



Appeal Decision

Site visit made on 17 November 2025

by Grahame J Kean BA (Hons) Solicitor, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 March 2026

Appeal Ref: APP/Q3115/C/23/3331409

Land on the East Side of Reading Road, Cholsey, Wallingford, Oxfordshire, OX10 9HG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Ms Emma Smith against an enforcement notice issued by South Oxfordshire District Council.
 - The notice was issued on 30 August 2023.
 - The breach of planning control as alleged in the notice is: the material change of use of the Land from agricultural land to a mixed use Sui generis use of leisure, outdoor education and outdoor therapeutic uses including facilitating development comprising the erection of wooden cabin with raised platform, wooden camping toilet cubicle, wooden sheds, wood stores and tree platform which are identified on the plan at Appendix 2 ("the Layout Plan").
 - The requirements of the notice are:
 - (i) Stop using the Land for leisure, outdoor education and outdoor therapeutic and all non-agricultural purposes.
 - (ii) Demolish and remove from the Land the wooden cabin with raised platform (coloured blue and numbered 1 on the Layout Plan at Appendix 2); the wooden camping toilet cubicle (coloured orange and numbered 3 on the Layout Plan at Appendix 2); the wooden sheds and wood stores (coloured yellow and numbered 4 on the Layout Plan at Appendix 2); and the tree platform (coloured green and numbered 2 on the Layout Plan at Appendix 2) all referred to in 3 above together with all related foundations.
 - (iii) Remove and clear from the Land all items, including but not limited to, seating, tables, furniture, logs, wood stacks, wheel barrows, trolleys, play equipment, pommel horses, goal posts, tyres, swings, ropes, wooden pallets, ladders, fire pits and grates, tarpaulins, building material sacks, canoes, bicycles, trampolines, oil drums, water butts, containers, buckets, screw-in tree mounted steps, corrugated sheeting, crates, bins, paving slabs, lawn mowers, hosepipes, solar panels, black decorative fencing, firewood stockpiles, waste, building equipment and machinery, which are unrelated to the lawful agricultural use of the Land
 - (iv) Remove from the Land any waste resulting from (i), (ii), and (iii) above
 - (v) Reinstate all areas of the Land disturbed as a result of steps (i), (ii), (iii) and (iv) above by grading and levelling the soil to levels commensurate with immediately adjoining undisturbed lands and by the sowing of a native 100% wildflower woodland seed mix with no grasses.
 - The period for compliance with the requirements is: six (6) months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f), (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is varied as follows:
 - In the allegation replace the words "to a mixed use Sui generis use of leisure, outdoor education and outdoor therapeutic uses" with "a sui generis mixed use for woodland and leisure purposes".
2. Subject to the correction, the appeal is allowed and the enforcement notice is quashed.

Procedural matters and validity of notice

3. The notice does not expressly allege unauthorised operational development. It alleges only “facilitating development”. The appellant asserts that the use alleged has not occurred and therefore the whole notice should be quashed.
4. In my view the Council, by using the phrase “facilitating development” clearly intends to apply the principle in *Murfitt*¹ such that a notice alleging a material change of use may require removal of associated works that are part and parcel of or facilitate the change of use. In this context it is unnecessary expressly to allege operational development. Whether the use has occurred is a ground (b) matter.

Reference in notice to cabin building with raised platform (cabin or the Lodge)

5. Curiously, the Council seeks to remove everything from the land that was allowed to remain previously, the use of which it did not consider to have engendered a material change of use. I have concerns about whether the notice validly alleges a material change of use rather than, having regard to the *Caldwell* case², making the operational development of the cabin building its main target. However, it would not be necessary to quash the notice on grounds of validity.
6. The notice was precipitated mainly by the erection of a cabin building on site. The Council summarised its position as follows:

“As evidenced in the appellants response to the PCN, work commenced on the wooden cabin building as a “lockdown project” towards the end of 2020 and it was substantially completed in April 2021. The toilet cubicle was substantially completed on June 23rd 2021. Whilst it is difficult to pinpoint an exact date as to when the material change of use occurred, it is considered to be around 2020/2021 (and certainly within the last 10 years of the issuing of the enforcement notice) when a significant change in the character and nature of the use of the Land occurred. Around this time works commenced on the provision of the log cabin and toilet cubicle. The provision of permanent building and structures on the site facilitated the material change of use of the Land which was previously open agricultural land with no shelter of [sic] toilet facilities.”

7. Reference to the toilet as “substantially completed” is misplaced as I saw it had no foundations and was a simple structure with rustic appearance, easily moveable.
8. Until 2020/2021 the Council accepted that after various temporary events on the land, use would revert to its former condition as agricultural land with temporary structures removed and the temporary use having ceased. However, as described below large moveable structures remained in place over many years. The erection of the cabin was the catalyst for the Council in assessing the leisure use as a material change in the use of the site. The *Murfitt* principle cannot be used to require removal of operational development “fundamental to” or “causative of” the change of use. If operational development, for example a building is a separate development in its own right it may fall outside its scope.
9. The cabin was a substantial permanent structure in its own right and given the way the Council described its view of when the material change took place, it is difficult to understand how its erection would have been other than so fundamental to the

¹ *Murfitt v Secretary of State for the Environment* (1980) 40 P. & C.R. 254

² *Caldwell* *SSLHC v Caldwell and anor Caldwell* [2024] EWCA Civ 467

material change to leisure use that requiring its removal is beyond the statutory power stated in Murfitt.

10. In reality the Council viewed the construction of the cabin as more than simply ancillary to the material change, but causative of the change in the character of the land which it had hitherto, and for whatever reason, refrained from treating as a material change (despite some inconsistent treatment of the effect of an Article 4 direction). And of course it was indisputably operational development. Therefore, judged at the time of issue of the notice, the requirement to remove it arguably could not be treated merely as a work associated with the change of use.
11. The notice deals in terms with an alleged change of use and “facilitating development”, ie not operational development as a separate matter. As the notice is to be quashed it is unnecessary formally to consider removing the cabin from the category of “facilitating development”. In any case the appellant, faced with what she saw as the draconian approach to removing everything from the land, offered to and did remove the cabin after service of the notice.

Mode of determination

12. The Council requested that an inquiry be held and stated 2 days were necessary, however it also replied “0” to the question how many witnesses it intended to call. The appellant was content with the written representations (WR) procedure. The Secretary of State applied the relevant criteria and considering all representations received, started the appeal by the WR mode. I have kept this under review and see no good reason to adopt a different procedure.
13. The Council, in its statement said that under this procedure, “*any factual evidence and persons claiming first hand evidence will carry limited weight as it cannot be tested or given under oath.*” In fact, the written evidence of the appellant included several duly completed statutory declarations as well as written statements. By definition, statutory declarations are given on oath, so although it is correct that the WR procedure lacks an opportunity to challenge that testimony (other than by means of the written replies (“final comments”) that may be made to both parties’ appeal statements, the several declarations do carry weight as sworn testimony.
14. Furthermore, written statements carry weight according to matters that go to what can be termed their evidential weight or probative value. By not intending to call witnesses in an inquiry, it would seem that the Council was looking to “put the appellant to proof” as to its case rather than put forward witnesses of their own. It would be permissible for the Council to have put various matters to an appellant’s witness at inquiry, but had it wished itself to establish facts favourable to its case beyond what the documentation demonstrated or what might have been elicited through cross-examination, it would have needed to call its own evidence.
15. The Council did not directly challenge the statements rather than make submissions on the status of the use of the land. However, it did submit its own evidence which has been considered such as photographs, notes of site visits, telephone conversations and so forth, appended to its statement. Ultimately, the assessment of whether the Council was correct in its view that up until the period 2020/21, the landowners, their friends and family enjoyed the recreational benefits of the appeal site on an intermittent basis and not sufficiently substantive to cause a material change in use of the land, is a matter of planning judgement on the balance of probability.

Ground (b)

16. An appeal on ground (b) is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. Whether, as the appellant argues, a change of use took place that required planning permission will be considered as part of the ground (c) appeal.
17. The appeal site is 0.44 ha. in a woodland area with an access just off the Reading Road (A329). It is one of a few privately owned strips of land, previously in the ownership of a farm. The Council was notified of an alleged breach of planning control in February 2021 when construction works were seen on site. Subsequently, a wooden cabin was built and a wooden toilet cubicle put in situ.
18. I note in passing that in a case³ in 1988 it was observed that *"the subdivision of tracts of farmland into small plots and their subsequent use for various leisure pursuits and recreational activities was a fairly recent phenomenon and that 'leisure plot' was the term by which they had become known and well enough to describe their use."*
19. The current condition of the land resembles such a plot. There are various items of equipment scattered around the site, some of which clearly have a leisure use whilst others have a genuine affinity with the management of trees or woodland. There is also a small tourer caravan (not targeted in the notice). The site itself is much longer than it is wide. The leisure and active woodland uses are mostly at the far end of the site, some distance from the grassed clearing closer to the road, but it is all one plot. The use of the site as a whole at the date of issue, I find to be not simply a leisure use but a sui generis mixed use for woodland and leisure use.
20. It is disputed that there is a therapeutic use as such on the site. The appellant states that when she responded to the planning contravention notice (PCN) the Council misunderstood her intentions; she wished to use the site going forward for community group meetings, alternative education therapy and the like but it had not been so used. I see no reason to doubt this explanation. As described below, she attempted to introduce a community project for formal therapy activities but was unsuccessful on that occasion. In my view, the therapeutic and beneficial effects of using the land to date, are more appropriately seen as a by-product of the use of the land for leisure or recreation purposes, or woodland management.
21. The appeal on ground (b) succeeds to this extent and the allegation of the breach of planning control will be amended accordingly.

Ground (c)

22. An appeal on ground (c) is that the matters alleged in the notice to have occurred, if they have occurred, do not constitute a breach of planning control. The burden of proof rests with the appellant, on the balance of probability.

Legal framework

23. Section 55 of the 1990 Act states that development means among other things the making of any material change in the use of any buildings or other land. By s55(2) certain operations or uses of land shall not be taken to involve development of the land, including *"the use of any land for the purposes of agriculture or forestry"*

³ Pittman et al v. Secretary of State for the Environment and Canterbury City Council [1988] J.P.L 391 at p 393

(including afforestation) and the use for any of those purposes of any building occupied together with land so used”.

24. A material change of use in the land is linked to the significance of the change and the impact on the character and use of the land. Whether it has occurred is a matter of fact and degree and a planning judgement considering whether the new use is more than casual, intermittent and insignificant, the test being whether enforcement action was possible against the use. A short suspension in activity or non-material fluctuations in the use will not usually stop the clock although a use might never amount to development in the first place during all relevant periods.
25. Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) relates to temporary buildings and uses. Under Class B the temporary use of land is allowed for any purpose (subject to certain limitations and conditions) for not more than 28 days in any calendar year. Class B also refers to “...the provision on the land of any moveable structure for the purposes of the permitted use.” Due to the Covid pandemic, the Government extended this period to 56 days until the end of 2021.
26. There is no express saving in the requirements of the enforcement notice but it is established⁴ that a notice cannot take away lawful use rights. By s181(2) a notice can only require a use to be discontinued permanently if a breach of planning control. Implementation of a temporary use rights pursuant to the GPDO would not be such a breach and s180(1) would apply so that the notice ceases to have effect so far as inconsistent with exercise of the temporary use rights.
27. Whether permitted development rights obtain depends on whether the works are within the relevant description for that Class of development in the GPDO and not specifically excluded, whether the permission deemed to be granted is subject to conditions, and whether the rights are removed for the particular property, for example by operation of an article 4 direction which removes permitted development rights, ie they require permission to be applied for in respect of development otherwise be deemed to be granted as permitted development.
28. Although the 28-day temporary use rights in Part 4 Class B appear to be removed, certain other use rights may be relevant to the use of the land for leisure and/or woodland management purposes. For example, from 26 July 2023, a new Class BC, within Schedule 2, Part 4 was added⁵ for development consisting of (a) the use of any land as a recreational campsite for not more than 60 days in total in any calendar year; and (b) the provision on such land of (i) not more than 50 pitches; and (ii) any moveable structure reasonably necessary for the purposes of the permitted use. Tents, campervans, and motorhomes are permitted; towed caravans are excluded. There are also conditions including that one must notify the local planning authority in writing each year before starting, providing a site plan and intended dates, and provide on-site toilet and waste disposal facilities.

Article 4 Directions understood to be current with regard to the site

29. The appeal site is part of a larger area of land subject to three separate Article 4 Directions. The first direction is made on 25 June 1971 (“71 R1”). The necessary approval of the Secretary of State was lacking, however it is a matter of public

⁴ See eg, *Cord v SSE* [1981] JPL 40. The principle was established in *Mansi v Elstree Rural DC* 62 L.G.R. 172, [1964] 1 WLUK 874 that an enforcement notice should not abrogate existing or permitted use rights.

⁵ See Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2023 (S.I. 2023/747).

record (London Gazette, 6 August 197, advertisement 5 August 1971) that the direction was confirmed. It removes from permitted development:

“All or any of the development comprised within Class VI (I) of Part 1 of the first schedule of the Town and Country Planning General Development Order 1963 as amended and not being development comprised in any other Class i.e. the carrying out on agricultural land having an area of more than one acre and comprised in an agricultural unit of building or engineering operations requisite for the use of that land for the purposes of agriculture other than the placing on land of structures not designed for those purposes or the provision and alterations of dwellings.”

30. The second direction was made on 30 September 1975 and approved by the S/S on 20 November 1975 (“75 S1”). It removed permitted development rights for:

“The use of land (other than a building or the curtilage of a building) for any purpose or purposes except a caravan site on not more than 28 days in total in any calendar year...and for the erection or placing of moveable structures on the land for the purposes of that use...” (removal of temporary use rights).

31. The third direction was made on 5 May 1976 (“76 S1”), approved by the S/S on 2 June 1976. The permitted use rights taken away are:

“The use of land, other than a building, as a caravan site in any of the circumstances specified in paragraphs 2 to 9 (inclusive) of Schedule 1 to the Caravan Sites and Control of Development Act 1960, or in the circumstances (other than those relating to winter quarters) specified in paragraph 10 of the said Schedule being development comprised Class XXII referred to in the First Schedule to the said Order and not being development comprised within any other Class.”

32. The Council officer in 2021 claimed that *“technically the parties are in breach of the Article 4 direction”* (presumed to relate to temporary use rights). However, there could no breach of the direction if, as the officer’s notes appear to suggest at the time, the use complained about did not amount to development requiring permission in the first place. If a temporary activity does not result in a material change of use, it is not “development” under s55, and no permission (express or permitted) is required. An Article 4 direction does not turn something that is not development into development⁶.

Pre-existing lawful use

33. In the early 1960’s planning application forms indicate the land was viewed as waste scrub land and “derelict agricultural land now covered with scrub”, then in 1972 as “agricultural and copse”, in 1973 as vacant with previous use described as “gravel extraction” and “sand quarry”.
34. Later, in 2009 when the Council investigated a possible change of use of the land, it was referred to as an undeveloped green and wooded area which led officers to refer to it as agricultural land, albeit not actively used as such. It appears that the Council was satisfied that the site was not then being used as a leisure plot in any material way as its view was that the leisure uses were infrequent. The file note dated 15.09.2009 states “It does not appear that there has been a material change

⁶ R (Williams) v Cyngor Gwynedd [2025] EWHC 2395 (Admin).

of use of the land” and “*although technically the parties are in breach of the Article 4 direction, the breach has now been resolved.*”

35. None of the application forms suggest use for leisure-type purposes when they were made. However, considering the nature of the site, the written information including the base OS plans used and the variety of descriptions, it is likely in my opinion that there has been a woodland use. Woodland may be used in a way ancillary to a farm use but the plot ceased to be so connected long since. As with agriculture the use of land for the purposes of forestry is generally not considered as development requiring planning permission.
36. The site’s character now is that of a small woodland used for leisure purposes. It is not part of an agricultural holding. Historic aerial images of the site clearly show that it has largely been covered with trees since before 2005 and the site has not been farmed or used for agricultural purposes. The personal and informal leisure use of the site has co-existed with caring for and managing it and the trees thereon, including planting additional trees and other vegetation to enhance its rural woodland character.
37. Agricultural land may not be actively farmed but still have an agriculture “use” within the scope of section 55(2)(e). It is unnecessary to stipulate the existing use in the notice, the essential issue is, on the notice as corrected, whether a material change to leisure and woodland use has occurred and if so when.

Whether a breach of planning control

38. The Council’s view⁷, was that an unlawful material change of use of the land occurred around 2020/2021 but it could not be more specific.
39. The grounds of appeal are conflated in the appellant’s statement. The case is essentially that there has always been a leisure use of the site, which proposition must be examined on ground (d).
40. In considering whether there has been a change in the character of the use, I must not ignore any off-site effects of the current use of the land, however these are not greatly emphasised by either party. Occasional special events necessitated some activity at the entrance to the land by the road but the underlying, fairly regular and intermittent use of the land for what may be termed leisure or woodland craft activity, camping and so on, is generally conducted away from the road. No interested person made representations on the appeal other than a district councillor in support of the appeal, considering that a more measured approach to the steps required in the notice would have been appropriate.
41. At the time of issue of the notice, the use of the land had evolved into a definable character of a plot used for leisure purposes, but also for purposes more accurately defined as woodland management, as evidenced in the various declarations and statements. Further, the siting over the years of many items on the land in association with leisure type activities was indicative of the fact that an unauthorised material change of use had occurred on the site.
42. The leisure use amounts to development as defined in s55(2), as does the mixed use I have identified. The current use of the land is unauthorised, the development requires planning permission which has not been granted or, insofar as the GPDO

⁷ See reasons stated in paragraphs 25-26 of its statement.

would have authorised certain temporary uses of the land, that permission appears to have been removed.

43. Therefore, there is a breach of planning control. The appeal on this ground fails.

Ground (d)

44. An appeal on this ground is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. This involves consideration of when the material change of use occurred.

Statutory declarations and statements

45. The statutory declaration from PS identifies the land subject to the notice, known to him as Jubilee Acre. He states on oath that his father purchased the land in the early 1970s from PTH, owner of Whitecross Farm, it had a huge pit three quarters of the way down, apparently used for builder's landfill. PS states that it was full of stagnant water, lower than the adjacent fields, and a wooded area had sprung up in the boggy surroundings. He added that before purchase from PTH, crops had not grown there, probably as it flooded for much of the year. He recalled that PTH allowed scouts to camp there often, as did his father. He declared that:

"there was a sizeable shed on the edge of the pit which had been erected during PTH's time of ownership (quite near to, or maybe partly on the plot where your cabin is now) which was large enough for a tractor to be kept in. My father used that shed to keep land management tools in such as chain saws and a small trailer."

46. PS then states that as a family they moved gravel from the adjoining land onto his father's land (the appeal site) to raise the level to prevent annual flooding. His father sited a 40 foot caravan on the land, used occasionally as a gathering place for fishermen and sometimes as a night watchman quarters when travellers were in the area. His estimation was that considering the use by Scouts and Guides for *"camping and other educational activities recreational use was the land's prime use since at least the mid to late sixties."* His father sold the land in the early to mid-1980's to TS, the appellant's father in-law and local businessman.

47. LH states she has known the appellant family since 1980 when they acquired the site, then mainly scrub with a rubble dump two thirds down from the road. Over the years, the land was cleared and a fire-pit and a log store installed. It was used by friends and family who camped there, and trees and flowers were planted.

48. CH is related to the appellant, she and her children have used and enjoyed "The Patch" as it is called, for days out providing a stress-free environment where they could learn outdoor and woodland skills surrounded by nature and wildlife, from which the children have benefited. The instances mentioned are compelling but relatively few specific dates are given. CL is a friend of the appellant's family and has known the site since 1983. She refers to several celebrations on the land, available as a recreational space.

49. PT's acquaintance with the appellant's family stretched back to 1988. He stated that "over the years" he attended numerous picnics, parties and camp outs, citing an instance in 2007 of his wedding reception for c150 people, hiring portaloos and a tent, adding that it has always been used for recreational purposes *"certainly*

since I first went there in 1988 and from what Tony told me long before that.” He produces photographs of an event in May 2007 and another in June 2008.

50. EP(2) cites use of the land as recreational, visiting it for various occasions over 33 years from when a child. She stated there was a camp fire area and an area further back for children with equipment such as a tree swing. She cited specific events of a birthday party on 7 June 2008, another on 8 June 2013, and a celebration of JS’s life on 28 December 2018. For over 30 years, she added, the site was a valuable space for a large number of the community.
51. RA states they frequented the Patch often, from childhood around 2007 through adolescence and now into adulthood, essentially for recreational purposes.
52. RP stated that he had been using “The Patch” continuously since around 1993/1994 when he was 9-10 years old and over the years for varied personal activities and as an outdoor instructor for 2nd Wallingford Scouts but also to help with felling trees in his capacity as tree surgeon, using trunks to make log benches over the years or for firewood. In his 30 years of knowing the land he has not seen it used for farming. PA, another scout leader stated that from 1994/5 through 1999/2000 as a group they used the site for scouting activities at least a dozen times on weekends and evenings. They stayed on the land overnight, maintained fences, cleared rubbish and deadwood, built shelters, camped and cooked food.
53. JM visited the site in 1993 for CL’s birthday party and again in July 2013 for ES’s birthday, and last visited in December 2018, stating the land was like a nature reserve, and well-cared for.
54. The appellant has sworn a statutory declaration, stating on oath that she went to the site often in the mid 90’s for picnics, bonfires and camping with a van, with JS whose father TS bought the land *“primarily as a garden space as his house in Wallingford only had a small yard and he wanted somewhere to walk his dog but also somewhere to entertain his large family (he was one of 7 siblings) and he enjoyed large family gatherings a few times a year up until he died in 2007.”*
55. It is unclear to what extent JS used the site as part of his waste disposal activities, but the appellant declared that the *“wooded area of land at the bottom was used by the Wallingford Scouts and there was a firepit, log piles and rope swings. The grassy area would get overgrown, and we would often be there strimming and getting rid of stinging nettles and we would often uncover more bits of rubbish that had been dumped there seemingly dating back to the Victorian time.”*
56. *“At least a few times a year”* there would be camps and the occasional party and after the children were born in 2004 and 2006 there were more frequent visits. A wedding event in May 2007 is cited, a family bbq in June 2007, a big party in 2008 and another in 2013 when a family dog died and was buried at The Patch with iron railings surrounding her grave. Between these events the site would be visited *“most weekends and often after school”* and *“a wide range of friends (adult and child) joined us on site over the years. Too many to now identify them all going back to the early 2000s.”*
57. The appellant ran outdoor learning sessions for schoolchildren and a local school used the site for campouts in 2013 and 2014 and used it c10 times in the following years for their “Friday Forest” session, the children cycling or walking from school. Between 2014-2016 the site was visited every weekend including to chop logs for

heating at home, after which time better log sheds were made and the land tidied most Sundays. In November 2019 the appellant was unsuccessful in applying for equipment for a community project to use the site as a therapy centre for children dealing with grief, trauma or difficulties at school. A donation of pallets was the used to build the initial shelter that eventually became the cabin.

58. The appellant emphasised the need to keep the use they have made of the Patch over such a long period, although agreeing to remove the Lodge, desiring to use it *"in the way in which I have always done since 1993 which is for leisure and recreation purposes without fear of punitive measures being taken"*.
59. The appellant summarised the previous use of the site in an email of 20 July 2021:
"To confirm what the land has been used for for the last 15 years - Primarily, it has been a space for my children to enjoy on a weekly basis with friends, after school and on weekends. In conjunction with that, the land has been used by various friends and family for birthday parties, weddings, celebrations, [and funereal and burial activity]. The Treehouse school, Scout groups and various other charities...have also used the land for forest school type activities, tree planting and/or social gatherings. These events are less frequent but regular use especially during the summer months. I have photographs to prove this usage dating back to 2007 obviously not from every event but hopefully enough to show the wide range of leisure use that "The Patch" has been used for."
60. AG's letter of January 2024, highlights the use made of the site since she went there with her two children ten years previously, referring to the benefits of peer-to-peer parenting support, whilst the children played and learned skills in a less stressful place than expensive indoor facilities for primary aged children. They visited twice a month and often after school, but no dates are provided.
61. MH first visited in June 2007 and over the years she helped manage the vegetation and enhance the flora on the site, however the frequency of visits and dates are not stated. LK refers to the land as a place of recreation and relaxation and since 2008 visited it for social gatherings but also found it of benefit to her and her family's mental health when people were allowed out during lockdown.
62. HL states that since 2011 her boys have been invited to spend time on the land for birthday parties, weekend days and ultimately, sleepovers, developing skills through Scouting activities. She states that the Lodge extended the time her children could spend there, enjoying a sleepover with friends. She planted trees to enhance the biodiversity of the site and cites use by a local school in Cholsey using it for a *'forest/nature learning experience'*.
63. A letter from MB (MBE), on behalf of a local charity, states that the charity bought oak tree saplings and the appellant offered up the land to plant over 30 saplings during 2021 with a working party of young volunteers to complete the task over many weekends. He refers to another local school end-of-year 6 party in July 2018 and 2008 birthday party at The Patch, supplying photographs of the same.
64. EP(1) set out what the site meant to her in terms of solace, sanctuary and therapy through illness, trauma and bereavement experienced by her family on various occasions between 2008 and 2016 referring to two earlier events on site, one in 2009 and one in 2013.

65. SK moved to the area in 2004, stumbling across the site which to her was clearly used for relaxation and leisure purposes, stating: *“Although it was wild around the edges there was a fire pit, neatly stacked piles of logs, tree swings and seats crafted from logs and wood. It was somebody's retreat and private space. I quickly turned back to the river path in case it was the end of someone's garden, and I was trespassing.”*
66. Later, in 2020 she was introduced to the appellant and *“it was still being used as a retreat and a place to relax and unwind in nature...the children could play, build dens, jump on the recycled trampoline, whittle sticks, poke fires, toast marshmallows and be free.”* Despite the Covid lockdown she continued to visit the site which to her knowledge had *“never been used as anything other than a place for people to relax, enjoy and connect with nature and each other”*.
67. LS's first use of the site was in 2007 at a party where there was a firepit and gazebos erected, and another in 2008. In June 2013⁸ at another event she noted:
““more substantial picnic benches, rope swings, a dresser used to store cooking equipment carpentry and wooding tools meant more opportunity for us all to have fun whilst there.”
68. LS has since the spring of 2013 visited more regularly, to help manage the land (chopping wood, maintaining the gateway) and to prepare for parties or picnics. The site became a garden for her mother in her last year, and her ashes were interred there in 2017.
69. PS visited The Patch many times and from 2005-2015 took his dog there for off-lead time, and attended several gatherings over the years, citing events in June 2008, 4 July 2009, September 2008 and others the dates of which he could not accurately recall. Since 2005 he has *“only known the primary use of the land to be for recreational & leisure purposes”*.
70. Another statutory declaration, made by GW, declared that his family have known the appellant since 2008 from which time they were welcomed to the Patch where friends' children would play, enjoying the outdoor adventure. His family's chest of drawers from home was a fixture for many years, survived the floods and was still there (as I saw). GW added that the rope swing was put up around 2011. Parties and weddings are cited, with food and music, and the appellant's work in enhancing wildlife, trees and streams, clearing rubble and hardcore (noted as prevalent throughout the site), his son recalling that as young children, they could never dig as there were *“always bricks underneath”*. The *“temporary”* structure which I take to be the cabin was erected during the Covid pandemic.
71. In a further statutory declaration from a Justice of the Peace, JW states on oath that she has known the appellant since 2007, stating she first went to the site in 2008, declaring that it is *“somewhere I have visited regularly over the years. In all the time I have known Emma, the land has only ever been used for leisure activities.”* She also refers to several parties, events and barbeques, adding *“we played games and used the equipment which Emma had left down at the site”*. She helped to clear the area for, and in the erection of, the hut (cabin) and helped in its construction. To her, the hut offered prospects for future endeavours, ie community groups and charities serving grieving families and children.

⁸ A date which I note was over ten years before the notice was issued.

72. LP also swore on oath that she was first aware of the Patch in 2016, benefitting from its therapeutic effects as a place for her family, since when many days were spent there.
73. The Treehouse School offers an alternative style of education to children in the community. LAR, the headteacher, stated that the appellant, for no personal gain, allowed children to visit the site for c10-15 forest school sessions with 3-4 adults, giving opportunities to play. Cycles and no vehicles were used to and from the site.

Other considerations

74. The reply to the PCN lists events that range from 1-2 per year to 6-7 but not necessarily a steady increase year-on-year as for example, there were 8 listed in 2018 and 7 in 2021, the year in which the Council alleges the change in use became material with the erection of the cabin. The officer's note of the investigation around this time states *"It does not appear that there has been a material change of use of the land"* and *"the owner claims that the site is not being used as a leisure plot...parties are a rare occurrence (3 over a 4-year period)...."*
75. The evidence submitted by the appellant including photographs appear to show several other structures on the land prior to the key period identified by the Council from of the end of 2020 to June 2021. Reference is made to the "chattels" including log stores which are said not to be buildings. However, the point of the Council including these works associated with the alleged material change of use of the site, whether they are chattels or operational development, is that they are alleged to be part and parcel of, and have facilitated, the alleged material change.
76. The officer's report authorising enforcement action contains 7 photographs taken on 5 March or 3 May 2023 (it is unclear which), illustrating the structures on site. Figure 1 includes various wooden tables and benches, the large fire pit and surrounding grate and a wooden store or shed. Figure 2 is of the cabin building. Figure 3 is of the wooden toilet cubicle. Figure 4 is of the tree platform and rope swing. Figure 5 is of the wooden open shed containing the chest of drawers, next to which is the large log store with several sections full of logs. Figure 6 is a general view similar to Figure 1, including a domestic-type settee. Figure 7 is of a pair of wooden entrance gates.
77. It is accepted that the cabin and toilet were recent installations. However, many other structures predate this time. The Council states in terms that *"that since the erection of the permanent buildings and structures on the site, which took place during 2021, there has been a material change of use of the land from an agricultural use to a mixed sui generis use of leisure, outdoor education and outdoor therapeutic uses"* (my emphasis).
78. However, considered as individual permanent structures it is likely that many such items have been erected on the site for at least 4 years prior to the issue of the notice. (The notice was issued on 30 August 2023, before the changes to the immunity periods took effect) therefore if substantially complete 4 years prior to issue, ie by 30 August 2019 they will have gained immunity in their own right since it is difficult to appreciate how these additional items that had not been objected to previously, on the basis that their use did not constitute a material change of use, should now do so, despite the removal of the cabin building.

79. The evidence from and on behalf of the appellant suggests that several activities were taking place on site prior to this period, for example collecting and chopping wood to build fires, making dens, swinging from ropes hung, learning how to use tools, cooking on an open fire, planting trees, clearing pathways, driving lawn mowers and so forth⁹. In the 1990's the wooded area of land at the bottom was used by a local scout group and "*there was a firepit, log piles and rope swings.*" In 2013 a dog was buried at the site at her favourite place in the wooded area and "*iron railings surround her grave*".¹⁰ Children made "*structures out of box pallets*" which judging from the detail of the narrative¹¹ was before 2013. An "*oak log bench*" was in place in 2016¹². Again, from the structure and detail of the narrative in question¹³ it would have been sometime between 2016 and 2018 that "*better log sheds (to store logs to allow us better bonfires)*" were made on site.
80. Images stamped with the date 30 August 2014 show a red utility, tractor or mowing vehicle designed for off-road use and which would be used in ground care or agricultural settings, and a solid timber section of fencing or raised platform, one dated 12 September 2014 of a square shaped iron grate with "hobs" on one side, similar to that which I saw when I inspected the site, and low bench seating and tables. Also buckets, tyres, tree swing, and in 2016 an archery target on a makeshift raised platform, green wooden cupboard (2015) slatted chairs (2008), large oil drums and several tables with integral side benches, camp style stools, makeshift shelter possibly with cooking utensils nearby (2016), use of oil drum as balance or see saw with ball and hollowed out tree trunk fashioned into seating, use of wheelbarrow (2017), and on 27 March 2017 a large open sided shed (also seen in an image marked as dated 13 September 2014¹⁴) which I also saw on site containing a smaller wooden chest of drawers. Also noted are images¹⁵ of tree platform, plastic chair, table tennis table (2018).
81. The statement of LS which refers to a date ten years before the notice was issued, included her noting substantial picnic benches, rope swings, a dresser used to store cooking equipment, carpentry and tools, with recreation in mind. The provenance of several of these large items installed in the earlier years is elaborated upon by GW in another statutory declaration.
82. The specific items required by the notice to be "demolished" and removed, apart from the cabin and toilet cubicle, are firstly, the wooden sheds and wood stores and secondly, the tree platform. The Council has asserted, although not perhaps consistently, that these items are permanent structures (or possibly buildings). As far as concerns the sheds and log stores, I consider the position is accurately illustrated in the image in the appellant's statement, of 3 small and 1 relatively larger log stores, that appear to have no foundations and would be easily lifted or dismantled and moved around, as with the adjacent open-sided shed containing the dresser. I do not consider these items to be operational development.
83. I am also satisfied that it is likely that they have been in situ for several years and during the time when the Council apparently regarded the activities on the land as intermittent and insufficient to effect a material change in its use. Their existence

⁹ Statement of CH

¹⁰ Statement of ES

¹¹ Statement of ES, paragraph 5.

¹² Statement of ES, paragraph 6.

¹³ Statement of ES, paragraph 7.

¹⁴ Statement of PT.

¹⁵ Appended to statement of MB.

does not seem to have been documented by the Council in the years leading up to 2020/2021. It was the cabin building and toilet that were responsible for the changed view as to the materiality of the use, but as the cabin building has been removed, it is arguable that thereupon the use ceased. If, without the building the other items continue to be used in the same way as previously, it must follow that they cannot be used in a way that materially changes the use of the land from its lawful existing use. As one person put it:

“Whilst fully appreciating that the Council has rules to apply, it is hard to believe that with the removal of the cabin assured, that use of The Patch could not return to that which many, many people have known for many years - just for the pleasure of enjoying outdoor space with family and friends and protecting a little piece of land, its wildlife and trees and streams.”

84. However, the evidence suggests to me that there was a material change of use well before the cabin’s erection. Furthermore, insofar as the structures highlighted in the officer’s enforcement report, ie the tables and benches, tree platform, log store(s) and wooden shed/dresser, are counted as operational development, the evidence would appear to show that it is likely they have been on the site since before August 2019, ie 4 years before the notice was issued, along with several other smaller items, not counted as buildings or permanent structures. However, the log stores appear to have been moved around over the years.
85. The Council’s case focuses on specific “events” celebrated on site, birthdays, parties, commemorations and the like, of which there are relatively few specific instances cited throughout a given year and there are years where no specific instances are cited. However, assessing the evidence as a whole, there has clearly been a routine use of the site extending over many years for leisure/recreation purposes, together with what one might term woodland-related uses whether or not the latter were ancillary to or distinct from an agricultural use.
86. Various structures were clearly established on the land several years prior to the period when the Council says the material change took place. These include the open shed/kitchen serving hut, dresser, log stores, the large “banqueting” seats and benches, fire pit, grave and so on.
87. The Council would have it that although a leisure use was instituted it was not a material change until the structures were used in conjunction with the cabin. The specific use of the pre-existing structures as described by the Council is vague:

*“These permanent buildings and structures facilitate more permanent (no longer temporary) non agricultural uses to take place on the enforcement site, which are **significantly less limited** in their nature, scale, effect and duration compared to those temporary uses which took place prior to the erection of the buildings and structures.¹⁶” (my emphasis).*
88. It is a distinction that is not borne out by the evidence, at least in the ten years or so before the notice was issued. In my view the evidence demonstrates that it is likely on the balance of probability that a leisure use was instituted on the site soon after it was acquired by the appellant’s family and maintained at a fairly low level of intensity. Gradually the use of the site evolved into a facility that embodied a

¹⁶ Statement of case, paragraph 25.

specific use that included the management and enhancement of the land together with a more regular use for leisure or recreations.

89. The Council investigated the use at various points in time, including in 2009, appearing ambivalent about whether development had taken place (due to the way they treated the application of the article 4 direction). In my view if a material change had not then taken place, the use of the site in combination with the structures that had been left there over several years had, by August 2013 reached a stage where enforcement action could have been taken for the breach identified. Such action was not taken and the use has been allowed to subsist.
90. The Council cites the Hedges case¹⁷ asserting that the legitimate focus is on the actual use of the land in determining whether there has been 10 years' continuous use for the purposes of establishing if a use is immune from enforcement action. It was a claim that the inspector wrongly required evidence of actual use of the land as a campsite to give rise to a material change of use, whereas case law discouraged a focus on actual use, requiring evidence to be considered as a whole. The use was a commercial campsite and no statutory declarations were submitted. The "useability" of the site was advanced for the short period in question, as the mobile facilities were clearly on the land. There was no evidence of actual use on the days in question and overall the inspector found the evidence insufficient to establish a material change of use throughout the whole period. However, the court held that regard was rightly had to factors other than actual use. That is a different proposition from saying that ten consecutive years of continuous use must equate to actual use every day.
91. On the issue of whether the Council could have taken enforcement action, I note that it served its PCN on 19 August 2021. It could have served a PCN a lot earlier than that, for example when the officer considered that there was a breach of planning control in contravening the provisions of the Article 4 direction removing the right to temporary uses of the land. The reply to the PCN was a full reply with many of the details of previous use recounted and now formalised in the submitted statements and statutory declarations. The reply also included images of past events and activities on the land including some from ten years prior to the issue of the notice. These included images from October 2011, December 2012 and June 2013 wherein can be seen several wooden structures, consistent with other images submitted with the formal submissions detailed above.
92. When the site was investigated at first¹⁸, the closure report said that the site was visited monthly. It may be difficult proactively to monitor the use of some sites, and at this time it may well have been a correct appraisal that *"at most it is being used as a picnic area, but this does not look as if this is for any commercial purposes."* There was an informant and it would have been for the Council to decide how much reliance to place on whether *"there has been little use of the land since"*.
93. It is telling however, that with regard to the next occasion on which the use was investigated in 2009¹⁹, the Council acknowledges that the information gained at that time was the most up to date planning history of the site before the current enforcement action. This means there was an unmonitored gap of well over ten

¹⁷ Hedges v Secretary of State for Housing, Communities and Local Government and another [2021] EWHC 2392 (Admin).

¹⁸ Council file Ref WE08/265, Item 10 in Chronology appended to Council's statement.

¹⁹ Council file Ref WE09/139 – 1/, Item 11 in Chronology op.cit.

years between the file closure in December 2009 and the observation that construction works were taking place in February 2021²⁰.

94. This is how the officer closed the file in 2009 with a letter to, presumably, the informant, explaining his view that:

*“Whilst the land is agricultural and should not be used for domestic parties or contain domestic paraphernalia, it is reassuring to discover that the parties are not part of an intensive business use. It also appears that the parties are infrequent; and as such, do not consider that there is any material change of use of the land. Since there have been no recent parties, I consider **that the breach of the Article 4 Direction** has been resolved at this time and will be recommending that the enforcement file is closed on this basis. I have spoken to the owner and will be writing him an informative letter.”*

95. It may be a contradiction that there was no material change of use, but on the face of it development of some kind had taken place in contravention of the direction but the site was not monitored until the construction activity was reported in 2021.
96. Guidance in analogous cases of existing use applications²¹ is that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the evidence alone is sufficiently precise and unambiguous on the balance of probability.
97. I find from all the foregoing matters that leisure uses as mentioned in the appellant’s reply to the PCN, were taking place on the land since around 2007 and whilst it may not have been at a level to sustain enforcement action on the basis of a material change in use, by 2009 the Council considered there to have been development that took place that required planning permission obtainable by application. Notwithstanding the ambiguity in the Council’s view as to whether development had taken place, by 2013 and at various earlier dates there were large wooden structures in place used in conjunction with the leisure and woodland uses. The evidence including the sworn testimony demonstrates on the balance of probability that a sufficiently regular pattern of use of the site for the alleged mixed use had materially changed the definable character of the land, albeit not an every-day use but to a use that was active and was not abandoned.
98. Whilst there are minor discrepancies over specific dates the body of statements and sworn testimony is sufficiently clear and precise. The character of the use has remained consistent throughout the relevant ten-year period before August 2023, as a result of which, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control which may be constituted by the matters stated in the notice, as corrected.
99. The appeal on this ground therefore succeeds.

Other matters

100. It should be noted that whilst it is not necessary for each component of a mixed use to be carried out in strictly separate areas of the planning unit, and there has been no hard and fast borderline created to confine the active uses within a

²⁰ Officer’s report, paragraph 2.4.

²¹ Planning Practice Guidance at Paragraph: 006 Reference ID: 17c-006-20140306.

particular area, the evidence on which the appeal succeeds is based on such activities occurring mostly at the bottom end of the site and on a level of activity that by and large has not caused significant external impacts.

101. Consequently, it should be borne in mind that despite success on ground (d) any use of property may amount to such a significant intensification of the lawfully established use that the character of the land or building is further fundamentally altered, upon which enforcement action might again be deemed expedient²².
102. The district councillor referred to above made a visit to the site, read the correspondence and met with officers and the appellant. He considered there was more room for discretion to be used when balancing the “good”, as he saw it, that the appellant had done to the land and the harm as viewed by the Council. These are not matters for me, nor is an application for a lawful development certificate (LDC) which the appellant appeared to contemplate as a possibility only and did not request as part of the appeal. The circumstances of the case are not so exceptional that it is necessary to exercise powers to issue an LDC. It would be for the appellant to decide whether it wished formally to establish as of now or in the future, what changes might be lawful or not, as involving eg a further material change, relying on permitted development rights not excluded and so forth.

Conclusion

103. From the evidence before me, I conclude that on the balance of probabilities, the appeal on ground (d) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control.
104. The enforcement notice will be corrected and quashed. In these circumstances, grounds (f) and (g) of the appeal do not need to be considered.

Grahame J Kean

INSPECTOR

²² See for example, *T Shepherd and D Love v SSE and Ashford BC* (CO/759/91, QBD 5/11/91) where Sir Graham Eyre sitting as a Deputy Judge held that a change of use from one leisure activity to another leisure activity is capable of being a material change of use.