[redacted]

Date: 28 May 2026 at 11:48:53 BST

[redacted]

Subject: Re: advice - change of a building from medial to vets

Matthew,

Thank you for your email.

I would confirm that a medical practice, and veterinary practice both fall within planning use class E(e) so this would not constitute a change of use requiring planning permission.

We would, however, always advise that you check the planning history of a particular property to ensure that it has the appropriate consent.

Regards

Ian Jarvis
Planner,
Area Team Group
Growth and Development
Manchester City Council
Floor 6 Town Hall Extension
Albert Square
PO Box 532
Manchester
M60 2LA

[redacted]

On 2 Jul 2026, at 17:36, James Bridgman <[redacted]> wrote:

Good afternoon Matthew,

I hope you are well.

I have reviewed the proposal, and it would appear that a vets would constitute as a Sui Generis use and therefore would require planning permission. Can you confirm if any external alterations would be required to facilitate the use?

I am happy to send over a validation requirement list to assist with the submission of a forthcoming planning application and details on how to submit etc.

The advice given at this stage is in good faith and on the basis of the information that you have provided. The advice is not binding on the City Council and maybe subject to change once the proposal has been the subject of the statutory planning process.

Kind regards,

James Bridgman
Career Graded Planning Officer

Development Management Central Core
Manchester City Council

[redacted]

www.manchester.gov.uk

Location address: Manchester City Council Town Hall Extension Lloyd Street Manchester M2 5DB.
Postal Address: Manchester City Council P.O. Box 532 Town Hall Manchester M60 2LA

On 3 Jul 2026, at 14:33, James Bridgman <[redacted]> wrote:

Hi Matthew,

Please accept my apologies for several response to your query. The Council are still trying to establish the whether the use would constitute as Use Class E or Sui Generis. I am going to require further information to establish what use class the premises would fall under.

In terms of the vets, it would only be considered a Class E if the premises was to operate as an animal research facility in line with the court case *West Suffolk Council v Secretary of State for Levelling Up, Housing and Communities & Ors [2025]*.

If the premises is to operate as a research facility on animals, to achieve a formal decision from the planning department that planning permission is not required, you would need to evidence there is an existing Class E lawful use at the site and that the new use would also be Class E. This would be considered under a Lawful Development Certificate whereby the Council would review your evidence of the lawful use and that the new vets use would be operating for research purposes.

If the vets would be operating as a medically treating animals with members of public visiting with animals then it would constitute as a Sui Generis use which would require planning permission. If this is the intention I can provide a validation list to support any forthcoming application.

Please can you advise on what type of operation the vets would be in line with my above guidance, and I can provide further information.

The advice given at this stage is in good faith and on the basis of the information that you have provided. The advice is not binding on the City Council and maybe subject to change once the proposal has been the subject of the statutory planning process.

Kind regards,

James Bridgman
Career Graded Planning Officer

Development Management Central Core
Manchester City Council

On 6 Jul 2026, at 14:04, James Bridgman <[redacted]> wrote:

Hi Matthew,

Thank you for confirming the intention of a standard medical vets treating animals. As per my guidance below this would constitute as a Sui Generis use and would therefore require planning permission for a change of use.

Kind regards,

James Bridgman
Career Graded Planning Officer
Development Management Central Core
Manchester City Council
[redacted]
www.manchester.gov.uk

Location address: Manchester City Council Town Hall Extension Lloyd Street Manchester M2 5DB.
Postal Address: Manchester City Council P.O. Box 532 Town Hall Manchester M60 2LA

MANCHESTER CITY COUNCIL

Planning

Growth & Neighbourhoods Directorate

Register of Applications

Application Reference

048164/FU/CITY2/95

Date Registered

20 Jul 1995

Applicant's Name & Address

Mental Health Services
of Salford, Bury New Road. Prestwich. Manchester, M25 3BL

Agent's Name & Address (where applicable)

C.F. Talbot,
Director of Facilities, Bury New Road, Prestwich, Manchester

Location

The Bridge, 104, Fairfield Street, City

Proposal

Change of use from self contained office building to offices and out-patient clinic for Drugs North West and Manchester Drugs Unit

Ward(s)

Central Ward

Decision

Approved

Date of Decision

21 Sep 1995

Conditions and Reasons:

1) The development must be begun not later than the expiration of five years beginning with the date of this permission.

Reason

Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990.

2) All work or other activity shall be confined to the following hours:

8.30.a.m. to 6.00 p.m. Monday to Friday inclusive.

Reason

To safeguard the amenities of the occupiers of nearby premises.

Official copy of register of title

Title number GM526869 | Edition date 27.10.2025

- This official copy shows the entries on the register of title on 03 Nov 2025 at 08:20:07.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 03 Nov 2025.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by HM Land Registry Fylde Office.

A: Property Register

This register describes the land and estate comprised in the title.

GREATER MANCHESTER : MANCHESTER

1 (31.01.1990) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being April House, 104 Fairfield Street, Manchester (M1 2WR).

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

1 (26.10.1995) PROPRIETOR: GREATER MANCHESTER MENTAL HEALTH NHS FOUNDATION TRUST of Bury New Road, Prestwich, Manchester M25 3BL.

2 (26.10.1995) RESTRICTION: Except under an order of the registrar no charge is to be registered or noted on the register.

C: Charges Register

This register contains any charges and other matters that affect the land.

1 The land in this title together with other land is subject to a yearly rentcharge of £33.11s.6d created by a Conveyance dated 19 February 1836 made between (1) William Eckroyd and others (2) William Neald and others (3) Francis Hoyle and Anna Hoyle (4) William Walker and (5) John Rigby.

The said Deed also contains covenants.

NOTE: Abstract filed

By a Conveyance dated 12 October 1889 made between (1) Thomas Chesters and others and (2) Chesters Brewery Company Limited this rentcharge was informally apportioned as to £13.11s.6d to the land in this title and other land.

C: Charges Register continued

NOTE :-Original in Certificate. Copy filed.

End of register

The Planning Inspectorate

Appeal Decision

Inquiry held on 16 to 18 April 2024

No site visit made

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30/05/2024

Appeal Ref: APP/F3545/X/23/3334323
Land at the Former Animal Health Trust Research Centre, Kentford CB8 7UA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Lochailort Kentford Ltd against the decision of West Suffolk Council.
- The application ref DC/23/1319, dated 10 August 2023, was refused by notice dated 13 October 2023.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is use of the land for Class E purposes.

Preliminary Matters

1. The Jockey Club (TJC), acting on behalf of the horse racing industry (HRI), was granted Rule 6 status. While written submissions were made and they had legal representation at the Inquiry, no witnesses were called to further their case. Their written submissions were not tested and will therefore carry less weight.

2. A pre-inquiry site visit took place on Monday 15 April 2024. Representatives for the rule 6 party were unavailable to attend and I was accompanied by representatives for the appellant and the Council. The purpose of the site visit was to familiarise myself with the layout of the site and the buildings with a view to furthering my understanding of how they had been used by the Animal Health Trust (AHT).

3. The inquiry sat for 3 days. Factual evidence was given under affirmation.

4. Lanwades Hall, its associated gate lodges (East Lodge and West Lodge) and its wall garden are Grade II listed buildings. They formed part of the AHT's land holding until 2016 when they were sold. The former visitor's centre is also a Grade II Listed Building. This building was the former stables to Lanwades Hall. There is no statutory requirement for me to have regard to the heritage asset status of these buildings in the formulation of my decision.

Background

5. The appeal site is located at the former Animal Health Trust Research Centre, which is approximately 120 acres in size and located on the western periphery

of the village of Kentford. It is a matter of common ground that there are 32 buildings located within the site[1].

6. The existing buildings have been used for a variety of purposes including laboratories, a Centre for Small Animal Studies (CSAS), a Centre for Equine Studies (CES), Cancer Therapy Centre, MRI and x-ray buildings, a visitors' centre, intern accommodation building, offices, a hydrotherapy unit, and associated stables, kennels and barns. There is an extensive planning history relating to the site[2], and there is no dispute that the existing buildings are lawful.

7. The AHT ceased its activities on the site in 2020 and the site has subsequently lain vacant. It is a matter of common ground that there has been no intervening use of the land between the AHT's closure and the date the LDC application was made.

Reasons

8. The **main issue** is whether the Council's refusal to grant a lawful development certificate for the existing use of land for Class E purposes was well founded. This turns on whether the appellant can show that the use of the appeal site for Class E purposes was lawful on the date of the application. As the matter relates to a use of land, the relevant period is 10 years, and the material date is therefore 10 August 2013. Any continuous 10-year period is relevant. An LDC appeal must be considered solely based on fact and law, and irrespective of planning merits.

9. The onus of proof is on the appellant to show, on the balance of probability, that the use for Class E purposes began on or before the material date. The use also must have been continued without significant interruption for 10 years. Bearing in mind that AHT did not operate for approximately 3 years preceding the date of the LDC application, it would have to be shown that the AHT had operated from or before 10 August 2010 for the use to have endured for a relevant 10-year period.

10. Section 191(5)(b) of the 1990 Act requires that, if a lawful development certificate is granted, it shall include a description of the use in question and where any use falls within a specified use class, that use class shall be referenced. Further, the planning practice guidance (PPG) clarifies that an application needs to describe precisely what is being applied for and not simply the use class.

11. The application form[3] only describes the existing use as falling within Use Class E. The section of the form requiring a full description of each existing use for which the certificate is being requested directs the reader to 'see covering letter'. While the Council's refusal of the certificate describes the existing use as 'a use falling within Use Class E', we know from the PPG that such a description is insufficiently precise. Furthermore, Use Class E (Commercial, Business and Service) is wide ranging.

[1] Statement of Common Ground Addendum March 2024
[2] CD1.18
[3] CD1.2

12. The purpose of the certificate was discussed at the Inquiry. Paragraph 13 of the covering letter[4] refers to the primary use of the site as being 'a research centre with associated veterinary/clinical practices, and education activities (Use Class E)'. When asked if this provided a sufficiently precise description of the use being applied for, the parties indicated that 'research centre' is too broad a term, therefore requiring further precision. It was also agreed that there is no need for the use for which a certificate is being sought to include associated, ancillary or incidental uses. The parties did not agree a form of wording, instead leaving it to me to decide, based upon the evidence heard. I shall return to this point in due course.

The Planning Unit

13. Where what use land and buildings have been put to is being considered, it is first necessary to determine whether there is a single planning unit or multiple planning units. In *Burdle*[5] it was held that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes. The concept of physical and functional separation is key, and Bridge J suggested 3 broad categories of distinction:

    i. Where it is possible to recognise a single main purpose of the occupier's use of his land to which activities are incidental or ancillary, the whole unit of occupation should be considered the planning unit.

    ii. Even though the occupier carries on a variety of activities, and it is not possible to say that one is incidental or ancillary to another, the entire unit of occupation should be considered the planning unit, in mixed use.

    iii. Where there are 2 or more physically separate and distinct uses, occupied as a single unit but for substantially different and unrelated purposes, each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered a separate planning unit.

14. The AHT own and occupied all the land and buildings. While there are fences and hedgerows present, they constitute landscaping features within the site rather than providing physical barriers between activities being undertaken. Some buildings were used for specific purposes, but those purposes formed part of a larger overarching purpose. For example, the hydrotherapy building was used amongst other things for the rehabilitation of dogs following treatment in the CSAS, staff employed throughout the site would take meals at the café in the visitor centre, and research findings and practices would be disseminated through the operation of continuing professional development (CPD) lectures and courses held in meeting rooms located in various buildings across the site.

15. We heard from Toni-Ann Hammond and Heather Ewence that while specific types of research, development and clinical activities took place in specific buildings, employees, visitors and animals would move around the site and between buildings. They also told us how research conducted would be put into practice within the CSAS and the CES and other buildings. Demonstrating functional connectivity between the activities undertaken.

[4] CD1.5
[5] *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207 (Div Court)

16. The unit of occupation is therefore the whole appeal site. While the Council initially argued that there was no need to determine the extent of the planning unit, having heard the evidence of the appellant's witnesses, they conceded that there is a single planning unit. For the reasons given above, I concur.

17. The matters in dispute are whether this single planning unit was used for a single primary use or a mixed use comprising of two or more primary uses and whether that single or composite use falls within the definition of Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO).

Case for the appellant

18. It is the appellant's case that all the AHT's activities fell within the single primary use of research and development of products and processes, a use that now falls within Class E (g) (ii) of the UCO. The clinical services and professional education for those working, and interested in, the field of animal health are claimed to be ancillary uses.

19. In the alternative, the appellant argues, if I find that clinical services are also a primary use, then it too falls in Class E. They maintain the professional education activity is an ancillary use.

Case for the Council

20. The Council contends the clinical services do not fall within Class E(e) as the medical and health services were not provided principally to visiting members of the public. They also contend the scientific research was pure research and did not lead to the development of products or processes as required by Class E(g)(ii). Furthermore, they argue the employment of interns and regular provision of CPD courses are a primary education use. It is the Council's case therefore that the activities of the AHT fell into 3 distinct primary uses, clinical activities, scientific research, and education, amounting to a mixed use.

Case for the Rule 6 Party

21. TJC has a long-standing commitment to Newmarket in terms of horse training, racing and breeding. They argue that a strong Newmarket is critical to the sustainability of British horse racing. TJC act as agent for the HRI in certain town planning issues to promote and protect the long-term sustainability of the HRI in and around Newmarket. TJC claim that development pressure in and around Newmarket is slowly eroding the scope to operate this complex industry. Development pressure is not however a matter before me for consideration.

22. TJC claim, since the AHT was established in 1946, it has been intwined with Newmarket's horse breeding and racing cluster. TJC claim the AHT has benefitted from funding provided by patrons for the betterment of treatment for horses; notably the AHT began due to the gifting of Lady Yule's Newmarket stable in 1946 to serve as the country's first Equine Research Station[6]. Due to the distinctly equine character, function and purpose of the AHT activities, TJC contend that they do not fall within Class E(g), E(c) or E(e). Instead, TJC argue AHT is part of the Newmarket Equine Cluster, a globally unique horse breeding and racing cluster recognised in local planning policy terms.

[6] CD1.17 A history of the Animal Health Trust by Richard Onslow

Whether this single planning unit was used for a single primary use or a mixed use comprising of two or more uses

23. The AHT's mission statement states "our approach is to develop new technology and knowledge for the better diagnosis, prevention and cure of disease; to provide a clinical referral service for veterinary surgeons in practice; to promote postgraduate education and to communicate our findings to others." Paragraphs 5.11 to 5.22 of the SoCG[7] set out and provide lists of the research, clinical and educational uses that have occurred on the appeal site since 1942 to 2017. I shall take these as a summary of the activities undertaken by the AHT.

Horse racing industry use/Newmarket Equine Cluster

24. From the list of agreed activities, I see nothing to suggest that the AHT were more closely linked to horse breeding and racing than to any other small animal breeding and associated activities. The AHT may well have received funding and donations from sources actively involved with horse breeding and racing, but funding sources do not necessarily correlate to the primary activities being carried out. I acknowledge the AHT has been directly responsible for the development and production of equine vaccines and equine therapies, amongst other equine matters. However, this does not necessarily mean they are part of the Newmarket Equine Cluster or an integral part of the HRI. Even if it did, referring to the 'Newmarket Equine Cluster' and 'HRI' is no different to referring to the car manufacturing industry or suggesting there is a West Midlands/Birmingham Car Manufacturing Cluster. These are nothing more than labels applied, in this instance, for planning policy purposes. It would have no bearing on the primary activities to which the appeal site is put.

Research and development of products or processes

25. It is a matter of common ground that research and development of products and processes occurred on some level as part of the AHT's activities. This was confirmed by Toni-Anne Hammond, who gave examples of research projects and their outputs; including developing and producing a duck hepatitis vaccine, successive forms of equine herpes virus vaccines and influenza virus vaccines updated to respond to changing mutations of the viruses, a PCR test for strangles, a PCR test to detect viral and bacterial nucleic acid, ELIZA[8] tests for equine viral arteritis and for antigens to equine influenza, genetic testing (all canine genetic testing currently used worldwide was developed at the AHT facilities), and therapies for sport horses exposed to high humidity. Heather Ewence went on to explain research projects and outputs involving the Welsh mountain ponies for which she was responsible. Further snapshots of the research and development achievements are found in the various Trustees Reports, in particular those found in CD1.60 to 1.62.

26. Research carried out by the AHT resulted in and contributed to the development and refinement of vaccines, drugs, therapies, treatments and new means of animal breeding, handling and husbandry. The appeal parties acknowledge that some research projects resulted in the advancement of knowledge rather than the production of a vaccine, drug, test or new technique in animal welfare. In such cases, research papers would be published in

[7] Statement of Common Ground February 2024 Pages 10 - 12
[8] Enzyme-linked immunosorbent assay (ELIZA)

professional journals. The Trustee Reports confirm the volume of research papers and other publications produced. The research set out in these publications would no doubt contribute to the furtherance of understanding in the wider scientific community. I find these research papers therefore to be a product resulting from research undertaken by the AHT.

27. In addition to the outputs identified above, the Trustee Reports and witness evidence confirm that some staff were employed purely for research and development purposes. Furthermore, some of the 32 buildings were also used primarily for research and development purposes, such as the laboratories and the Allen Centre. A significant proportion of the AHT's expenditure and income related to research and development activities.

Clinical Services

28. I heard how the clinical activities were generally carried out by clinicians, scientists and other staff who were engaged in research and development projects being undertaken by the AHT as well as the implementation of those treatments and therapies. Animals treated within the CSAS and CES did so, primarily, on a referral basis from their own veterinarian. The treatment of these animals is identified as an essential element of furthering the AHT's knowledge about disease and injury. The knowledge gleaned was then applied to improving diagnosis, prevention and treatment of infections, non-infectious and inherited diseases.

29. Animals attending and being treated at the CSAS and the CES were not however sought out specifically to take part in research and development projects. While their attendance and treatment did, no doubt, contribute to advancement of the AHT's processes, treatments and therapies, the purpose of their attendance was to be treated to improve their own health and welfare.

30. In addition, the Trustee Reports and witness evidence confirm that some staff were employed purely for veterinary purposes. Furthermore, buildings such as the hydrotherapy building, MRI barn, kennels and some stables were used primarily in connection with clinical services. A greater proportion of the AHT's expenditure and income related to clinical services.

Education

31. There is no suggestion that the appeal site is an educational institution such as a school, college or university. Further, it is agreed between the appellant and Council that educational and training activities take the form of (a) dissemination by AHT staff of research and the outputs of research to other professionals in the animal health field, including dog breeders to a limited extent, continual professional development (CPD), and (b) the placement with AHT of interns and post-graduate students.

32. It is common ground that the CPD sessions amounted to approximately 22 over the course of a year. Sessions where either day or evening events and catered for in-house training, and research and best practice sharing. Dr Mellersh's statutory declaration states that the dissemination of information to dog breeders arising from her genetic research team occurred 3 to 4 times per year. Interns and PHD students amounted to approximately 5% of the total workforce. In addition, it is agreed that AHT staff published 144 papers, e-pubs

and conference abstracts in 2017. This figure is comparative with figures in other years.

33. It is common ground that the lecture theatre, located in the Visitor Centre, was use for educational purposes only. No staff are employed solely for educational purposes. The interns and PHD students had full time jobs with the AHT, which facilitated their on-going education. A small proportion of the AHT's expenditure and income related to education.

Primary and/or Ancillary use(s)

34. The primary use of land or a building is, as the term implies, the main use or activity that is carried out by the occupier. The essential characteristic of an ancillary use is that there should be some ordinarily functional relationship between it and the primary use. The SoCG, at paragraph 5.8, confirms that the appellant and Council's agree with this approach. The courts have also held that size or scale of a use is not necessarily determinative as to whether a use is ancillary.

35. Much was made of the staffing levels, proportion of buildings used and income and expenditure on specific areas of the business. However, these are not determinative in the identification of the primary use of the appeal site.

36. The main purpose of the AHT was the development of technologies and knowledge to better diagnose, prevent, and cure animal diseases. The list of products and processes set out in 5.12 to 5.15 of the SoCG shows that this was a fundamental activity of the AHT. Having regard to Section 191(5)(b) of the 1990 Act, I therefore find that the research and development of animal health and welfare products and processes was a primary use.

37. The evidence shows operational links between the research and development of animal health and welfare products and processes and the clinical services in terms of the staff undertaking the work and the advancement in treatments and therapies. However, animals being treated in the CSAS and the CES were primarily brought to the facility for treatment by their owners, as opposed to taking part in specific research projects. The products and processes developed by the AHT could be administered to animals elsewhere by other animal healthcare professionals. The provision of specialist veterinary services by the AHT does not therefore, in my judgement, have an ordinarily functional relationship with the research and development of animal welfare products and processes. Having regard to Section 191(5)(b) of the 1990 Act, I therefore find that clinical services comprising of animal health and medical services was a primary use.

38. Turning to the educational activities, the agreed activities were carried out as a direct result of the two primary activities. CPD is a fundamental part of any business, particularly in one where a key component is to develop new technology and knowledge for better diagnosis, prevention and cure of disease, and the promotion of treatments and therapies to improve animal health and welfare. The educational activities would not have occurred independently of the two primary activities. Educational activities are therefore, in my judgement, an ancillary use.

39. The Trustee Reports also show that there has been no significant change to the intensity of each of the component uses between 2010 and 2020, which I take to be the relevant 10-year period.

40. For these reasons, I find that the clinical services were not ancillary to the research and development of animal health and welfare products and processes. The education activities were however ancillary to both those primary uses.

41. Having identified there are two primary uses, it is necessary to determine whether they fell within none, one or more defined use Class.

The Town and Country Planning (Use Classes) Order 1987 (as amended) and Use Class E: Commercial, Business and Service

42. The UCO specifies different Classes of use for the purposes of paragraph (f) of s55(2) of the 1990 Act, so that a change of use within the same use Class is not to be taken to involve development of land. Its effect is to specify that a change of use from an old use to a new use, which both fall within the same Class is not development. The concept of the UCO requires that it be applied to a single definable use of land or building and not a composite use, unless there is a single dominant use and others are ancillary uses.

43. Class E is wide ranging and encompasses uses that previously fell into several different Classes such as shops, financial services, business, indoor sports, etc. Class E also provides that "use, or part use" for any of those purposes falls within the Class. The PPG specifies that Class E provides for use, or part use, for all or any of the purposes set out in the Class[9]. Movement from one primary use to another within the same use class is not development.

44. Where primary uses fall out with a use class or comprise more than one primary use falling within different use classes, they are sui generis uses. While a mixed use would normally be a *sui generis* use, the introduction of Class E now means that uses that have significantly different characteristics could fall within a single use Class and would no longer form a mixed or sui generis use.

45. While some of the research activities carried out by the AHT may not have led to the development of products and/or processes by them, that was not their fundamental aim. Furthermore, the publication of their research would have contributed to others developing products and processes. As a matter of fact and degree, I find that the research and development of animal health and welfare products and processes, including research papers, fall within use Class E(g)(ii).

46. Clinical services comprising of animal health and medical services would generally be considered veterinary services, and this is not specified in any use Class. Use Class E(e) is however 'for the provision of medical or health services, principally to visiting members of the public'. It is not disputed that the AHT provided medical and health services. Key to determining whether the AHT's clinical service fall within Class E(e) is what is meant by 'principally to visiting members of the public'.

47. The Council contend that, 'principally to visiting members of the public', means that the services are provided mainly to members of the public who can and do

[9] PPG paragraph: 12 Reference ID: 13-012-20140306

walk in off the street without restriction. They directed me to various legal authorities.

48. In *Karla v SSE* (1996) 72 P&CR 423 the Court of Appeal considered whether a solicitors office fell within Class A2 (which included the provision of professional services to visiting members of the public) or Class B1 (which included use as an office other than an A2 use). The Inspector had rejected the appeal partly on the basis that a solicitors' office would not be 'appropriate to provide in a shopping centre'. The court held this was an error in law as the requirement that a service be appropriate in a shopping area only applied to Class A2(c): other services. It did not apply to financial and professional services, where the test was providing services principally to visiting members of the public. It was found that the use of an appointments system did not necessarily mean that services are not provided to visiting members of the public.

49. In *R v Thurrock Borough Council, ex parte Costco* 1993 WL 964266 (1993), planning permission for a 'warehouse club for the sale of goods was challenged on the ground that it was effectively an A1 retail use, which was contrary to policy. The warehouse club was open only to members, who had paid a subscription and were either a 'Business Member' or a 'Private Member'. Schiemann J held this meant it was not an A1 retail use as 'if there is a restriction on those who can come and buy then the premises are not prima facie properly described as being used for the sale of goods to visiting members of the public and in consequence do not fall within Class A1 of the order…'.

50. In *R v LB Kensington and Chelsea, ex p Europa Foods Ltd* 1996 WL 1090308 (1996) a similar question to *Thurrock* arose but this time in relation to whether the use of auction rooms was within Class A1, and whether sales in an auction room were to 'visiting members of the public'. Macpherson J held that they were within Class A1 as there were no restrictions upon visiting members of the public, as in *Thurrock*.

51. The AHT did not provide a general veterinary practice, where people might walk in off the street to have their animals treated. There is no dispute that the services offered by the AHT were specialist services, were people brought their animals to be treated on a referral basis. This is no different than people attending a specialist health clinic following referral by their general practitioner. All it means is that people would attend on an appointment basis, which having regard to *Kalra*, does not necessarily mean that attendees are not 'visiting members of the public'. There was no requirement for people bringing their animals for treatment to pay a subscription or to be a member, as in *Thurrock*. I therefore find that the people bringing their animals for treatment were 'visiting members of the public'.

52. I acknowledge that the clinical services offered by the AHT included commercial diagnostic services. I heard that while most samples were supplied by post, some were delivered by owners. However, Class E(e) requires the provision of services **principally** to visiting members of the public [my emphasis], which means that not all services have to be provided to visiting members of the public. Given the amount of accommodation given over to the physical treatment of animals it would be reasonable to conclude this was a primary element of the clinical services on offer. I therefore find that the AHT's clinical services comprising of animal health and medical services fall within Class E(e)

for the provision of medical and health services, principally to visiting members of the public.

53. The appeal site is a single planning unit and both primary uses fall within Class E. As provided for in the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020/757, where a planning unit is used for multiple primary uses falling within Class E, the whole planning unit is in a single use for Class E purposes.

Relevant period

54. The AHT has operated since the late 1940's. The planning history shows that, with the exception of the office staff building and intern accommodation building[10], all buildings were erected before the late 2000's. From this it is reasonable to conclude that the two primary uses have been carried out for at least 20 years, if not longer, without significant interruption.

Conclusion

55. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of the use of land for the purposes of research and development of animal health and welfare products and processes and for clinical services, comprising of animal health and medical services (Class E) was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

Formal Decision

56. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

M Madge

INSPECTOR

[10] DC/16/2361/FUL

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 14 August 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The appellant has shown, on the balance of probability, the appeal site has been used for the purposes of research and development of animal health and welfare products and processes and for clinical services, comprising of animal health and medical services (Class E), without significant interruption for more than 10 years. No enforcement action may be taken because the time for taking enforcement action has expired.

Signed

M Madge
Inspector

Date: [30/05/2024]
Reference: APP/F3545/X/23/3334323

First Schedule

The use of land for the purposes of research and development of animal health and welfare products and processes and for animal health and medical services (Class E).

Second Schedule

Land at Land at the Former Animal Health Trust Research Centre, Kentford, CB8 7UA

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

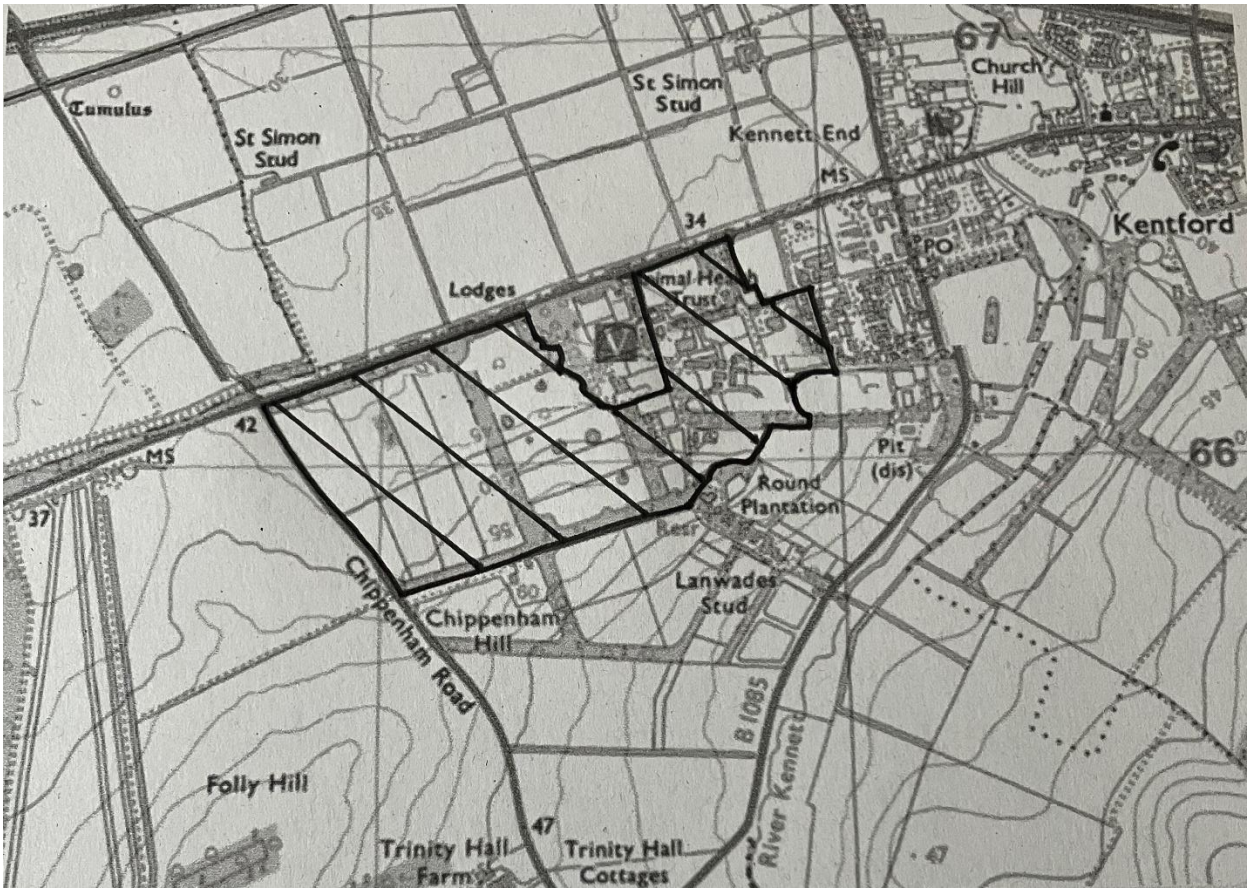
This is the plan referred to in the Lawful Development Certificate dated: [30/05/2024]

by M Madge Dip TP MA MRTPI

Land at: Land at the Former Animal Health Trust Research Centre, Kentford, CB8 7UA

Reference: APP/F3545/X/23/3334323

Scale: Not to Scale



APPEARANCES

FOR THE APPELLANT:

Douglas Edwards KC Counsel for the appellant	appointed by Sarah Ballantyne-Way of Lochailort Investments

He called: Toni-ann Hammond AIMLS
Andrew John McGladdery BVMS, CertESM, MRCVS
Heather Anne Ewence MSc
Roger A Hepher BA (Hons) MTP FRICS MRTPI FRSA AAoU

FOR THE LOCAL PLANNING AUTHORITY:

Robin Green Counsel for the Council	appointed by West Suffolk Council

He called: Amey Yuill MSc

RULE 6 PARTY:

Celia Reynolds Counsel for The Jockey Club	appointed by Tom Ashley of Turnberry Consulting Limited

DOCUMENTS

IN1	Opening statement for the appellant
IN2	Opening statement for the Council
IN3	Opening statement for The Jockey Club
IN4	Summary of Research Activities 2010 - 2016
IN5	Authorities Bundle
IN6	Closing submissions for the Council
IN7	Closing submissions for The Jockey Club
IN8	Closing submissions for appellant

Neutral Citation Number: [2025] EWHC 861 (Admin)

Case No: AC-2024-LON-002354

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 April 2025

Before :

MRS JUSTICE LANG DBE

- -

Between :

WEST SUFFOLK COUNCIL	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES **(2) LOCHAILORT KENTFORD LIMITED** **(3) THE JOCKEY CLUB**	**Defendants**

- -
- -

Robin Green (instructed by **Birketts LLP**) for the **Claimant**
Hugh Flanagan (instructed by the **Government Legal Department**) for the **First Defendant**
Douglas Edwards KC (instructed by **Town Legal LLP**) for the **Second Defendant**
The Third Defendant did not appear and was not represented

Hearing date: 26 March 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.30 am on 10 April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE LANG DBE

Mrs Justice Lang:

1. The Claimant ("the Council") applies for a statutory review, pursuant to section 288 Town and Country Planning Act 1990 ("TCPA 1990"), of the decision made on 30 May 2024, by an Inspector (appointed by the First Defendant), to allow the Second Defendant's appeal against the Council's refusal to grant a lawful development certificate ("LDC") in respect of the use of land and buildings at Kentford, Suffolk ("the Site"), for the purposes of Class E of Schedule 2 to the Town and Country Planning (Use Classes) Order 1987 ("the UCO").

2. The Second Defendant is the owner of the Site, which was previously owned and operated by the Animal Health Trust ("AHT"). The Council is the local planning authority for the area in which the Site is situated.

3. The Second Defendant's application for a LDC was dated 10 August 2023. The Council refused the Second Defendant's application for a LDC on 13 October 2023.

4. The Second Defendant appealed against the refusal. On 30 May 2024, the First Defendant's Inspector allowed the Second Defendant's appeal against the Council's refusal of a LDC, and granted a LDC in respect of the use of the Site.

5. On 4 October 2024, Mr C.M.G. Ockelton, sitting as a Deputy Judge of the High Court, refused the Council permission to apply for statutory review, on the papers. The Council applied to renew the application for permission. On 20 December 2024, Mould J. made an order on the papers in which he adjourned the renewed application for permission to apply for statutory review to be listed in Court as a "rolled-up" hearing, with the substantive claim to be determined on the same occasion, if permission was granted.

The issues

6. The claim concerns the interpretation and application of Class E of Schedule 2 to the UCO which provides:

> "**Class E. Commercial, Business and Service**
>
> "Use, or part use, for all or any of the following purposes—
>
> (a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public,
>
> (b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises,
>
> (c) for the provision of the following kinds of services principally to visiting members of the public—
>
> (i) financial services,
>
> (ii) professional services (other than health or medical services), or
>
> (iii) any other services which it is appropriate to provide in a commercial, business or service locality,

(d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms or use as a swimming pool or skating rink, principally to visiting members of the public

(e) for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,

(f) for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,

(g) for—

(i) an office to carry out any operational or administrative functions,

(ii) the research and development of products or processes, or

(iii) any industrial process,

being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit."

7. The Claimant submits that the Inspector erred in law in that:

i) **Ground 1**: in Class E(e) the phrase "the provision of medical or health services, principally to visiting members of the public" means that medical or health services are provided principally to passing members of the public without restriction. It is not enough that members of the public attend the site where the services are provided if their attendance is dependent on satisfying a prior requirement, such as obtaining membership of an organisation or a referral from a third party. In the present case the clinical services in question were provided on a referral basis only, yet the Inspector wrongly considered that they fell within Class E(e).

ii) **Ground 2**: in Class E(g)(ii) the phrase "the research and development of products or processes" means research and development *into* or *about* products and processes. In other words, the subject matter of the research and development is one or more products or processes or both (such as a new medicine or new manufacturing process). Research into something other than products and processes is not within Class E(g)(ii). The Inspector confused the subject matter of research and the form in which it is recorded, holding that research papers that simply advanced human knowledge were themselves a "product" and therefore within Class E(g)(ii).

8. In response, the First and Second Defendants submitted:

i) **Ground 1**: the Inspector did not misinterpret or misapply the phrase "visiting members of the public" in Class E(e). The Inspector found that members of the public brought their animals to the AHT to receive specialist veterinary services. The fact that they had to obtain a referral from their vet and an appointment at the AHT was not inconsistent with visiting the AHT as a member of the public.

ii) **Ground 2**: the Inspector did not misinterpret or misapply the phrase Class E(g)(ii) which is use for "the research and development of products or

processes". The Inspector considered extensive evidence, including in the Statement of Common Ground, that the AHT was researching and developing "products and processes" to better diagnose, prevent and cure animal diseases. The fact that some research did not lead directly to the development of a product on the AHT Site did not take the use outside Class E(g)(ii).

The Inspector's decision

9. The Inspector (M. Madge Dip TP MA MRTPI) considered oral and documentary evidence and submissions during the course of a 3 day inquiry. She also made a pre-inquiry visit to the Site.

10. The Inspector set out the factual background at paragraphs 5 to 7 of the Decision Letter ("DL/5-7"):

> "5. The appeal site is located at the former Animal Health Trust Research Centre, which is approximately 120 acres in size and located on the western periphery of the village of Kentford. It is a matter of common ground that there are 32 buildings located within the site.
>
> 6. The existing buildings have been used for a variety of purposes including laboratories, a Centre for Small Animal Studies (CSAS), a Centre for Equine Studies (CES), Cancer Therapy Centre, MRI and x-ray buildings, a visitors' centre, intern accommodation building, offices, a hydrotherapy unit, and associated stables, kennels and barns. There is an extensive planning history relating to the site, and there is no dispute that the existing buildings are lawful.
>
> 7. The AHT ceased its activities on the site in 2020 and the site has subsequently lain vacant. It is a matter of common ground that there has been no intervening use of the land between the AHT's closure and the date the LDC application was made."

11. The Inspector described the main issue as follows:

> "8. The **main** issue is whether the Council's refusal to grant a lawful development certificate for the existing use of land for Class E purposes was well founded. This turns on whether the appellant can show that the use of the appeal site for Class E purposes was lawful on the date of the application. As the matter relates to a use of land, the relevant period is 10 years, and the material date is therefore 10 August 2013. Any continuous 10-year period is relevant. An LDC appeal must be considered solely based on fact and law, and irrespective of planning merits.
>
> 9. The onus of proof is on the appellant to show, on the balance of probability, that the use for Class E purposes began on or before the material date. The use also must have been continued without significant interruption for 10 years. Bearing in mind that AHT did not operate for approximately 3 years preceding the date of the LDC application, it would have to be shown that the AHT had operated from or before 10 August 2010 for the use to have endured for a relevant 10-year period."

12. The Inspector concluded that the planning unit comprised the entire Site, for the following reasons:

> "14. The AHT own and occupied all the land and buildings. While there are fences and hedgerows present, they constitute landscaping features within the site rather than providing physical barriers between activities being undertaken. Some buildings were used for specific purposes, but those purposes formed part of a larger overarching purpose. For example, the hydrotherapy building was used amongst other things for the rehabilitation of dogs following treatment in the CSAS, staff employed throughout the site would take meals at the café in the visitor centre, and research findings and practices would be disseminated through the operation of continuing professional development (CPD) lectures and courses held in meeting rooms located in various buildings across the site.
>
> 15. We heard from Toni-Ann Hammond and Heather Ewence that while specific types of research, development and clinical activities took place in specific buildings, employees, visitors and animals would move around the site and between buildings. They also told us how research conducted would be put into practice within the CSAS and the CES and other buildings. Demonstrating functional connectivity between the activities undertaken.
>
> 16. The unit of occupation is therefore the whole appeal site. While the Council initially argued that there was no need to determine the extent of the planning unit, having heard the evidence of the appellant's witnesses, they conceded that there is a single planning unit. For the reasons given above, I concur."

13. The Inspector summarised the matters in dispute and the parties' cases as follows:

> "17. The matters in dispute are whether this single planning unit was used for a single primary use or a mixed use comprising of two or more primary uses and whether that single or composite use falls within the definition of Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO).
>
> *Case for the appellant*
>
> 18. It is the appellant's case that all the AHT's activities fell within the single primary use of research and development of products and processes, a use that now falls within Class E (g) (ii) of the UCO. The clinical services and professional education for those working, and interested in, the field of animal health are claimed to be ancillary uses.
>
> 19. In the alternative, the appellant argues, if I find that clinical services are also a primary use, then it too falls in Class E. They maintain the professional education activity is an ancillary use.

Case for the Council

20. The Council contends the clinical services do not fall within Class E(e) as the medical and health services were not provided principally to visiting members of the public. They also contend the scientific research was pure research and did not lead to the development of products or processes as required by Class E(g)(ii). Furthermore, they argue the employment of interns and regular provision of CPD courses are a primary education use. It is the Council's case therefore that the activities of the AHT fell into 3 distinct primary uses, clinical activities, scientific research, and education, amounting to a mixed use."

14. The Inspector summarised the work of the AHT at DL/23:

"23. The AHT's mission statement states "our approach is to develop new technology and knowledge for the better diagnosis, prevention and cure of disease; to provide a clinical referral service for veterinary surgeons in practice; to promote postgraduate education and to communicate our findings to others." Paragraphs 5.11 to 5.22 of the SoCG set out and provide lists of the research, clinical and educational uses that have occurred on the appeal site since 1942 to 2017. I shall take these as a summary of the activities undertaken by the AHT."

15. The Inspector set out her findings on the clinical services offered, as follows:

"*Clinical Services*

28. I heard how the clinical activities were generally carried out by clinicians, scientists and other staff who were engaged in research and development projects being undertaken by the AHT as well as the implementation of those treatments and therapies. Animals treated within the CSAS and CES did so, primarily, on a referral basis from their own veterinarian. The treatment of these animals is identified as an essential element of furthering the AHT's knowledge about disease and injury. The knowledge gleaned was then applied to improving diagnosis, prevention and treatment of infections, non-infectious and inherited diseases.

29. Animals attending and being treated at the CSAS and the CES were not however sought out specifically to take part in research and development projects. While their attendance and treatment did, no doubt, contribute to advancement of the AHT's processes, treatments and therapies, the purpose of their attendance was to be treated to improve their own health and welfare.

30. In addition, the Trustee Reports and witness evidence confirm that some staff were employed purely for veterinary purposes. Furthermore, buildings such as the hydrotherapy building, MRI barn, kennels and some stables were used primarily in connection with clinical services. A greater

> proportion of the AHT's expenditure and income related to clinical services."

16. The Inspector concluded that the clinical services were a primary use:

> "37. The evidence shows operational links between the research and development of animal health and welfare products and processes and the clinical services in terms of the staff undertaking the work and the advancement in treatments and therapies. However, animals being treated in the CSAS and the CES were primarily brought to the facility for treatment by their owners, as opposed to taking part in specific research projects. The products and processes developed by the AHT could be administered to animals elsewhere by other animal healthcare professionals. The provision of specialist veterinary services by the AHT does not therefore, in my judgement, have an ordinarily functional relationship with the research and development of animal welfare products and processes. Having regard to Section 191(5)(b) of the 1990 Act, I therefore find that clinical services comprising of animal health and medical services was a primary use."

17. The Inspector then went on to determine whether the primary uses she had identified fell within Class E. In regard to research and development, she concluded that the use fell within Class E(g)(ii):

> "45. While some of the research activities carried out by the AHT may not have led to the development of products and/or processes by them, that was not their fundamental aim. Furthermore, the publication of their research would have contributed to others developing products and processes. As a matter of fact and degree, I find that the research and development of animal health and welfare products and processes, including research papers, fall within use Class E(g)(ii)."

18. In regard to clinical services, the Inspector concluded that the use fell within Class E(e):

> "46. Clinical services comprising of animal health and medical services would generally be considered veterinary services, and this is not specified in any use Class. Use Class E(e) is however 'for the provision of medical or health services, principally to visiting members of the public'. It is not disputed that the AHT provided medical and health services. Key to determining whether the AHT's clinical service fall within Class E(e) is what is meant by 'principally to visiting members of the public'.
>
> 47. The Council contend that, 'principally to visiting members of the public', means that the services are provided mainly to members of the public who can and do walk in off the street without restriction. They directed me to various legal authorities.
>
> …..

> 51. The AHT did not provide a general veterinary practice, where people might walk in off the street to have their animals treated. There is no dispute that the services offered by the AHT were specialist services, were people brought their animals to be treated on a referral basis. This is no different than people attending a specialist health clinic following referral by their general practitioner. All it means is that people would attend on an appointment basis, which having regard to *Kalra*, does not necessarily mean that attendees are not 'visiting members of the public'. There was no requirement for people bringing their animals for treatment to pay a subscription or to be a member, as in *Thurrock*. I therefore find that the people bringing their animals for treatment were 'visiting members of the public'.
>
> 52. I acknowledge that the clinical services offered by the AHT included commercial diagnostic services. I heard that while most samples were supplied by post, some were delivered by owners. However, Class E(e) requires the provision of services **principally** to visiting members of the public [my emphasis], which means that not all services have to be provided to visiting members of the public. Given the amount of accommodation given over to the physical treatment of animals it would be reasonable to conclude this was a primary element of the clinical services on offer. I therefore find that the AHT's clinical services comprising of animal health and medical services fall within Class E(e) for the provision of medical and health services, principally to visiting members of the public."

Legal framework

19. Under section 288 TCPA 1990, a person aggrieved may apply to quash a decision on the grounds that (a) it is not within the powers of the Act; or (b) any of the relevant requirements have not been complied with, and in consequence, the interests of the applicant have been substantially prejudiced.

20. The general principles of judicial review are applicable to a challenge under section 288 TCPA 1990. Thus, a claimant must establish that the Secretary of State misdirected himself in law or acted irrationally or failed to have regard to relevant considerations or that there was some procedural impropriety.

21. The exercise of planning judgment and the weighing of the various issues are matters for the decision-maker and not for the Court: *Seddon Properties Ltd v Secretary of State for the Environment* (1981) 42 P & CR 26. As Sullivan J. said in *Newsmith v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 74, at [6]:

> "An application under section 288 is not an opportunity for a review of the planning merits….."

22. In *St Modwen Developments Ltd v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643, [2018] PTSR 746, at [6] – [7], the Court of Appeal set out the principles upon which the Court will act in an application for statutory review under section 288 TCPA 1990. Lindblom LJ gave the following guidance:

> "7. Both the Supreme Court and the Court of Appeal have, in recent cases, emphasised the limits to the court's role in construing planning policy (see the judgment of Lord Carnwath in *Suffolk Coastal District Council v Hopkins Homes Ltd*. [2017] UKSC 37, at paragraphs 22 to 26, and my judgment in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314, at paragraph 41). More broadly, though in the same vein, this court has cautioned against the dangers of excessive legalism infecting the planning system – a warning I think we must now repeat in this appeal (see my judgment in *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893, at paragraph 50). There is no place in challenges to planning decisions for the kind of hypercritical scrutiny that this court has always rejected – whether of decision letters of the Secretary of State and his inspectors or of planning officers' reports to committee. The conclusions in an inspector's report or decision letter, or in an officer's report, should not be laboriously dissected in an effort to find fault (see my judgment in Mansell, at paragraphs 41 and 42, and the judgment of the Chancellor of the High Court, at paragraph 63)."

Interpretation of Class E

23. It is common ground that the starting point (and often the end point) in construing legislation is to consider the natural and ordinary meaning of the language used, read in its statutory context.

24. Class E of the UCO was amended in 2020, introducing significant changes. The Planning Encyclopaedia notes as follows:

> "The new Class E (Commercial, Business and Service) is exceptionally wide-ranging, incorporating within a single class uses which would previously have fallen within Classes A1 (Shops), A2 (Financial and professional services), A3 (Food and drink), B1 (Business) and D2 (Assembly and leisure). The significance of the ability to be able to change between any of these very different uses without it constituting development should not be understated.
>
> Of perhaps even greater significance, however, is the fact that the new Class E covers 'use, or part use' for any of those wide-ranging purposes. This is a new concept for the Use Classes Order which did not previously cover mixed-use premises. This will allow spaces to be used far more flexibly with a mixture of uses taking place concurrently and allowing for changes in that mixture of uses without any need to obtain planning permission."

25. I was also referred to the Circular 03/2005 issued by the Office of the Deputy Prime Minister when the UCO was amended in 2005. Paragraph 29 describes Part A as covering uses which will generally be found in shopping areas, whose vitality and character will be affected by the shops and other facilities available, and thus the number of people who can be attracted to go there.

26. Class A1 and A2, which have since been incorporated into Class E, included the reference to "visiting members of the public". That phrase has been the subject of judicial consideration which I will consider below.

27. The predecessor to Class E(g) was Class B1. It covered:

> "Use for all or any of the following purposes—
>
> (a) as an office other than a use within class A2 (financial and professional services),
>
> (b) for research and development of products or processes, or
>
> (c) for any industrial process,
>
> being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit."

It can be seen that the wording of Class E(g) is essentially the same as far as research and development are concerned.

28. Circular 03/2005 gave the following guidance on former Class B1:

> "53. Provided that the limitation specified in the class is satisfied, this class will also include other laboratories and studios and 'high tech' uses spanning office, light industrial and research and development (for example, the manufacture of computer hardware and software, computer research and development, provision of consultancy services, and after-sales services, as well as micro-engineering, bio-technology and pharmaceutical research, development and manufacture), in either offices or light industrial premises, whichever are more suitable."

29. This is an extensive list of examples of activities that fall within the Class and no attempt is being made to narrow the scope of the class.

Ground 1

The Council's submissions

30. The Council submitted that there was clear and consistent case law to the effect that the provision of sales or services are not made to "principally to visiting members of the public" for the purposes of the UCO unless any member of the public can simply walk in off the street and obtain goods or services without satisfying some prior restriction. The Inspector misunderstood the meaning of this provision at DL/51.

31. There was a prior restriction in this case. No member of the public could simply turn up at the AHT with a sick animal and obtain treatment. Clinical services were only available to those members of the public who had been referred to the AHT by a vet.

32. Although it was debatable whether the phrase "medical or health services" included veterinary services, the Council did not pursue this point because veterinary services could potentially come within Class E(c)(ii) which extends to professional services (other than health or medical services).

Case law

33. In *R v Thurrock Borough Council, ex parte Tesco Stores Ltd* [1993] 3 PLR 114, the grant of planning permission for a "Warehouse Club for the sale of goods" was challenged on the ground (among others) that it was effectively a Class A1 retail use, which was contrary to policy. According to Schiemann J., at 117F-H, the Warehouse Club was open only to members who satisfied two requirements:

> "1. A subscription of somewhere in between £25–35 has to be paid before one can become a member.
>
> 2. In order to be eligible to become a member one must either be a business, in which case one would become … a 'Business Member', or be within an employment group specified by Costco, in which case one would become … a 'Private Member'."

Schiemann J. described this as "a deliberate attempt for purely commercial reasons, to exclude the ordinary member of the public who wishes merely to purchase a few items". He held that the "members" were no longer merely "visiting members of the public". He explained that "the relevant phrase in the Use Classes Order is not designed to catch a situation where the sale is, not to any member of the public who cares to come along, but only to those who, being eligible, have first become members of a restricted group".

34. Following this decision, the UCO was amended by the insertion of article 3(6)(k) which excluded retail warehouse clubs from Schedule 1 and 2 to the UCO. This reflected the decision of the Court, but did not seek to apply any wider exclusion to the Class.

35. In *Kalra v Secretary of State for the Environment* (1996) 72 P & CR 423 the Court of Appeal held that the fact that a solicitors' office, located in a former shop in a shopping area, required visitors to make appointments, did not justify the inspector's conclusion that it fell outside Class A2 of the UCO (which included the provision of professional services principally to visiting members of the public).

36. At page 428 Henry LJ held:

> "… Looking at the wording of the Use Classes order, it is clear that for a solicitor's practice to qualify under Class A2(b) 'professional services (other than health or medical services' – must be provided 'principally to visiting members of the public'. That restriction would seem to me to be intended to extend to solicitors who base themselves in or close to shopping areas in the hope of attracting clients who walk in off the street."

And at 429:

> "….. if you have not the time to see the visiting public without an appointment because you are corresponding or telephoning for other clients who in their turn had walked in off the street, I do not see why it should be said that the legal services you provide are not 'provided principally to visiting members of the public' as those clients originally were. Nor can the need for appointments be significant. Hairdressers have them, yet they

> are Use Class Al. Just as you time your shopping expedition to fit in with your hairdressing appointment, so you will time it to fit in with your solicitor's appointment. The judge treated those findings as findings of fact justifying the conclusion that 'visits by persons with prior appointments' are not visits by the public. In my judgment, the fact of having an appointment cannot sustain that conclusion. There is no reason to assume that those with appointments did not originally walk in off the streets."

37. Staughton LJ agreed with Henry LJ. At page 431, Pill LJ agreed that "the fact that a solicitor operates an appointment system for clients is not in itself, as the inspector appeared to have thought, determinative of the issue". However, Pill LJ also considered that the inspector had misapplied Class A2 by considering whether the proposal was "appropriate to a shopping area" in accordance with the local authority's policies as "[a]ppropriateness to a shopping area is not a part of the definition of Class A2(b)".

38. In *R v LB Kensington and Chelsea, ex p Europa Foods Ltd* 1996 WL 1090308, [1996] NPC 4, the question arose whether the use of auction rooms was within Class A1 of the UCO, and in particular whether the sale or display in the auction rooms was "to visiting members of the public". Macpherson J. held that the use was for visiting members of the public, among others. At page 7 of the judgment he said:

> "… There is no evidence at all of any restriction upon members of the public visiting the premises both in order to see the goods displayed and/or to engage in sales by auction. There are, upon the facts, sensible arrangements made to register or number those who may bid. But there is no restriction upon anybody entering the premises, nor any requirement (such as for example in *R. v. Thurrock Borough Council ex parte Costco* (1993) 3 PLR 114) that only persons who are already 'members' may attend. Dealers may of course be present in large or small numbers. But dealers are members of the public, in general terms, and sales are certainly not limited to dealers. The evidence (see affidavit of Paul Berthaud) also shows that the operation of these particular auction rooms is open and informal and thus itself designed to encourage people to come in and indeed to buy at auction who might otherwise have thought that the purchase of goods at auction was not for them. The visiting member of the public is thus the auctioneer's target and his joy. I am unable to see how the conclusion that the use fell within this part of the order can be attacked."

Conclusions

39. In my judgment, the natural and ordinary meaning of the language in Class E(e) is clear. First, there must be use, or part use, of premises for the purpose of the provision of medical or health services. Secondly, the services must be provided principally to visiting members of the public. A planning decision-maker must apply the natural and ordinary meaning of the words used to the facts as found in the particular case. This requires an exercise of a decision-maker's planning judgment.

40. Any decision is likely to be highly fact-specific, as demonstrated by the case law. The court must guard against elevating conclusions based on specific facts into statements of general application in all cases. In my view, the Council wrongly

elevates into a general requirement that the services must be available to "passing" members of the public who "walk in off the street", citing Henry LJ in *Kalra.* Although Circular 3/2005 referred to shops and facilities in shopping areas, there is no locational requirement in the amended Class E(e). The premises do not have to be in a commercial or business locality where members of the public may be passing by, and walking in off the street. Only Class E(c)(iii) includes a locational requirement and it is not relied upon in this case. Location in a shopping area where members of the public were likely to be passing by, and walking in off the street, was clearly a key part of the factual matrix in *Kalra*, but it was not a relevant factor in this case where the services were located within a large estate/campus, situated at the edge of a village. Members of the public could freely visit the Site to obtain medical or health services, by car or on foot, but they were not going to be casually walking in off the street. However, in my judgment, that did not exclude this use from coming within the scope of Class E(e). Indeed, at the hearing before me, the Council did not seek to argue that the Site's location outside any shopping or commercial area was a reason why the services fell outside Class E(e).

41. The phrase "principally to visiting members of the public" is not defined in the UCO. I agree with the First and Second Defendants that it is a straightforward term which falls to be applied on a case-by-case basis, across a wide range of uses. The phrase "member of the public" indicates someone not acting on the basis of any particular affiliation, relationship, or position. The term "visiting" is compatible with members of the public having to make some arrangements with the provider before attending the premises, such as registering and/or making an appointment, as confirmed in *Kalra*. Class E includes use for a children's nursery (Class E(f)) or a gym (Class E(d)) "principally to visiting members of the public". It can reasonably be assumed that, when making the UCO (as amended), the Minister and Parliament were aware that children's nurseries and gyms generally require new attendees to go through some administrative process and enter into a contract, with payment of fees.

42. It is significant for this case that Class E(e) contains an exception for "the use of premises attached to the residence of a consultant or practitioner", thus envisaging that services would be provided to members of the public by both consultants and practitioners. The distinction between a general medical practitioner and a specialist medical consultant is well-established (see e.g. *Routh v Jones* [1947] All ER 759, per Lord Greene MR at 761E-F). Typically (though not invariably), a patient obtains a referral from a general practitioner to see a consultant. I consider that practice can reasonably be assumed to have been known by the Minister and Parliament when the UCO (as amended) was made.

43. In my judgment, the Inspector correctly interpreted and applied Class E(e) at DL/51, where she stated:

> "51. The AHT did not provide a general veterinary practice, where people might walk in off the street to have their animals treated. There is no dispute that the services offered by the AHT were specialist services, were people brought their animals to be treated on a referral basis. This is no different than people attending a specialist health clinic following referral by their general practitioner. All it means is that people would attend on an appointment basis, which having regard to *Kalra*, does not necessarily mean that attendees are not 'visiting members of the public'. There was no requirement for people bringing their animals for treatment to pay a subscription or to be a member, as in *Thurrock*. I therefore find that the people

bringing their animals for treatment were 'visiting members of the public'."

44. In my judgment, people bringing their animals to the AHT for specialist treatment were visiting as members of the public. The fact that they had to obtain a referral from their vet did not indicate otherwise. They were not visiting as members of a club or organisation, nor in some other capacity which would be inconsistent with visiting as members of the public (e.g. as an employee).

45. In my view, the exclusion of specialist services provided by a consultant, on the basis that members of the public require a referral, would be an unduly restrictive interpretation and application of Class E(e).

46. For these reasons, Ground 1 does not succeed.

Ground 2

The Council's submissions

47. The Council submitted that the Inspector, at DL/26 and DL/45, misunderstood Class E(g)(ii).

48. Class E(g)(ii) embraces use for the research and development of products or processes. As a matter of ordinary language, the research and development "*of* products and processes" means research and development "*into*" or "*about*" products and processes.

49. For research to fall within this Class, the subject matter of the research must be a product or process or both. For instance, research into a new vaccine or new genetic test would constitute research of a product. But a research paper that was not targeted at a product or process would be "pure research" and therefore fall outside the scope of the Class.

50. A research paper, regardless of its subject matter, could not constitute a product within the meaning of Class E(g)(ii). If it did, almost any academic paper – on poetry, sociology, history, philosophy etc. – could qualify.

51. The Inspector's finding at DL/45 that "the research and development of animal health and welfare products and processes, including research papers, fell within use Class E(g)(ii)" was based on an erroneous approach. It was not possible to say what the Inspector's conclusion would have been had she correctly differentiated between the research of products and processes and other research directed at increasing human knowledge.

Conclusions

52. In my judgment, the natural and ordinary meaning of the language in Class E(g)(ii) is clear. There must be use, or part use, for the purpose of research and development. The research and development must be of products or processes (I do not accept that the Council's submission that other words should be substituted for the word "of" which is the language used in the provision).

53. The terms used in Class E(g)(ii) are not defined in the UCO. The term "product" is defined in the Shorter Oxford English Dictionary as "a thing produced by an action, operation or natural process; a result, a consequence". The term "process" is defined

as "a thing that goes on or is carried on; a continuous series of actions, events or changes; a course of action, a procedure".

54. As the Second Defendant correctly submitted at the inquiry, as a matter of statutory construction, where the conjunction "and" is used in legislation, as a starting point, this should be taken to be mean "joint and several", or conjunctive and disjunctive, such that "A and B" means "A and B together or either of them" (see *Bennion, Bailey and Norbury on Statutory Interpretation*, 8th Edition, section 17.11). This may be rebutted by context but is confirmed to be the presumption. Examples and illustrations of this are given in *Bennion* at 17.11.

55. The position is confirmed in the planning context in my judgment in *Breckland District Council v Secretary of State for Housing Communities and Local Government* [2020] EWHC 282 (Admin). In that case I was considering a LDC which referred to "caravan and camping site". I held, at [39]:

> "Where two alternatives are separated by the word "and", the natural and ordinary meaning is one can do both or either. ... [counsel] gave the example of a licence to serve hot and cold food, which could be used alternatively to serve any hot food or any cold food or both."

56. By way of further illustration, Class E(b)(ii) refers to "use of land for the sale of food and drink…where the consumption of that food and drink is mostly undertaken on the premises". As a matter of common sense, the word "and" between "food and drink" must mean the conjunctive and the disjunctive. There is no basis to consider that the conjunction "and" used in Class (g)(ii) of Class E has any different meaning.

57. Other examples include *R v Oxfordshire C.C., Ex p. Sunningwell* [2000] 1 AC 335, where it was held that "sports and pastimes" does not refer to two classes of activities "but a single composite class which uses two words in order to avoid arguments over whether an activity is a sport or a pastime" (Lord Hoffmann at 367); and *R(Blackpool Council) v Howitt* [2008] EWHC 3300 (Admin), where the Court held that "the prevention of crime and disorder" included the prevention of crime even if it did not amount to disorder.

58. Applying these principles, the phrase "research and development" in Class E(g)(ii) includes use for either research or development, or for both. The research and/or development has to be of products or processes. Such an interpretation accords with the language and the intended broad scope of Class E.

59. There was substantial evidence of the research and development into products and processes which was carried out at the AHT, much of which was agreed in the Statement of Common Ground.

60. The Inspector set out her findings on research and development at DL/25 – 27:

> "*Research and development of products or processes*
>
> 25. It is a matter of common ground that research and development of products and processes occurred on some level as part of the AHT's activities. This was confirmed by Toni-Anne Hammond, who gave examples of research projects and their outputs; including developing and producing a duck hepatitis vaccine, successive forms of equine herpes virus vaccines and influenza virus vaccines updated to respond to changing mutations of the viruses, a PCR test for strangles, a

> PCR test to detect viral and bacterial nucleic acid, ELIZA [Enzyme-linked immunosorbent assay] tests for equine viral arteritis and for antigens to equine influenza, genetic testing (all canine genetic testing currently used worldwide was developed at the AHT facilities), and therapies for sport horses exposed to high humidity. Heather Ewence went on to explain research projects and outputs involving the Welsh mountain ponies for which she was responsible. Further snapshots of the research and development achievements are found in the various Trustees Reports, in particular those found in CD1.60 to 1.62.
>
> 26. Research carried out by the AHT resulted in and contributed to the development and refinement of vaccines, drugs, therapies, treatments and new means of animal breeding, handling and husbandry. The appeal parties acknowledge that some research projects resulted in the advancement of knowledge rather than the production of a vaccine, drug, test or new technique in animal welfare. In such cases, research papers would be published in professional journals. The Trustee Reports confirm the volume of research papers and other publications produced. The research set out in these publications would no doubt contribute to the furtherance of understanding in the wider scientific community. I find these research papers therefore to be a product resulting from research undertaken by the AHT.
>
> 27. In addition to the outputs identified above, the Trustee Reports and witness evidence confirm that some staff were employed purely for research and development purposes. Furthermore, some of the 32 buildings were also used primarily for research and development purposes, such as the laboratories and the Allen Centre. A significant proportion of the AHT's expenditure and income related to research and development activities."

61. The Inspector gave an overall summary of the AHT's work at DL/36 when considering primary uses:

> "36. The main purpose of the AHT was the development of technologies and knowledge to better diagnose, prevent, and cure animal diseases. The list of products and processes set out in 5.12 to 5.15 of the SoCG shows that this was a fundamental activity of the AHT. Having regard to Section 191(5)(b) of the 1990 Act, I therefore find that the research and development of animal health and welfare products and processes was a primary use."

62. In my judgment, there was ample evidence to support the Inspector's conclusion that the Site was in use for the purpose of research and development of products or processes. Unsurprisingly, some of the research did not directly lead to the development of products and processes. Nonetheless, the Inspector found that development of products and processes remained the ultimate aim of the research in those instances: see DL/45. Furthermore, the Inspector found that "the publication of their research would have contributed to others developing products and processes", albeit not at AHT. It is beyond argument that the research was for medical/health purposes (not the humanities, as referred to in the Council's submissions). In my

view, all these factors taken together were sufficient for the use to come within Class E(g)(ii). I consider that the Inspector's conclusions were the result of an exercise of planning judgment, based upon a reasonable evaluation of the evidence before her.

63. The Inspector also accepted the submission that a research paper was a "product" of the research that had been undertaken, and therefore came within Class E(g)(ii). In my view, she was entitled to reach this view. A research paper is a means of disseminating the output of research. Research could alternatively be disseminated in a film or a podcast or a computer programme. These are all "products" in the ordinary meaning of the term, and come within the dictionary definition of a "product": "a thing produced by an action, operation or natural process; a result, a consequence". But even if the Inspector did err in finding that a research paper was a product of the research, her other findings and conclusions which I have set out above were a sufficient basis upon which to find that the use came within Class E(g)(ii). So even if, contrary to my view, there was an error, it made no difference to the outcome.

64. For all these reasons, the Inspector was entitled to conclude, at DL/45:

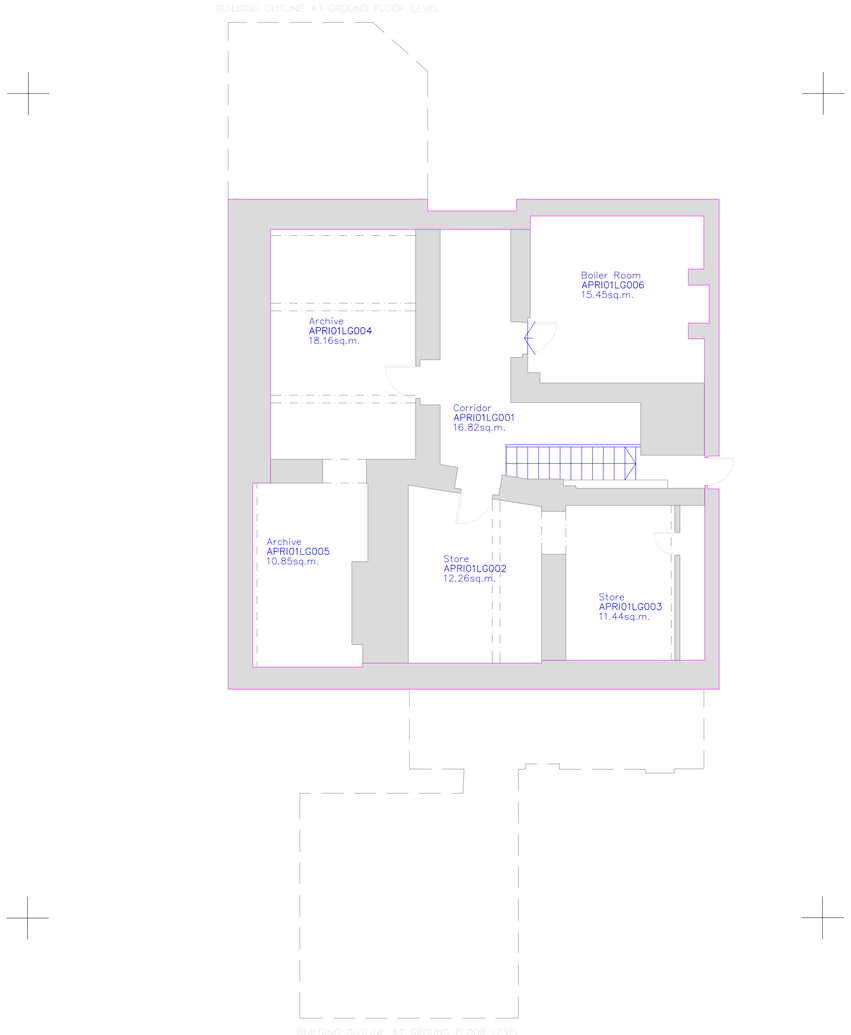
> "As a matter of fact and degree, I find that the research and development of animal health and welfare products and processes, including research papers, fall within use Class E(g)(ii)."

65. Therefore Ground 2 does not succeed.

Final conclusion

66. I grant permission to apply for statutory review, in recognition of the fact that it took the better part of a day for the claim to be argued and I reserved judgment. However, for the reasons set out above, I reject both grounds of challenge and so the claim for planning statutory review is dismissed.

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128.0m² (GEA)
103.8m² (GIA)
84.98m² (NIA)
The Bridge
Manchester Community Site

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PROPERTY: April House	BLOCK REF: APRI01
YEAR OF CONSTRUCTION: -	NUMBER OF FLOORS: 4
GROSS INTERNAL AREA (GIA): 103.82m²	NET INTERNAL AREA (NIA): 84.98 m²
HEATED VOLUME: - (m³)	BUILDING FOOTPRINT: 128.0 m²
CLINICAL AREA: 0.00 m²	NON-CLINICAL AREA: 84.98 m²
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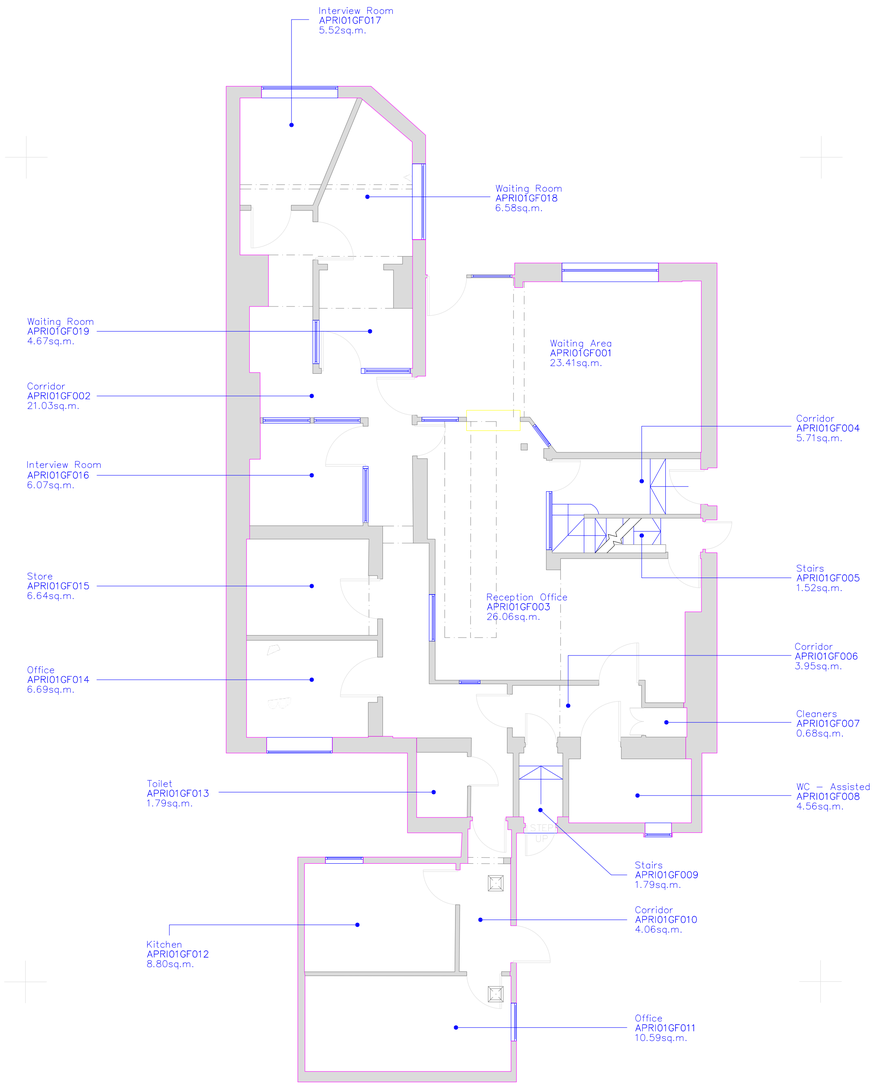
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Lower Ground Floor Plan Layout
April House
104 Fairfield Street
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Date	Jul 2019	Sheet Size	1:100@A2	

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Ground Floor
185.6m² (GEA)
160.5m² (GIA)
150.12m² (NIA)
The Bridge
Manchester Community Site

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YEAR OF CONSTRUCTION: -	NUMBER OF FLOORS: 4
GROSS INTERNAL AREA (GIA): 160.5m²	NET INTERNAL AREA (NIA): 150.12 m²
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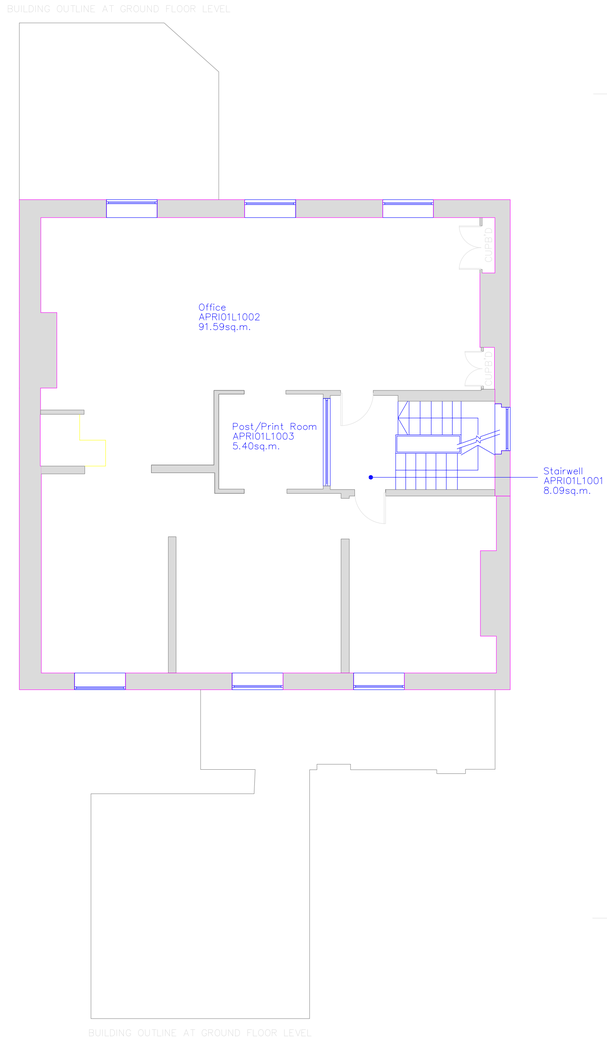
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First Floor
128.8m² (GEA)
108.8m² (GIA)
105.08m² (NIA)
The Bridge
Manchester District

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YEAR OF CONSTRUCTION: -	NUMBER OF FLOORS: 4
GROSS INTERNAL AREA (GIA): 108.8m²	NET INTERNAL AREA (NIA): 105.08 m²
HEATED VOLUME: - (m³)	BUILDING FOOTPRINT: 128.8 m²
CLINICAL AREA: 0 (m²)	NON-CLINICAL AREA: -(m²)
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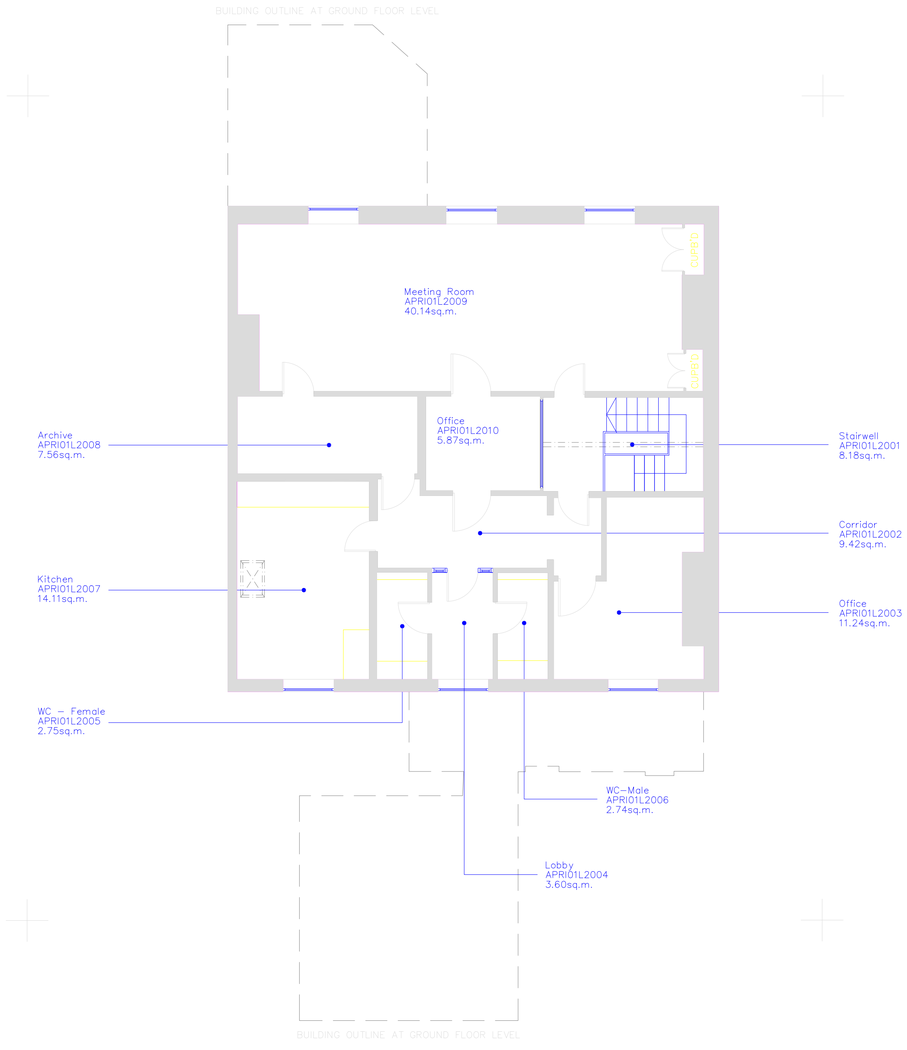
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First Floor Plan Layout
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Second Floor
128.8m² (GEA)
110.8m² (GIA)
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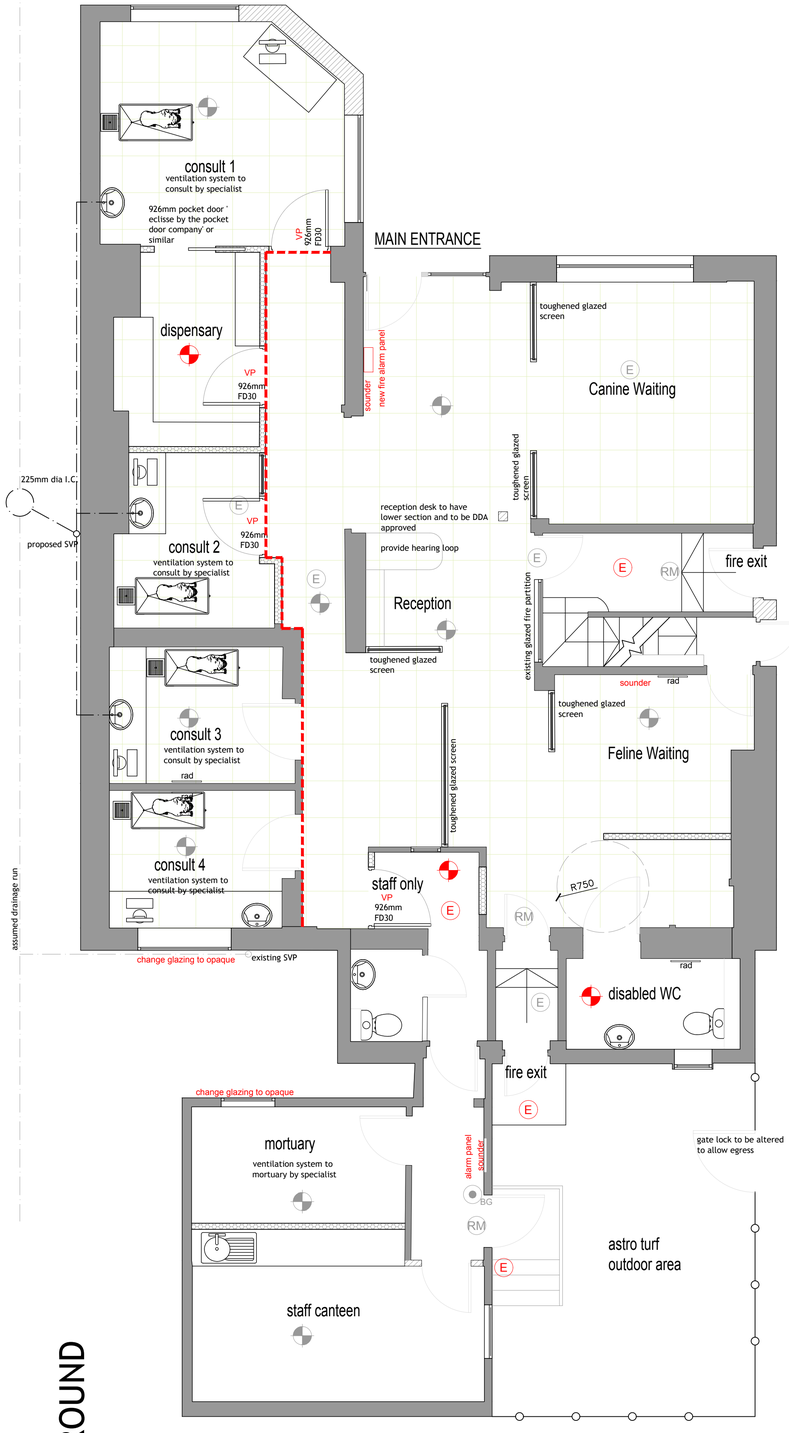
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subject to amendments via:-

building inspector comments where required. refer to written schedule of notes



BASEMENT



GROUND

1:50 0 1 2 3 4 5 m

FIRE STRATEGY KEY

- RM — Emergency running man illuminated EXISTING
- E — Emergency Lighting EXISTING
- Smoke Sensor, Siren, Beacon EXISTING
- BG — Break Glass Call Point EXISTING

All doors are fire doors with vision panels above basement level

- RM — Emergency running man illuminated PROPOSED
- E — Emergency Lighting PROPOSED
- Smoke Sensor, Siren, Beacon PROPOSED
- BG — Break Glass Call Point PROPOSED
- VP — fire rated vision panel - rated to match wall construction
- Fire Wall / Compartment including glazing - 60mins
- Fire Wall / Compartment - 30mins
- 100mm timber or 'c section 'studding as per notes

underdraw ceiling with 15mm fire board by Siniat to provide 60 mins fire resistance. install to manufacturers details.

any openings in ceiling to be fire stopped by specialist contractor. certificate to be provided to building inspector

remove suspended ceiling. underdraw ceiling with 15mm fire board by Siniat to provide 60 mins fire resistance. install to manufacturers details.

any openings in ceiling to be fire stopped by specialist contractor. certificate to be provided to building inspector. ceiling to receive suspended ceiling system to clients requirement

All levels and dimensions must be checked on site by contractor prior to commencemt of works. Any variations must be reported to the client. Use figured dimensions only. DO NOT SCALE from PDF or prints. no liability canbe accepted. Contact the Designer to confirm any dimensions

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MAHE Architecture

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Project: Proposed Vet Surgery at 104 Fairfield St, Manchester M1 2WR

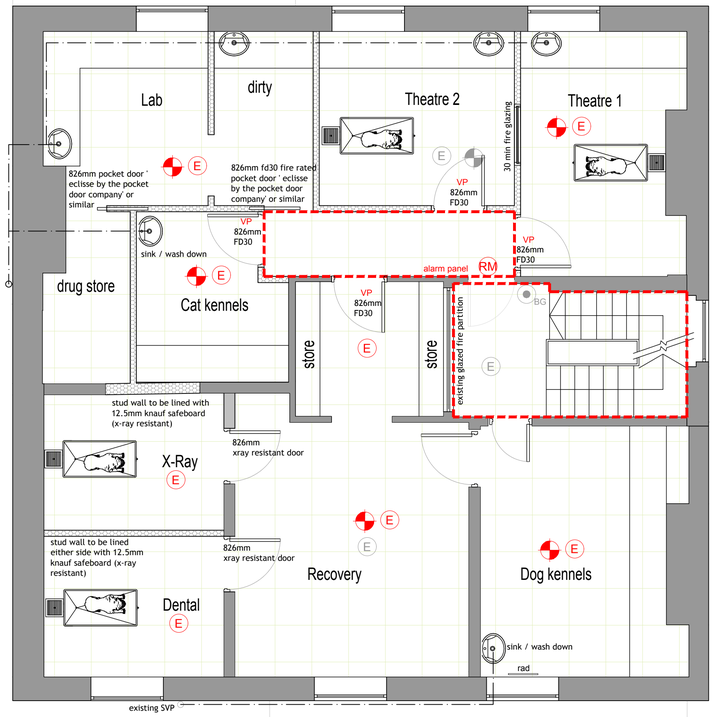
Title: Proposed Layout basement

Dwg Scale: 1:50 a1

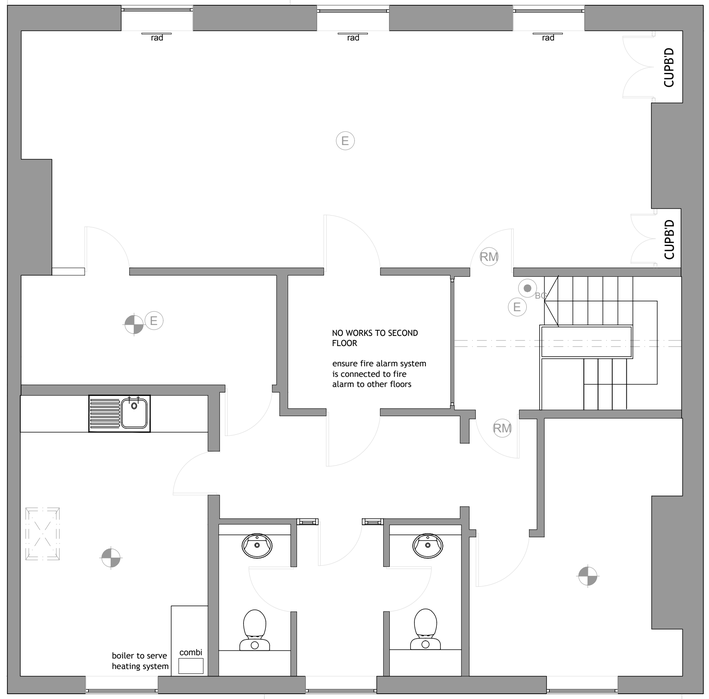
Drawing Number: 895-BR01

subject to amendments via:-

building inspector comments where required. refer to written schedule of notes



FIRST



SECOND

FIRE STRATEGY KEY

- RM — Emergency running man illuminated EXISTING
- E — Emergency Lighting EXISTING
- Smoke Sensor, Siren, Beacon EXISTING
- BG — Break Glass Call Point EXISTING

All doors are fire doors with vision panels above basement level

- RM — Emergency running man illuminated PROPOSED
- E — Emergency Lighting PROPOSED
- Smoke Sensor, Siren, Beacon PROPOSED
- BG — Break Glass Call Point PROPOSED
- VP — fire rated vision panel - rated to match wall construction
- Fire Wall / Compartment including glazing - 60mins
- Fire Wall / Compartment - 30mins
- 100mm timber or 'c section 'studding as per notes
- underdraw ceiling with 15mm fire board by Siniat to provide 60 mins fire resistance. install to manufacturers details. any openings in ceiling to be fire stopped by specialist contractor. certificate to be provided to building inspector
- remove suspended ceiling. underdraw ceiling with 15mm fire board by Siniat to provide 60 mins fire resistance. install to manufacturers details. any openings in ceiling to be fire stopped by specialist contractor. certificate to be provided to building inspector. ceiling to receive suspended ceiling system to clients requirement

1:50 0 1 2 3 4 5 m

All levels and dimensions must be checked on site by contractor prior to commencemt of works. Any variations must be reported to the client. Use figured dimensions only. DO NOT SCALE from PDF or prints. no liability canbe accepted. Contact the Designer to confirm any dimensions

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M A H E
Architecture

Client: LPL Clinical Services LTD

Project: Proposed Vet Surgery at 104 Fairfield St, Manchester M1 2WR

Title: Building Regulations

Dwg Scale: 1:50 a1

Drawing Number: 895-BR02