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# Appeal Decision

Hearing held on 20 November 2024

Site visit made on 20 November 2024

**by D Fleming BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 3 December 2024**

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**Appeal Ref: APP/V2255/C/22/3311616**

**The Happy Pants Animal Sanctuary, Land to the east of Hawes Wood,  
Iwade Road, Newington, Kent ME9 7HY**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended)(the 1990 Act). The appeal is made by Ms Amey Frances James against an enforcement notice issued by Swale Borough Council.
- The notice was issued on 20 October 2022.
- 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 of an animal sanctuary and the stationing of caravans for human habitation.
- The requirements of the notice are to:
  1. Cease the use of the site as an animal sanctuary;
  2. Cease the use of the site for the siting of caravans for human habitation;
  3. Permanently remove all animals and livestock from the site;
  4. Permanently remove all caravans and mobile homes along with any associated areas of decking from the site;
  5. Remove all septic tanks from the land;
  6. Demolish all buildings and structures on the land and remove the resultant debris;
  7. Permanently remove all fencing, fence posts, enclosures, cages, gates and walls from the land including those located along the front boundary adjacent to Iwade Road;
  8. Remove all vehicles, trailers, tractors, diggers and horse boxes from the land;
  9. Remove all storage containers and skips from the land;
  10. Remove all rubble and hardcore which has been imported and laid across the land or is currently being stored on the land;
  11. Remove all signage from the land; and
  12. Remove all materials including but not limited to building materials, paving slabs, plastic boxes, pallets, wood, bins, animal shelters, trampolines, wheelbarrows, water troughs, wooden cable drums, portable toilets, kennels, rubbish, tools, benches and detritus brought onto the land in association with the unauthorised mixed use.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) 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.

**Summary Decision: The appeal is dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.**

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## Preliminary Matters

1. The Hearing was held in person with a local resident joining remotely.
2. At the Hearing I discussed how I would carry out the site visit, which was to view the inside of the site and then the wider area. My view of the wider area

was also to involve walking along two public rights of way in the area but, in the end, I only walked along the path that led to the solar farm and not the one that led up to Callum Hill. This was because I saw what I needed to from Iwade Road and from within the site.

### **Background**

3. The appeal site is situated in open countryside outside of any settlement boundary. It comprises an 'L' shaped parcel of land approximately 8ha in area with access from Iwade Road. The site is not level but rises in height from the roadside boundary to the north western boundary. Within the site there are two blocks of remnant orchard. The smaller block borders about half of the road boundary and the larger block occupies the top half of the site. The open land between these blocks in the middle of the site has been fenced and divided into animal pens.
4. The appellant moved onto the site at the start of 2021 initially on a one year lease but this was extended to five years in 2022. She is the chair of the Happy Pants Ranch animal sanctuary charity which provides a forever home for approximately 400-450 animals. These include farm animals such as pigs, sheep and goats as well as ponies and domestic animals such as guinea pigs, dog and cats. There are also a variety of birds including an emu, rheas, ducks, turkeys, geese and chickens.
5. In addition to the various animal housing units, there are also shipping containers used for storage of animal feed and bedding and caravans used as rest areas for the volunteers as well as housing for the animals and storage. The appellant resides on site in a mobile home.

### **The Notice, questions of validity and the ground (b) appeal**

6. The appellant raised concerns about the wording of the allegation and the requirements of the notice. The notice identifies two primary uses within one planning unit which are the use of the land as an animal sanctuary and the use of the land to station caravans for human habitation. There is no mention of the operational development which facilitates the use.
7. It is open to the Council how they frame the notice so long as they follow the requirements set out in section 173 of the 1990 Act. Some Councils issue separate notices for allegations concerning a material change of use and operational development and others include both breaches within the one notice. Where the operational development facilitates the change of use it is not always necessary to specify it in the allegation. This is the route chosen by the Council in this case.
8. There is no disagreement between the parties that the appeal site comprises one planning unit. Clearly there is a primary use comprising the use of the land as an animal sanctuary. Where I differ from the appellant though is that I consider the siting of the mobile home for residential purposes and the use of another caravan on the site for residential accommodation to be a primary use not an incidental use.
9. An incidental use is one which is functionally related to the primary use. By definition, then, an incidental use cannot be one that is integral to or part and parcel of the primary use. The functional relationship should be one that is normally found and not based on the personal choice of the user.

10. For example, the primary use of animal sanctuary also includes the use of the land for the storage of food and bedding. This use is normally found with the keeping of animals, there is a functional relationship and it is therefore regarded as being incidental. The appellant has chosen to live on the site and this is her sole residence. A residential use is not normally found with the keeping of animals and is of a different character. There are fields up and down the country which contain various animals but it does not follow that they also have a residential use.
11. The siting of the mobile home (which falls within the legal definition of a caravan) provides self-contained living accommodation. This is a primary use and therefore the Council were correct to frame the allegation as a material change of use to a mixed use comprising two primary uses within one planning unit.
12. The mobile home occupied by the appellant is in the middle of the site. There are various other caravans placed around the site which are used for storage or to house the cats for example. However, the appellant disputes that any are currently used for habitation.
13. In appealing on ground (b) the burden of proof is firmly on the appellant to show that the matters alleged have not occurred as a matter of fact. As she stated a second caravan (a touring caravan) was occupied for residential purposes for a few months following a break down in a personal relationship, this demonstrates that the matter alleged has occurred as a matter of fact. This was also seen by the Council at their September 2022 site visit. The Council were therefore correct to refer to "caravans" in the plural in the allegation and the appeal on ground (b) fails.
14. Turning now to the requirements of the notice, the appellant challenges the validity of the notice on the basis that there is a lack of clarity. This is primarily because the notice is not accompanied by either a plan showing all the caravans and buildings etc that the Council require to be removed or a survey conducted by the Council of what existed before the notice was served.
15. In the first instance, where the allegation relates to a material change of use to a mixed use then it follows that the first requirement should be to cease the mixed use. The Council have spelt this out as two separate actions but that is incorrect. However, there would be no injustice to either party if I were to vary the requirements to follow the correct approach.
16. The remaining requirements refer to a long list of items to be removed from the site in order to remedy the breach of planning control. The Planning Practice Guidance states that notices are not improved by over-elaborate wording and s173(4) of the 1990 Act sets out that the breach may be remedied by "restoring the land to its condition before the breach took place".
17. Setting out a shopping list of requirements in order to safeguard the Council's position at any future prosecution overlooks what has been held in *Miller-Mead*<sup>1</sup>. Similarly, requiring the Council to produce a survey of what they found is also unreasonable when it has been held that the appellant is in the best position to know what she has done before the issue of the notice. The Council followed best practice and issued a Planning Contravention Notice in August

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<sup>1</sup> Miller-Mead v MHLG [1963] 2 WLR 225

2022 in which they asked about buildings and structures on the site not included in the planning application.

18. It seems to me that the requirements can simply be varied to require the restoration of the land to its condition before the breach took place. Neither party would be prejudiced by this variation as it would cover the removal of various items such as the waste brought onto the site (investigated by the Environment Agency), the animal housing, the shipping containers, the cesspits, the Portaloos and the caravans. It was open to the appellant to submit an appeal on ground (f) if she had any evidence that any of the operational development or structures were in place before the change of use took place but she did not.

### **The ground (c) appeal**

19. An appeal on ground (c) is that there has not been a breach of planning control in relation to the fencing, enclosures and gates at the site. The appellant accepts that they are development within the meaning of section 55 of the 1990 Act but considers that they benefit from the permitted development allowed for in the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO).
20. At the Hearing the appellant conceded her interpretation of the GPDO was incorrect. Article 3(5)<sup>2</sup> of the GPDO applies, express planning permission is required, which has not been applied for and therefore there has been a breach of planning control. As such, the appeal on ground (c) fails.

### **The ground (a) appeal and the deemed application**

#### Main Issues

21. The main issues are (i) whether the site is an appropriate location for the use, having regard to local planning policy; the effect of the development on (ii) the rural character and appearance of the area; and (iii) the living conditions of neighbouring occupiers, having regard to noise and disturbance.

#### Reasons

##### *Location of the use*

22. The Council's local plan (LP) is the Bearing Fruits 2031 The Swale Borough Local Plan, Adopted July 2017. Policy ST 3 The Swale Settlement Strategy sets out the Council's approach to development in the borough. It steers development towards major settlements and development in the countryside will only be permitted where it can be demonstrated, amongst other matters, that it would contribute to protecting the intrinsic value, landscape setting, tranquillity and beauty of the area.
23. Policy DM 3 The Rural Economy is directed at economic growth in rural areas and supports land-based businesses. In the first instance, it requires previously developed land to be considered or if not available that it is demonstrated that a particular location is necessary. In addition, for all

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<sup>2</sup> The permission granted by Schedule 2 does not apply if – (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building or unlawful; (b) in the case of permission granted in connection with an existing use, that use is unlawful.

- proposals, they should not result in significant harm to, amongst other matters, biodiversity, landscape or the rural character of the area.
24. There is no doubt that due to some of the animals kept by the appellant (Sheep, pigs, goats for example), the animal sanctuary use is a land-based enterprise. None of the animals are bred and some are re-homed such as the cattle that were there in 2021. However, the appellant has provided no particular justification for the location of the sanctuary (it is not an agricultural use and one is thus required) other than it was the only site offered to her when she had to vacate her previous site at short notice. She stated that the appeal site had been unused for about 15 years and that prior to that the owners had kept pigs there. It had therefore been unmanaged for several years when she took it on.
  25. The appellant states she carried out various preparations in order to make the site suitable for the animal sanctuary use. These included importing inert waste for the access track and hard standing areas, installing shipping containers, the digging of a pond for some of the animals and the erection of fences to secure the site and subdivide the open area into pens. Electricity is provided by a generator and sewerage is dealt with by cesspit/septic tank but there appears to be a connection to mains water. Thereafter she provided housing of various descriptions for the assorted animals as well as facilities for her numerous volunteers.
  26. It was submitted that some flexibility is justified in finding that the use is acceptable as it is similar to a smallholding and can only be in the countryside. However, while it is accepted that the use is land based, comparisons with smallholdings are not convincing due to the number and variety of animals kept at the sanctuary.
  27. It seems to me that the suitability of the site was just that it was available and larger than her previous site, which was 2.4ha. Other than an existing pig shelter in the orchard in the top half of the site, there was nothing else that made it predisposed for an animal sanctuary use, such as former livestock buildings. To that end there is conflict with Policy DM 3 1.b. This requires where sites are not available that it is demonstrated that a particular location is necessary to support the needs of rural communities or the active and sustainable management of the countryside. The appellant has failed to show how the animal sanctuary use complies with these requirements.
  28. Similarly, it appears to have been the appellant's intention from the outset to live on the site. The mobile home was brought onto the site when the site was being prepared and although the appellant stated in early emails to the Council it was to be used by volunteers during the day, following a theft from the site, she began living there.
  29. The residential use conflicts with Policy ST 3 which, although adopted in 2017, remains consistent with the National Planning Policy Framework (the NPPF). This states that decisions should avoid the development of isolated homes in the countryside unless there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.
  30. The Council's rural consultant was invited to comment on the application submitted by the appellant after she began using the site. They agreed that the continued operation of the animal sanctuary use required an on-site

presence for the proper care of the relatively large number and variety of animals involved, including out of normal working hours. He stated that the use applied for was for a temporary period and the appellant was willing to accept the imposition of a condition similar to an agricultural workers' condition.

31. I note the consultant's comments were based on the fact that permission was sought for a temporary period and that it was unlikely the charity would meet the usual financial tests that are applied to proposals for permanent rural workers' dwellings. The appellant confirmed at the Hearing that the deemed application before me was for a permanent planning permission. At the site visit I saw there is some security on the site but there appears to be a need for an on-site presence, in the interests of animal welfare. This was accepted by the Council at the Hearing provided there was an appropriate condition to control the use.
32. I have not reached an overall conclusion at this stage on Policies ST 3 and DM 3 as they have requirements that fall to be considered under other issues, which I will now move on to.

*Character and appearance, visual*

33. The appeal site lies within a locally designated Area of High Landscape Value known as the Swale Level, which is land between the villages of Newington, Lower Halstead and Iwade. This is set out in Policy DM 24 Conserving and enhancing valued landscapes. Land near the appeal site is mainly in arable use with large fields and there are expansive views over this area from Callum Hill and the top half of the appeal site. Within this area there are also blocks of remnant orchards as well as the ancient woodland (Hawes Wood) abutting the south west boundary of the appeal site and in the distance the more recent developments of solar farms.
34. Some fields have hedges or lines of trees that mark their boundaries which means that only short distance views are possible and some sites are partially enclosed. That is the case with the appeal site which is screened by woodland on three sides. Where the site was open to view from Iwade Road, this has now been blocked by new fencing and gates set back from the road. Only when the double gates are open is it possible to see part of the site. It is possible from Iwade Road to glimpse the pen adjoining Blackberry Farm to the north but this is only in passing and because it is on rising land. Otherwise, the activities within the site, the caravans and the animal shelters result in limited visual harm on the surrounding character and appearance of the area. Nevertheless, there is harm and as such the development does not accord with Policy DM 24 which requires the value, character, amenity and tranquillity of the Borough's landscapes to be protected.
35. I have noted the Council's concerns over the appearance of the Iwade Road fencing but I found it was not out of place as there are examples of similar fencing in the area, for example, High Oak Hill Farm. This fencing is built on the edge of the road whereas at Happy Pants Ranch it is set back behind an overgrown verge. The front garden to Blackberry Farm has a simple post and rail fence but that is not always the case for residential properties in the area where I saw a variety of boundary treatments erected for privacy and security.

*Character and appearance, loss of habitat*

36. The change to the character and appearance of the area is not restricted to visual changes. The development has affected the habitats that previously existed on the site and threatens to harm the adjacent ancient woodland, which is also designated as a Locally Designated Site of Biodiversity Value and Local Wildlife Site in the LP. Aerial photographs and Google Street View images show that prior to the new use, the open part of the site appeared to have become scrub, an important transitional area where grassland changes to woodland. The supporting text to Policy DM 29 Woodlands, trees and hedges also highlights that traditional orchards are rich in biodiversity. Behind the field gate there also appeared to be just a grass track adjacent to part of Hawes Wood.
37. As the appellant began the use before the outcome of her planning application, she only submitted an Ecological Appraisal after the notice was issued. Field survey data was therefore gained after significant changes had already been made to the site. Nevertheless, the ecologist was able to derive sufficient information from his visits and other sources to ascertain what had existed beforehand.
38. One of the most significant changes on site was the construction of a permanent internal road approximately 200m in length adjacent to the Hawes Wood boundary. This was made using unknown numbers of lorry loads of "mixed construction and demolition waste", as described by the Environment Agency. Their photographs show this waste contained large volumes of plastic packaging, plastic bottles, wires, electrical equipment and metal mixed amongst the concrete and bricks. It appears the construction of the road made no provision for surface water drainage.
39. The road has been constructed adjacent to the ancient woodland boundary without observing the recommended<sup>3</sup> 15m wide buffer zone from the boundary of the wood to avoid for example root damage. The road also includes a parallel hard surfaced area which is used for vehicle parking and at the time the notice was issued for the placing of sheds and shipping containers.
40. Buffer zones should consist of semi-natural habitats such as a mix of scrub and grassland which enable wildlife to flourish and are created to protect the trees from negative effects. This could be surface water runoff from the road and hard surfaced area. Whilst the appellant has now repositioned the sheds and shipping containers away from the ancient wood, and maintains a buffer zone at the top of the site, the significant harm caused by the construction of the road and hard surfaced area remains.
41. The Ecological Appraisal included evidence from old maps to show that the boundary between the sites may have comprised a hedge as these were often used to prevent cattle straying into the valuable woodland. As a temporary measure the appellant has nailed a means of enclosure to the trees on the boundary but the Council's Tree Officer states this may have damaged them by creating wounds that can be channels for infection.
42. Whilst the appellant has offered to replant a hedge, which would go some way to replacing some habitat, this ignores Government advice for a buffer zone

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<sup>3</sup> Government Guidance: Ancient woodland, ancient trees and veteran trees: advice for making planning decisions, from Natural England, published 14 January 2022

- and overlooks the harm caused by the construction of the road and hard surfaced area. In addition, with some of the rescue poultry on site being free range and the rescue cats roaming at will, it is not known how such a hedge could be protected until it is established. In addition to the hedge, it was also suggested that cars could, as an intermittent use, continue to be parked adjacent to the wood. However, access is only allowed to a buffer zone if the habitat is not harmed by trampling. This therefore would neither respect the habitat nor the buffer zone.
43. The former scrub area in the middle of the site was cleared and is now used to house former farm animals. The appellant's ecologist describes how some of this area has now suffered serious poaching, which is where the animals have cut up the turf with their hooves. I saw significant ground disturbance across most of the site due to the number and type of animals that are kept. It was also stated that the pen used to keep the ponies in is unsuitable for their use in the winter. The ponies have now been moved off site to alternative pasture. There is no grassland left for the animals to graze and they are fed using imported food.
44. The Ecology Appraisal recommends replanting the grassland and light grazing by sheep thereafter. However, it is not clear how this could be achieved without removing some of the animals from the site to allow the land to rest and recover and then be managed more sensitively.
45. Some of the pigs make use of part of the remnant orchard at the top of the site. As pigs root and do not graze it is not clear how tree roots are being protected or again how the ecologist's recommendations for the restoration of the remnant orchard habitat could be achieved. In addition, some of the pigs make use of the former grassland/scrub area making it difficult to restore and manage that area.
46. There are ponds within the site and ponds within Hawes Wood, which are shown on historic maps and therefore it is likely that they are rich in wildlife due to their age. The appellant has also made a new pond. Previous wildlife surveys have found great crested newts in the area but these surveys are more than three years old so the evidence base is not up to date. Nevertheless, old ponds can still be a haven for a variety of wildlife and even though the appellant has made a pond for the rescue terrapins, there is nothing to stop the rescue poultry from disturbing the wildlife in the other ponds.
47. I therefore find that the use has resulted in significant harm to the existing site habitats and, furthermore, that the development could lead to the deterioration of ancient woodland. There is therefore conflict with Policies DM 28 Biodiversity and geological conservation and DM 29, which require amongst other matters the conservation of biodiversity. Notwithstanding the appellant's recommendations from her ecologist, via a suitably worded condition, to retain, enhance and manage the site habitats, I find for the reasons given that these would be insufficient to mitigate the harm I have found.

*Character and appearance, traffic/rural lanes*

48. The sanctuary use as a charity relies on volunteers to look after the animals and the appellant states there are around 6 people on site every day. Given the location of the site it appears the volunteers arrive by car. It is possible that some may car share and some may cycle but the site is over 1km from

Newington and therefore it is unlikely that anyone would arrive by train or bus and walk along Iwade Road given the distance and the absence of a footpath. The appellant orders and receives food for the larger animals once a month and bedding is brought twice a month in a pickup truck and trailer. Small animal food is brought by the appellant in her own car. Chicken manure is collected by the Council. Horse, sheep and goat droppings are placed in a bucket and are taken by passers-by who bring a bag to collect it. Pig manure is left on the ground in the top remnant orchard.

49. Iwade Road is defined in the LP as a protected rural lane that is part of the character of the Swale landscape. It is unclassified and single track with the occasional passing bay. Policy DM 26 Rural lanes states that planning permission will not be granted for development that would significantly harm the character of rural lanes as a result of traffic levels. When the Highway Authority commented on the planning application seeking a temporary use, they recommended that the use be limited to two years so that the effect of the appellant's plans for open days could be monitored and assessed.
50. As permission was refused, monitoring and assessment has not occurred although the appellant held 23 open days in 2023 and 13 in 2024. It is not known whether they raised any issues but each open day was limited to 10 cars. The increased number of vehicles using the lane may have resulted in a change to the character of the lane but this is unlikely given the limited number of vehicles and the dates of the open days largely restricted to the school summer holidays. As such, any change would have been temporary and I find that it has not been demonstrated that this significantly harmed the character of the lane so as to conflict with Policy DM 26. In addition, the limited traffic associated with the running of the site has not resulted in significant harm to the character of the lane.

#### *Living conditions*

51. There are several dwellings along Iwade Road in the vicinity of the appeal site but the nearest is Blackberry Farm, a detached dwelling with land to the rear situated immediately to the north of the remnant orchard bordering Iwade Road. To the south of Hawes Wood there is also Woodland Farm comprising poultry buildings and a detached dwelling occupied by the farmer. On the other side of Iwade Road there is a cluster of dwellings around High Oak Hill Farm house.
52. The Sanctuary looks after a significant number of animals and the Council received noise nuisance complaints from local residents from when the use started. These complaints were investigated and several noise readings were taken in June and July 2021. Statutory nuisance was found and this resulted in the issue of two noise abatement notices by the Council in July 2021. One noise abatement notice was issued in respect of the electricity generator and the other was in respect of the "Cumulative constant daily noise from animals including cockerels, geese, sheep, cattle and dogs kept on the premises."
53. Whilst the generator is now switched off at 6pm every evening, the complaints continued in respect of the noise from the animals and so in 2024 noise was recorded using monitoring equipment. This found after analysis that noise from the animals is constant and is not dependent on just one type of animal such as the cockerels but, for example pig squealing was also referenced. The

- Council have therefore commenced prosecution proceedings for non-compliance with the abatement notice.
54. The appellant has tried to abate the noise by moving the cockerels to the western corner of the site but as most of them are free range, this has not satisfactorily abated the noise. The cows have now been re-homed but the site still contains a significant number of pigs (over 30) as well as birds. The response to the Planning Contravention Notice in September 2022 stated that there were 26 geese, 28 ducks, 115 chickens (of which 40 were cockerels), 9 turkeys, 4 peacocks, 2 emus and 1 rhea. These numbers may have changed since then, for example I saw that there are now around 6 rheas and only 1 emu.
55. It was submitted that prior to the use commencing on the site surrounding neighbours would have enjoyed background noise levels commensurate with a disused rural site. However, a third party stated that Hawes Wood is used for pheasant shoots so there would be short term noise events during the shooting season. On occasion there would also be noise from managing agricultural arable land which borders Iwade Road. It seems to me that the use of the appeal site gives rise to noise complaints not because the previous scene was tranquil and neighbours had become used to that but because the new use results in more or less constant noise disturbance to such a level that it is unacceptable.
56. The living conditions of nearby neighbours have also been disturbed by stray animals escaping into their properties or along the highway. The appellant was warned about this in October 2022 when the Council issued a Community Protection Warning letter. However, the problem persisted and so a Community Protection Notice (CPN) was issued in April 2023 which listed that there was evidence of stray animals regularly between October 2022 until the end of March 2023. The reason for issuing the CPN was to prevent the detrimental effect of stray animals on the quality of life of those in the neighbourhood.
57. Despite the CPN, stray animals continued to cause a disturbance and the appellant was served with two Fixed Penalty Notices on 20 April and 18 May 2023. At the Hearing a third party stated that their garden fences have been broken down and that they have suffered incursions from all sorts of animals. I find that the repeated occurrence of stray animals is unacceptable and is indicative of potentially either/or poor management/inadequate fencing.
58. For these reasons I find there is significant harm caused to the living conditions of neighbouring occupiers, having regard to noise and disturbance. As such, the use does not accord with Policy DM 14 General development criteria which requires no significant harm to be caused to amenity and other sensitive uses or areas. The appellant has suggested a condition could be imposed requiring the animals causing the noise to be removed from the site or, relocated within the site or, reduced in numbers so as to overcome noise concerns. It seems to me though that she has already tried some of these options to no avail, such a condition would therefore be ineffective and would not make the development acceptable.

### Interim conclusion

59. Whilst I have found no significant harm to the character of the rural lane, I have found limited visual harm to the character and appearance of the area and significant harm to the existing site habitats and the living conditions of neighbouring occupiers. Overall therefore, the development conflicts with Policies ST 3 and DM 3 as it has not been demonstrated that the use contributes to protecting the intrinsic value, landscape setting or tranquillity of the area. In addition, it has not been demonstrated that the various suggested conditions would make the development acceptable.

### Intentional unauthorised development

60. It is now well-established Government planning policy that intentional unauthorised development is a material consideration that should be weighed in the determination of planning applications and appeals. The Written Ministerial Statement announcing this policy stated that it applied to all new planning applications and appeals received since 31 August 2015. The change of use of the land was clearly done in the knowledge that planning permission was required. However, there was no attempt to hide the fact and a planning application was submitted for the development. Nevertheless, it was intentional unauthorised development to which I attach some weight against the grant of planning permission.

### Other Matters

61. Local residents have expressed concerns on two other matters. However, biosecurity is outside the legal framework of my decision and is the responsibility of other agencies and a loss of privacy caused by trespass is a private matter.

### Overall conclusion

62. For all these reasons the appeal on ground (a) fails.

### **The ground (g) appeal**

63. This ground of appeal is that the six month period given to comply with the requirements of the notice is too short. The appellant requests that this be increased to 12 months to allow time to fund raise to pay the costs of moving a significant number of animals elsewhere or to re-home them. Without such time, there is the possibility that the charity would close.

64. I accept that a longer period would be helpful to secure the future of the animals and also for the personal requirements of the appellant but, on the face of it, I consider six months is a reasonable period to comply with the actual requirements of the notice. That is, after all, the purpose of the time allowed in the notice, not necessarily to provide time to fund raise.

65. The notice however also results in the engagement of Article 8 rights and Article 1 rights (1st Protocol) in that there will be interference with the occupiers' home and home life. Those rights are qualified though and it is for the decision maker to ensure interference is proportionate. In this case the reasons for the issue of the notice relate to the harm to the living conditions of local residents and the character and appearance of the area. These are, in my view, strong planning reasons for issuing the notice.

66. Whilst in theory the use could cease within six months, there is at present no alternative site available to the appellant. The appellant runs a small charity and it was stated that there are no funds available to buy another site or even to pay the costs of removing the animals and the various structures off site.
67. Notwithstanding this, I consider that a period of a year would be tantamount to a grant of temporary planning permission. In my view an increase to nine months would strike an appropriate balance between the needs of the appellant and the reasons for issuing the notice. To this limited extent the appeal on ground (g) succeeds.

### **Conclusion**

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

### **Formal Decision**

69. It is directed that the enforcement notice is varied by:
- (i) The deletion of the steps required to be taken in paragraph 5 of the notice and their replacement with:
    - Cease the mixed use of the site;
    - Restore the land to its condition before the breach took place; and
  - (ii) Delete the period of "six (6) months" in paragraph 6 of the notice and replace with "nine (9) months".

Subject to these variations, 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.

*D Fleming*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Anthony Keen	Agent
Neil Coombes	Ecological consultant
Amey James	Appellant
Stuart Newson	Volunteer at Happy Pants

### FOR THE LOCAL PLANNING AUTHORITY:

Izindi Visage	Solicitor, Ivy Legal
Neil Whittaker	Planner, Ivy Legal
Helen Forster	Ecologist, Kent County Council

### INTERESTED PARTIES:

Julia Bell	Volunteer at Happy Pants
Harry Nash	Local resident
Journalist	Kent Online Media Group

### DOCUMENT

Annotated Google Earth image to show buildings on site, October 2024, submitted by appellant