24th May 2019

Mr & Mrs S Conway
York Lodge, Highwood Hill, Mill Hill, London NW7

Briefing Note to Members of Hendon Area Planning Committee, 30th May 2019

Application Ref: 19/0581/RCU
Retention of Unlawful Care Farming Facility
SweetTree Fields, Marsh Lane, London NW7 4EY

1. Overview

2. For the very reasons the previous planning application (17/7627/RCU) was refused and the Council subsequently took enforcement action against this unlawful use and development, ***this application must also now be refused***.

3. This unlawful development is inappropriate development in the Green Belt and remains a source of material harmful impact on neighbouring residential amenity. ***Nothing*** has materially changed therefore since then.

4. Although numerous letters of support have been sent to the Council, no amount of public support can constitute very special circumstances for the erection of inappropriate development in the Green Belt or justify harmful material impact on residential neighbour amenity. This is especially

true where the support only exists from users of a facility which was opened in breach of planning control in the first place.

5. Application Flaws

6. It is unacceptable that the Council's planning officers had a positive pre-application engagement, given this recalcitrant applicant of an unlawful development which was subject of an unappealed Enforcement Notice which requires the owner to restore the land back to the state it was in before works took place. The applicant chose not to appeal against the Notice which was their second change but have been positively encouraged by officers to submit an application with a minimum fig-leaf of changes in order to have a third go.

7. The applicant's ecological information is inadequate for an important metropolitan open land site.

8. The applicant has utterly failed to assess contamination.

9. No assessment of traffic impacts has been undertaken. Our transport planning consultants have previously concluded, any vehicle movements in or out of the site present a risk to the safety and efficiency of the access, local public highway, vehicles and pedestrians alike; any intensification of use would increase the existing risks and may introduce additional hazards.

10. Apparently, trip generation has been done on the back of databases for agricultural use which is nonsense when the applicant knows what trips there are – they have said so.

11. Agricultural Use

12. Care farming does not constitute an agricultural use. It's a material change of use which required planning permission but none was obtained. You, as members, have already decided that it is inappropriate development within the Green Belt. Marginal changes in simultaneous visitors and swapping a few sheep for goats instead do not automatically make the use inappropriate. It will remain a far higher intensity than any likely agricultural use on the site which might have 15 visits to the site *per week* rather that 45 on site *at any one time*. It could be 80 per day if 35 clients and helpers come for the morning and another set come for the afternoon.

13. Green Belt Policy

14. The unlawful use is more akin to an open-air care facility, visitor attraction and petting zoo. In its nature and intensity, it is inappropriate development of the Green Belt.

15. Case law and even the Mayor's recent call-in of a school in Richmond, make clear that the openness of the Green Belt is impacted by more than just building mass and includes hardstanding and uses which detract from the openness and setting.

16. The Council has already assessed this development as inappropriate and cannot now, in the absence of any meaningful difference in proposal come to a different decision. To do so would render the decision open to legal challenge on the grounds of irrationality.

17. Well-established case law states that openness is not synonymous with being able to be seen. There is no new information or fundamental change to the scheme meaning that the Council should uphold its previous finding that the scheme is inappropriate and harmful to the openness of the Green Belt. Landscape screening cannot solve the impact on openness and indeed can itself be intrusive.

18. Given the inappropriateness of the development, Very Special Circumstances need to be demonstrated. This is a high bar. There is a presumption against inappropriate development which is more than a simple balancing act.

19. The ***need*** for the facility ***in this location***, rather than just the desirability of keeping it open would have to be demonstrated. There is no such case made by the applicant. Even then, the case would have to be weighed against the harm to the Green Belt and all other material planning considerations.

20. **Alleged Change in Intensity**

21. Unacceptable intensity of site use was a reason for refusal of the previous retrospective application and a reason for bringing enforcement proceedings against this site.

22. This application involves ***no meaningful reduction in intensity*** of the proposed use.

23. Livestock Intensity

24. The applicant's references to Livestock Units (LU) is a red herring and a clear attempt to confuse a reason for refusal. While the proposal to remove some animals and replace others might be welcome, in practice this does nothing to affect the intensity of the use. Livestock Units are also not a standardised calculation (the applicant's figures for different animals differ from the Agricultural Budgeting and Costings Book) or intended for this purpose but merely a measure of grazing on site.

25. What absolutely counts in considering intensity is the proposed number of visitors, employees and care workers.

26. The LU analysis does indicate significant amounts of feed will be brought to the site and a high stocking density for the available grazing resources.

27. Given the applicant's commencement of development in breach of planning control, and in defiance of enforcement notice, the possibility of

breaching any permission which is granted, especially one which appears to be unworkable without further modification, cannot be ruled out. The livestock numbers would require monitoring and there is concern that the number of authorised lambs is low in comparison to the number of ewes (30 ewes would normally average 51 lambs in a season not 15) leading to likely pressure to increase these numbers in future.

28. Visitor Intensity

29. The applicant did not appeal against either the 2018 Refusal or the Enforcement Notice. The Council will need good reason to depart from its earlier decision.

30. Given Members considered a 55-person cap condition was too high last time, it is astounding that the applicant is actually ignoring this.

31. Using the applicant's own figures from paragraph 6.42 of their planning statement each of those 20 visitors could have one or two support workers. In addition, there are 10 volunteers on site and between 6 and 10 members of staff. Therefore, on a busy day with 20 participants there could be up to 40 support workers, 10 volunteers and 10 members of staff, a total of ***80 people*** present on site. The applicant is plainly not addressing a reason for refusal – they are in fact proposing a 45% ***increase*** in intensity. The application should be refused for this reason alone.

32. Your officers have proposed a maximum of 45 people on site at any time with no more than 35 of those being volunteers, clients and their helpers.

This is however based on 15-20 clients which ***on the applicant's own figures*** would need 15-40 support workers which would clearly almost always exceed the 35 allowance before site-volunteers are counted.

33. Again, this is therefore almost guaranteed to either be breached or lead to significant pressure to allow increased numbers in a very short period of time. The applicant objected to the higher cap previously. This condition cannot safely be relied upon to minimise or protect the impacts of the development and cannot make inappropriate development appropriate nor can it create very special circumstances.

34. Even if never varied and fully complied with, given the applicant's own statements regarding their aspirations means that it is likely to lead to trying to arrange two maximum-size groups of visitors per day resulting in intensified traffic not accounted for in this assessment and a likely maximised use of the permitted hours in order to accommodate the two groups for a long as possible.

35. In contrast, an agricultural small-holding would normally be run by one person, possibly with part-time help from a family member with occasional visits from specialist service providers and suppliers which may amount to a couple of visits per week.

36. By comparison, the actual scale of visitors to this site is completely out of proportion with the location, its Green Belt status or that of any alternative agricultural use.

37. Importantly, supplies and so on required by a smallholding apply equally to care farming use, and may be at a higher intensity given its nature.

38. Threat of fall-back

39. Your officers make reference to the potential for similar activity and buildings as agricultural land in the event of refusal. Your officers fail to properly advise you that a fall back must only be accorded weight appropriate to its likelihood of occurring.

40. In practice there is no realistic prospect of an agricultural use with this intensity of daily activity, even if equivalent animals were retained on site. It is even less likely, as hinted at in the officer's report, that significantly higher stocking levels would actually be housed at the property and if they were the visitor activity would still remain a tiny proportion of the proposed scheme.

41. Furthermore, permitted development (PD) rights for buildings equivalent to these (the existing building cannot be retained under PD because of the Enforcement Notice) need to be justified by the agricultural use on site. It is highly unlikely that buildings of equivalent impact on openness would be required for any realistic theoretical future agricultural use of this land.

42. This hollow threat simply cannot be used to argue that the care farming proposal is not inappropriate. It also cannot reasonably be likely enough that it could bear enough weight to constitute very special circumstances.

43. **Harm to Residential Neighbour Amenity**

44. These impacts exist and are experienced on a daily basis. The much higher intensity will make these impacts worse.

45. The facilities and structures remain close to neighbours.

46. This unlawful development has continued throughout its existence to cause significant harm to residential neighbour amenity in terms of noise, disturbance, dust, threat to security, loss of privacy, overlooking and loss of views all of which will be exacerbated should this current application be approved.

47. **Support for the Application**

48. Almost without exception, supporters are not local and are supportive of the use as a principle and give no consideration to the merits of the location.

49. The use may well be commendable but is not appropriate to this location and very special circumstances have not been demonstrated.

50. The applicant has provided no evidence why this location is the correct one and the use is acceptable. No such assessment exists.

51. Little weight should be attached to general indications of support for care farming or this facility – it is the wrong form of development in this location.

52. Conversely, the overwhelming majority of objections are directed at the actual site, nature of occupation, the significant material harm to their residential amenity and the area generally and carry far greater weight in planning balance.

53. They are also generally from NW7 postcodes or other N or NW areas and know the area and in many cases are actually experiencing the amenity impacts to which they refer.

54. **Conclusions**

55. The application should be refused, and indeed there is no way the Council can reasonably grant this planning application.

56. The application is fundamentally flawed and does not contain enough information to allow it to be granted.

57. Even if members were prepared to consider granting planning permission, planning decisions should be consistent. If a Council is going to depart from its previous refusal of retrospective permission and decision to enforce then there needs to have been a material change of circumstances or of policy. There has been neither. The applicant has not sought to

address any of the reasons for refusal or for which enforcement action was taken.

58. This application represents inappropriate development in the Green Belt. As such it requires very special circumstances and none have been demonstrated.

59. Members were right the first time. Although officers have sought to justify their recommendation, this is completely inappropriate as there is no information in front of them which demonstrates a material change to meet the concerns or very special circumstances to overcome Green Belt policy and therefore Committee must refuse this application.

60. Popularity of a particular visitor attraction (whether aimed at those with particular needs or the general public) cannot possibly constitute very special circumstances, especially when that popularity arises solely due to the erection of the facility in breach of planning control in the first place. To suggest otherwise simply invites development of popular activities on the Green Belt in order to generate support which can then be claimed as very special circumstances. Clearly that would make a nonsense of Green Belt policy and the planning system generally. You, as members, clearly would not wish to encourage or reward such action.

61. The Officers' report refers to widespread support. No, it is not, it is from users of the site across a massive catchment well beyond the local area without any cognisance of local issues and site-specific justification.

62. It is entirely misleading to suggest that this unlawful care farming is akin to an agricultural holding. An agricultural use of this land would not have this level of building and would in practice only be used for a few grazing animals with limited visits.

63. It is astonishing that a development which needed refusal and enforcement in 2018 is now suddenly, not even border line acceptable but fully in accordance with the development plan.

64. The Officers recommendation for approval is directly contrary to the Council's previous decision with no justification. Use, paths and buildings are all the same. The analogy with agriculture is wrong given visitor numbers and intensity of staff.

65. Regarding the response to public consultation, this application does not respond to the substantial number of longstanding material objections of neighbours and the local community.

66. In respect of the Equality Act, whilst we are in full agreement that the Act must be considered, no one should be able to intentionally and knowingly breach planning control and then insist that any action taken harms the protected group he has invited onto this land and illegally offered services to.

67. The Enforcement Notice has fallen due and continued use is a criminal offence. Contrary to the officer's report, your officers cannot agree an adjustment to the dates in the Enforcement Notice. If the Applicant had

wanted one, they should have appealed which they did not. This is different to enforcement officers agreeing to hold off enforcement which is understandable given the live application but any such forbearance is of no assistance in weighing the proposal in front of you.

68. Even at this stage, Members still have the power to decline to determine this application notwithstanding what Officers think. If you are of the view that no material change has been made then you remain entitled to resolve to decline to determine this application. To do so would send a clear signal that a much more fundamental reassessment of the scale and nature of activities is needed.

69. If Committee grants this permission, it is in effect agreeing to withdraw the Enforcement Notice in exchange for very minor adjustments to what was unacceptable only 10 months ago.

70. Refusing the permission simply gives the applicant a further option to appeal, something they should have done either for the previous Refusal or Enforcement Notice but failed to do.

71. This application is too little too late. Declining to determine would draw a line under this matter and prevent the applicant from dragging out the Enforcement Notice and continuing to impose unacceptable impacts on residents' amenity.

72. If, however, you do not choose to decline to determine this application, then I urge you to refuse the application and make clear that no further

application will be considered without a fundamental alteration to the nature and intensity of the use.

73. The Council must now decline to determine or refuse the application and proceed to vigorously uphold the Enforcement Notice to ensure that it is complied with without further delay or take appropriate action if it is not.