbour to the business has stated that it causes unbearable outdoor noise, however no substantive evidence has been submitted to support such statements. Officers are not persuaded that such use would be incompatible a residential use, adjoining or adjacent to commercial premises. Whilst the grooming experience may cause anxiety to some dogs and in some occasions, and some animals may get agitated, this would not be the case for every single animal on every single visit to the business. Additionally, it is in the interest of the business to maintain the animals calmed and relaxed to undertake the grooming at ease. It is acknowledged the proposed business would potentially generate different noises when compared to an office use, however there is nothing to suggest they would such as to constitute a nuisance. In any event the main living accommodation of the adjacent residential property is 50m away from the subject building, the adjoining building to the subject site is ancillary/incidental and the operations of the business would not occur during unsociable hours. Therefore, no demonstrable detrimental impacts to the living

conditions of adjacent residents and or enjoyment of their dwelling house and garden are anticipated as a result of the change of use proposed. Environmental Health officers from the Council have been consulted on this application, as they deal with statutory nuisances (noise, odours, etc) and have raised no objections to the application. Therefore, officers find the change of use acceptable in this regard and no conflict with the above referenced policies and paragraphs of the NPPF is found. If the Council is minded to approve this application, a planning condition would be suggested to restrict operations to the times/days suggested in the application form and to also restrict the presence of animals on the premises overnight to ensure that no disturbance occurs outside business hours” 20. In the section headed “Planning Balance” the Report then set out an analysis of the issues against the relevant law and policy. Having first summarised the requirements of statute (as to which see below) and of the relevant planning policies (notably policies NBE1 and ED1-3 of the Hart District Local Plan) the Report then continued with the following analysis and conclusions: “- Social Benefit/Harm Social benefit of moderate nature would arise as a result of an additional business being located in the district for the benefit of its residents that want/need to make use of it. Approved Judgment Colin Malcolm v Hart District Council AC-2024-LON-002540 No social harm would arise as a result of the proposal.

- Economic Benefits/Harm Economic benefits of moderate nature would also be attracted by the proposal as a result of relocating to the district and the additional expenditure in the local economy following occupation. No economic harm is identified.
- Environmental Benefits/Harm Environmental benefits arising are limited to continuing the active use of existing commercial premises in the district and avoiding deterioration of the building as a result of any potential long-term vacancy. Environmental harm of limited nature would arise as a result of the location of the business in an area that is not highly sustainable, and access can mainly be achieved by private motor vehicle. However the same situation would be presented with any business making use of the premises (offices or any other commercial use) in this undesignated employment site. In considering the benefits above against the harm identified, officers view is that the proposed development would result in more benefits and of higher weight than the harm identified. As such the proposal would not present a material conflict with the HLP32 as a whole” 21. 22. 23. The Report recommended the grant of permission subject to conditions. The Report set out a list of recommended conditions. These included a condition restricting the hours of operation to between 09:00 to 18:00 on weekdays and 09:00 to 17:30 on Saturdays, with a restriction against opening for business on Sundays or bank or public holidays, and a restriction against dogs being kept on the premises overnight. No conditions were recommended regarding the carrying out of any noise attenuation measures. The Permission was granted on 14th June 2024. Conditions were imposed upon the Permission in line with the recommendations in the Report. The Claimant brought a judicial review challenge against the grant of the Permission. The grounds of challenge may be summarised as follows: a) b) Ground 1(1) – the Defendant’s conclusions in relation to noise and impact on residential amenity were irrational Ground 1(2) – it was inappropriate to compare the dog grooming operation in Unit

5 with the same operation in the town centre Approved Judgment Colin Malcolm v Hart District Council AC-2024-LON-002540 c) d) e) Ground 1(3) – the Council made material errors of fact in assessing the highway impacts of the proposals Ground 1(4) – the Council’s approach to the benefits of the proposals was irrational Ground 1(5) – the Council failed to interpret planning policy correctly 24. 25. 26. The challenge is defended by the Council. The Interested Party has elected not to file his own Acknowledgement of Service – as is his entitlement – and he has not participated in the hearing, save to submit some written representations which (by my Order prior to the start of the hearing) I allowed to be admitted, along with the Claimant’s response to them. The claim was considered on the papers by Mr CMG Ockelton sitting as a Deputy Judge of the High Court. By his Order dated 4th October 2024 he granted permission for the claim to proceed. Permission to proceed was granted on all grounds, although from the observations of Mr Ockelton in his Order he was plainly more sceptical about the merits of some grounds than he was of others. 27. On this basis the case came before me. The Law 28. 29. The relevant law is uncontroversial between the parties. Section 70 of the Town and Country Planning Act 1990 (as amended) provides that: “(1) Where an application is made to a local planning authority for planning permission:

- (a) Subject to sections 91 and 92, they may grant planning permission either unconditionally or subject to such conditions as they think fit; or
- (b) They may refuse planning permission
- (2) In dealing with an application for planning permission ... the authority shall have regard to:
 - (a) the provisions of the development plan, so far as material to the application, and ...
 - (c) any other material considerations” 30. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that: “If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise” Approved Judgment Colin Malcolm v Hart District Council AC-2024-LON-002540 31. The principles underlying the court’s review of a planning officer’s report are as set out by Lindblom LJ (as he then was) in R (Mansell) v Tonbridge and Malling BC

[2019] PTSR 1452 at [42]: “42. The principles on which the court will act when criticism is made of a planning officer’s report to committee are well settled. To summarise the law as it stands:

- (1) The essential principles are as stated by the Court of Appeal in R v Selby District Council, ex parte Oxton Farms [1997] E. G. C. S. 60 (see, in particular, the judgment of Judge L. J., as he then was). They have since been confirmed several times by this court, notably by Sullivan L. J. in R (on the application of Siraj) v Kirklees Metropolitan Borough Council [2010] EWCA Civ 1286, at paragraph 19, and applied in many cases at first instance (see, for example, the judgment of Hickinbottom J., as he then was, in R (on the application of Zurich Assurance

Ltd., t/a Threadneedle Property Investments) v North Lincolnshire Council

[2012] EWHC 3708 (Admin), at paragraph 15).

- (2) The principles are not complicated. Planning officers' reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge (see the judgment of Baroness Hale of Richmond in *R (on the application of Morge) v Hampshire County Council* [2011] UKSC 2, at paragraph 36, and the judgment of Sullivan J., as he then was, in *R v Mendip District Council, ex parte Fabre* (2000) 80 P. & C. R. 500, at p.509). Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer's recommendation, they did so on the basis of the advice that he or she gave (see the judgment of Lewison L. J. in *Palmer v Herefordshire Council* [2016] EWCA Civ 1061, at paragraph 7). The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice in the officer's report is such as to misdirect the members in a material way – so that, but for the flawed advice it was given, the committee's decision would or might have been different – that the court will be able to conclude that the decision itself was rendered unlawful by that advice.
- (3) Where the line is drawn between an officer's advice that is significantly or seriously misleading – misleading in a material way – and advice that is misleading but not significantly so will always depend on the context and circumstances in which the advice was given, and on the possible consequences of it. There will be cases in which a planning officer has inadvertently led a committee astray by making some significant error of fact (see, for example *R (on the application of Loader) v Rother District Council* [2016] EWCA Civ 795), or has plainly misdirected the members as to the meaning of a relevant policy (see, for example, *Watermead Parish Council v Aylesbury Vale District Council*

[2017] EWCA Civ 152). There will be others where the officer has simply failed to deal with a matter on which the committee ought to receive explicit advice if Approved Judgment *Colin Malcolm v Hart District Council* AC-2024-LON-002540 the local planning authority is to be seen to have performed its decision-making duties in accordance with the law (see, for example, *R (on the application of Williams) v Powys County Council* [2017] EWCA Civ 427). But unless there is some distinct and material defect in the officer's advice, the court will not interfere” 32. 33. The principles set out in *Mansell* apply equally to officer's delegated reports as they do to reports for a Planning Committee (see *R (Bates) v Maldon DC* [2019] EWCA Civ 1272 at [43]). I turn now to consider the submissions of the parties in relation to the separate grounds of challenge. There is, as Ms Olley for the Claimant conceded, a degree of overlap between the various individual grounds but I have tried to isolate the arguments relevant to each one in the summary below. Claimant's submissions Ground 1(1) – conclusions on noise/impact on amenity were irrational

34. Ms Olley submitted that the Report paid scant attention to the Claimant's concerns around noise. She highlighted the comment that the Claimant's objection was "not accompanied by any substantial evidence to back up" assertions about the adverse impacts of noise. This, she submitted, was not a fair characterisation of the Claimant's objections. Firstly she noted that the Claimant could only give evidence predicting the noise impacts of a use that at that stage had not begun at Unit 5. Secondly the officer had apparently made a judgement based on the likely levels of noise from the previous town centre location of the dog grooming studio without ever having visited it and without paying due heed to the negative views of a neighbour to the dog grooming studio when it was there, which the Claimant's objection letter references. 35. 36. In addition, submitted Ms Olley, the officer should have taken due notice of the previous appeal decisions submitted with the first objection letter because these illustrated the kind of noise levels that one could expect from a dog grooming studio. Finally Ms Olley submitted that it was irrational for the officer to conclude that amenity concerns could be relegated in their importance because they would be confined to business hours from Monday to Saturday. This ignores the impact which noise from the studio would have on those using the Annexe and on the Claimant's enjoyment of his garden during those business hours. Ms Olley submitted that the officer also fell into error by failing to compare noise levels from a dog grooming studio with noise levels from a (near silent) office use at Unit 5. Instead the officer focused only on the different types of noise generated by the two uses, not on the different noise levels. Ground 1(2) – inappropriate comparison with a town centre location 37. Put simply, Ms Olley's submission was that a comparison between the relative tranquillity of Unit 5 and the hustle and bustle of a town centre location was not Approved Judgment Colin Malcolm v Hart District Council AC-2024-LON-002540 comparing like with like. In making this comparison the Officer had misled himself into relying on an immaterial consideration. Ground 1(3) – errors of fact in the assessment of highway impacts
38. Ms Olley submitted that the officer miscalculated the likely number of vehicular trips to Unit 5 during the day. The Report concluded that, with the predicted patronage, the business could groom ten dogs per day which equated to twenty vehicular trips (one to drop a dog off and another to take them away). But in fact, submitted Ms Olley, the actual number of vehicular trips would be double this amount because typically a dog owner would bring the dog for grooming, drop it off, and then leave and return to collect it later (meaning two separate visits to the site and a total of four journeys to and from the unit). Thus the officer's conclusion about no adverse impact from additional traffic movements was based on a material under-recording of the likely journey numbers.
39. Ms Olley clarified that this ground of challenge now focused on the additional noise that would be created by vehicular comings and goings and not, for example, difficulties for so many vehicles navigating the narrow access road by reason of the poor quality of the road surface and the limited number of passing points. Ground 1(4) – irrational approach to the benefits of the proposal 40. As I have noted from the extracts from the Report above, the officer considered that there were benefits arising from a use of Unit 5 by a dog grooming studio and that the benefits outweighed the harm. But, submitted Ms Olley, there was no

adequate identification and/or explanation of those benefits and hence no rational basis for concluding that the benefits of the proposals outweighed the clear harm to the Claimant's residential amenities. Ground 1(5) – failure to interpret policy correctly

41. Ms Olley submitted generally that the officer's conclusion to grant planning permission must indicate a failure to interpret the prevailing policy correctly, or at least that any conclusion that there were material considerations outweighing the breach of policy were irrational. Council's submissions
42. For the Council Mr Parker's overarching submission was that the Claimant's criticisms of the officer's conclusions relied upon an overly legalistic and hyper-critical reading of the Report of the kind that the courts frequently deprecate. He added that, read fairly and as a whole, the basis on which the officer reached his conclusion was both clear and a legitimate exercise of planning judgement with which the court should be slow to interfere. Ground 1(1) – conclusions on noise/impact on amenity were irrational
43. Mr Parker submitted that whether the impact on amenity would be unacceptable was classically an exercise of planning judgement. Read correctly, the Report did not leave out of account any relevant consideration in making that judgement: the officer had correctly summarised the alleged impact on the enjoyment of the main dwelling Approved Judgment Colin Malcolm v Hart District Council AC-2024-LON-002540 house, and the Annexe, and the garden, and the conclusion that the new use would not have detrimental impacts was one that was rationally available to the officer on the facts of the case. Moreover the exercise of planning judgement was adequately reasoned. Read fairly, the officer had concluded that noise levels in the Annexe would not be unreasonable because the Annexe did not form part of the main unit of residential occupation and was remote from it. As to the reference in the Report to the absence of "substantial" evidence of harm from the noise, read in context this was saying no more than that the Claimant had failed to provide evidence to support his complaint that noise levels would be "unbearable" or that the Annexe would be "unusable" during the permitted period of operation by the dog grooming salon. In addition, submitted Mr Parker, the officer was entitled to take at face value the fact that there was no evidence to support the allegation that a neighbour of the town centre unit from which the studio formerly operated had complained of "unbearable" levels of noise. In particular, added Mr Parker, there was no requirement on the officer to undertake a site visit of the town centre unit to verify for himself the levels of noise emitted. As to the other appeal decisions submitted with the objection letter, Mr Parker submitted that they did not establish any basis for the suggested presumption to be applied by the officer that a dog grooming studio would be noisy. Each appeal decision was necessarily fact-sensitive. Finally, to the Claimant's submission that the imposition of conditions restricting the hours of operation was an implied acceptance that during normal operational hours there would be an unacceptable impact, Mr Parker submitted that this was not a fair inference from the Report. The Report correctly acknowledged that during the hours of operation there would be noise caused, and the conclusion which the Claimant sought to infer from the Council restricting hours of operation was not one that could properly be made. 44. 45. 46. Ground 1(2) – inappropriate comparison with a town centre location 47. There was nothing

inappropriate in the comparison made by the officer. He was plainly aware of the different environment in the town centre from that at the Complex. His comparison was apt because it illustrated that in its previous location the studio had operated in close proximity to another residential use. Moreover, submitted Mr Parker, it was fair for the officer to conclude that no substantial evidence had been raised about disturbance caused to other residential units from the existing operation. Ground 1(3) – errors of fact in the assessment of highway impacts 48. Noting the Claimant’s complaints about the error in calculation of vehicle movements, Mr Parker submitted that the officer’s calculation was a legitimate exercise of his planning judgement. Moreover the officer was entitled to rely upon the absence of any objection from the County Council as highway authority, and he gave reasons for his conclusion that the impact from additional vehicular movements would be acceptable. Ground 1(4) – irrational approach to the benefits of the proposal Approved Judgment Colin Malcolm v Hart District Council AC-2024-LON-002540

49. Mr Parker’s primary submission was that there was nothing irrational in how the officer had concluded on the economic benefits from relocating the studio from the town centre to this location. 50. Notwithstanding this primary submission Mr Parker’s secondary submission, relying on section 31(2A) of the Senior Courts Act 1981, was that it was highly likely the outcome would not have been different even if the perceived economic benefits were not taken into account, having regard to the other findings in favour of the grant of planning permission. Ground 1(5) – failure to interpret policy correctly
51. Mr Parker noted that there was no particular policy which the Claimant identified as having been misinterpreted. Indeed, properly understood, Mr Parker submitted that this ground was no more than an impermissible attack on the exercise of planning judgement and that the court should not get involved. Analysis and conclusions 52. The starting point is for the court to remind itself of the warning sounded in *Mansell*, and countless cases since, that officer’s reports in planning cases should be given a fair and impartial reading rather than being subjected to minute forensic scrutiny. Alongside the oft-cited passage from *Lindblom LJ* in *Mansell* Mr Parker for the Council also cited the concurring judgment of the Chancellor of the High Court, emphasising in particular this cautionary guidance about the role of planning reports at [63]: “Appeals should not, in future, be mounted on the basis of a legalistic analysis of the different formulations adopted in a planning officer’s report. An appeal will only succeed, as *Lindblom LJ* has said, if there is some distinct and material defect in the report. Such reports are not, and should not be, written for lawyers, but for councillors who are well-versed in local affair and local factors” 53. That passage, of course, refers to reports written by a planning officer to inform a decision to be taken by members of a Planning Committee. In this case the decision was taken by the officer himself under delegated powers. But that factual distinction has no relevance to the approach to be adopted by the court when construing the delegated report, as confirmed by *Lindblom LJ* in *R (Bates) v Maldon District Council* [2019] EWCA Civ 1272 at [43]: “As this court has said before, a planning officer’s report must not be read in an overly critical spirit or with an unrealistic view of what needs to be set out in assessing the proposal on its merits (see, for

example, my judgment in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314 at [41]-[42], and the judgment of the Chancellor of the High Court at [62]-[64]). I see no reason to apply a different approach to a report prepared by a planning officer where the decision is being taken under delegated powers and there is a duty on the officer making the decision to give reasons for that decision, under regulation 7 of the Openness of Local Government Bodies Regulations 2014 . The court will Approve Judgment *Colin Malcolm v Hart District Council* AC-2024-LON-002540 only intervene if there is some distinct and material defect in the report, such as a clear misunderstanding of relevant national or local policy” 54. To that well-established guidance I would merely add the observation that a delegated report serves as a written record of a decision taken by the author of the report. The report has not been written to guide and inform a decision that must be taken by others. There is therefore no scope for an innocent misunderstanding of the guidance the report is providing by a separate decision-maker. The author can be presumed to know his or her own mind, and consequently a delegated report can (if anything) be read more benevolently than can a report upon which others will rely when making a decision. 55. Having set out this general guidance – most of which the parties accept expressly – I turn now to consider the individual grounds of challenge. Ground 1(1) – conclusions on noise/impact on amenity were irrational 56. 57. 58. As I read the Report it summarises comprehensively the elements of the Claimant’s objection to the planning application as expressed in the two letters from Messrs Kingsley-Smith. It notes the concern about noise and the various different assumed sources of it. It records the Claimant’s objection that both the Annexe and outdoor spaces would be rendered “unusable” within permitted business hours by reason of the noise. It records that the application includes no proposals for sound-proofing. It highlights arrivals and departures at the site as a potential source of noise. It records the objection that the use would be inappropriate to “this location”, which – it is reasonable to infer – acknowledges that this is a rural area. It also records concerns expressed at the time about the suitability of the access road. It summarises the policy and legal objections, including the fact that the proposal is said not to be a “rural enterprise” within the meaning of Local Plan policies NBE1 and ED3. It follows from this that the Claimant’s complaint cannot point to the overlooking of any element of his objections, but must rest instead on the adequacy with which the particular grounds of objection are assessed and conclusions reached on them. The section of the Report to scrutinise with this point in mind is the section headed “Impact on Neighbours Amenity” before reviewing the “Planning Balance” section and the overall conclusion. The “Impact” section includes an acknowledgement both that the Claimant and his wife “spend most of the time gardening and enjoying their outdoor space” and “that family stays in the annexe regularly”. These factors have not therefore been ignored by the officer. Instead he summarises the relevant objections in these terms: “Strong concerns have been raised citing that unbearable levels of noise would arise from the proposal rendering the use of the annex only possible in the evenings and on Sundays. However, the objection is not accompanied by any substantial evidence to back up such assertions” 59. At first blush the reference to the lack of “substantial evidence” is a curious one, and potentially concerning. On its face it may suggest that the officer, in looking for Approved Judgment

Colin Malcolm v Hart District Council AC-2024-LON-002540 60. 61. 62. “substantial” evidence to back up the objection, has applied too high a threshold to the supporting evidence before treating the objection as a material consideration. I put to Mr Parker for the Council that this may be a typographical error, a view which I considered to be supported by the use of the much more predictable term “no substantive evidence” at the end of the following paragraph in the Report. But either way I consider that what the officer said is a fair characterisation of the material before him. The objection letters treat the excessive and unreasonable noise emanating from dog grooming studios as incontrovertible facts. The officer, in exercise of his planning judgement, was entitled not to assume that this must be correct. He was aware of the existence of the previous location of the dog grooming studio in the town centre, and of the fact that – but for the assertion in the second objection letter that a neighbour of that unit had told the Claimant of the “unbearable noise” experienced by them – there were no complaints of which the Council was aware despite the proximity to some residential premises. The second objection letter merely confirmed that the neighbour in question was not one of the neighbours who supported the Interested Party’s application, but the neighbour was not identified. The briefest of details were given of how the Claimant elicited this commentary from him or her. In addition, although the Claimant’s witness statement in these proceedings (which I allowed to be admitted as a reply to the evidence which I also admitted from the Interested Party) goes into some further detail about conversations the Claimant’s wife is said to have had with the neighbour, and of a conversation which the Claimant himself had at the nearby barbers, these details were never shared with the Council prior to its decision to grant the Permission. They cannot therefore have been expected to influence the decision. The officer’s conclusion that there is no “substantive evidence” of noise concerns expressed by neighbours of the studio at its former location is a fair reflection of the fact that there was only one second-hand statement about noise concerns attributed to an unidentified neighbour in one of the objection letters. In her oral submissions to me Ms Olley clarified the relevance which the Claimant says should have been attached to the three planning appeal decisions sent with the first objection letter. Despite the first objection letter asserting that the decisions “highlight why such external noise is unacceptable” the decision letters were not, Ms Olley confirmed, advanced as part of an argument that there was a need for consistency in decision-making and that they were material considerations in deciding this planning application (an argument which would be based on the judgment of the Court of Appeal in *North Wiltshire District Council v Secretary of State for the Environment* [1992] 65 P&CR 137). That, it seems to me, was a sensible and proper concession, not least because (a) each case is necessarily fact-sensitive and so conclusions about the acceptability of a use in one location will be far from determinative of the acceptability in another location, (b) none of the appeal sites were anywhere remotely close to Unit 5 nor even in the Council’s administrative area, and (c) in two of the three cases the Inspectors concluded that the noise from the studios would not be unacceptable in a residential area. Instead Ms Olley submitted that the decisions stood as an illustration of the type of noise that can be caused by a dog grooming studio and that the officer should have taken due notice of this general fact and applied it to the sensitive location of the Claimant’s

property. Approved Judgment Colin Malcolm v Hart District Council AC-2024-LON-002540 63. In her oral and written submissions Ms Olley placed some emphasis on the passage in the Report in which residential amenity concerns were apparently relegated in importance because the main residential property was some distance from Unit 5: “In any event the main living accommodation of the adjacent residential property is 50m away from the subject building, the adjoining building to the subject site is ancillary/incidental and the operations of the business would not occur during unsociable hours. Therefore, no demonstrable detrimental impacts to the living conditions of adjacent residents and or enjoyment of their dwelling house and garden are anticipated as a result of the change of use proposed” (the emphasis is Ms Olley’s) 64. 65. 66. I do not consider that this passage reveals any error. The conclusion about there being no adverse amenity impacts does not rest upon the fact that the Annexe is merely an ancillary building and the main residential dwelling is 50 metres away. Earlier in the Report the officer noted the objection that the Annexe is in “regular” residential use and that the Claimant and his wife were frequently to be found in their garden. The reliance upon one word in the Report is an example of the overly “legalistic analysis” warned against in Mansell, and it conceals the fact that – read fairly and as a whole – the Report did not leave out of consideration any relevant factor. The “Impact on Neighbours’ Amenity” section of the Report concludes with (a) an acknowledgement by the officer that the Council’s Environmental Health Officer was consulted “as they deal with statutory nuisances (noise, odours etc.)” and that they raised no objections; and (b) a recommendation that conditions be imposed on the grant of permission to restrict the hours of operation of the studio and preventing dogs being kept on the premises overnight. Both conditions are found on the Permission. The reason given for each condition is “To protect the residential amenities of neighbouring occupiers”. The “Planning Balance” section of the Report then sets out correctly the requirements of section 38(6) before weighing the benefits and harm of the proposals under the headings of social, economic and environmental. Under the latter heading the Report acknowledges that: “Environmental harm of limited nature would arise as a result of the location of the business in an area that is not highly sustainable, and access can mainly be achieved by private motor vehicle”

67. Whilst the focus of this comment appears to be on environmental sustainability as a result of its poor accessibility by any means other than the private car, read in the context of the remainder of the Report this summary clearly imports the earlier findings about noise impacts and the residual effects of noise after imposition of the two planning conditions. 68. The final “Conclusion” section of the Report does not comment specifically on environmental or noise impacts but concludes more generally that the planning balance favours the grant of permission. Approved Judgment Colin Malcolm v Hart District Council AC-2024-LON-002540 69. I must say that I have some sympathy for the Claimant if his fears about the levels of noise should prove to be well-founded. If the noise climate does indeed become “unbearable” and the Annexe “unusable” then, as was canvassed briefly in the hearing before me, there may be grounds for getting the Council’s Environmental Health

Officer to investigate a possible statutory nuisance – although I expressly make no comment on the merits of any such investigation which may take place. But for the reasons I have given above the conclusions in the Report about the likely impact of noise on the Claimant do not render the decision to grant the Permission unlawful. 70. For these reasons ground 1(1) fails. Ground 1(2) – inappropriate comparison with a town centre location 71. 72. There is a degree of overlap between this ground and ground 1(1), because the criticism levelled at the officer by the Claimant for his comparison bears upon the conclusions he drew about the ability of the studio to co-exist with neighbouring residential uses without attracting noise complaints. I see nothing in this criticism. The purpose for which the officer draws the comparison in the Report is to identify that in town centre locations uses such as a dog grooming studio are often found physically closer to residential premises, and that in this case there were residential premises opposite, next to and above the former location of the studio.

73. Whilst I acknowledge that the ambient noise levels in a town centre location will not compare with the quiet rural location of the relocated premises, equally it was relevant for the officer to test the plausibility of the claim of “unbearable” noise by noting that adjacent residential premises in close proximity to the former location had not complained about adverse noise levels, other than the unidentified neighbour whom I have referred to in the context of ground 1(1). 74. Furthermore the overall conclusions about the noise levels are based on plenty of other factors besides the absence of complaint by town centre neighbours. The officer has certainly not concluded that, because there have been no complaints by adjacent town centre residents, therefore the use must also be acceptable in a rural location. 75. Ground 1(2) therefore fails. Ground 1(3) – errors of fact in the assessment of highway impacts 76. 77. 78. As I have noted above, the complaint about an under-recording of traffic generation is now framed by Ms Olley as a complaint about additional sources of noise. That is a reformulation of how the traffic ground was put in each of the two letters of objection. Instead the objection letters focused primarily upon conflicts between vehicles meeting head-on down a track wide enough only for one vehicle, other than a limited number of passing points; the poor state of repair of the road; and the absence of proper drainage. For these reasons the Report considered the Claimant’s highway objections as points about traffic impact rather than the point now pursued about additional noise. Doubtless for this reason the Report did not comment at all about the noise Approved Judgment Colin Malcolm v Hart District Council AC-2024-LON-002540 implications of additional vehicle movements. Instead it reached a conclusion that the additional vehicle movements would not be unacceptable. That conclusion relied on the absence of any objection from the County Council highway authority and on the fact that the lane, being an adopted highway, should be maintained to a better standard than it evidently is by the highway authority. It is wholly unrealistic to expect the Report to have dealt with a potential noise objection that was not made to the Council in the way that it is now made to me. Put at its highest (a) the two objection letters referred opaquely to the likelihood of “unacceptable commotion outside”, in circumstances where the reader could easily have interpreted that

as referring to the noise from dogs before they entered the premises, and (b) whilst the Council was furnished with material from the three other appeal decisions where noise from vehicles arriving and departing was identified by the appeal Inspectors as a relevant factor, the second objection letter (by which the appeal decisions were sent) did not specifically identify noise from vehicles arriving and departing as an issue which it was said the Council should grapple with. Instead it merely referred again to a generic “commotion outside”. I am therefore not in the least surprised to see no overt consideration of the point in the Report. The absence of consideration does not render the decision unlawful. I also note in passing that the traffic complaint as now refocused by the Claimant is far from being indisputable. From the plans it appears as though vehicle arrivals and departures and unloading could well take place inside the courtyard area formed by the complex of buildings around the perimeter, meaning that the Annexe and the garden will be shielded from some noise generation by the buildings themselves. In addition the Claimant’s ground of challenge assumes that no customer with dogs will ever stay and wait whilst their dogs are groomed but that all of them will make a journey to and from the studio to drop off the dog and then a further journey to pick them up afterwards. There is no evidence before me as to the likelihood of any owner choosing to wait for their dogs, but it must be a possibility. Finally the Claimant’s calculation of additional traffic movements also assumes that each visitor brings only one dog with them. If any of the estimated ten dogs per day arrive together this would reduce the Claimant’s calculated vehicular movements. Overall I accept that the Council’s calculations probably under-record to a material degree the number of new vehicle movements, but it should not be assumed that the true calculation is necessarily double what the Report records. The more important point, though, is that the objections submitted on behalf of the Claimant did not signal that noise from vehicular movements was something significant needing to be assessed by the Council. 79. 80. 81. 82. 83. Ground 1(3) therefore fails. Ground 1(4) – irrational approach to the benefits of the proposal 84. The complaint about the assessment of the benefits of the proposal bears upon the planning balance set out in the Report. In the case of social and economic impacts the Report concludes that the benefits of the proposal outweigh the harm. In the case of environmental benefits and harm it is not wholly clear whether the Report concludes that there would be overall harm or that the residual harm is no worse than the status Approved Judgment Colin Malcolm v Hart District Council AC-2024-LON-002540 quo and hence it is a neutral consideration, but I consider that nothing material turns on this uncertainty. 85. 86. 87. This section of the Report is lightly reasoned and that does the Council no favours in defending this ground of challenge. However, the question for the court is not about the length of the reasons but of the adequacy of them. The primary complaint levelled at the Council’s reasoning is that there can be no economic benefit from relocating a business which already exists. This was a line of argument which, from his comments in the Order granting permission, evidently interested Mr Ockelton. It is true that the proposal relates to a relocation of an existing business. However, that business was located in Farnborough town centre which is in Rushmoor Borough Council’s administrative area. It relocated to the Council’s administrative area instead. That appears to be the rationale behind the Council

attributing some weight to the relocation as a benefit, with commentary in the Report on both the social and economic benefits noting the relocation “to the district”.

88. Whilst generally local planning authorities are encouraged to view proposals more holistically and without being constrained by artificial administrative boundaries, it is not unusual to see a more parochial attitude displayed. In those circumstances one can see how the officer felt able to conclude that a relocation of the business from Rushmoor Borough to Hart District was a benefit to Hart District (even if it may have been at the expense of Rushmoor Borough losing the business) and that this qualified as a benefit to the Council.
89. I am therefore unable to agree with Ms Olley that it was irrational for the Council to attribute as a benefit the relocation of the business to Unit 5. 90. Ground 1(4) therefore fails. Ground 1(5) – failure to interpret policy correctly 91. 92. 93. I agree with Mr Parker that this ground is largely unparticularised. It appears to offer nothing that the earlier grounds did not already cover. As I have noted above, the Report fairly summarises the objections made on behalf of the Claimant; it analyses the relevant development plan policies and material considerations for and against the grant of planning permission; it cites the correct legal test in section 38(6) of the 2004 Act; and it reaches an adequately reasoned conclusion. Once these facts are understood, ground 1(5) is revealed to be no more than an impermissible attack on the exercise of planning judgement. The Claimant is understandably disappointed by the outcome and believes that the application should have been refused. But those beliefs do not render the decision unlawful. Conclusions
94. Many of the arguments which have been advanced before me as part of this claim may have gained some traction with a Planning Inspector considering an appeal Approved Judgment Colin Malcolm v Hart District Council AC-2024-LON-002540 against a refusal of planning permission. That is because the task of an Inspector is to consider and rule on substantive planning arguments. But it is not the role of this court to second guess the exercise of planning judgement by the original decision- maker - absent irrationality - however disappointing the outcome may be for the Claimant. In my judgement the exercise of planning judgement by this officer is a long way from clearing the irrationality threshold. 95. For these reasons this claim fails.
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