

PLANNING COMMITTEE

CHAIRMAN: Cllr Mike Haines

DATE: 19 January 2021

REPORT OF: Business Manager – Strategic Place

ENFORCEMENT REPORT

REFERENCE NO: 16/00198/ENF

DESCRIPTION OF DEVELOPMENT: Alleged unauthorised change of use of land

MAMHEAD: Land at The Orangery, Mamhead

OBSERVATIONS

Background to the Alleged Breach

1. In June 2019 the Council received a complaint about a sculpture park being created at The Orangery, Mamhead that was being advertised as being open to the public.
2. Under the planning legislation you are entitled to operate a business from a residential property without requiring planning permission but this would depend on the impact this has on the surrounding area and nearby residential properties. This can include allowing people to view private gardens. However, where the use becomes more than a private residence it is likely that planning permission would be required.
3. Private garden showing can also take place either as an ancillary activity or through schemes such as Devon Open Studios or the National Gardens scheme. In addition 'permitted development' rights for the temporary / occasional change of use of non-residential land can be relevant here.
4. In this instance to assess the situation Officers made contact with the owner and subsequently undertook a visit with various officers, including the Conservation Officer, the Tree Officer and the Landscape Officer in December 2019. It was planned to have another site visit but the Coronavirus restrictions affected a planned follow up meeting. However a meeting has since been held on site to look at what activities were being carried out in relation to the advertised Sculpture Park and to assess whether planning permission was required for a change of use of the land.

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5. From the Devon Sculpture Park (DSP) website, reviews on Google and through our meeting it is clear that tours and events relating to both re-wilding and the sculpture park were being carried out on the land. There was also a sign at the site entrance that was advertising a sculpture park with no details about how to arrange a site visit which meant members of the public would try to access the site on an ad hoc basis.

6. Information available on the DSP website now more clearly indicates that there are a variety of visits, tours, workshops and retreats being advertised that can be undertaken at the site. These could be for individuals, families or small groups. Although originally it seems that members of the public could just turn up to the site it is noted that things had changed and any visits would have to be booked in advance and are tailored towards who is attending.

7. As the use became clearer, consideration as to whether or not it needed planning permission essentially hangs on the extent of the use – frequency / volume of visits / disturbance caused etc.

Planning Contravention Notice

8. In order to assess the level of use and what services were being provided a Planning Contravention Notice (PCN) was served to require the owner to provide information about the use of the land and buildings.

9. The returned PCN confirmed the activities being undertaken. In response the number of visitors to see the gardens and sculptures is objectively low for a site of this scale. Prior to the recent covid-19 pandemic there had been 15 separate tours with a total of 35 people. Since the site was reopened, there had been 3 tours with a total of 7 people attending up to the point of the PCN being returned at the end of September 2020.

10. We are mindful of the unusual circumstances of this year but these numbers cannot be said to be likely by themselves to have caused a change of use to have occurred at the site. It is considered the predominant use is clearly still residential / agricultural.

11. As for the rewilding tours these do appear to be more popular with 6 to 20 people attending at a time, however, this is not a daily occurrence and since the pandemic there had been 5 days when these events have been held up to when the PCN was returned. Again, these numbers are currently objectively low.

12. In summary: numbers visiting the site are low and visits are pre-booked. The website reflects this and the signage at the site has been updated.

13. There has also been concern raised about a café operating from the property. There is no established “drop in” café on site. Those involved in tours are though provided with refreshments as appropriate. This is by using the existing kitchen associated with the house.

Conclusion and Officer Recommendation

14. In this instance from the details obtained through the investigation it is not considered the number of people attending is sufficient to constitute a change of use and as such it does not appear that a planning breach is occurring.

15. In addition, as part of the assessment consideration must be given to what can be carried out as 'permitted development'. Under the planning legislation provision is given to temporarily change the use of the land for up to 28 days in a calendar year without requiring planning permission. This would allow for an unlimited number of people to attend the site without any planning restrictions. It should be noted that this has been extended to 56 days up until the end of 2021 under Coronavirus legislation.

16. Furthermore, as part of the investigation it is noted that some of the issues that have been raised related to the impact on the local residents. Although there clearly has been some impact with the current uses we are hopeful that these should have been resolved with the change in the signage and the way people book in advance. Substantially we consider these to be civil matters and not matters that are within our control in light of the level of use.

17. Although in this instance it is not considered a planning breach is occurring should further information be received (including from local residents or others) that shows the level of activity has increased considerably then this position could be reviewed.

Response to the Council's proposals

18. Although in this instance it is not considered the level of activity constitutes a change of use for which planning permission would be required this has been disputed by the Ward Councillor and local residents do have residual concerns. They consider that notwithstanding the permitted development rights outlined above, the use of the site to operate a sculpture park at all should require a planning application being submitted so that the matter can be regularised.

19. Comments received have noted the importance of the historic gardens, highway issues, the various different events / activities that are provided and the impact on local residents.

20. As for the impact on the historic gardens in this instance it is not considered that the use has any negative impact on the landscape. The activities only appear to involve people visiting the site and walking around to view how the land is farmed and to appreciate the historic setting of the site. Furthermore, having been in contact with Historic England it seems that they do not have any concerns about the use of the land and, incidentally, have not received any complaints about the activities occurring.

21. With regards to any highway impact it is agreed that any use as a sculpture park or for rewilding tours would generate additional vehicles at the site. At the levels of use currently evidenced, we do not consider that this is any more than could be generated by lawful residential or ancillary / associated activities at the property. We

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have however discussed the matter with Devon County Council as Highway Authority and they have confirmed that they have not received any complaints about an increase in traffic to the site and that with the identified level of usage, they do not consider this unacceptable.

22. Officers note that there are a variety of courses on offer but understand that the resources at the site limit the capacity to deliver these concurrently – rather, the options shown illustrate the types of tours that can be arranged. Furthermore, no evidence has been submitted either by local residents or the site owners through their PCN to suggest that an excessive number of people are attending the site. From the discussions with the owner it seems that all the activities are pre-booked and would not involve people turning up without an appointment. Based on the investigation to date there has been no evidence submitted to show a high level of people attending the site on a regular basis to constitute a change of use.

23. It is appreciated that the additional vehicles attending the site will have an impact on the local residents but to date insufficient evidence has been received to establish a materially detrimental impact that would be subject to any planning control. Without evidence to demonstrate a change of use has occurred it would not be possible to request a planning application or support formal action being taken.

24. In this instance although concerns have been raised about the use of the land for various events / workshop activities, to demonstrate a planning breach is occurring evidence is required to show the level of use constitutes something that would require planning permission rather than a use within the parameters of permitted development.

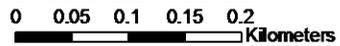
RECOMMENDATION

25. The Committee is recommended to resolve that no further action is taken at this time.

WARD MEMBERS: Councillor Connett



Planning Committee 16/00198/ENF The Orangery, Mamhead



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Drawn By: AAA

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