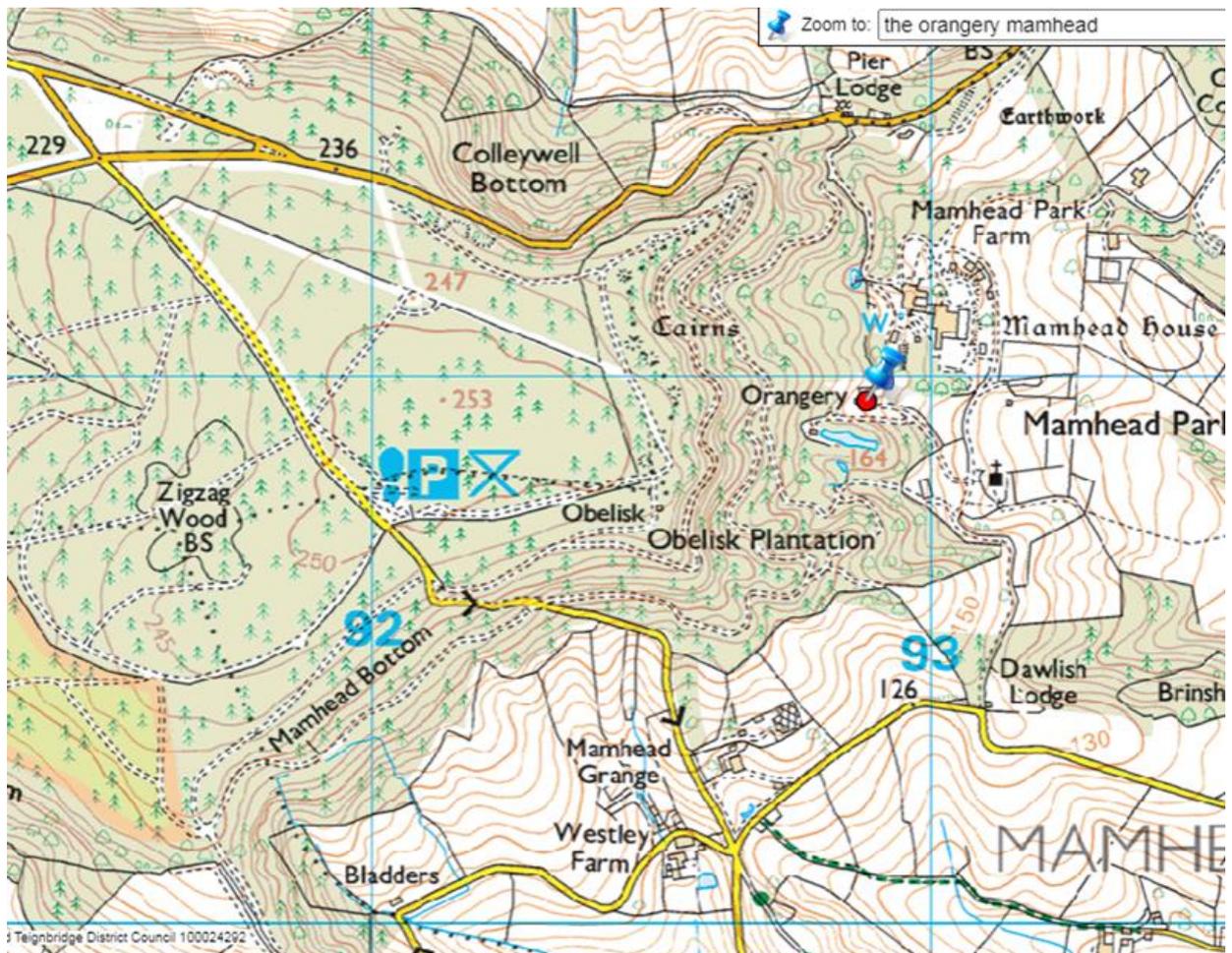


**TEIGNBRIDGE DISTRICT COUNCIL
PLANNING COMMITTEE
MARCH 16 2021
PART I**

Report Title	Alleged unauthorised change of use at The Orangery, Mamhead
Reference Number:	16/000198/ENF
Purpose of the Report	To determine whether or not to take enforcement action
Recommendation	It be RESOLVED no enforcement action is taken at the current time
Ward and Ward Member	Kenton with Starcross Cllr Connett
Report Author	Business Manager – Strategic Place Ros Eastman Email: roselyn.eastman@teignbridge.gov.uk



1 BACKGROUND

- 1.1 This case is referred to committee at the request of the local ward member.
- 1.2 It concerns a site originally part of the Mamhead House estate which has been separated off and is now occupied as a separate residential unit with its own garden and associated parkland (“**the Site**”).
- 1.3 In June 2019 the Council received a complaint about a sculpture park being created at the Site that was advertised as being open to the public. The complaint referred to marketing information and signage at the Site entrance encouraging members of the public to turn up unannounced to view the Site and such having a detrimental impact on the amenity of nearby residents. It has also been alleged that the Site has changed from a residential unit with its own gardens and associated parkland, to commercial garden / Sculpture Park; including a café for visitors. Reference was also made to the Sculpture Park within the Site being advertised publicly for viewing.

2. ENFORCEMENT INVESTIGATION APPROACH

- 2.1 In response to the complaint, information was sought and obtained from site visits, the site owners and from complainants. Further advice has been sought on the impact of the use of the Site from Highway Authority (in terms of traffic generation) and Historic England and the Conservation Officer (in terms of the impact of the use on the historic fabric of the Site). The Council’s Tree Officer and the Landscape Officer have also provided comments.
- 2.2 This evidence has been considered within the context of the relevant planning law which provides:
 - (i) Has there been a material change of use which amounts to development. Under planning legislation you are entitled to operate a business from a residential property without requiring planning permission subject to there not being any material impact on the surrounding area and nearby residential properties. This may potentially permit the public to view private gardens without requiring planning permission. Indeed, 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.
 - (ii) If there has been a material change of use, is the development permitted development so that planning permission is not required? Permitted development rights exist which allow land to be used for the temporary / occasional change of use of non-residential land.
 - (iii) If not, planning permission is required. This could cover for example a situation where the use as a visitor attraction becomes the dominant use of the Site.

3. ENFORCEMENT TEAM'S FINDINGS

(i) Has there been a Material Change of Use?

The Nature of the Activity at the site

- 3.1 Tours and events relating to both re-wilding and the sculpture park are being offered and / or carried out on the land. The landowner suggests that the majority of the tours / events that are taken up related to the various agricultural activities that are carried out on the land. There is no established "drop in" café on site. Those involved in tours are provided with refreshments as appropriate using the existing kitchen associated with the house.

The Level of Activity at the site

- 3.2 Having established that a business use is taking place at the site alongside the residential use, our next step has been to review whether or not this needs planning permission based on the extent of the use – frequency / volume of visits / disturbance caused etc.
- 3.3 Complainants had provided some information regarding their view of the level of disturbance the use was causing however in order to be sure this was a consequence of the business use and not residential activity a Planning Contravention Notice (PCN) was served to require the owner to provide information about the use of the land and buildings.
- 3.4 It is an offence to knowingly give false or misleading information in response to a PCN.
- 3.5 The returned PCN confirmed:
- the activities being undertaken;
 - the number of visits and visitors.
- 3.6 The number of visitors to see the gardens and sculptures is objectively low for a site of this scale. Prior to the covid-19 pandemic there had been 15 separate tours with a combined 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.
- 3.7 The number of visitors for this element of the use has not caused a change of use to have occurred at the site.
- 3.8 The rewilding tours appear to attract larger groups with 6 to 20 people attending at a time, however, this is not a frequent occurrence and March – September 2020 there were 5 days when these events had been held.
- 3.9 Again, these numbers are objectively low.

The Impact of the Activity at the Site

- 3.10 Information available on the DSP website has been updated and any visits have to be booked in advance.
- 3.11 It is understood that some neighbours feel their residential amenity has been affected by the use. With the management of the tours that is now in place – advance booking and the removal of on-site signage in particular – it is not considered that any impact would be material at the objectively evidenced levels of use.
- 3.12 Neither our Landscape Officer nor our Conservation Officer consider the activities cause harm to the heritage assets. Historic England do not have any concerns regarding the use.
- 3.13 Devon County Council as Highway Authority does not consider the use materially affects the highway network.

Conclusion Regarding a Material Change of Use

- 3.14 Having considered the nature, level and impact of the use at the site, it is not considered that there has been a material change of use at the site.
- 3.15 There is therefore no need to consider whether permitted development rights apply or a planning application should be submitted at this time.

4. OTHER CONSIDERATIONS

- 4.1 The enforcement report has been prepared taking account of Human Rights Act 1998. In arriving at this recommendation, due regard has been given to the site owner's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

5. CONCLUSION

- 5.1 The Business Manager (Development Management) does not consider that there has been a material change of use based upon evidence available.
- 5.2 There is therefore no need to consider further whether any permitted development rights for possible changes of use would apply and nor is there any development in respect of which a planning application should be sought.
- 5.3 Consequently, no further action should be taken at the current time.