

# Planning Enforcement in Wales

What is incidental to the  
enjoyment of a dwellinghouse?

21<sup>st</sup> September 2011



# Background

- Complaint received alleging dwelling being used for breeding of animals
- Site visit undertaken & large number of animals noted at property but evidence of alleged breach not conclusive
- Planning Contravention Notice served on owners of property to establish exact nature of activity



# PCN Questions

- Maximum number of animals kept at the property in the preceding 12 months
- Minimum number of animals kept at the property in the preceding 12 months
- Whether the animals were kept as pets or for sale
- Whether breeding took place at the property



# PCN Questions

- The number of dogs kept at the property
- The number of breeding bitches
- Details of how the animals were housed
- Were the occupiers registered as breeders with the Kennel Club and were new litters registered



# PCN Responses

- Maximum number of animals :  
2 chipmunks, 4 ferrets, 5 cats, 18 dogs & 17 puppies
- At time of PCN :  
2 chipmunks, 4 ferrets, 3 cats & 18 dogs
- All kept as pets



# PCN Responses

- 7 breeding bitches at property but not kept primarily for breeding
- not registered as breeders with Kennel Club but all litters registered
- 20 litters produced over last 8 years (ave. 2.5 per year)



# Legislative Background

- Section 55 (2) (d) of the T&CPA 1990 states:  
  
‘...the use of any buildings or land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such is not deemed to involve development of the land’



## Legislative Background

- Interpretation of Class E, set out in para.E. 2. to part 1, Schedule 2 of GPDO 1995 states :
- ...purpose incidental to the enjoyment of the dwellinghouse as such includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse'



## Is there a breach?

- Satisfied that no material change of use of the premises for the breeding of animals, and that chipmonks, ferrets & cats kept as pets
- Key issue – Is the number of dogs kept at the premises (between 18 & 35 over the previous 12 months, beyond the level that could be deemed incidental?



# Considerations

- The approach of the Courts

## Emin v Sos for the Environment(1989)

- Introduced objective test of reasonableness i.e. could not rest solely on the whim of the occupiers but needed a sense of reasonableness in all the circumstances of the particular case



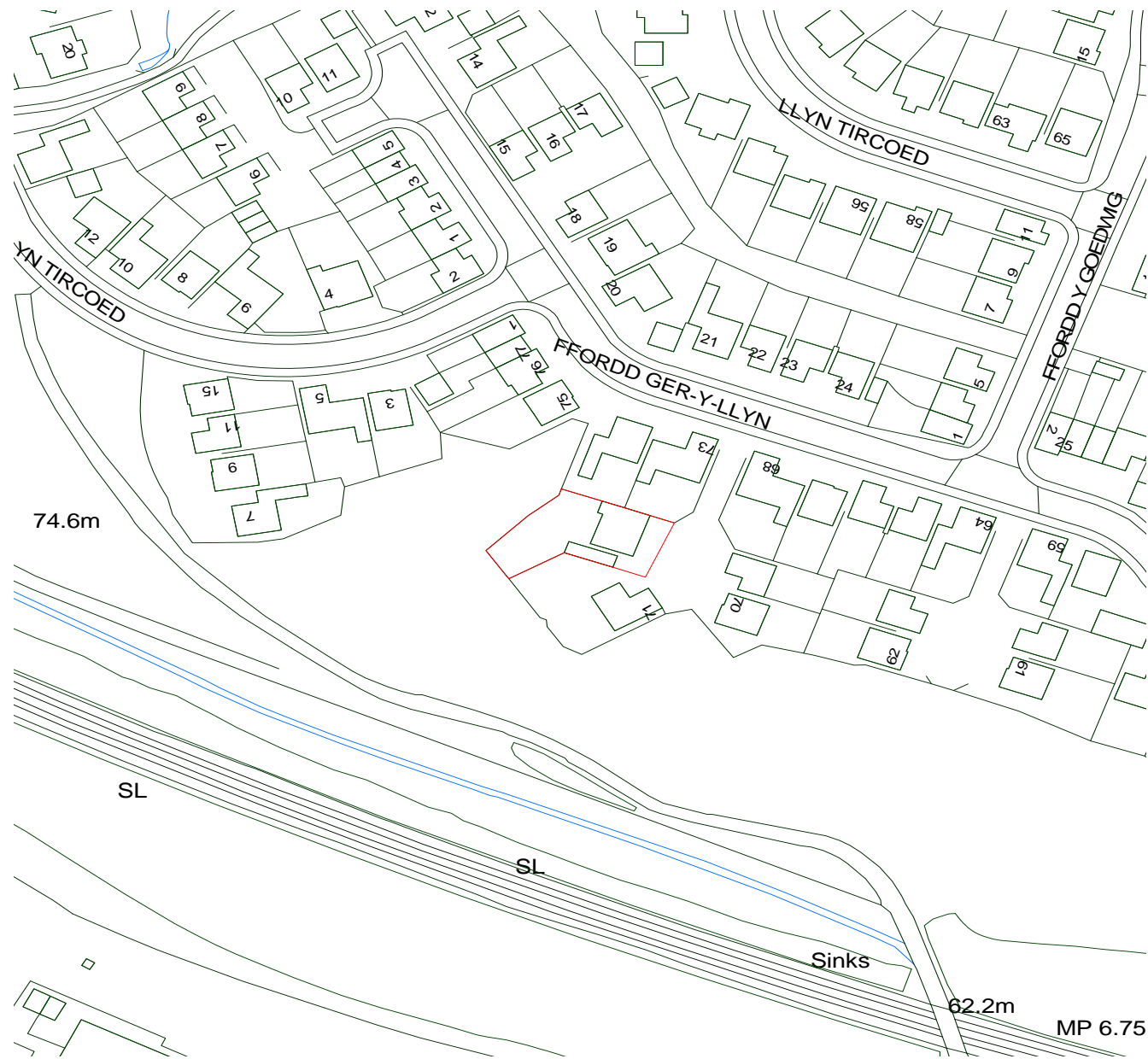
## Wallington v SoS for Wales (1991)

- Court of appeal re-affirmed that the consideration related to the particular dwellinghouse.
- Perfectly acceptable to have regard to what people normally do in a dwellinghouse
- Matter of fact and degree in a particular case



- Croydon LBC v Gladden
- Harrods Ltd., v SoS for Environment, Transport & Regions & RB Kensington & Chelsea





## Conclusions

- Local Planning Authority considered that number of dogs kept at premises was not reasonable in this particular case
- The keeping of between 18 & 35 was not considered normal
- Site, location, curtilage & scale of activity not suitable in this property
- Neighbours would not expect such a large number of dogs to be kept at property



- Human Rights Act 1998 –  
Interference with Article 8 rights  
Action proportionate to protect wider public interest



# Enforcement Notice

- Breach :

Change from residential use to mixed use as residential and for the keeping of dogs

- Reasons:

- Not an incidental use

- Adverse Impact on residential amenity through disturbance, smell & noise pollution.



# Enforcement Notice

- Requirements:

Reduce the total number of dogs kept at the property to no more than 6 in number plus their puppies of no more than 6 months in age

- Time for compliance

12 months



# Appeal

- Appeal submitted on 3 grounds : (c), (f) & (g)
- Ground (c) – argued use incidental as dogs kept were small, no objections from residents & only occupants can determine whether dogs were for their personal enjoyment
- Ground (f) – argued requirements were excessive and could be inhumane.
- Ground (g) – argued may not be possible to reduce number within 12 months



# Appeal Decision

- Appeal dismissed
- Inspector had regard to findings of Wallington case.
- Considered level of activity exceeded the point where reasonably regarded as incidental
- Requirements reasonable and allow appellants to continue to enjoy hobby at level where potential to cause disturbance to others reduced.



# Appeal Decision

- Time for compliance reasonable for necessary arrangements to be made



# Where are we now?

- Still in the period for compliance

