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

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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.
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> 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.
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> 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.