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# Appeal Decision

Hearing held on 21 June 2011

Site visit made on 21 June 2011

**by Diane Lewis BA(Hons) MCD MA LLM MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 27 September 2011**

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**Appeal Ref: APP/N5090/C/10/2142219**

**Land at Belmont Farm, The Ridgeway, London NW7 1QT**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Andrew Reid against an enforcement notice issued by the Council of the London Borough of Barnet.
- The Council's reference is ENF/01575/09/H.
- The notice was issued on 5 November 2010.
- The breach of planning control as alleged in the notice is:
  - i. Without planning permission, change of use to incorporate a mixed children's farm and café use (including the hosting of business networking events). The erection of fences, animal and bird enclosures and apparatus.
  - ii. It appears to the Council that the above breach of planning of control has occurred within the last ten years.
- The requirements of the notice are:
  - 1) Cease the use of the site as a children's farm.
  - 2) Cease the use of the café and permanently remove chairs from the café premises, ensuring there is no more than 50 chairs at any time.
  - 3) Cease the use of the café area for the hosting of business networking events.
  - 4) The demolition and removal of the fences, animal and bird enclosures and apparatus.
- The period for compliance with the requirements is three months after the notice takes effect.
- The appeal was made on the grounds set out in section 174(2)(a), (c), (d), (e) and (g) of the Town and Country Planning Act 1990 as amended. The appeal on ground (e) was not pursued and the appeal on ground (d) was withdrawn.

**Summary of Decision: The appeal is dismissed, the enforcement notice as corrected and varied upheld and planning permission on the deemed application is refused.**

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## The enforcement notice

1. The Council confirmed that the erection of fences, animal and bird enclosures and apparatus was considered to be operational development. The time limit for taking this type of enforcement action is within four years, beginning with the date on which the operations were substantially completed. This time period was omitted from the wording of the notice.
2. I raised the matter at the hearing but no submissions were made on behalf of the appellant. I have also taken account of the grounds of appeal relied on and

the discussions that took place between the principal parties. I am satisfied that to correct the notice will not cause the appellant injustice.

3. The Council did not comment on or seek to amend the wording of requirement 2 about the chairs in the café, although invited to do so.

**Appeal on ground (c) – there has not been a breach of planning control**

4. The appellant confirmed at the hearing that the ground (c) appeal applies not only to the café and to the animal and bird enclosures (the matters stated in the grounds of appeal) but also to the change of use to a children's farm.

**The children's farm**

5. The wider holding at Belmont Farm covers an area of some 81 hectares. In appeal decisions in early 2003<sup>1</sup> the Belmont Estate was found to be a single planning unit in a mixed use consisting of equestrian, agricultural and residential uses. Around that time the primary activity on the planning unit was breeding and training racehorses. Other equestrian activities included the playing of field and arena polo, riding holidays and teaching. The indoor riding centre was used for the stabling of horses and the separate stables complex was disused. A judgement later that year confirmed a change in the components will involve a change in the mixed use itself and, subject to the question of materiality, will amount to development. It was that line of reasoning which was decisive, rather than the creation of a new planning unit<sup>2</sup>.
6. Therefore to succeed the appellant has to show that the children's farm is ancillary to one of the component uses within the single planning unit. The leading case in determining a planning unit is *Burdle v Secretary of State for the Environment*. As a working rule it should be assumed the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.
7. At the present time the mix of equestrian, agriculture and residential use continues, primarily on the land to the north and north east of the appeal site. However, the type and scale of some of the equestrian activities and the agricultural use have changed. There are now some 40 horses on site, compared to 120 to 140 horses and ponies in the past. A carriage driving school has become popular. The indoor equestrian centre ceased in 2000 and the number of riding lessons is now small. A pony club and a polo club continue and the training and breeding of racehorses remain important. Holidays have been provided via the Children's Holiday Fund. The number of sheep on the holding has been considerably reduced and the emphasis now is on rare breeds. Large farm vehicles, which are used on the appellant's farm at Sandridge, are kept at Belmont. The farm yard also has a modern barn that is used as workshops and to house tractors, farm equipment and so on. The residential use comprises a mobile home and associated small garden near the farm yard<sup>3</sup>.
8. The children's farm is on land to the north east of The Ridgeway. It has involved the conversion of a rectangular arrangement of low roofed stables and

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<sup>1</sup> The first decision in January 2003 concerned the formation of a manege and the second concerned a lawful development certificate (s192) for a change of use of the indoor riding centre to a health and fitness centre.

<sup>2</sup> *Belmont Riding Centre v First Secretary of State and London Borough of Barnet* [2003] EWHC 1985 Admin

<sup>3</sup> A twin unit caravan was granted a certificate of lawfulness in June 2008.

outbuildings, where there are now incubators, cages housing small animals, rodents and birds, an animal petting area, a party and education room and toilets. The reception and cafe are in the central building. In addition to the displays and facilities in the building group a trail has been laid out around the various animal and bird enclosures. Public access is gained first via an entrance off The Ridgeway in the south east corner of the frontage. This entrance provides access to the car park and from there entry is down a footpath to the reception. Circulation around the trail and buildings is unsupervised. Egress from the car park is by another gateway, in the north west corner of the frontage, onto The Ridgeway. The car park is on the land forming the north western part of the appeal site. There is an area of grass on the site frontage where sign boards advertising the children's farm have been erected.

9. The children's farm, together with the car park, access, circulation area and frontage, are separated from the lands to the north east by metal fencing, lockable gates and buildings. It forms a distinct physical entity from the rest of the wider holding. This strong physical division was unlikely to have existed when the indoor riding centre and stables were in use and it was not reflected in the description of the riding school and stables in the 2005 appeal decision<sup>4</sup>.
10. The purpose of the children's farm is to provide fun and education for all the family. Visitors are able to see the animals at close quarters and at specific times to participate in their daily care. The animals include traditional farm livestock such as goats, pigs, sheep, chickens, turkeys and ducks, non-native animals such as wallabies and birds such as snowy owls and storks. The farm caters for educational visits and parties. In 2010 there was a total of 46000 visitors over 11 months. During August, the busiest month, there were on average 290 visits per day.
11. The trail, the animal petting and feeding, the other associated activities and the support facilities are concentrated within the appeal site, not diffused across the wider holding like the equestrian activities. The animals and birds are primarily for show, rather than being kept for the purpose of farming the land. Some animals have been reared to produce pork, lamb and eggs but this probably is very much of an incidental nature. There was no evidence to show that the stock on the wider holding are kept or have any involvement with the children's farm or that 'display' animals are grazed on the wider holding. The buildings on the working farm are not used for any equipment or storage associated with the children's farm, although the tractor for the trailer rides is kept in the farmyard when not in use. The children's farm employs around 19 members of staff and although some staff may also work on the wider holding this was not a link identified by the appellants.
12. There is closely supervised access to the wider holding at arranged times. The tractor trailer rides, for which there is an additional charge, provide visitors with a supervised tour of the farm. They add understanding and enjoyment to the visit. An education room, in the old stables, accommodates school and group visits, where children are able to learn about animals and farming. The occasional stationing of farm tractors on the frontage to The Ridgeway for display purposes is a means of promoting and drawing attention to the children's farm. The tractor trailer rides, the educational visits and the display

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<sup>4</sup> This decision dated 23 May 2005 dealt with three proposals concerning changes of use of the indoor riding arena and the conversion of the disused stable blocks to Class A1/A2/A3/B1 use (refs APP/N5090/A/04/1159447, 1161832, 1161831).

of agricultural machinery were put forward by the appellant to show how the wider farm holding is integrated into the use of the children's farm. However, these factors do not have any significant functional link to the operation of the wider holding.

13. In conclusion, the children's farm is used by the community. The emphasis is on providing opportunities for education, recreation and enjoyment. Based on day trips, it is a very different use to the provision of holidays through the Children's Holiday Fund. There is not the functional relationship between the children's farm and the agricultural or equestrian uses to enable it to be regarded as ancillary to one of the components of the mixed use previously described. Furthermore it is not subsidiary to those mixed uses - it attracts a large number of visitors, generates a lot of activity and car parking. The children's farm is of a different character to the agricultural and equestrian uses. It is a primary use. The material change in the components amounts to a change in the mixed use and development requiring planning permission has taken place. Moreover, as a matter of fact and degree, the development of the children's farm, by reason of its physical and functional separation, has created a new planning unit, separate from the wider holding. The appeal on ground (c) regarding the change of use does not succeed.

### ***The café***

14. In the grounds of appeal the appellant relied on the café being a replacement for a refreshment area within the former stable block. He also pointed out there was a catering facility within the indoor riding centre. These places for food and drink were ancillary to the equestrian component of the mixed use on the wider holding. Their existence has little relevance to the current situation where the children's farm is a primary use. The main issue is whether the café is ancillary to the children's farm or whether it is a separate primary use.
15. The café is in the central former stable building. To enter the café a visitor has to pass the reception and pay desk to the children's farm. The building is surrounded by the farm trail and does not have a distinct, separate identity. However, it is possible to visit the café without having to pay an entry fee to the children's farm.
16. Inside the café most of the space is for visitor use, with a counter and kitchen at one end. At the time of the site visit there were 24 tables of varying sizes and about 85 chairs, although up to 92 covers was agreed previously. The space is practical and functional, suited for short stays. Agricultural implements are displayed on the wall and three television screens provide promotional and educational information on a range of farming operations. The display and screens add interest and are subsidiary to the primary purpose for the sale and consumption of food and light refreshments.
17. The café is marketed and advertised as the Waffle Café, with free wi-fi access. The menu offers light meals and snacks. The only indication that the food source is from the farm is a note on a menu stating that the waffles will soon be made from wheat grown on the farm at Sandridge. The café is open seven days a week, the opening hours being the same as the children's farm. The advertisements welcome unaccompanied grown ups but most of the material is directed at providing information about the food, the hours of opening and related available activities at the children's farm.

18. The location and appearance of the café, the opening hours and the advertising material all indicate that the café is ancillary to the children's farm. However, in terms of trade and use the evidence is less clear cut. The appellant maintains that the primary use of the café is to serve refreshments to the visitors to the children's farm, as well as providing shelter, warmth and shade, dependent on the season. He explained it is used as a meeting point for grandparents and community groups who want to use the farm one way or another and by those who simply want a rest while the children are going round the farm. It does not at present provide a source of revenue to help support the farm, although its existence is essential to it.
19. In addition, visitors to see the race horses training (events advertised every Wednesday and Saturday) are invited to breakfast at the café. It has become a stopping off point for walkers using the local footpaths. Residents say that the café is often used by mothers and school children. It is also regularly used by a local group on Tuesday mornings for early business networking events, between 0645 and 0900 hours. These events are attended by about 45 people, as seen from CCTV evidence, although residents claimed the number is nearer 90. Probably most of the group travel by car and park in the car park, as indicated by the CCTV images and the photograph submitted by the Council.
20. The evidence indicates that the café serves the local community more generally and as a matter of fact the appellant has described it as becoming a valuable and unique community resource because it is the only café open seven days a week in the area. However the question is how the wider use affects the functional relationship between the café and the children's farm. The café could be used by outside groups and people in the locality who are not visiting the farm whilst still remaining ancillary to the children's farm. The matter is one of fact and degree. The onus of proof is on the appellant to establish that there is no breach of planning control against which action may be taken. The test is the balance of probability. The stronger the evidence produced on behalf of the local planning authority the more would have to be established in rebuttal for the appellant to establish his case.
21. At the hearing the appellant said over 95% of customers to the café were visiting the farm, although this was not supported by detailed evidence. He also said that the café was noisy, with lots of children, which did not encourage older people to come in. When there was snow and ice over three months the café was empty every day. Additional evidence is the CCTV images which were provided for 6 days in June 2011. They are helpful in showing the variation in use of the café. The busiest times in the café were around lunch time and early afternoon on Sunday and on Friday morning (discounting the business meeting on Tuesday). Even then the café was nowhere near full. The general lack of people in the café is the more striking feature.
22. The Council disputed the 95% figure. Attention was drawn to the number of covers (approx 90) compared to the average number of visits per day, ranging between 137 up to 290 in the busiest month. Casual observation had also indicated that the majority of people who came into the café did not pay an entry fee to the farm.
23. In my view there is little to be gained by comparing the number of covers to the number of visitors, because the physical capacity of the café suggests potential rather than the type and actual use that has taken place. Casual observation would be imprecise because of the way the circulation works and

the range of tickets available. Anecdotal evidence has little weight. The 95% figure would have to be considerably less to indicate that the café is a primary use.

24. As matter of fact and degree and taking all factors into account the probability is that the café has been ancillary to the children's farm. The wording of the breach of planning control in the enforcement notice needs to be varied. The café as an ancillary use to the children's farm is unauthorised because that primary use is a breach of planning control. Accordingly the ground (c) appeal on this matter fails.

### ***Bird and animal enclosures***

25. The issue is whether the erection of the fences, animal and bird enclosures and apparatus on the children's farm site amounted to operational development constituting a breach of planning control.
26. There is a wide range of fences, animal and bird enclosures and apparatus on the children's farm. Neither the Council nor the appellant made any distinction between them and dealt with the issue in a very generalised and superficial way, with no reasoned argument. The basic point of the appellant is that the animal and bird enclosures are demountable structures and so comprise chattels rather than buildings. The Council say the structures are fixed. Permitted development rights were not raised by the main parties and the documentation indicates that they have been removed by an Article 4 Direction.
27. The meaning of development includes the carrying out of building, engineering, mining or other operations in, on, over or under land (s55(1)). A building is defined as including any structure or erection, or any part of a building as so defined (s336(1)). Three primary factors are relevant to what constitutes a building – size, permanence and physical attachment.
28. The fences were mainly of timber or post and wire and varied in height and form. The animal and bird enclosures were also mainly of timber and wire mesh or netting. The enclosures forming the aviaries and the pens for the different animals varied in size and height, the largest bird enclosure being near the entrance. All the fences and enclosures were sturdy and secure and fixed into the ground to give stability. They were integral to the trail and there was no sign that they were regularly moved. Going by the leaflets, the layout has remained similar since the children's farm opened in 2009 and the appellant did not point to any variation on the site visit. By reason of size, permanence and physical attachment I conclude as a matter of fact and degree that the fences and animal and bird enclosures fall within the definition of a building and operational development has taken place.
29. The timber apparatus forming a platform within the goat enclosure was firmly lodged into the ground and appeared to be a permanent structure. A horse simulator, built of timber and glass, looked like a small building, similar to a kiosk. There was no indication that it was moveable or that its siting had changed. By reason of size, permanence and physical attachment as a matter of fact and degree the apparatus and horse simulator fall within the definition of a building and are operational development.
30. Within some enclosures were animal shelters, constructed of timber and on runners. These lacked the permanence and physical attachment of the fences

and enclosures. Therefore they are chattels and operational development has not taken place and to this limited extent the ground (c) appeal succeeds.

31. In conclusion, a breach of planning control has occurred by the erection of fences, animal and bird enclosures and apparatus on the children's farm. The wording used in the notice requires no variation, even though the shelters are chattels.
32. It is also the case that the erection of fences, animal and bird enclosures and apparatus has been integral to the change of use of the land. The local planning authority can require the undoing of any incidental operational development even though the operational development may not have constituted a breach of planning control had it been carried out as an independent operation.

### **Appeal on ground (a)**

#### ***Main issues***

33. As a result of the ground (c) appeal the deemed application is for the material change of use of land to a children's farm with ancillary café, and the erection of fences, animal and bird enclosures and apparatus. The appeal site is located within the Metropolitan Green Belt. The main issues are:
  - Whether the children's farm, and associated works, are inappropriate development in the green belt.
  - The effect of the development on (i) the openness and visual amenity of the green belt, (ii) the character and appearance of Mill Hill Conservation Area, (iii) the living conditions of nearby residents, and (iv) highway safety.
  - Whether by imposing reasonable planning conditions any objections could be overcome.
  - The effect of the development on farm diversification.
  - The contribution of the children's farm to the community facilities in the area.
  - If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

#### ***Planning Policy***

34. The development plan includes the London Borough of Barnet Unitary Development Plan 2006 and The London Plan 2011, which came into effect on 22 July 2011. The main parties were invited to update their evidence which had been based on the former London Plan (consolidated with alterations 2004).
35. National planning policy of most relevance to the issues in this appeal is contained in Planning Policy Guidance Note 2: Green Belts (PPG 2) and Planning Policy Statements on Delivering Sustainable Development, Planning for Sustainable Economic Growth, Planning for the Historic Environment and Sustainable Development in Rural Areas (PPS 1, PPS 4, PPS 5 and PPS 7).

36. Among the principles set out in the Ministerial Statement *Planning for Growth* is the need to consider fully the importance of national planning policies aimed at fostering economic growth and employment and to consider the range of likely economic, environmental and social benefits of proposals. Proposals securing sustainable growth should be treated favourably, consistent with policy in PPS 4.
37. The draft National Planning Policy Framework document was issued for consultation on 25 July 2011. Relevant proposed key policy changes relate to the presumption in favour of sustainable development and protecting community facilities. Core green belt protection remains in place and existing policies on the historic environment are streamlined. In the interests of natural justice the main parties and a third party were given the opportunity to address the relevant draft policies and I have taken into account the responses. However the document is subject to change and its policies have little weight at the current time. Planning Policy Guidance Notes and Statements, and Circulars, remain in place until cancelled.

### **Green Belt**

#### *Inappropriate development*

38. PPG 2 states the general presumption against inappropriate development in the green belt. The making of a material change in the use of land is inappropriate development unless it maintains openness and does not conflict with the purposes of including land in the green belt. Re-use of buildings inside the green belt is not inappropriate development provided that the stated criteria are met. The erection of buildings is inappropriate development unless for one of the stated purposes. In The London Plan Policy 7.16 states that in planning decisions the strongest protection should be given to London's green belt in accordance with national guidance. Policies O1, O2 and O6 of the London Borough of Barnet Unitary Development Plan (the UDP) are generally consistent with national policy.
39. The change of use to the children's farm has involved the re-use of a group of buildings for the keeping and display of animals and birds, the reception and café, the party and education room and toilets. The surrounding land is used for the keeping and display of animals and birds along a trail. In addition, space to the north and west has been formalised for a car park with about 92 spaces, retaining a grass area on the site frontage. Integral to the change of use has been the associated operational development involving the erection of fences, animal and bird enclosures and apparatus. There were just over 50,000 visitors in the first year of operation. The present use, activity and associated works have to be compared with what is known of the previous use.
40. The buildings were used in connection with the riding school as stables, tack rooms and a small refreshment area. The appellant's evidence is that some 320 to 420 riding lessons took place each day from 0630 to 2130 hours and there was a pony club for up to 40 children. The buildings then fell into disuse. The 2005 appeal decision described them as being in poor condition and the central building (now used for the reception and café) all but derelict. In isolation, the re-use of the buildings has not had a materially greater impact on the openness of the green belt and the purposes of including land within it. The Council and third parties have not sought to argue that they were incapable of conversion without major or complete reconstruction, despite their poor condition. As stables and as converted they are in keeping with their



semi-rural surroundings because of their low profile and the use of timber cladding. However, the use is not solely confined within the buildings. PPG 2 requires that strict control is exercised over any associated uses of land surrounding the buildings which might conflict with the openness of the green belt and the purposes of including land within it (for example, because they may involve extensive hardstanding, car parking).

41. The appellant maintained that the land on the northern and western part of the appeal site was previously used for the stationing of farm vehicles and horse boxes in connection within the wider holding, together with a 50 space car park referred to in sales particulars for the Belmont Riding Centre<sup>5</sup>. The extension to the grassed area on the frontage has resulted in the loss of an area equivalent to some 20 spaces.
42. However, the 2005 appeal decision indicated that the land was largely open, which is consistent with an aerial photograph pre 2007. The probability is that in the 1990's the unsurfaced land was used for informal and occasional parking of horse and farm related vehicles, apart from the frontage north west of Sheepwash Pond. A defined area for car parking appeared to exist on the land adjacent. There is no information on the level of use of the car park, only its capacity. In recent years, prior to the opening of the children's farm in 2009, these areas were little used for parking, a conclusion supported by the comments of residents and other interested parties and by previous appeal decisions. By that time the stables had fallen into disuse and the indoor equestrian centre had closed. The current position is that the 92 space car park is more formally laid out with an in-out arrangement, demarcation of blocks of parking and a hard surface in a good state of repair. It is well used, with a regular turnover of cars. Openness has not been maintained.
43. The land behind Sheepwash Pond was described in the 2005 appeal decision as an area of trees and other vegetation. It is now occupied by animal and bird enclosures. A loss of openness has occurred.
44. Most of the activity at the children's farm is concentrated in and around the group of buildings and the car park. The children's farm is open daily seven days a week, attracting around 290 visitors on the busiest days. In contrast, the main activity associated with the riding lessons probably would have taken place on the wider holding. Although the appellant has referred to two large cross country events, one held in 1998 and the other held in 1999, they were atypical and would have been primarily on the surrounding lands. Referring to the 2005 appeal decision, the inspector concluded that the proposed small retail trading estate was likely to result in more intense levels of activity and traffic than a resumption of the lawful use.
45. For these reasons the use of land surrounding the buildings conflicts with the openness of the green belt and there has been some encroachment into the countryside.
46. The fences and animal and bird enclosures are integral to the children's farm. As explained above, the children's farm has not maintained openness and has conflicted with a purpose of including land within it. Therefore these structures do not fall within the 'essential facilities' or any other purpose of new buildings identified in paragraph 3.4 of PPG2. That being so, they are inappropriate development.

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<sup>5</sup> Reference was also made to an OS plan attached to a Tree Preservation Order dated 26 November 1991.

47. In conclusion, the children's farm and associated structures are inappropriate development, which is by definition harmful to the green belt. In view of the presumption against inappropriate development, the harm has substantial weight.

*Effect on openness and visual amenity*

48. Any material loss of openness can be sufficient to make the development inappropriate. The scale and impact of the loss of openness is also a consideration.

49. The ability to re-use buildings has limited the harmful effect on openness, as has the lightweight construction and generally small size of the enclosures. The car park has a more significant effect on openness because it is an extensive area of hard surface within the overall site.

50. The children's farm is contained within a well defined area and because of the sloping nature of the land much of the development is not seen from The Ridgeway. The exception is the car park, which because of its appearance detracts from the visual amenity of the green belt. The small extension to the green space on the frontage has provided little mitigation. The animal enclosures are mainly screened in the summer months by the trees and vegetation around Sheepwash Pond but when not in full leaf the structures would become more intrusive. The children's farm has no effect on longer distance views across the valley from the north because of the topography and the intervening farmyard. Overall, the harm to visual amenity is confined to short distance views from The Ridgeway and has a moderate adverse impact.

**Conservation Area**

51. The Ridgeway runs through the heart of Mill Hill Conservation Area. Along this busy route are purpose built institutional buildings, mansion houses and modest cottages. The wide grass verges along the southern side of The Ridgeway, together with good specimen trees and hedgerows, provide a green corridor of informal planting. The Conservation Area Appraisal identifies Sheepwash Pond as a focal point and highlights the glimpsed views across the appeal site towards the open land to the north. These landscape features and views are valuable for their contribution to the semi-rural and open character of the Conservation Area.

52. The activity and community/educational uses at the children's farm are not out of character with the busy thoroughfare and the existing educational establishments in the locality, such as Mill Hill School and Belmont Mill Hill Preparatory School. Similarly, the farming associations relate to the rural setting to the Conservation Area. However, the fencing and enclosures have led to clutter and a loss of openness within the site in a sensitive position close to Sheepwash Pond. The views over the valley have been partially obstructed by the vehicles parked on the car park throughout much of the day and by the sign boards and promotional display on the site frontage. They are a much more immediate intrusion than the visible upper part of the mobile home stationed in a less sensitive position beyond the car park.

53. Therefore the car parking, the various structures and promotional material detracts from the open character, the rural views and landscape feature that make an important contribution to the quality of the local built and natural

environment. The development has failed to preserve or enhance the character and appearance of the Conservation Area.

54. The direction provided by policy HC1 of the UDP is that the development should not be permitted. PPS 5 in policy HE9.1 states a presumption in favour of the conservation of designated heritage assets. In this case the harm would be less than substantial and therefore under policy HE9.4 harm has to be weighed against the public benefit of the development. I will return to this in the overall balancing exercise.

### ***Living conditions***

55. Policy ENV12 of the UDP seeks to separate noise sensitive developments from noise generating sources. The north western boundary of the site adjoins the residential property known as Millbrae. In 2007 the old bungalow was redeveloped and replaced by a house of individual and high quality design, which has large windows with an outlook towards the site. The rear garden extends along the length of the internal access road within the site.
56. Most of the vehicular activity generated by the children's farm would be in close proximity to Millbrae. There would be noise from car doors shutting, engines starting and revving and vehicles exiting the car park. Additional noise would arise from the visitors chatting, laughing and so on. The occupants of the house also highlighted the disturbance from the early morning business networking events at the café and from delivery vehicles. This activity would amount to considerable disturbance to the occupiers of the dwelling because it would occur every day of the week, including weekends and holidays and because it would be at the rear of the house, away from the noise of the main road. The enjoyment of the private garden would be most affected. The increased depth of the frontage landscaping on the appeal site would have very little, if any, effect in mitigating the noise. There also would be a small loss of privacy because of the relationship of some of the upper floor windows to the site.
57. The appellant argued that the occupiers of Millbrae would have been subject to the traffic comings and goings generated by the wider holding and that the children's farm would have reduced vehicle movements. This was disputed by the current occupiers, who have lived at Millbrae since 2003. The 2003 appeal decision also casts doubt on the appellant's assertion. The Inspector said that access to the indoor riding centre and the rest of the complex could only be gained through a complicated and sophisticated security system sited well to the east adjoining the main racehorse and training facilities. Unlike the earlier commercial riding centre operations there was no longer access to that land for the public at large from The Ridgeway. Therefore the probability is that the children's farm has resulted in greater numbers of vehicle movements and a more intensive use of the car park area to the detriment of the living conditions of the occupiers of Millbrae.
58. The residential property Sheepwood lies to the south east of the site, near to the group of buildings, the animal and bird enclosures and the trail. The occupiers say that the impact of the children's farm on their home and daily lives has been considerable. When they moved to their home the stables were in a dilapidated state, which in part explains why they have found the change of use so intrusive. The probability is that the past activity associated with the stables would have been enclosed within the courtyard. The riding of horses would have taken place over the wider holding. Most of the activity at the

children's farm is concentrated in and around the buildings. The trail and the enclosures back onto Sheepwood. The boundary fence and vegetation would not be sufficient to prevent noise disturbance from visitors and some loss of privacy. There would be some potential for noise and smell from the animals but given stringent standards on hygiene, smell is unlikely to be a particular problem.

59. My conclusion is that residential amenity of nearby residents has been significantly harmed by the development. A children's farm, a use which attracts lots of people and involves the outside display of animals and birds, has materially different characteristics to the former stables and the agricultural use of the land. Good practice would avoid siting such a use between two residential properties and the objective of policy ENV12 has not been met.

### **Highway safety**

60. The Ridgeway is a busy B Class road, serving the area around Mill Hill and Highwood Hill and linking into the wider highway network. There is a bus stop outside the site, used by school children. Highway safety was not a matter raised by the local planning authority, although residents expressed general concerns about the numbers of turning movements and the conflict with pedestrians and users of the bus stop. No technical information or analysis was submitted.
61. The Ridgeway has various functions - providing for movement of traffic, pedestrians and cyclists, providing access to public buildings, schools and homes and defining a sense of place, linking the buildings and spaces. Referring to national guidance in Manual for Streets, it is a street as distinct from a road. Greater emphasis needs to be given to pedestrian activity and safety. Visibility in the vicinity of the site entrance and exit is good. Traffic speeds are likely to be variable, rather than constant, in response to the junctions, pedestrian crossings, bus stops, frontage access and so on. It is the responsibility of drivers to travel within the speed limit at a speed suited to the conditions. The number of visitors to the children's farm on average range from 137 to 290 visitors per day. Not all people will come by car and family groups will come in a single car. The number of turning movements would not be substantial. Taking all these factors into account the development would not lead to a significant reduction in highway safety.
62. There is no evidence to show that on existing levels of visitor numbers the children's farm significantly exacerbates traffic congestion on The Ridgeway.

### **Use of conditions**

63. Circular 11/95<sup>6</sup> advises that if properly used conditions can enhance the quality of development and enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission. Conditions should be seen to be fair, reasonable and practicable. PPG 2, in relation to the re-use of buildings, also encourages consideration of whether any objections could be overcome by imposing reasonable conditions.
64. Discussions between the Council and the appellant have taken place since March 2010 over conditions to control the scale and operation of the children's farm and the use of the land within the site. The discussion at the hearing

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<sup>6</sup> Circular 11/95 The Use of Conditions in Planning Permissions

highlighted the main points where there was lack of agreement. In general terms, the appellant was seeking maximum flexibility, to realise greater potential of the facility and to allow for an increase in visitor numbers to 60,000 a year. The Council was seeking to exert a wide range of control, including restrictions on detailed management of the farm.

65. The location of the site within the green belt and a conservation area and between residential properties, suggests that the use would require a greater degree of control than if the site were located in an area that was not subject to special restraints. The purposes of the conditions would be to protect the character, appearance and openness of the area, and to protect residential amenity. However, a children's farm has certain characteristics and requirements in order to function. It may be that the location and the use are incompatible. The children's farm is a new, different use and reference to the equestrian uses that have taken place in the past on the site (some of which ceased some years ago) and on the wider holding have limited relevance to the conditions that should be imposed.
66. The hours of opening during March to October are 0800 to 1800 hours Monday to Friday and 0900 to 1800 hours Saturday and Sunday. During the winter months the farm closes at 1700 hours. The appellant was seeking opening hours from 0700 to 2130 hours seven days a week, which in my view would be excessive for the use in question. The current opening hours are necessary and reasonable.
67. The car park has been contentious in terms of its size and use. The aim would be to ensure all parking demands are met within the site and to restrict use to visitors and employees of the children's farm. The visual impact and scope for landscaping also has to be taken into account. No detailed information has been provided on, for example, capacity relative to the number of visitors and mode of travel, or even levels of existing use. The appellant was not willing to reduce the number of spaces below those existing. The Council put forward a limit of 50 spaces, which in effect would be about half the size of the existing parking area and correspond to the probable former capacity. A car park around this size seems reasonable, given the visitor numbers and the accessible location of the site in relation to public transport.
68. The café should remain ancillary to the primary use, which would allow occasional use by people who are not visiting the farm. It would be unreasonable to require all customers to pay the entry fee to the farm. The building and space that is currently used appeared to be functional and sufficiently spacious to allow a level of comfort and flexibility. The Council has not put forward an adequate reason to restrict the number of covers to 50.
69. The Council is seeking to preclude the provision of children's play facilities and picnic areas. However, picnic tables are already outside the café and there is no justification for requiring their removal. Children's play equipment may typically be found on other children's farms but the green belt location and the limits of space would argue against such provision here.
70. Control on the amount of the entry fee would be an unreasonable interference with the management of the operation. In a similar way, to seek to control where different types of animals are kept and the addition of any new types of animals would be unreasonable and impractical. One way that the amenity of residents could be improved would be to exclude the keeping of animals from the area alongside the boundary fence. Bearing in mind the layout of the trail,

this probably would be too significant a reduction on the animal display area and therefore unworkable.

71. A children's farm has an educational role, primarily directed and related to the animals and birds present at the farm and with farming more generally. However, it is not a community centre or a school where a broader range of classes and activities may be expected. The Council has suggested a condition to the effect that there should be no drama classes/workshops or music sessions. This could be interpreted too tightly and impose an unnecessary restriction on the range of incidental activities that could be held. A preferable approach would be to concentrate on controlling opening hours and the identification of the use of buildings and spaces, linked into the site layout, rather than ruling out certain types of workshops. For example, the existing balance, as shown on the leaflet, provides a suitable emphasis on the space devoted to housing animals and birds. On the other hand, use of most of the buildings for education rooms probably could not be accommodated within a primary use of the land as a children's farm.
72. A condition excluding the hosting of business networking events, workshops and seminars would be justified in this green belt location because such events are not directly related to the main use of the land and they would increase demand for car parking.

### ***Initial conclusions***

73. Conditions as outlined above would provide a means of controlling the use of the building and spaces. Satisfactory compliance would reduce the loss of openness and harm to visual amenity and deliver some environmental enhancement. Early morning disturbance through external events would be precluded.
74. The mechanism to confirm and control details of the car park, additional planting, layout of the trail, location of facilities, use of buildings and so on would be through the submission and approval of a site layout and landscape scheme. Such a scheme is not before me. Therefore there is uncertainty over the degree of improvement that would be secured and indeed whether an acceptable scheme could be achieved in view of the appellant's resistance to reduce the amount of car parking.
75. Restrictions on car park size and opening hours are key factors in containing the degree of harm to the green belt, conservation area and neighbours' amenity. The appellant made clear the restrictions would be unacceptable. Assessment of harm and the weight to be attached to that harm will be made on that basis.
76. In the absence of a detailed scheme to show otherwise, the harm through inappropriateness would not be overcome. This harm has substantial weight. The harm to openness and the visual amenity of the green belt adds some additional weight against the development. The effect on the Conservation Area would be negative because of the relationship of the development to Sheepwash Pond and the intrusion of the car parking, the signage and display vehicles into the views across the valley to the north. I attach significant weight to the failure to preserve or enhance the character and appearance of the Conservation Area. Neighbouring residents would experience noise disturbance. The adverse effect this would have on the enjoyment of their

gardens, especially at weekends, has significant weight. Overall there are very strong considerations weighing against the development.

77. In these circumstances where inappropriate development is involved it is up to the appellant to show why permission should be granted. Reliance is placed on the development being farm diversification in a sustainable location and the children's farm as an educational and community facility. The points made about the re-use of existing buildings and the reduction in the car parking area are relevant to and inform the issue of inappropriate development. They are not positive factors to weigh in the balance as other considerations.

### ***Farm Diversification***

78. Recognising that diversification into non-agricultural activities is vital to the continuing viability of many farm enterprises, PPS 7 advises that favourable consideration should be given to proposals for diversification in the Green Belt, where openness is preserved and there is no conflict with the purposes of including land within it. In cases of inappropriate development, any wider benefits of the farm diversification may contribute to the 'very special circumstances' required by PPG 2. Re-use of buildings is encouraged and account must be taken of the amenity of nearby residents who may be adversely affected by new types of on-farm development. Policy 7.22 of The London Plan encourages a thriving farming and land based sector particularly in the green belt but the development plan has no specific policy on farm diversification.
79. I explored with the appellants at the hearing what wider benefits the diversification has brought to the farming enterprise as a whole and to the wider community, the economy and the environment. The children's farm has been running at a loss. The appellant thought this was to be expected of a new business starting in a time of recession. The aim is that it breaks even. No business plan was presented, although the indications are that to do so it would have to expand its community use, attractions and perform a greater educational role (a farm shop and evening classes have been considered). This may partly explain why greater flexibility was being sought in the planning conditions. There was no specific link, financial or otherwise, identified with the farming enterprise at Belmont or at Sandridge, where farming will cease within three years in any event. Therefore at the present time, and probably into the future, the children's farm is not able to be credited with making a contribution to the viability of the farming enterprise or providing an element of financial stability in a business subject to high volatility. It is not essential for a farm diversification project to contribute to the economic viability of a working farm but the failure to do so lessens the weight to be given to diversification.
80. Job creation was identified as the specific contribution made by the development to the local economy. The children's farm has provided around 15/19 jobs<sup>7</sup> and three opportunities for apprenticeships, opportunities that the appellant wishes to develop in the future. The Government's top priority in reforming the planning system is to promote sustainable economic growth and jobs<sup>8</sup>. Therefore this contribution to the local economy has significant weight.
81. The site is in a sustainable location, accessible by various means of public transport and within walking/cycling distance of the residential areas to the

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<sup>7</sup> Both figures were cited by the appellant.

<sup>8</sup> Written Ministerial Statement: Planning for Growth 23 March 2011.

south and west. This factor is of most relevance and benefit to the development of the children's farm as an educational and community resource.

### ***Educational and Community facility***

82. The rationale of the children's farm was to provide an educational facility where children could learn about animals and farming by viewing the animals and by riding on the tractor trailer around the wider holding. Educational packs are available and an educational programme has been developed. Three to five schools a week have visited since the Spring. Educational films are shown and historic farm implements displayed in the café.
83. A petition with about 750 signatures was submitted to affirm that the children's farm is a welcome and valued asset in the community. The on-line petition has attracted some 330 comments, such as 'a gem of the neighbourhood', 'well cared for, well run and a pleasure to visit', 'the best thing to have happened to Mill Hill'. Additional support has been received from St Vincent's Catholic Primary School on The Ridgeway, other colleges and educational establishments and the Hertfordshire Federation of Young Farmers Clubs. They emphasise the enjoyment that the farm gives, along with the opportunity to learn about food, farming and the environment.
84. The petitions were part of a campaign to Save Belmont Children's Farm and were promoted on the basis of only one side of the argument. Also not everyone is in favour of the facility, with objections from Mill Hill Preservation Society and St Paul's Church. Even so, undoubtedly there is a great amount of support for the children's farm. It is a much valued resource and a real asset to the community. It performs multiple functions and has added a new facility and attraction within the Borough, the other children's farms being at Kentish Town and London Colney. It provides access to the countryside as a place for outdoor education and children's play, encourages greater appreciation of the farming sector and food production and promotes healthy living. The links to and support from local schools are strong. It encourages social interaction and community involvement, which is an essential element in delivering sustainable development and a key principle identified by PPS 1. The farm forms part of a network of green infrastructure and is an initiative that has support through Policy 2.18 of the London Plan. The role of the children's farm as a community and educational resource has substantial weight.

### ***Balancing harm against other considerations***

85. The benefits of farm diversification are primarily through the jobs provided and the valuable educational and community role of the children's farm. The accessibility of the site is an asset. These are forceful arguments in favour of the development that have the support of national policies emphasising job creation and provision of community facilities. The public benefit would justify the development under policy HE9.4. However, the question is whether the economic and social 'public benefit' considerations clearly outweigh the totality of the harm arising from the inappropriateness of the development in the green belt and the other harm identified. The London Plan has reaffirmed that the strongest protection should be given to London's green belt. The harm, to the openness and visual amenity of the green belt, the Conservation Area and neighbour amenity, add very significantly to the substantial weight against the inappropriate development. Objections are unable to be overcome by the use of planning conditions, where lack of agreement over the size of the car park and the uncertainty over a layout and landscape scheme, are critical factors.



Whilst Policy EC6.2f of PPS 4 supports farm diversification for business purposes, it does so where diversification is consistent in its scale and environmental impact with its rural location. The development does not satisfy this objective.

86. After a lot of thought I conclude that the other considerations do not clearly outweigh the harm identified. Very special circumstances necessary to justify the development do not exist. The balance is against the development. It is therefore contrary to Policy 7.16B of the London Plan, policies O1, O2 and O6 of the UDP and national policy in PPG 2. The appeal on ground (a) does not succeed.

### **Appeal on ground (g)**

87. The issue is whether the compliance period of three months falls short of what reasonably should be allowed.

88. The appellant is seeking a period of 6 months or until March 2012, whichever is the later, to allow the orderly closure of the children's farm. The Council raised no objections to a period of 6 months.

89. Two main reasons support an extension to the compliance period – the need to properly re-home the animals and to allow employees time to find alternative employment. These important considerations justify a compliance period of six months. I will vary the enforcement notice accordingly, prior to upholding it. The local planning authority also has power under s173A(b) to extend this period, for example in the event the appellant seeks to address outstanding issues related to planning conditions. The appeal on ground (g) succeeds.

### **DECISION**

90. I direct that the enforcement notice is corrected by the deletion of paragraph 3(ii) and the addition of a new reason 7 in paragraph 4 "It appears to the Council that the breach of planning control consisting of the material change of use of the land has occurred within the last ten years and that the breach of planning control consisting of the erection of fences, animal and bird enclosures and apparatus has occurred within the last four years".

91. I direct that the enforcement notice be varied by:

- the deletion of the wording of paragraph 3(i) and its replacement by "Without planning permission, (i) the material change of use of land to a children's farm with ancillary café, and (ii) the erection of fences, animal and bird enclosures and apparatus."
- The replacement of three months by six months as the time for compliance in paragraph 6.

92. Subject to the above correction and variations I dismiss the appeal, uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Diane Lewis*

Inspector

## **APPEARANCES**

### FOR THE APPELLANT:

|   |                                    |
|---|------------------------------------|
| David Lane BSc(Hons) DipTP DipTP<br>MRTPI | Principal of DLA Town Planning Ltd |
| Andrew Reid                               | The appellant                      |

### FOR THE LOCAL PLANNING AUTHORITY:

|                          |  |
|--------------------------|--|
| Joe Henry BA(Hons) DipTP | Planning Regulations and Enforcement Manager<br>London Borough of Barnet |
|--------------------------|--|

### INTERESTED PERSONS:

|   |                                |
|---|--------------------------------|
| Robin Pearson BSc(Econ) DipTp<br>MRTPI      | Pearson Associates             |
| Robert Jameson LLB                          | Solicitor, Jameson and Hill    |
| Michael Jacobs                              | Resident                       |
| Mrs Jacobs                                  | Resident                       |
| Mr and Mrs Neophytou and<br>Elena Neophytou | Residents                      |
| John Living                                 | Mill Hill Preservation Society |
| David Welch                                 | Mill Hill Preservation Society |

### **DOCUMENTS submitted at the hearing**

- 1 Letter of notification of the hearing and list of people notified
- 2 Representations from Mill Hill Preservation Society and a local resident
- 3 Leaflets and advertising material submitted by the Council
- 4 Bundle of letters and petitions in support of the development submitted by the appellant
- 5 Summary submitted by Mr Jameson
- 6 Appendix 4 to Mr Reid's Statement
- 7 Sales particulars submitted by the appellant
- 8 Bundle of CCTV images submitted by the appellant

### **PLANS**

- A Plan attached to the enforcement notice