Neutral Citation Number: [2025] EWHC 3312 (Admin)

Case No: AC-2025-CDF-000014

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

Cardiff Civil and Family Justice Centre
2 Park Street, Cardiff CF10 1ET

Date: 19/12/2025

Before :

HIS HONOUR JUDGE JARMAN KC
Sitting as a judge of the High Court

Between :

THE KING **On the application of RICHARD JAMES WILLIAMSON**	**Claimant**
- and -	
CAERPHILLY COUNTY BOROUGH COUNCIL	**Defendant**
-and-	
SUZANNE PARSONS	**Interested Party**

The Claimant in person
Mr Lewis Harrison (instructed by **Legal Services, Caerphilly CBC**) for the **Defendant**
The Interested Party did not appear and was not represented.

Hearing dates: 8 December 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 19 December 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HIS HONOUR JUDGE JARMAN KC

HHJ Jarman KC:

Introduction

1. The Claimant challenges the decision dated 11 November 2024 of the Defendant as local authority dismissing his complaints about recurring fouling of his garden by his neighbour's two cats. The Defendant determined that the matters complained of did not amount to a statutory nuisance within the meaning of section 79 of the Environmental Protection Act 1990. The summary grounds set out three grounds of challenge, each with sub grounds. Permission was initially refused but granted on renewal. The Claimant's skeleton argument for the substantive hearing marshalled his grounds in a somewhat different way but without any substantially new arguments. That is the basis upon which he presented his case at the hearing, without objection, and the basis upon which Mr Harrison for the Defendant responded. I propose in this judgment to deal with the grounds, in respect of which there is some overlap, by focusing on the way the case was put before me. I shall deal with the grounds in detail in due course, but the essence of the challenge is that instead of considering whether the fouling amounted to deposits which were prejudicial to health within the meaning of the 1990 Act, the Defendant considered, or at the very least focussed on, the manner in which the cats were kept and/or considered the right at common law for cats to roam rather than whether there was a statutory nuisance.

2. The complaint was made by email dated 2 October 2024. In it, the Claimant said the fouling had been going on for some months and that various humane methods which he had tried had been unsuccessful. He also said that he had attempted to engage with his neighbours who owned the cats but the fouling was continuing. His email continued:

> "I understand but cats have a right to roam; however, they do not have the right the cause a statutory nuisance or pose an environmental health risk. I have collected CCTV footage that clearly shows the two cats fouling in my garden on multiple occasions, and I believe this evidence substantiates my claim. Furthermore, being able to prove the two cats from the same household are to blame add significant weight to my complaint. The cats are fouling on a weekly basis, and I'm exhausted from repeatedly clearing up after someone else's pets. This issue has severely impacted my mental health and the enjoyment of my property. I wake with dread each day wondering if there is yet more cat mess for me to have to clean up.
>
> As a parent of a newborn who will soon be playing in our garden, I am particularly concerned about the health risks associated with cat faeces, such as toxoplasmosis. My daughter should not be exposed to such dangers in her own home environment."

3. An environmental officer of the Defendant replied the same day, saying that the complaint did not fall within the remit of statutory nuisance, and suggested the Claimant should consider civil action. The reason given why it was considered that there was no statutory nuisance was set out as follows.

> "If animals are kept at a specific property and that property is causing a nuisance (fouling not been picked up), we could investigate under EPA 1990 S79(1)(f), but animals moving freely between properties is not something which can be a statutory nuisance."

4. The next day the Claimant responded raising a number of points. On the 4 October 2024 the officer indicated in an email that having consulted their manager, the complaint would be investigated. By email dated 9 October 2024, the Claimant enclosed CCTV footage showing the cats fouling in his garden. However, he also said that there were many instances of fouling which the cameras had not recorded despite fresh fouling as the cameras did not record well after streetlights were shut off at midnight. He further said that there were areas in his front garden which the cameras did not record, but which "have had fouling." He also said that the neighbours had seen the footage and confirmed that the two cats belonged to them.

5. By email dated 22 October 2024, the officer asked whether there had been further incidents of fouling and asked for further evidence. In reply the Claimant said that it had lessened which he put down to bad weather as it "always improves" when the weather is bad. He said that there were incidents of fouling in the area not covered by the cameras, but there was footage of one of the cats leaving that area and shortly after he found fresh mess.

6. On 24 October 2024 he sent further footage, which he said did not show fouling, but did show one of the cats entering his property, after which there was fresh mess in the area they have been in, the most recent such incident being the previous night. On 8 November 2025, the officer repeated the request for fresh evidence and said that the last videos had not been viewed as they did not contain footage of fouling. The officer requested that only footage showing fouling be sent in the future. In reply the Claimant repeated his point that the cameras did not cover all areas of his garden.

7. That brought forth the challenged decision of 11 November 2024, which included the following:

> "You are correct that we do often request logs regarding instances of "nuisance", and that is what you have been providing with your CCTV evidence. There is no more effective means to monitor than your own CCTV and as you have been forthcoming with providing it, I felt it best to continue in this way. This would effectively build up a log of those instances. As stated I didn't view the videos as you said yourself no fouling was witnessed. The fouling is the focus of the investigation and cats in your garden alone, would not be within the scope of statutory nuisance.

> I have now conducted a visit to the subject address to assess the state of the property, as well as how the animals are kept. I am satisfied that there are adequate provisions for the cats to foul inside the property if required. We have spoken about their procedures and they have made changes to the litter trays to encourage one of the cats that had previously not liked using them. I am satisfied that the procedures are adequate, and they are conscientious about ensuring the cats have the correct facility.
>
> With regards to the law, as discussed previously, cats are not governed by the same roaming laws as dogs & livestock are. The common law principle is that there are no laws governing control, they have a "right to roam". Cat owners are also required to make considerations of welfare and not letting cats outside when they are accustomed to it, can be detrimental to their welfare. Based on the current evidence, state of the property, the fact that only three cats are kept and the provisions in place, I am satisfied that the subject is not keeping animals in such a manner as to be prejudicial to health or a nuisance stop."

8. Further emails ensued with each party maintaining and repeating their stance. Reviews were carried out by other officers under stages 1 and 2 of the Defendant's complaints procedure but the complaint was not upheld. Nothing new was said in these reviews and each came to the conclusion that the complaint had been properly investigated.

The statutory framework

9. The underlying purpose of the 1990 Act is to improve pollution control and environmental protection. Part I contains detailed provisions for the integrated pollution control and air pollution control by local authorities. Part II deals with waste land and contaminated land. Part III is headed "Statutory Nuisance and Noise."

10. Under Part III, Section 79(1) sets out the matters which constitute statutory nuisance for the purposes of that Part, and materially provides the following:

> "(1) the following matters constitute "statutory nuisances" for the purposes of this Part, that is to say…
>
> (e) any accumulation or deposit which is prejudicial to health or a nuisance;
>
> (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
>
> and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 80 below or sections 80 and 80A below and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take

> such steps as are reasonably practicable to investigate the complaint."

11. In subsections (2) to (6A), there are several exceptions set out to the application of section 79(1). For example, one of the specified statutory nuisances is that in subsection (1)(b), namely smoke emitted from premises so as to be prejudicial to health or a nuisance. However, there are four exceptions to the application of that subsection set out in subsection (3), the first of which is "smoked emitted from a chimney of a private dwelling within a smoke control area in Wales." There are no specified exceptions to the application of section 79(1)(e) or (f).

12. Section 79(7) sets out various definitions of expressions used in Part III. These include that a "person responsible" in relation to a statutory nuisance, means the person to whose act, default or sufferance the nuisance is attributable. Another relevant defintion is that "prejudicial to health" means injurious, or likely to cause injury, to health.

13. There is a further relevant definition set out in subsection (9), which provides, so far as is material:

> "In this Part "best practicable means" is to be interpreted by reference to the following provisions—
>
> (a) "practicable" means reasonably practicable having regard among other things to local conditions and circumstances, to the current state of technical knowledge and to the financial implications;
>
> (b) the means to be employed include the design, installation, maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and structures;
>
> (c) the test is to apply only so far as compatible with any duty imposed by law;
>
> (d) the test is to apply only so far as compatible with safety and safe working conditions, and with the exigencies of any emergency or unforeseeable circumstances..,"

14. Section 80(1) provides that:

> "...where a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, in the area of the authority, the local authority shall serve a notice ("an abatement notice") imposing all or any of the following requirements—"
>
> (a) requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence;
>
> (b) requiring the execution of such works, and the taking of such other steps, as may be necessary for any of those purposes,

> and the notice shall specify the time or times within which the requirements of the notice are to be complied with."

15. Section 80(2), so far as material, provides that such a notice shall be served on the person responsible for the nuiscance. The following subsections deals with matters consequential to the service of such a notice, which materially provide:

> "(3) A person served with an abatement notice may appeal against the notice to a magistrates' court... within the period of twenty-one days beginning with the date on which he was served with the notice.
>
> (4) If a person on whom an abatement notice is served, without reasonable excuse, contravenes or fails to comply with any requirement or prohibition imposed by the notice, he shall be guilty of an offence.
>
> (5) ...a person who commits an offence under subsection (4) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale together with a further fine of an amount equal to one-tenth of the greater of £5,000 or level 4 on the standard scale for each day on which the offence continues after the conviction."

16. By subsection (7) it is made a defence to prove that the best practical means were used to prevent or counteract the effects of the nuisance.

Legal principles

17. These provisions were considered in *R v Carrick DC Ex p Shelley* [1996] Env LR 273 (1996) by Carnwath J as he then was. That case concerned the depositing of sewage on a beach. After referring to the above sections, he made several observations, some of which are relevant in the present case:

> "Pausing there for a moment, I make a number of comments: first the issue under section 80 is one of fact, not discretion. So far as the decision to serve an abatement notice is concerned, if the authority are satisfied on the balance of probabilities that there is a statutory nuisance, they have a duty to serve a notice…
>
> Thirdly there has been some discussion of the terms "deposit" and "accumulation". I was referred to *R. v. Metropolitan Stipendiary Magistrates, Ex P. Lwra* [1993] 3 All E.R. 113 , which shows that the deposit may be temporary. However, that was in a very different context and does not seem to me to assist in this case. In any event, it is not, as I understand it, in issue that materials brought to the beach via the sea may, in principle, amount to a deposit or accumulation within the section. The cleaning arrangements are, of course, relevant as to whether the deposit or accumulation amounts to a nuisance.

> Fourthly if the abatement notice is to be served on the Water Authority the Council would need to be satisfied that the Water Authority are responsible for the nuisance. That, as it seems to me, is to be approached on common sense lines. If it can be shown on the balance of probabilities that the material comes from the Water Authority's outfalls, the fact that it also depends on the vagaries of the tide does not preclude their responsibility…
>
> Sixthly the relevant phrase is "prejudicial to health or a nuisance" . "Prejudicial to health" is defined in subsection (7) of section 79 as meaning "injurious or likely to cause injury to health" . That poses no particular problem of meaning, although the Authority will normally need some expert guidance to decide whether there is prejudice to health. In this case the Authority had the advice of their scientific officer, Mr Rogers."

18. Carnwath J then went on to say that the word "nuisance" had given rise to more controversy. He observed that the case he was dealing with concerned a public nuisance, and referred to some of the case law on the meaning of public nuisance at common law, as follows:

> "In principle "nuisance" has its common law meaning, either a public or a private nuisance. In this case we are in the field of public nuisance, that is the effect on members of the public and their families using the beach for playing and swimming.
>
> As to that, I have been referred to *National Coal Board v. Thorne* [1976] 1 W.L.R. 543 at 566 where Watkins J. said: "A public nuisance at common law has been expressed to be an act or omission which materially affects the material comfort and quality of life of a class of Her Majesty's subjects." That is relatively straightforward, but some of the cases have suggested a limitation, even in relation to the term "nuisance", to matters affecting health. Thus, in *Coventry City Council v. Cartwright* [1975] W.L.R. 849 C Lord Widgery said this: "The underlying conception of the section is that that which is struck at is an accumulation of something which produces a threat to health in the sense of a threat of disease, vermin or the like."
>
> That case was, in fact, concerned with the first limb, that is prejudice to health; nuisance was not directly in issue, because the injurious material was stored on the site rather than emanating from emissions or discharges from elsewhere. But in the *National Coal Board* Case Lord Widgery referred to that same passage in terms which suggest that he saw "threat to health" as underlying both limbs of the definition. In *Wivenhoe Port v. Colchester Borough Council* (1985) J.P.L. 175 Judge Butler, Q.C. described the authorities as a "sea of uncertainty" . He concluded that: "To be within the spirit of the Act a nuisance to be a statutory nuisance had to be one interfering materially

> with the personal comfort of the residents, in the sense that it materially affected their well-being, although it might not be prejudicial to health."

19. Carnwath J then referred to the submissions before him, including by counsel for the applicants:

> "In the present case, Mr Pannick, for the applicants, submitted that all those observations are derived from the context of the Public Health Act and cannot be imported into the Environmental Protection Act 1990, which has a much wider ambit. He says I should simply adopt the words given by Watkins J. in the *National Coal Board* case as the ordinary meaning of public nuisance in common law. I think that may well be correct. However, it is unnecessary in the context of the present case to examine the case law in detail. I did not understand there to be any serious argument, but that significant deposits on a public beach of sewage related debris, such as condoms and sanitary towels, are capable in principle of amounting to a statutory nuisance, even without specific evidence of injury to health. The issue for the Council therefore was largely one of degree."

20. In that case, the challenged decision was that of council members on the basis of an officer's report, whereas in the present case the challenged decision was made by an officer. What that means in the present case is that to ascertain the approach of the Defendant to the Claimant's complaint, regard must be had to the officer's correspondence to the Claimant rather than a report to members. Carnwath J continued in relation to the officer's report in the case before him:

> "The question posed in the report is "Does a Statutory Nuisance Exist?" , but that question is not clearly answered. There is an indication that there is likely to be a legal dispute, but no indication as to what the legal issues are, nor any clear advice as to what is meant by a nuisance in law. As I have indicated, that term posed a straightforward question of fact which was within the competence of the members to answer, they being as I understand it, familiar with the beach.
>
> Nor is there a clear indication in the report that under the statutory nuisance procedure, unlike other enforcement procedures, with which members will have been familiar (like the planning enforcement), the Authority does not have any discretion once the existence of the nuisance is established."

21. Accordingly, Carnwath J came to the conclusion that the crucial issue had not been dealt with. He then went on to deal with relief:

> "There is no way in which the Court can reach a conclusion on that, or say that there is only one reasonable view that the Authority could reach. It seems to me, subject to any

> submissions, that the appropriate remedy is a declaration that the resolution of June 20, 1995 was not a valid discharge of the Authority's duty under section 80 of the Act. I assume that given such a declaration the Authority will accept that it is under an obligation to reconsider, so that there is no need for an order of mandamus to require them to reconsider in accordance with the law."

22. In *Cunningham v Birmingham City Council* [1998] Env LR 1 (1997), the Divisional Court on a case stated considered whether the test for "prejudicial to health" was objective or subjective. Pill LJ, giving the lead judgment, observed that in relation to the wording of section 79(1)(a), it was common ground that the two limbs, "prejudicial to health" and "nuisance" are to be considered separately. It was also common ground that an objective test is to be applied to "nuisance." Pill LJ concluded that the test for "prejudicial to health", was, as a matter of statutory interpretation, also an objective one and so it was not permissible to take into account the individual health requirements of potential occupiers.

23. These statutory provisions have more recently been considered by the Court of Appeal in *R (Gary Ball) v Hinckley & Bosworth Council & Anor* [2024] EWCA Civ 433, which involved noise from a motor sport venue. Coulson LJ, giving the lead judgment, emphasised the very limited nature of discretion vested in a local authority. The issue there was whether the local authority has power to vary an abatement notice. At [21], he said:

> "In summary, there is an obligation on the relevant local authority, if it is satisfied on the balance of probability that a statutory nuisance exists, to serve an abatement notice. The only limited discretion arises where, in the case of an noise nuisance, the perpetrator may be granted a 7-day 'grace' period in which the local authority can seek to persuade that person to abate the nuisance or prohibit or restrict its occurrence."

24. He then continued at [23]:

> "On any proper reading of s.79 and s.80, they are dealing with abatement notices as a one-off event, following an inspection of the area carried out "from time to time". That is why an ensuing abatement notice remains in force indefinitely: see *R v Clerk to the Birmingham City Justices, ex parte Guppy* (1988) 152 JP 159 at 163B and 163H. The sections are not couched in the language of a continuing duty, and do not suggest that inspections and subsequent notices are to be regarded as part of an obligatory continuing dialogue both before and after service of the notice."

25. Coulson LJ then turned to the question of criminal proceedings for failure to comply with an abatement notice and the defence that the best practicable means were used to prevent or counteract the effects of the nuisance, sometimes known as the BPM defence. After a review of the authorities, he said this at [33]:

> "The authorities therefore demonstrate that there are two distinct stages. First, the local authority has to decide whether there is a statutory nuisance. If it does so decide, it is obliged to issue an abatement notice. There is no relevant discretion. If there is an appeal, or a criminal prosecution, then it is at that second stage that the Magistrates' Court has to decide whether there is a BPM defence. This distinction between the powers of the local authority on the one hand, and those of the Magistrates' Court on the other, is of critical importance when considering the primary issue in this appeal. Whether or not the nuisance has been or can be addressed by the use of BPM is not a matter for the local authority: it falls outside their jurisdiction. In law, it is solely a matter for the Magistrates' Court. That is also consistent with my earlier conclusion that the abatement notice is envisaged as a one-off event which is the sole responsibility of the local authority. The abatement notice is not a gateway for the local authority's ongoing consideration of BPM."

26. For those and other reasons, Coulson LJ concluded that, as a matter of statutory interpretation, it is not necessary to imply a right to vary an abatement notice on the part of the local authority into the 1990 Act, and continued at [90] "In the current legislative scheme the power to vary an abatement notice has been given to the Magistrates' Court, not the local authority."

27. Reference was also made in submissions before me to *Fearn & others v Board of Trustees of the Tate Gallery* [2023] UKSC4, in which the Supreme Court considered a private nuisance claim by the neighbouring occupiers of flats overlooked by the Gallery's viewing platform. The court determined that the case was not about overlooking, but about visual intrusion, and in that context the viewing and photography from the platform amounted to a substantial interference with the enjoyment of the flats and that such a viewing gallery was not an ordinary use of the Gallery's land and amounted to a private nuisance.

28. However, that was a private nuisance case and not one which considered statutory nuisance under the 1990 Act. Those cases which do so, cited above, emphasise the importance of interpreting and applying the Act. In my judgment, *Fern* does not take matters further in the present case. For similar reasons, other cases to which I was referred relating to claims for nuisance by cats either at common law or under different statutory provisions, such as housing legislation, are of limited assistance. By way of example, in *R v Walden-Jones exp Coton* [1963] 1 WLUK 664, premises were defective to keep the number of cats present in the household from straying and an abatement notice was issued for nuisance.

29. In *Buckle v Holmes* [1926] 2 KB 125, the Court of Appeal determined that the owner of a cat who strayed onto neighbouring land and killed pigeons was not liable in trespass. Banks LJ, giving the lead judgments said that a:

> "… dog, a useful domestic animal, must be used if at all according to its nature ; that it cannot ordinarily be kept shut up, and that the general interest of the country demands that dogs should be kept and that a reasonable amount of liberty should be

> allowed them. Therefore dogs are placed by the common law in a class of animals which do not by their trespasses render their owners liable. I can see no possible distinction between a dog and a cat."

30. Again, these principles do not assist on the question of whether the matters raised by the Claimant are capable of amounting to a statutory nuisance within the meaning of the 1990 Act.

The main ground of challenge-ground 1

31. I now turn to consider the grounds in more detail. Although there are several of them, the essence of the Claimant's challenge is as summarised at the outset of this judgment, namely the Defendant approached his complaint by considering the manner in which the cats were kept and/or the right at common law for cats to roam rather than whether there was a statutory nuisance because the fouling amounted to deposits prejudicial to health.

32. The first ground is that the Defendant proceed under the wrong subsection of section 79(1), namely (f), and should have considered the complaint under subsection (e). He accepts that he did not mention subsection (e) and that he did refer to subsection (f) after the officer had done so but maintains that his complaint in substance clearly raised the issue of whether the fouling in his garden was prejudicial to health.

33. Mr Harrison, for the Defendant raises a number of points under the overarching submission that domestic cats are very common and do roam and whilst doing so, often foul other land. He submits that Parliament cannot have intended the provisions of section 79 to apply to such a situation. The first point is that such transient fouling on other land cannot amount to "any deposit" and what is contemplated by the section is a deposit on the land of the person said to be causing the nuisance.

34. The Defendant did not determine the complaint on that basis. I accept that the complaint made no specific reference to subsection (e), but I also accept that the complaint in substance clearly raised the issue that the fouling was deposited on the Claimant's land and was prejudicial to health. His complaint as worded was not about the manner in which the cats were kept or the mere fact that they were allowed to roam. It was the fouling in his garden that he objected to, on grounds of health. In my judgment the Defendant should have approached the complaint on that basis and it is clear that it did not do so.

35. I can see no justification for interpreting the clear and wide words "any deposit" in such a restrictive way. Had Parliament intended that section 79(1)(e) should not apply to cat faeces left by roaming cats, it could very easily have made this an exception, as it did in the case of smoke from domestic chimneys in some areas. In *Shelley*, Carnwath J accepted the agreed position that material swept onto a beach by the sea may in principle amount to a deposit within the meaning of section 79, irrespective of any cleaning arrangements. In my judgment in principle the same may apply to the fouling of which the Claimant complains, irrespective of his cleaning up of the mess, and such fouling is capable of amounting to a deposit within the meaning of section 79(1)(e).

36. Mr Harrison's next point is that there was no evidence that such deposits were prejudicial to health. Again, the Defendant did not consider this, as in my judgment it should have. In the hearing bundle there are NHS guidance on the risk to health from cat faeces. The guidance on Toxoplasmosis, an infection which the Claimant specifically mentions in his complaint, suggests that this is caused by parasites in dog and cat faeces. While the infection does not usually cause symptoms in humans, in some case it can cause serious symptoms such as confusion, blurred vision, slurred speech and unsteady walking.

37. The guidance on Toxocariasis suggest that this is caused by worms in such faeces, not directly, but by the worms laying eggs on soil or sand which may take weeks to become harmful. Again, there are rarely symptoms in infected humans, but in some cases there can be serious symptoms such as breathing difficulties or loss of vision. The guidance suggests that animals should not be allowed to defecate in places where children play.

38. The Claimant also points to the Defendant's own Public Spaces Protection Order, which it made under Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014, and which amongst other things makes it an offence to allow dogs into enclosed children's play area and other leisure areas. The Defendant's documents leading up to the making of the order includes reference to health hazards posed by dog faeces and specifically refers to Toxocariasis.

39. As Mr Harrison submits, there was no evidence in the present case that the cats in question carried the parasites which cause the infections referred to in the NHS guidance and the Defendant's documentation leading up to the order. It is noteworthy that in *Shelly* Carnwath J observed that sufficient deposits of the material which he was concerned with was capable of being prejudicial to health even without evidence of injury, and he also observed that local authorities may need to obtain expert advice, as was done in that case. In my judgment the cat faeces in the present case were clearly capable of being prejudicial to health and this should have been considered by the Defendant but was not. An additional point in the Claimant's complaint raised was that this was having a severe impact on his mental health.

40. In my judgment ground 1 is made out. That is sufficient for the claim to succeed. For the sake of completeness, I will deal with the other grounds but will do so briefly.

The other grounds

41. The second ground is related to the first and alleges that the Defendant made no inquiry as to the health risks. The Defendant did refer to health risks, but in the context of whether the cats were being kept in a manner prejudicial to health. It is clear that the Defendant did not engage specifically with the issue of whether the faeces in the Claimant's garden were prejudicial to health. Precisely how it should do so is a matter for the Defendant, but again Carnwath J's observation in *Shelley* that local authorities may wish to obtain expert advice is pertinent. So too is the Defendant's own documentation dealing with the health risk of dog faeces in children's playground in making the order referred to above. To this extent ground 2 is also made out.

42. Ground 3 is that the Defendant excluded relevant evidence by not considering the CCTV footage of cats in the Claimant's garden which did not show direct evidence of fouling. The Defendant at one stage maintained that the CCTV footage showed five

incidents of direct fouling whilst the Claimant said it was eight. At the hearing I invited the parties to attempt to agree what the footage showed as a result of which the Defendant accepted that six such incidents were shown. Two further incidents were more equivocal. Whilst there was no direct evidence in respect of these incidents, in one a cat was shown coming from behind a pot where faeces were found, and in the other a cat was shown pawing as if to cover faeces.

43. The nub of this ground relates to the officer not reviewing further footage where there was no direct evidence of fouling, in the context that the officer accepted the footage as the best log of incidents. As far as that goes such a stance may be reasonable, but it is clear from the Claimant's emails that such footage had the limitations which he mentioned and that he asserted that some of this footage was of cats being in the area where he found faeces afterwards. That in my judgment is relevant evidence which ought to be taken into account. To that extent, this ground is also made out.

44. The fourth ground is that in dealing with the complaint by reference to common law principles irrelevant matters were taken into account. In my judgment it is clear from the third paragraph of the officer's response to the complaint that such factors as a right to roam and animal welfare were taken into account. In my judgment, these are not relevant to the issue of whether there was a statutory nuisance within the meaning of section 79(1). It may be that such factors would be relevant to best practical means as a defence to any prosecution, but these were not factors for the Defendant. To that extent this ground is made out.

45. The fifth ground is an alternative if it is found that the complaint fell for determining under section 79(1)(f). I have already found that it did not, so I need not consider this.

46. The sixth ground is that the reviews mentioned above did not deal with the errors I have found in the determination of the complaint. I accept that they did not, but that takes the matter no further.

Conclusions

47. For the reasons given above, in my judgment the determination cannot stand, and the complaint must be redetermined in accordance with the principles set out above. I make it clear that whilst the decision-making process should have regard to such principles, nothing in this judgment should be taken as expressing a view one way or the other on the outcome of the redetermination. That is a matter for the Defendant, acting lawfully. As in the *Shelley* case, in my judgment the appropriate relief, subject to submissions, is a declaration along these lines in the expectation that the Defendant will act upon it.

48. The Claimant Mr Williamson and Mr Harrison each made his submission in a very clear, concise and focussed manner. I am grateful to each of them for their valuable assistance in this case, which I have not found to be straightforward. I would hope that they can agreed a draft order dealing with consequential matters and file the same within 21 days of hand down of this judgment, together with written submissions on any such matters which cannot be agreed, which will then be dealt with on the basis of such submissions.