



Appeal Decision

Site visit made on 3 May 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 June 2023

Appeal Ref: APP/R0660/C/22/3308768

Land on the South side of Beggarman's Lane, Knutsford

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Phil Simons against an enforcement notice issued by Cheshire East Council.
 - The notice, numbered 21/00632E(2), was issued on 20 September 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from agricultural use to a dog exercise facility including associated development consisting of the erection of enclosures and the provision of canine exercise equipment on the Land.
 - The requirements of the notice are to:
 - a) Cease the use of the Land as a dog exercise facility.
 - b) Remove all enclosures, jumps, tyres, tunnels, bins and other paraphernalia from the Land that is unassociated with the agricultural use of the Land.
 - The periods for compliance with the requirements are:
 - a) 2 months after this notice takes effect.
 - b) 2 months after this notice takes effect.
 - 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 by:
 - At section 5 of the notice, delete the words 'is unassociated with the agricultural use of the Land' and insert 'are associated with the use of the Land as a dog exercise facility', so that it says 'Remove all enclosures, jumps, tyres, tunnels, bins and other paraphernalia from the Land that are associated with the use of the Land as a dog exercise facility.'
2. Subject to the correction above, 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 enforcement notice makes reference to policy DC3 of the Macclesfield Borough Local Plan. However, since the notice was issued, the Council has adopted the Site Allocations and Development Policies Document (adopted December 2022)(the DPD). The Council advise that policy HOU12 of the DPD is relevant to the appeal before me. The appellant has been given the opportunity to comment on the implications of the change in policy through this appeal.

4. The appellant asserts that notice does not specify the reasons why it is expedient to issue the Notice or include all policies and proposals in the development plan which are relevant to the decision to issue the enforcement notice. However, while the appellant may not agree with the Council's reasons for taking enforcement action, they are clearly stated within the enforcement notice and policies are cited. As such, I do not consider the notice is defective in this regard.

Ground (b)

5. An appeal under ground (b) is made on the basis that the matters stated in the notice as constituting the breach of planning control, have not occurred. The onus of proof is firmly on the appellant to show that some or all of the alleged matters had not in fact occurred by the time the notice was issued, on the balance of probabilities.
6. The main thrust of the appellant's case under this ground is that the fencing would be permitted by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO) and that the canine exercise equipment are chattels which are outside the definition of development. These appear to be arguments that the matters stated in the notice do not constitute a breach of planning control, which should be considered under ground (c).
7. Although not raised by the appellant under ground (b), they assert that the lawful use of the land is recreational (equestrian) and not agricultural. Since the enforcement notice alleges the change of use of the Land from agricultural use, I consider this matter should be considered under ground (b).
8. While I saw there are structures outside the appeal site which could have been used for horses, the appellant has provided no substantive evidence to show how the appeal site itself has been used. A number of interested parties dispute that the site was previously used for equestrian purposes and I have been provided with photographs which appear to show, amongst other things, stubble from cropping and what appears to be a recently ploughed field. No equestrian paraphernalia is evident in any of the photographs provided and so I consider it likely, on the balance of probabilities, that the lawful use of the appeal site is agriculture.
9. From my inspection of the site and from the evidence before me, it is evident that the breach has occurred. The appeal under ground (b) therefore fails.

Ground (c)

10. An appeal under ground (c) is made on the basis that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. It is for the appellant to make their case on the balance of probabilities. Section 191(2) of the Act sets out that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason).
11. The appellant suggests that the fencing is permitted by The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)('the GPDO'). Part 2, Class A of Schedule 2 permits the erection,

construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

12. However, an enforcement notice concerned with a material change of use, by virtue of section 173(4)(a) of the Act, may require the removal of works which would otherwise be immune, including the removal of those which might not constitute development, or which might have been permitted development if they had not been constructed to facilitate the alleged use. The fencing that has been erected to form the enclosures within the site, facilitates the unauthorised use. In addition, the items placed within the site, such as tyres, jumps and so on, while not necessarily development in their own right, also facilitate the unauthorised use.
13. There is a suggestion by an interested party that the use of the site would be permitted development. However, the appellant does not dispute that a material change of use has occurred or that the material change of use would require planning permission. The use of the site as a dog exercise facility is, in my view, significantly different in character to an agricultural use by virtue of the noise arising from the facility, the frequency of vehicle movements, the use of the site by members of the public and the visual effects of paraphernalia within the site.
14. Thus, for the reasons given above, the appeal under ground (c) must fail.

Ground (a)

15. An appeal under ground (a) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. Although the appellant has previously submitted a planning application in respect of the site, the appeal concerns an enforcement notice which has been issued. My consideration of the appeal scheme is therefore based upon the development which has been carried out.

Main Issues

16. The main issues of the appeal are:

- Whether the appeal scheme is inappropriate development in the green belt having regard to the revised framework and relevant development plan policies;
- The effect of the appeal scheme on the openness of the Green Belt;
- The effect of the appeal scheme on the living conditions of nearby occupants, with particular reference to noise;
- 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 appeal scheme.

Reasons

Whether inappropriate development in the Green Belt

17. The main parties do not dispute that the appeal site lies within the Green Belt. Policy PG3 of the Local Plan Strategy 2010-2030 (adopted 2017)(LPS) seeks to

protect Green Belt from inappropriate development. The National Planning Policy Framework (the 'Framework')(2021) identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances.

18. The construction of new buildings should be regarded as inappropriate in the Green Belt subject to a number of exceptions as set out in paragraph 149, including b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for... 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.
19. Paragraph 150 advises that certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are: e) material changes in the use of land (such as changes of use for outdoor sport or recreation...).
20. The appellant suggests that the use of the land as a dog exercise area would fall to be considered as 'outdoor recreation', a matter which is not disputed by the Council. Although the facility would be used to train dogs, this would typically be done by owners in their spare time for fun and so I would agree that the activities which take place within the appeal site should be considered to be 'outdoor recreation' and that it falls to be considered under paragraph 150e) of the Framework. Since the erection of the enclosures is necessary for the use, I consider it should be considered under paragraph 149b).
21. Paragraphs 140b) and 150 of the Framework, contain a specific test about whether openness is preserved, in determining whether the proposal should be categorised as inappropriate development. The correct approach, as indicated in *Euro Garages Ltd v SSCLG & Anor* [2018] EWHC 1753 (Admin) is to consider the impact or harm, if any, wrought by the change.
22. As confirmed in *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466 the openness of the Green Belt has a spatial aspect as well as a visual aspect. This approach was also endorsed in *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council* (Appellant) [2020] UKSC 3, which also confirmed how to take account of the visual effects is a matter of planning judgement rather than one of legal principle.
23. The appeal site comprises a substantial area which is located to the south of Beggarman's Lane, outside the urban area of Knutsford. Fencing delineates two 'exercise' areas and a 'dog agility' area. Within the exercise areas and dog agility area are tunnels, posts, tyres and wooden cable reels or 'spools' and bins. A substantial area of bark has been placed to the entrance of the facility, along with a number of tyres and wooden posts. Access to the site is gained from an entrance off Beggarman's Lane, with an area for parking provided between the exercise areas and Beggarman's Lane.
24. There are clear views into the site from Beggarman's Lane, with signage, tyres, wooden posts and fencing all clearly visible from the public domain. Fencing and gates are also highly visible and while such features are not unusual in an agricultural field, such features would generally be more limited in extent.

Although vegetation bounds the site, I saw that vehicles parked within the site, including a white trailer, are clearly visible from outside of the site, when travelling along Beggarmans Lane. While cars are likely to only be present at the site during hours of operation, they have the effect of reducing openness.

25. Photographs provided by an interested party show vehicles within the site are particularly visible from outside of the site when vegetation is not in leaf. I note that the noise assessment advised that only 40% of clients arrived by car, with the remaining 60% arriving on foot. However, this is only a snapshot in time. Furthermore, even if this is reflective of how visitors access the site, it is still a significant proportion who access the site by private car. Although agricultural vehicles may have accessed the site, their use is likely to have been far more limited.
26. The appellant has drawn my attention to application 20/0596M which would allow up to 45 dogs to be on-site at any one time. While in the Green Belt, the Council concluded that the proposal would preserve the openness of the Green Belt and not conflict with the purposes of including land within it. The scheme would involve the reuse of an existing building and would involve dogs being brought to the site by staff members rather than their owners. It is therefore not comparable to the appeal scheme before me. The appellant has also drawn my attention to application 21/5277N which is for the change of use of an agricultural field into a dog exercise area. However, the site is not located in the Green Belt and is therefore not comparable to the appeal scheme before me.
27. Appeals APP/M1005/W/21/3281517 and APP/K3415/W/20/3264866 concerned dog walking fields. Whilst I note the conclusions of the Inspectors in the cases cited, it is unlikely that a site used for dog walking would contain the extent of paraphernalia that is present at the appeal site. They are therefore not comparable to the appeal scheme before me.
28. Appeal APP/P1805/W/19/3241000 concerned retrospective permission for a dog training/exercise park. I note the scheme in that case involved a small shed, tyres and 'pools' and that the Inspector concluded the development was not inappropriate development, however, I must assess the appeal scheme on the facts before me. While I note many of the items placed within the appeal site could be moved, such as the tyres and spools, given their substantial size, I consider they are unlikely to be moved regularly and so are likely, in this case, to attain a quality of permanence which diminishes the openness of the Green Belt spatially and visually.
29. Beggarmans Lane marks the start of open countryside, with sprawling open fields and woodland on one side and development generally located on the other. In my view, this part of the Green Belt is particularly vulnerable to encroachment from the built-up area of Knutsford. I consider the cluttered appearance of the appeal site and the spatial impact of fencing, vehicles and other items within the site fails to preserve openness, conflicts with the aim to check the unrestricted sprawl of large built-up areas and assist in safeguarding the countryside from encroachment and has a modest adverse impact on the Green Belt.
30. Consequently, for the reasons given above, I find the appeal scheme is inappropriate development in the Green Belt, contrary to policy PG3 of the LPS and the Framework.

Noise

31. The entrance to the appeal site is located opposite No 47 Beggarman's Lane. Residential properties along Beggarman's Lane are generally located on the northern side of the road, fronting onto the highway. Properties are generally set back from the road, with generous front gardens. The front gardens appear well-maintained, suggesting occupants of the dwellings spend leisure time in their front gardens.
32. Policy HOU12 of the DPD seeks to ensure that development does not cause unacceptable harm to the amenities of nearby occupiers of residential properties due to environmental disturbance, which includes the effects of noise. Although anecdotal, a number of occupants of nearby residential properties along Beggarman's Lane and the adjacent site, Brackenwood, raise concern regarding noise arising from the appeal site, including from the barking of dogs.
33. It is proposed to operate the facility between the hours of 9am (9.30am on a Sunday) and 7pm (5pm on a Sunday) during the Summer months and 9am (9.30am on a Sunday) and 3pm during the Winter months. An online booking system is stated to automatically limit the number of bookings to ensure there are no more than six dogs on the site at any one time, with each customer limited to not more than two dogs. No commercial dog groups are allowed to book or use the site. Customers have a choice to book either 30 minute or 60 minute sessions.
34. The Noise Policy Statement for England (2010)(the NPS) sets out the aim to mitigate and minimise adverse impacts on health and quality of life from environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development. The aim refers to the situation where the impact lies somewhere between LOAEL¹ and SOAEL² and requires that all reasonable steps should be taken to mitigate and minimise adverse effects on health and quality of life while also taking into account the guiding principles of sustainable development. The Framework similarly seeks decisions which avoid giving rise to significant adverse impacts on health and quality of life.
35. In support of the appeal, the appellant has submitted a Noise Assessment (NA), which was undertaken in accordance with the requirements contained within British Standard (BS) 4142:2014 "Methods for rating and assessing industrial and commercial sound".
36. The Council advise it does not consider BS4142:2014+A1:2019 is appropriate for the meaningful measurement of noise from barking dogs. The NA acknowledges the standard is not intended to be applied to the rating and assessment of sound from domestic animals. It is suggested that since the appeal site is a commercial setting the assessment provisions would be applicable. However, whether the site is a commercial site or not does not change the characteristics of the sound generated by an animal visiting the site.

¹ LOAEL – Lowest Observed Adverse Effect Level – This is the level above which adverse effects on health and quality of life can be detected.

² SOAEL Significant Observed Adverse Effect Level – This is the level above which significant effects on health and quality of life occur.

37. Measurements to establish the background noise climate were made between 11:00-15:00 on Monday 14 November and Saturday 19 November 2022. It is not clear why the measurements were obtained over such a limited period, nor is it clear why they did not include times when the area is likely to be quieter, such as Sundays or evenings, particularly since it is proposed to operate the facility until 7pm in summer months.
38. The results, therefore, may not be reflective of quieter times, such as evenings up to 7pm³, or on a Sunday. Given the limited period over which the data was collected, I am concerned that the background level selected may not be appropriate in this case. Furthermore, during my visit I noted the main sources of noise outside of the site appeared to be intermittent aircraft noise and distant road traffic noise, which is consistent with the findings of the noise assessment. Noise levels in the absence of aircraft noise appeared much lower. As a result, in the absence of aircraft noise, other noise is likely to be far more noticeable.
39. I note that the NA found very few instances of dog barking from the appeal facility, however, this is at odds with the anecdotal evidence provided by interested parties. The surveys conducted on 11 and 12 November were manned. It is asserted that the surveyor remained in the background during the surveys and that the fact surveys were being conducted had not been communicated to any of the clients. While the surveyor may have made efforts to remain in the background, their presence is likely to have modified the behaviour of clients using the facility.
40. The tendency of a dog to bark is likely to be highly variable, depending on the breed of the dog, how it is managed by its owner and the presence of external stimuli. The level of noise arising from the site is therefore likely to be hugely variable. During my visit the facility was being used by a single dog, which appeared well behaved and did not bark. My visit was pre-arranged and the users of the facility were clearly aware of my presence. I do not consider, therefore, this is likely to be representative of noise arising from the site.
41. The noise assessment has adopted the contention that the facility is well managed where only occasional barks occur. However, planning permission runs with the land and even if the appellant currently runs the facility so that only occasional barks occur, the way in which it is managed could change in the future. Furthermore, an interested party advises that the appellant's website states that they will be operating BarkRun as a remote site until further notice. In such a circumstance, it is not clear how the appellant would ensure that users adhere to the rules of the site or that the dogs who attend are suitably controlled.
42. The NA found that it was not possible to disaggregate the contributions from the appeal site from the other contributors, primarily the frequent overflight of aircraft, to the local noise climate. As such, the NA included a Noise Source Assessment, which is based the assessment on two dogs barking simultaneously and assumes a separation distance of 76 metres, which is the northern boundary of exercise area 1. However, the assessment does not take account of noise arising from dogs barking outside of the enclosures in areas which are closer to residential properties along Beggarman's Lane, nor does it

³ It is proposed to operate the facility up to 7pm Monday to Saturday during the summer months

take account of noise arising from the barking of dogs owned by individuals who choose to park along Beggarman's Lane.

43. The appellant suggests that booking terms and conditions will make it clear that customers using their cars to get to the site will be required to use the on-site parking facilities. However, it is not clear how this would be enforced. Although it would be possible to secure parking facilities to encourage users of the facility to park within the appeal site, it would not be possible to require that they use the facilities provided by condition and individuals may still choose to park along Beggarman's Lane.
44. Furthermore, while customers are required to use the last 5 minutes of their slot to ensure that the maximum number of dogs on site is not exceeded, it is not clear how this would be controlled, particularly in the absence of a member of staff on site. Given the potential for overlap in dogs arriving and leaving, the number of dogs present at the site at any one time could, in practice be much higher.
45. While it would be possible to restrict the number of dogs on site by condition, even if this is adhered to, off-site effects may still arise as a result of overlap between users of the facility arriving and leaving, particularly where users of the site choose to park along Beggarman's Lane. Although the duration of any barking may be limited as an individual makes their way to the facility and into an enclosure, further away from residential properties, I consider occupants of nearby dwellings are likely to find such noise intrusive.
46. BS4142:2014+A1:2019 suggests that a difference of around +10dB or more is likely to be an indication of a significant adverse impact, depending on the context and a difference of +5dB is likely to be an indication of an adverse impact, depending on the context.
47. The NA calculated dog barking noise level at the nearest house façade to be 50dB(A). While the calculation does not take into account the effects of the soft ground covering between the source and receiver, given the issues raised above, I consider it is likely to underestimate the potential noise levels arising from the material change of use of the land to a dog exercise facility.
48. The NA suggests that this would equal the suggested 50dB_{L_{Aeq,T}} criterion for external amenity areas set out in BS 8233:2014, however, this document relates to guidance on sound insulation and noise reduction for buildings and is not, in my view, appropriate to assess the effects of changes in external noise levels to occupants of an existing building.
49. When applying the BS 4142:2014 methodology, the NA has standardised the specific sound level to the reference time period. While the assessment includes penalties for impulsivity and intermittency, I am not persuaded this approach is helpful in understanding the likelihood of adverse impacts on quality of life for occupants of nearby properties given the characteristics of dog barking, which is intermittent and of varying pitch.
50. I have considered whether it would be possible to address concerns raised above through the use of conditions. However, while it would be possible to limit hours of operation and number of dogs at the site, given the concerns I have raised regarding the assessment carried out, I consider it is unlikely this would address harm to the living conditions of nearby occupants.

51. The appellant has drawn my attention to application reference 20/0596M, located in Little Bollington around 8 miles from the appeal site which concerned the change of use of land and associated barn/field shelter from horse grazing to dog adventure field/dog exercise area. In this case, the dogs would be brought to the site by staff members in groups, which would minimise traffic movements.
52. While the Council approved the scheme, it considered that as the nearest residential property is approximately 120 metres from the application site, there would be significant noise drop off. This is a much greater distance compared with distance between the nearest residential property along Beggarman's Lane and the appeal site and so it is not comparable to the appeal scheme before me.
53. The appellant has also drawn my attention to application 21/5277N, located in Hurleston, however, residential properties are stated to be located approximately 50m from the front boundary. Furthermore, the noise environment in that location is stated to be impacted by the A51. It is therefore not comparable to the appeal scheme before me.
54. The appellant has also drawn my attention to a number of appeal decisions, including APP/M1005/W/21/3281517, which concerned a proposed dog walking field. In this case, the Inspector describes there as being a reasonable gap between the appeal site and nearby residential properties. In relation to APP/P1805/W/19/3241000 the Inspector noted that a noise report identified high background noise resulting from traffic using the A448. However, noise was not identified as a reason for refusal and so it was not discussed in detail in the decision letter.
55. Similarly in relation to APP/K3415/W/20/3264866 noise was not raised as a reason for refusal and so was not discussed in detail in the decision letter. I do not consider the schemes cited to be comparable to the appeal scheme before me. Furthermore, whether a scheme is acceptable with respect to noise is site specific and proposal specific. Even where there are apparent similarities, in the absence of very detailed, site-specific information, I cannot be sure the schemes are comparable.
56. An interested party suggests that a gun club uses some of the land close by and operate on Saturdays and Sundays and generates a lot more noise than the Barkrun facility. However, this of itself is not justification that the appeal scheme should be allowed.
57. Thus, for the reasons given above, given the proximity of the site to the properties along Beggarman's Lane, I am not persuaded that the appeal scheme does not cause a significant adverse effect on the living conditions of nearby occupants, contrary to policy HOU12 of the DPD, the Framework and the NPS, the requirements of which are set out above.

Other considerations

58. The appellant has drawn my attention to policies PG6 and SC3 of the LPS, which both support the provision of outdoor recreation, as well as policy RUR 6 of the DPD. A number of individuals have written in support of the appeal scheme, including those who use the facility. I recognise that the provision of a safe space within which individuals can exercise their dogs is likely to be of

benefit to the health and well-being of its users. However, while it is suggested the facility is unique, from the evidence it appears likely that there are other facilities within a reasonable distance of the site which could offer similar benefits. Even if there is an unmet demand in the local area, I have no substantive evidence to show that it would not be possible to locate such a facility outside of the Green Belt. I therefore afford this matter modest weight.

59. I have been provided with a letter of support on behalf of the owners of the neighbouring wood, who hope that the use of the site will prevent unwanted activity in the area and preserve the woodland. While the use of the appeal site may deter unwanted activity in the adjacent woodland, I consider the appeal scheme is not the only means of preventing unwanted access. I therefore afford this matter very limited weight.
60. The appeal scheme is a commercial venture and would therefore bring some economic benefit to the area. However, the level of employment generated is likely to be very modest and so I afford this matter limited weight.

Green Belt Balance

61. The Framework sets out the general presumption against inappropriate development within the Green Belt. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
62. Paragraph 11 of the Framework states that decisions should apply a presumption in favour of sustainable development, which means approving development proposals that accord with an up-to-date development plan without delay; or where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, granting permission unless the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.
63. I have no evidence to show that the policies of the development plan are out of date. Furthermore, I have found the appeal scheme has a modest adverse impact on the Green Belt and that it causes harm to the living conditions of nearby occupants, with regard to noise. The presumption in favour of sustainable development under paragraph 11d)ii. does not therefore apply.
64. Drawing everything together, I find that the other considerations in this case do not clearly outweigh the harms that I have identified. Consequently, the very special circumstances necessary to justify the developments do not exist and the appeal schemes conflict with the Framework and with policies PG3 of the LPS and HOU12 of the DPD and the development plan taken as a whole.

Ground (f)

65. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

66. Section 173(4) of the Act sets out the purposes of a notice are (a) remedying the breach by making any development comply with the terms... of any planning permission..., by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach.
67. The notice requires the use to cease and all enclosures, jumps, tyres, bins and other paraphernalia from the Land that is unassociated [sic] with the agricultural use of the Land to be removed. It is therefore clear that the purpose of the notice is to remedy the breach.
68. The main thrust of the appellant's case under ground (f) is that it would be excessive to require the removal of the fencing, as it is permitted development and exercise equipment as it is not operational development. I have already considered matters relating to the planning merits of the appeal scheme under ground (a) above.
69. As explained under ground (c) above, where an enforcement notice is issued in respect of a material change of use and works were carried out to facilitate the material change of use, the enforcement notice may require that the ancillary works are removed in order that the site is restored to its previous condition.
70. The fencing used to construct the enclosures does not exceed 2m and, once the enforcement notice is complied with, the appellant could erect fencing up to 2m. However, I see no reason why the appellant would choose to do so, given its position within the site is intended to delineate users of the different parts of the site. The exercise equipment similarly facilitates the use and has been placed within the site for this purpose. Since the fencing and exercise equipment facilitate the unauthorised use, their removal is necessary in order to remedy the breach.
71. I consider the wording of the requirement should be corrected to make it clear the items that should be removed relate to the unauthorised development. Since this would not change the scope of the requirement, I consider such a correction would not cause injustice to either party.
72. Thus, for the reasons given above, the appeal under ground (f) fails.

Ground (g)

73. An appeal under ground (g) is made on the basis that any period specified in the notice...falls short of what should reasonably be allowed. The appellant requests that the time limit for compliance be extended to 12 months to allow them to find, finance and purchase an alternative location and secure the appropriate permission.
74. I see no reason why it would not be possible for the appellant to comply with the requirements within the compliance period given. While I appreciate the appellant's desire to secure an alternative location to enable continuity of the business, given the harms I have identified above, particularly to living conditions of nearby occupants, I consider it would be undesirable to extend the compliance period in this case.
75. Thus, I find the compliance period in this case is reasonable and proportionate and the appeal under ground (g) must fail.

Conclusion

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

M Savage

INSPECTOR