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## Appeal Decisions

Site visit made on 7 March 2016

**by Sara Morgan LLB (Hons) MA Solicitor**

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

**Decision date: 14 March 2016**

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### **Appeal A: APP/B9506/C/15/3070026**

**Land at Nordic Farm (also referred to as land adjacent to Meadow Edge), Silver Street, Hordle SO41 0FN**

- 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 W Simpkins against an enforcement notice issued by New Forest National Park Authority.
  - The notice was issued on 12 May 2015.
  - The breach of planning control as alleged in the notice is without planning permission, the erection of three outbuildings shown in the approximate positions coloured blue on the plan attached to the notice and fence shown in the approximate position coloured green on the plan attached to the notice.
  - The requirements of the notice are:
    - (1) demolish the buildings in the approximate position coloured blue on the plan attached to the notice to ground level and remove all subsequent materials and debris from the land affected;
    - (2) demolish the fence shown in the approximate position coloured green on the plan attached to the notice to ground level and remove all subsequent materials and debris from the land affected.
  - The period for compliance with the requirements is 10 weeks.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act.
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### **Appeal B: APP/B9506/C/15/3070029**

**Land at Nordic Farm (also referred to as land adjacent to Meadow Edge), Silver Street, Hordle SO41 0FN**

- 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 W Simpkins against an enforcement notice issued by New Forest National Park Authority.
  - The notice was issued on 12 May 2015.
  - The breach of planning control as alleged in the notice is without planning permission the material change of use of the land affected from agriculture to a mixed use for agriculture and for the stationing of a caravan and the stationing of a portaloo for non-agricultural purposes.
  - The requirements of the notice are:
    - (1) cease the use of the land affected for the stationing of a caravan for non-agricultural purposes;
    - (2) cease the use of the land affected for the stationing of a portaloo for non-agricultural purposes;
    - (3) remove the caravan, shown in the approximate position coloured purple on the plan
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attached to the notice, from the land affected;

(4) remove the portaloo, shown in the approximate position coloured orange on the plan attached to the notice from the land affected.

- The period for compliance with the requirements is 10 weeks.
  - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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## **Decisions**

### **Appeal A**

1. The enforcement notice is corrected by (i) deleting from paragraph 3 the words "and fence shown in the approximate position coloured green on the plan attached to this notice"; and (ii) by deleting paragraph 5 (2). Subject to these corrections the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **Appeal B**

2. The enforcement notice is quashed.

### **Appeal A**

#### ***The ground (c) appeal***

3. The ground (c) appeal relates solely to the fence referred to in the allegation. The appellant argues that the fence the subject of the notice is permitted development. The National Park Authority (NPA) now agrees that the fence should not have been included in the enforcement notice, and does not intend to pursue that element of the allegation.
4. Under these circumstances, the ground (c) appeal succeeds insofar as it relates to the fence, and I shall correct the notice accordingly.

#### ***The ground (a) appeal and the deemed planning application***

5. The ground (a) appeal, and the deemed planning application, now relate only to the development referred to in the corrected allegation, that is to say the erection of three outbuildings. The main issue is the effect of the outbuildings on the character and appearance of this part of the New Forest National Park.
  6. The appeal site is an area of around 1.7 hectares of agricultural land located within the New Forest National Park. National planning policy, as set out in the National Planning Policy Framework (NPPF) requires great weight to be given to conserving landscape and scenic beauty in National Parks, which have the highest status of protection in relation to these matters. This requirement is reflected in relevant policies of the NPA's Core Strategy and Development Management Policies DPD, adopted in December 2010.
  7. The buildings enforced against are constructed of timber. Two of these buildings have flat roofs, and at the time of my site visit were used to house a donkey, a pony, a goat and some other small livestock, as well as to store various items. The third has the appearance of a small pitched roofed garden shed, and appeared to be in use to provide shelter for the appellant and for the sale of eggs and other items.
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8. The two flat roofed buildings in particular have a somewhat ramshackle appearance, and appeared to have been put together in an ad hoc fashion from available bits of timber. The garden shed-like building appeared out of place on land used for agriculture, and was somewhat incongruously sited near to the entrance to the site. The three buildings do not display a high quality of design or materials, and they appear to be sited somewhat randomly across the front part of the site. They detract from and erode the local character of the New Forest, having a poor and unsympathetic external appearance which detracts from rather than enhances the built heritage of the New Forest, effects which policies DP1, CP8 and DP6 of the Core Strategy seek to avoid. Consequently, they conflict with those policies.
9. The buildings are not highly visible from the road itself, but from within the site they are visible and detract from the landscape and scenic beauty of the surrounding countryside. The fact that they cannot be seen from the road is not a good reason for permitting such buildings to remain. Whether or not there are public views of the buildings, they detract from the landscape and scenic beauty of this part of the national park, in conflict with national planning policy. The development is harmful regardless of whether there are public views of it. In any event, roadside fences and hedges can come and go over time, and there would be no guarantee that the buildings would remain largely concealed from the road. In addition, the site is being used for the sale of produce and has been used as a certificated Caravan Club site and visitors to the site will be able to see the buildings. Their appreciation of the scenic beauty of the New Forest will not be enhanced by these buildings.
10. Policy DP20 of the Core Strategy indicates that planning permission will be granted for buildings required for agriculture or forestry purposes where there is a functional need for the building. When the grounds of appeal were lodged, the justification given was a need to store hay, agricultural machinery and related equipment in connection with the agricultural use of the premises. Reference was also made to the need to store livestock inside during adverse weather or winter months, although little detail was given. By the time the appellant's final comments were submitted, planning permission had been granted on appeal for a new barn to satisfy the agricultural needs of the site<sup>1</sup>. The appellant has said that if planning permission were given for the new barn, the three buildings the subject of the enforcement notice would be demolished.
11. At my site visit I was able to see that the approved barn has now been constructed, albeit that it was not clear that it had been brought into use yet. The standard of design of the approved building is significantly higher than that of the poorly designed and constructed buildings enforced against. My conclusion, therefore, is that there is no longer a justification for the buildings enforced against on the basis of the need to store hay, agricultural machinery and other equipment, even on a temporary basis.
12. There is a condition attached to the new barn preventing its use to house livestock. However, as indicated above, very little detail has been given about the level of livestock keeping on the appeal site and the extent to which (if at all) it contributes towards the appellant's business. I am not, therefore, satisfied that a functional need for a building to house livestock has been made out.

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<sup>1</sup> APP/B9506/W/15/3035975

13. In any event, policies DP1 and DP6 of the Core Strategy apply to all new development and require high quality design and construction of an appropriate and sympathetic nature in terms of scale, appearance, form, siting and layout. The development enforced against certainly does not meet the requirements of these policies, and does not enhance the built heritage of the New Forest. Even if a need for accommodation for livestock had been made out, this would be outweighed by the poor quality design and construction of these buildings.
14. I conclude, therefore, that the buildings enforced against have a seriously harmful effect on the character and appearance of this part of the New Forest, and conflict with relevant policies of the Core Strategy. Planning permission should not be granted for the development, either permanently or for a limited period, and the appeal on ground (a) fails.

### ***The ground (g) appeal***

15. The appellant's arguments on this ground of appeal are that the removal of the structures would cause substantial harm to the appellant's agricultural business and that permission should be granted for the development on a temporary basis subject to agreement with the NPA on an acceptable replacement agricultural building.
16. That building has now been granted planning permission and has been constructed. There is therefore no justification for extending the period of compliance, in terms of storage of hay, machinery and other inanimate objects.
17. As indicated above, I have no information concerning the livestock and their contribution towards the appellant's business. The animals in the building would need to be rehoused before those buildings could be removed, but there is no evidence that it could not be done within the 10 week compliance period in the notice.
18. I conclude that the 10 week compliance period is reasonable and achieves an appropriate balance between the appellant's interests and the need to bring this breach of planning control to an end without unnecessary delay, having regard to the harm that is being caused to the character and appearance of the New Forest National Park. The ground (g) appeal therefore fails.

### **Overall conclusions**

19. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

### **Appeal B**

20. The allegation in the Appeal B enforcement notice is of a material change of use of the land affected from agriculture to a mixed use for agriculture and for the stationing of a caravan and the stationing of a portaloo for non-agricultural purposes. The notice does not state what the non-agricultural purposes are in the allegation, and there is nothing in the reasons for issuing the notice to indicate what these might be.
21. There were three caravans on the appeal site at the time of my site visit, one very close to the position of the caravan referred to in the enforcement notice and indicated on its plan, and two some distance away. The appellant's

representations refer to the site having a certificate from the Camping and Caravanning Club, but the copy of the licence provided in the representations expired on 29 February 2016 and I have not been told whether a new certificate has been issued for the site.

22. The appellant's representations also refer to a caravan being stored on the land, which was to be removed. It is not clear from the representations whether this caravan is the one situated close to the position marked on the enforcement notice plan, but from what I could see on my site visit it did not appear that this caravan was being stored.
23. The enforcement notice needs to tell the appellant what he has done wrong, and what he must do to remedy it. The stationing of a caravan and portaloo on land by itself does not amount to a material change of use, and the notice must indicate the purpose for which it is alleged the caravan and portaloo are on the land - for example, storage, or the stationing of the caravan and portaloo for residential use, or for some other purpose. It is not possible to say, from this notice, what the NPA consider is the purpose of siting the caravan and portaloo on the land. It is not enough to refer to "non-agricultural purposes".
24. I have wide powers to correct any misdescriptions in an enforcement notice, but those powers can only be exercised if I am satisfied that the correction will not cause injustice to either party. The appellant has not appealed under ground (a), that planning permission should be granted for the use alleged in the notice, and it is now too late for a ground (a) appeal to be lodged. Therefore, even if I knew what the NPA was alleging, I would not be able to correct the notice without potentially causing injustice to the appellant, who would not then be able to seek planning permission for the use the NPA considered was taking place.
25. Under these circumstances, I conclude that the notice is defective and cannot be corrected without causing injustice. Consequently, it must be quashed.

*Sara Morgan*

INSPECTOR