

**Case Name:** *Malcolm, R (On the Application Of) v Sims [2025] EWHC 642 (Admin) (18 March 2025)*

**Full case:** [Read here](#)

**Commentary:** In this judicial review case, Mr. Malcolm (the “Claimant”) challenged Hart District Council's (the “Council”) grant of planning permission the change of use of Unit 5 at Bramshot Farm Barns complex (the “Unit”) from Class E(g)(i) office use to a dog grooming studio, classified as sui generis use.

The Claimant, who resides adjacent to the Unit, objected to the development due to concerns over noise impacting his residential amenity, particularly with respect to an annexed building (the “Annexe”) on his property. He argued that the Council's assessment of his objections was legally flawed and sought to have the planning permission quashed. However, Mr Tim Smith, sitting as Deputy High Court Judge, dismissed the claim on all grounds and the planning permission was upheld.

The Court referred to the guidance in [R \(Mansell\) v Tonbridge and Malling BC \[2019\] PTSR 1452](#) that officer's reports in planning cases should be given a fair and impartial reading rather than being subjected to minute forensic scrutiny. The Court added that in the case of a delegated report *“there is no scope for an innocent misunderstanding of the guidance the report is providing by a separate decision-maker. The author can be presumed to know his or her own mind, and consequently a delegated report can (if anything) be read more benevolently than can a report upon which others will rely when making a decision.”*

### Background

The Unit, one of eight commercial premises in a redeveloped rural complex, was originally designated for office use under Land Use Class E(g)(i). On 5 April 2024, the Interested Party submitted a planning application to allow flexible use of the Unit, either as an office or a dog grooming business (sui generis). This change would enable the Interested Party to relocate their dog grooming business, “Upper Hound Dog Grooming,” from Farnborough town centre to the Unit.

The Unit shares a physical party wall with the Annexe, a residential building on the Claimant's property located at the bottom of the garden, approximately seventy metres from the main residential accommodation. The Claimant's evidence confirms that the Annexe is continually used by family members and that the Claimant frequently utilises the garden space nearby. Concerns over potential noise disturbance from the proposed dog grooming studio prompted the Claimant to instruct solicitors, Messrs Kingsley-Smith, to submit objections on his behalf. Objections were raised on 7th May 2024, emphasising the Claimant's regular use of the Annexe and garden and the anticipated impact on residential amenity.

The planning case officer, Mr. Martinez, recommended approval with conditions, including restricted operating hours and a ban on overnight dog boarding. Planning permission was formally granted on 14th June 2024 in accordance with these recommendations.

### Grounds of Challenge

The Claimant sought judicial review of the granted planning permission, raising five grounds of challenge:

1. the Council's conclusions in relation to noise and impact on residential amenity were irrational;
2. it was inappropriate to compare the dog grooming operation in Unit with the same operation in the town centre;
3. the Council made material errors of fact in assessing the highway impacts of the proposals;
4. the Council's approach to the benefits of the proposals was irrational; and
5. the Council failed to interpret planning policy correctly.

The Council actively defended the claim, while the Interested Party chose not to submit an Acknowledgement of Service. Instead, they provided written representations, which were admitted alongside the Claimant's response. On 4 October 2024, Mr CMG Ockelton, sitting as Deputy Judge of the High Court, considered the claim on the papers and granted permission for the claim to proceed on all grounds, despite expressing reservations about certain aspects of the case.

### Ground 1

The Claimant contended that the Council's report failed to adequately address the specific noise implications arising from the proposed change of use, particularly in the context of the rural setting and the proximity of the Annexe. He criticised the officer for dismissing his objections due to insufficient evidence, arguing that it was unreasonable to require concrete predictions for noise impacts from a use that had yet to commence. The Claimant further alleged that the officer relied on assumptions derived from the noise levels at the dog grooming studio's previous town centre location without conducting a site visit or considering the negative experiences of a neighbour at the prior site, which were highlighted in the Claimant's objection letter. He also disputed the officer's conclusion that noise concerns were mitigated by restricting operations to business hours, emphasising the adverse impact on his enjoyment of the Annexe and garden during those times.

The Court dismissed this challenge, holding that the Council's officer had fairly and lawfully considered the objections. The officer's report addressed the noise concerns, policy objections, and potential impacts on the Annexe and garden. While acknowledging the Claimant's concerns, including references to previous planning appeals, the Court noted that these appeals were not directly applicable due to differing circumstances. The Court expressed sympathy for the Claimant should noise issues arise in the future but suggested that such matters could be addressed through further investigation by the Council's Environmental Health Officer regarding any statutory nuisance. This, however, did not undermine the lawfulness of the decision. Consequently, Ground 1 was rejected.

### Ground 2

The Claimant challenged the officer's reliance on the dog grooming studio's previous operations in Farnborough town centre, contending that such comparisons were irrelevant due to the distinct rural character of the application site.

The Court found that this comparison was appropriate for evaluating the compatibility of the proposed use with nearby residential properties. Although there was some overlap with the issues raised under Ground 1, the Claimant's criticism of the officer specifically targeted the conclusions about whether the studio could coexist with neighbouring residential uses without generating noise complaints.

The Court acknowledged differences in ambient noise levels between town centres and rural areas but held that the officer reasonably noted the absence of significant complaints from neighbours at the studio's previous location, except for one unidentified neighbour referenced in Ground 1. It was emphasised that the officer did not rely exclusively on the absence of complaints or suggest that the studio's suitability in an urban setting guaranteed its appropriateness in a rural environment. Instead, the officer's conclusions on noise impacts were informed by multiple factors and broader considerations. Consequently, the Court rejected Ground 2, deeming the Claimant's criticism unfounded.

### Ground 3

The Claimant asserted that the officer significantly underestimated the expected number of vehicular trips associated with the site, resulting in an underrepresentation of the noise and disruption caused by customer traffic. He argued that the officer's calculation, which estimated twenty vehicular trips per day based on the assumption that ten dogs would be groomed daily, failed to account for the typical visit pattern: each dog owner would make two separate trips – one to drop off the dog and another to collect it – leading to a total of forty vehicular movements per day. This ground of

challenge focused exclusively on the noise generated by vehicular activity and did not address issues such as the suitability of the narrow access road.

The Court acknowledged that the officer's estimate of vehicular trips might have been conservative. However, it was deemed reasonable for the officer to rely on the absence of any objections from the County Council highway authority. Since no specific concerns were raised regarding traffic noise, the officer was not required to examine this issue further. Consequently, Ground 3 was dismissed.

#### Ground 4

The Claimant contended that the Council exaggerated the economic benefits of the proposal by equating the relocation of an existing business with generating a net economic gain.

The Court acknowledged that the relocation of a business into the district could reasonably be regarded as a local economic benefit. While the reasoning in the officer's report was brief, it was not deemed irrational. Furthermore, the Court noted that even if an error had been made in assessing the economic benefits, it would not have influenced the overall outcome given the broader balance of planning considerations. Accordingly, Ground 4 was dismissed.

#### Ground 5

The Claimant asserted that the Council had misinterpreted and improperly applied relevant development plan policies concerning rural enterprise and amenity.

The Court found no error in the interpretation of policy. It concluded that the officer had accurately summarised and correctly applied the relevant policies, determining that the judgment constituted a proper and lawful exercise of planning discretion. Consequently, it held that Ground 5 was merely an impermissible challenge to the exercise of planning judgment and was accordingly dismissed.

#### Conclusion

The Court dismissed the challenge on all five grounds. While the Claimant's concerns were genuine and sympathetically noted, the judge found that the Council's officer report adequately addressed the objections and demonstrated a rational application of planning law and policy.