



Appeal Decision

Site visit made on 25 October 2022

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2023

Appeal Ref: APP/C1950/C/21/3267086

Land situated at and known as land on the north-west side of The Ridgeway, Northaw

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Lorraine Edwards against an enforcement notice issued by Welwyn Hatfield Council.
 - The notice was issued on 14 December 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the Land to a mixed use comprising forestry use, the use for leisure purposes and the use for dog walking/exercise associated with a non-profit organisation, including:
 1. The stationing of a caravan used for purposes ancillary to the leisure use and the dog walking/exercise use associated with a non-profit organisation.
 2. The stationing of a portable building used for purposes ancillary to the leisure use and the dog walking/exercise use associated with a non-profit organisation.
 3. The importation of hardcore, scalpings and other such materials used to form an access way and other hard standings.
 4. The erection of fences and a gate.
 5. Miscellaneous items present on the Land associated with the leisure use and the dog walking/exercise use associated with a non-profit organisation.
 - The requirements of the notice are to:
 - (i) Cease the mixed use of the Land by discontinuing the use for leisure purposes and for the dog walking/exercise use associated with a non-profit organisation.
 - (ii) Remove the caravan from the Land.
 - (iii) Remove the portable building from the Land as shown by the attached photograph marked A.
 - (iv) Take down and remove from Land the fence, including the posts, and the gate as shown in the approximate position by the blue line on the attached plan.
 - (v) Take down and remove from the Land the timber fence, including the posts, as shown by the attached photograph marked B.
 - (vi) Remove from the Land all hardcore, scalpings, and all other such hard surface materials used for the creation of the access way and other hard surfaces.
 - (vii) Remove from the Land the timber sleepers used to demarcate the access way and other hard surfaces.
 - (viii) Remove from the Land the tent, all outdoor furniture and other paraphernalia used for leisure purposes and for the dog walking/exercise use associated with a non-profit organisation.
 - (ix) Remove from the Land all materials, debris, waste, plant and equipment associated with requirement (i) to (viii) above.
 - The period for compliance with the requirements is three calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - Deleting the word 'including' at the end of the first paragraph of section 3 and replacing with 'facilitated by'.
 - Deleting the words 'used for purposes ancillary to the leisure use and the dog walking/exercise use associated with a non-profit organisation' from sub-paragraph 1 of section 3.
 - Deleting the words 'used for purposes ancillary to the leisure use and the dog walking/exercise use associated with a non-profit organisation' from sub-paragraph 2 of section 3.
 - Deleting the words 'associated with the leisure use and the dog walking/exercise use associated with a non-profit organisation' from sub-paragraph 5 of section 3.
 - Deleting three (3) and the substitution with six (6) months as the period for compliance in section 6.
2. Subject to the corrections and variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

3. The onus lies with the appellant to make her case on grounds (b) and (c) to the standard of the balance of probabilities.
4. I note the appellant's criticism of the Council following her submitted response to the Planning Contravention Notice. Nevertheless, I have considered all matters afresh, on the basis of the evidence submitted and my own site visit.

The Appeal on Ground (b)

5. A ground (b) appeal is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact.
6. The Council has submitted a number of extracts from the Lozzas Lurcher Rescue (LLR) website. It is clear from the same, that LLR and Lozzas Podenco Rescue are run by the appellant. The website states that it is based in Hertfordshire, although the picture on the main page is not of the appeal site. Nor are the pictures in the web page for the Driftwood Dog Retreat, which are non-fee kennels run by the appellant. However, reference is made in that web page to 'offsite play in a fully secure woods...' owned by the appellant. Further LLR web page extracts also refer to the appellant buying a wooded area for the rescue dogs. It is more likely than not, that those references are made in respect of the wooded appeal site.
7. LLR social media pictures from 13 June 2020 and 14 November 2020 show a number of rescue dogs at the appeal site. Other photographs from the LLR Facebook page show dogs within the appeal site during September 2019 and January 2020, some of which do not appear to those pictured elsewhere as the appellant's own dogs. The photographic evidence does not therefore support

- the appellant's submission that the woodland is only used for exercising her own dogs.
8. Another LLR Facebook picture shows the splayed access to the appeal site with the hardcore surface, flanking sleeper enclosures and gates with boards across the top, which may or may not be to prevent dogs jumping over. A sign for 'Jack's Wood' is attached to one side of the access and a photograph of a dog on the other side. That picture is dated 17 September 2019. A LLR Facebook picture from the same date also shows the caravan, tent, outside tables, and part of a screen timber fence. Another shows a dog van parked in the hardcore area, demarcated by sleepers, along with two dogs in the woods (picture dated 17 September 2019).
 9. Based on the above, it is more likely than not that the appellant used the land for dog walking/exercise in connection with LLR.
 10. The appellant also acknowledges that the site is used for woodland management with ancillary family leisure. She explains that the caravan is used as a rest area during inclement weather whilst undertaking woodland management works and for family time, and that the tent is used for occasional overnight stays in the summertime. Those are evidently forestry and leisure purposes.
 11. The Council's dated photographs from September 2019 largely reflect the above photographs, showing the access, hard standing areas, post and wire enclosures, sleeper enclosure, gates, screen fencing, caravan, tent and outdoor seating at the appeal site.
 12. Therefore, on the balance of probabilities, at the time the enforcement notice was served, there had been a change of use of the land to a mixed use comprising forestry, leisure and for dog walking/exercise associated with a non-profit organisation. The stationing of a caravan and portable building used for purposes ancillary to the leisure use and the dog walking/exercise use associated with a non-profit organisation had also occurred, along with the importation of materials used to form an access way and other hard standings; the erection of fences and a gate and the introduction of miscellaneous items used to facilitate the mixed use of the site.
 13. The appeal on ground (b) fails.

The Appeal on Ground (c)

14. For the appeal to succeed on ground (c), the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged matters did not constitute a breach of planning control.
15. For a material change of use to have occurred, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. The concept of a mixed use is one of two or more primary (or main) uses existing within the same planning unit. One is not incidental to the other, although there may be incidental uses associated with each primary use.
16. The appellant contends that no change of use has occurred. However, the mixed use results in vehicular movements into and out of the site and parking within the site. Dogs are clearly exercised within the woodland area and the

caravan and tent along with the miscellaneous items are used for overnight stays and for sitting and eating out. The character of those activities is significantly different to that of a relatively small area of woodland solely in forestry use.

17. Moreover, the stationing of a caravan and a portable building on the land, along with the creation of hardstandings, new access, erection of fences and the introduction of miscellaneous items such as a picnic table, chairs, barbeque, portable hammock and tent, also results in a material change to the character and appearance of the site.
18. The appellant contends that the existing activity does not require planning permission, being woodland management with ancillary 'family leisure'. However, an incidental or ancillary use is one which is functionally related to the primary use and one that is normally found and not based on the personal choice of the user. A family leisure use cannot reasonably be described as functionally related to a primary woodland management use or one that is normally found. The same rationale and conclusions are also applicable to a dog walking/exercise use associated with a non-profit organisation.
19. Therefore, as a matter of fact and degree, the change of use of the land from woodland/forestry to a mix use comprising forestry use, leisure use and for dog walking/exercise in association with a non-profit organisation, is material and as such amounts to development requiring planning permission.
20. The appellant argues that the prefabricated outbuilding has no foundations or fixings and the remaining appurtenances are entirely portable being wooden furniture and a small garden tent. It is submitted that all of these structures are entirely temporary and do not amount to 'development'. The appellant also submits that the fencing is permitted development¹.
21. However, as noted, the alleged breach is the material change of use of the land to a mixed use, 'including' the stationing of a caravan, a portable building and miscellaneous items used for purposes ancillary to the leisure use and the dog walking/exercise use associated with a non-profit organisation, and the importation of hardcore, scalplings and other such materials used to form an access way and other hard standings and the erection of fences and a gate.
22. The notice is therefore directed at a material change of use, rather than operational development. The word 'including' within the allegation clearly relates to works which were intended to facilitate the mixed use. The appellant contends that a gateway, gate and track have always existed in this location. That argument could be construed as a hidden ground (d) appeal insofar as those matters have become immune from enforcement action through the passage of time². However, in the case of *Murfitt*³ it was held that where an enforcement notice is issued in respect of a material change of use, and works were carried out to facilitate the same, the notice may require that the

¹ Article 3 and Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) grant planning permission for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure, subject to limitations

² Section 171B(1) of the 1990 Act states that (1) 'Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed'

³ *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598

'ancillary' works are removed in order that the site is restored to its previous condition and the breach remedied.

23. It follows from *Murfitt* that an enforcement notice concerned with a material change of use may not only require the removal of works which would otherwise be immune, but also the removal of those which might have been permitted development, if they had not been constructed to facilitate the alleged use. It was further held in *Somak Travel*⁴ that an enforcement notice could require the removal of works which did not amount to development at all but had facilitated an unauthorised material change of use.
24. The stationing of a caravan (and tent) for overnight stays, and to provide shelter during inclement weather, facilitates the mixed use of the site. So does the portable building, which I saw provided toilet facilities. The access way and other hard standings facilitate access and parking in connection with the mixed use. The gate and perimeter fencing allow the land to be safely used by the appellant's daughter and for exercising dogs, whilst also preventing deer access. The internal fence provides screening and sound attenuation from road noise. Other miscellaneous items, such as barbeque, tables and chairs, provide facilities for making food, sitting out and taking breaks.
25. Accordingly, the matters after word '*including*' in the allegation, clearly facilitate the mixed use of the site. For clarity purposes, the enforcement notice should therefore be corrected accordingly, so as to refer to '*facilitating*', rather than '*including*'. It is also unnecessary to refer to those facilitating matters thereafter in the allegation as ancillary or in association with the leisure use and dog walking/exercise use in association with a non-profit organisation. I am able to make those corrections, which do not change the scope of the notice, without injustice to any party.
26. Accordingly, on the balance of probabilities, the use of the land for mixed use purposes, as described in the corrected allegation, constitutes a breach of planning control. The appeal on ground (c) fails.

The Appeal on Ground (a)

Main Issues

27. The land to which the enforcement notice relates lies within the Metropolitan Green Belt and forms part of a designated ancient woodland and the Northaw Great Wood Site of Special Scientific Interest (SSSI). The site is also subject to a Tree Preservation Order (TPO). Within that context, the main issues are:
- whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (NPPF) and relevant development plan policies;
 - the effect on the openness of the Green Belt;
 - the effect on the character and appearance of the area;
 - the effect on the ancient woodland;
 - the effect on the SSSI; and

⁴ *Somak Travel v SSE & Brent LBC* [1987] JPL 630

- if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Whether inappropriate development and the effect on openness

28. Policy GBSP1 of the Welwyn Hatfield District Plan 2005 (DP) states that the Green Belt will be maintained in Welwyn Hatfield as defined on the Proposals Map.
29. The NPPF explains that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt⁵. Exceptions include buildings for forestry and the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport and outdoor recreation, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
30. Subject to the same caveats, certain other forms of development are also not inappropriate in the Green Belt, including material changes in the use of land (such as changes of use for outdoor sport or recreation)⁶. Emerging Policy SADM 34 of the Welwyn Hatfield Local Plan (ELP) states that within the Green Belt planning permission will be granted for development in accordance with national policy and criteria which essentially reflect those stated above.
31. Any forestry related buildings would not therefore amount to inappropriate development. However, the buildings and structures on site are also used in connection with recreation and dog exercising, for both the appellant's dogs and those associated with LLR. The latter being in association with a non-profit organisation, which is not development listed as not inappropriate in the NPPF.
32. Even if part of the mixed use could be considered as a change of use for outdoor recreation, the elements that facilitate that change including the stationing of a caravan, a portable building, fencing, access gates and hardstandings for parking vehicles, result in a clear reduction in the openness of the Green Belt. The fact that the site is wooded does not affect the concept of openness – those facilitating aspects are urbanising features in the countryside.
33. Accordingly, I find that the mixed use of the site amounts to inappropriate development in the Green Belt for the purposes of the NPPF and ELP SADM 34.

Character and appearance

34. The character of the site reflects its designation as ancient woodland. Those domestic and urbanising features which facilitate the mixed use, including a caravan and shed-like portable building along with miscellaneous eating and sitting out facilities, are therefore out of character and harmful.
35. I appreciate that the timber fencing largely screens those features from the road, nevertheless, the fencing in itself is domestic in character and appears as an incongruous and somewhat arbitrary urbanising feature within the

⁵ Paragraph 149

⁶ Paragraph 150

woodland. In any case, lack of visibility cannot in itself justify harmful development as such an argument could be repeated all too often, to the overall detriment of the character of an area.

36. Based on the 1971 Ordnance Survey map, it is likely that a track has historically run through the site, although the degree of surfacing is unclear. However, the Google Street View image from 2008 shows trees across the site frontage and no track or gateway leading into the site from the road. There does appear to be an agricultural style gate in 2015, although it appears to be further back from the road than the current position. No vehicular access, hardstanding or fencing are visible at that time.
37. The image from 2018 does show a hardcore type track leading from the road to the pre-existing agricultural style gate. Again, no hardstanding area is visible beyond the gate and there does not appear to be any fencing. The next image from October 2020, some two months prior to the issuing of the enforcement notice, appears to reflect the current arrangement whereby the solidity of the sleepers flanking the access, combined with the design and somewhat makeshift appearance of the gates, result in harmful and unduly obvious presence along this part of The Ridgeway. The incongruous characteristics of the access are exacerbated further by the signs/pictures attached to the sleepers. That contrasts significantly with the recessive pre-existing arrangement of an agricultural style gate set back from the road.
38. I appreciate that Cuffley Camp utilises timber sleepers on either side of its access but that is seen in the context of a formal entrance to a learning centre. It is not directly comparable to a small area of privately owned woodland.
39. By bringing the gates closer to the road, part of the previous track would likely fall within the land covered by the enforcement notice⁷. The appellant acknowledges that she has carried out resurfacing works around the entrance but the photographic evidence shows that works have extended beyond any previous arrangement by the creation areas of hardstandings either side of the track, edged in sleepers. Those changes further erode the woodland character of the site and increase the overall degree of harm.
40. Despite the height of the perimeter fencing, its design is such that it has a relatively recessive appearance from the roadside, particularly where it has additional tree screening. I also noted similar style fencing to other nearby parcels of woodland. It follows that the perimeter fencing is not out of character or harmful to the appearance of the site and surroundings.
41. Nevertheless, I conclude that the material change of use results in unacceptable harm to the intrinsic character and appearance of the woodland site and surrounding countryside landscape – contrary to DP Policies RA10, D1 and D2 and the NPPF. Those policies require, amongst other things, that proposals for development in the rural areas will be expected to contribute, as appropriate, to the conservation, maintenance and enhancement of the local landscape character of the area in which they are located.

⁷ The Council confirm that the access track in front of the gates does not form part of the land covered by the enforcement notice.

Ancient woodland

42. The NPPF states⁸ that development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists.
43. I saw that a number of trees had been felled at the front of the site, although that in part may have arisen from storm damage. The Council has also provided dated photographic evidence of a number of trees which appear to have been cut down close to the access. However, the Google Street View photograph of October 2015 – before the appellant's acquisition of the site – also show some tree felling at the site frontage. Elsewhere within the site I saw no other evidence of tree felling and the Council was unable to point out where any had occurred.
44. Although the appellant asserts that no trees have been damaged, I have limited evidence to that effect and no arboricultural impact assessment has been provided. The majority of roots are in the top 600mm of soil and fully mature trees may die if 5-10% of their roots are damaged. Damage can be caused by cutting the roots or by compaction of the soil structure through the siting of heavy items under the tree canopies, through compaction of surface materials and through vehicular movements and parking. Soil compaction can in turn adversely affect drainage, gas exchange, nutrient uptake and organic content, thereby serving to impede or restrict root growth.
45. The appellant's soil survey concludes that the overall site showed little or no signs of compaction and that no trees were affected. However, the survey acknowledges it to be at a basic level and that '*a number of samples were taken across the site, but concentrating in areas potentially affected by the new fencing*'. No details are provided of the exact position of the sample locations.
46. I note that the appellant states that vehicles are left at the gate to minimise damage to the woodland and the soil survey states that the new chipping material placed in a car parking bay, was not impeding drainage or tree root growth as far as could be ascertained. However, I have found, on the balance of probabilities, that the hardstanding areas are newly formed and therefore would likely have involved creating compacted areas of earth with chippings on top. The hardstanding on the south west side of the access is also positioned between the trunks of two trees and likely within their root protection areas. The larger hardstanding area is also in close proximity to a number of trees. It is likely therefore that the creation of the hardstandings has had an effect through the compression and weight of imported materials and the associated parking and manoeuvring of vehicles.
47. The caravan has not been placed in a natural clearing as stated but rather in close proximity to the trunks of several mature trees and likely within their root protection areas. The portable shed type building is also potentially sited within the root protection areas of nearby trees. I note that the appellant's basic soil survey states that the campsite area itself is not affected by compaction but pitching a tent will not have the same weight characteristics as a caravan and portable building, which if not fixed to the ground, are kept in place by their own weight. Moreover, although the tent and caravan are relatively close by,

⁸ Paragraph 175

the camping area is in a small clearing area and therefore further from the trees.

48. The sleepers used as posts in the fences are relatively substantial cuts of timber, fixed into the ground. Even if the fence line follows an established boundary, it is likely, given its length and woodland density, that at least some of those posts fall within the root protection areas of a number of trees.
49. Based on the above, it is likely that the development has resulted in a limited loss of protected trees and it is not shown that where that has occurred, the felling was carried out as part of a woodland management plan for the site or in accordance with any other plan for Great Northaw Wood.
50. Moreover, given the limited scope of the soil survey and nature of the facilitating works, I share the Council's concerns over likely deterioration of the ancient woodland through compaction and from fence posts inserted into the woodland soils. No wholly exceptional reasons or a suitable compensation strategy are advanced for the same. As such the mixed use is contrary to DP Policy R17 and the NPPF. The former states, amongst other things, that the Council will seek the protection of existing woodland.

SSSI

51. The site forms part of the Northaw Great Wood SSSI. SSSIs are protected under the Wildlife and Countryside Act 1981 from damaging operations, including development proposals. Natural England (NE), as the government's statutory adviser on nature conservation, must be consulted by a local planning authority considering development proposals that would affect a SSSI.
52. Although the Council state that NE has raised concern about damage to the SSSI, I have not been provided with evidence to that effect. The Council also state that the NE has been consulted as part of the appeal but similarly I have not been advised of any response received. The appellant refers to the favourable condition of the SSSI recorded by NE but the assessment date is prior to her acquisition of the site.
53. The appellant's soil survey has found no evidence of soil contamination from the activities undertaken at site and that the degree to which soils are going to be disturbed/harmed as part of the development is considered minimal and well within tolerances for woodland soils.
54. I also recognise the perimeter fencing will act as a barrier to deer grazing and associated bark stripping impacts, and that areas of dead wood have been retained and stacked to allow beetles and fungi to thrive. Moreover, although I have no details of the previous condition of the site, I have no reason to dispute the appellant's assertion that following the removal of materials and litter from the site, it is cleaner than when it was purchased.
55. The evidence that I have therefore does not point towards harm to the SSSI, such that would be contrary to DP Policy R13 and the NPPF. Those policies state, amongst other matters, that development on land within a SSSI, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted.
56. However, I am mindful that the soil survey is limited in its scope and I do not have the response(s) from the government's statutory adviser on such

matters. I am therefore unable satisfactorily conclude whether or not there has been an adverse effect on the features for which the site is of special scientific interest. I have considered requesting the information from the Council but having regard to my findings on the other matters, it would not change the outcome of my decision, even if robust evidence showing no harm was presented.

Other considerations and the Green Belt balance

57. The NPPF states that substantial weight will be given to any harm to the Green Belt, and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
58. I have found that the mixed use amounts to inappropriate development within the Green Belt and has a negative effect on its openness. I have also found harm to the intrinsic character and appearance of the woodland and to ancient woodland itself.
59. I have highlighted some ecological benefits but in the absence of the above stated information and evidence I am unable conclude whether or not there has been an adverse effect on the SSSI.
60. I appreciate that the enclosed woodland provides a secure area for the appellant's disabled daughter. I also recognise that spending time in a forest will have a positive effect on mental health. I am also mindful that LLR clearly does a lot of very good work in terms of dog rescue.
61. I have identified that the perimeter fence protects the land from deer grazing and also protects the site from trespass, fly tipping and vandalism. It is also similar to that erected around the woodland on the opposite side of the road.
62. Having regard to the traffic flow and vehicular speeds along The Ridgeway, the ability to park and turn around within the site represents a benefit in terms of highway safety.
63. I also appreciate that the intensity of use is likely to be considerably less than the activities associated with Cuffley Camp and the public areas of Northaw Great Wood nature reserve. However, those managed, publicly accessible facilities are not direct or reasonable comparisons with the private and unplanned use of woodland in this case. Moreover, even if camping, dog walking and outward bounds are encouraged in those locations, that does not justify the above stated harm arising from the matters which facilitate the material change of use at this site, including the stationing of a caravan, siting of a portable building, erection of a screen fence and laying of hardstandings.
64. Drawing the above together, the other considerations – taken individually or together – do not outweigh the harm caused to the Green Belt by reason of inappropriateness, which must carry substantial weight, along with the other harms identified. If evidence from NE were to confirm harm to the SSSI, that would further weigh (significantly) against the development.
65. I find that the very special circumstances necessary to justify allowing the deemed planning application do not exist and I conclude that the mixed use represents inappropriate development that is, by definition, harmful to the Green Belt and in conflict DP Policy GBSP1, ELP Policy SADM 34 and the NPPF.

Conclusions on the Ground (a) Appeal

66. For the reasons given above, I conclude that the ground (a) appeal should not succeed. I shall refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

The Appeal on Ground (f)

67. An appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control or, as the case may be, the injury to amenity caused by the breach.
68. In this case, the requirements of the notice are, in short, to cease the mixed use of the land by discontinuing the use for leisure purposes and for the dog walking/exercise use associated with a non-profit organisation (those being the parts of the mixed use which constitute the breach of planning control) and to remove all of the structures, operations and items which facilitate that change of use. It follows that the purpose of the enforcement notice is to remedy the breach and the appeal on ground (f) can only succeed if it is shown that the steps are excessive to that end. In this case, as the ground (a) does not succeed, any lesser step that would not remedy the breach cannot be accepted through ground (f).
69. Consequently, although I have found that the perimeter fencing has ecological benefits insofar as it prevents deer grazing, and is not visually harmful, it was erected to facilitate the material change of use. That is also the case for the screen fencing, the stationing of a caravan and portable building, the formation of hardstandings and an access way with gates, along with the other miscellaneous items. Failure to remove those aspects would not therefore remedy the breach.
70. Moreover, as explained above, an enforcement notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or be permitted development, or be immune from enforcement, so that the land is restored to its condition before the change of use took place.
71. Given my findings on the merits of the mixed use under ground (a), it follows that I do not find that lesser steps would remedy the harm. The appeal on ground (f) fails.

The Appeal on Ground (g)

72. The ground (g) appeal is that the time given to comply with the notice is too short. The appellant requests a period of 12 months on the basis that it would be difficult to remove the caravan and other materials within three months.
73. However, a period of 12 months is excessive and unjustified, having regard to the mobility of the caravan and portable building, and the overall extent of the other facilitating aspects. However, I am mindful that the perimeter fencing may be acceptable in planning terms and of the permitted development rights which may be available to the appellant under Schedule 2, Part 2, Class A of the GPDO.

74. I will therefore extend the period of compliance to six months so that the planning merits of the same can be properly explored and a planning application submitted, should the appellant wish to do so.

75. I shall vary the enforcement notice accordingly. The appeal on ground (g) succeeds to that extent.

Richard S Jones

INSPECTOR