

Application No: 17/00712/FULL Full Application

Site: The Martins, Balmer Lawn Road, Brockenhurst, SO42 7TT

Proposal: Outbuilding

Applicant: Mr M Ahearn

Case Officer: Daniel Pape

Parish: BROCKENHURST

1. REASON FOR COMMITTEE CONSIDERATION

Contrary to Parish Council view

2. DEVELOPMENT PLAN DESIGNATION

Site of Special Scientific Interest

3. PRINCIPAL DEVELOPMENT PLAN POLICIES

DP1 General Development Principles
DP6 Design Principles
DP12 Outbuildings
CP8 Local Distinctiveness

4. SUPPLEMENTARY PLANNING GUIDANCE

Design Guide SPD

5. NATIONAL PLANNING POLICY FRAMEWORK

Sec 7 - Requiring good design

6. MEMBER COMMENTS

None received

7. PARISH COUNCIL COMMENTS

Brockenhurst Parish Council: Object. No objection to the size / design of the outbuilding but are concerned that it lies too close to the boundary / building line with resultant impact on neighbouring amenity.

8. CONSULTTEES

No consultations required

9. REPRESENTATIONS

9.1 None received

10. RELEVANT HISTORY

10.1 None.

11. ASSESSMENT

11.1 The Martins, Brockenhurst is a detached dwelling located to the south of Balmer Lawn Road. There are no properties on the opposing north side of the road, but to both sides of the site are detached dwellings, one of which is used as holiday self-catering accommodation. To the front of the property there is a notable Oak tree and two existing access points with gravel parking area. At present there is no garaging facility.

11.2 The applicant seeks permission for an outbuilding to be used as a garage and home gym. The outbuilding is to be constructed from pine elevations and red tile bitumen roof shingles with a modest amount of fenestration. The outbuilding is to sit on a concrete base with a ridge height of 3.8m and an external footprint of 35m². There is to be a conventional garage door and separate access door.

11.3 Vehicular access to the garage would be from Balmer Lawn Road utilising the existing gate. The existing gravel parking and turning area would need extending, southwards to the Eastern side of the property, by a minor amount to meet the garage door. To facilitate this garage access, a few shrubs would be removed and relocated.

11.4 The Parish Council have recommended refusal for the application raising concern that it lies too close to the boundary/principal building line and that as such it would impact upon neighbour amenity. It is noted however that the Parish Council have not objected to the size or design of the outbuilding.

11.5 Locating a garage to the side of a dwelling is common along Balmer Lawn Road and it is considered that in this instance the proposed development would respect neighbouring amenity through the retention of an adequate gap. The location chosen is a logical one with regards to other siting constraints on the property, the eastern side providing the only available space. 'Gorse Cottage' that is used as a holiday let is located 9m from the outbuilding with a gap of 3.5m from the outbuilding to the edge of the applicant's curtilage.

- 11.6 It is not mentioned whether the Parish Council are concerned about potential noise created from the outbuilding's intended activity, but it is considered that the building is of reasonable design and thickness to prevent harmful levels of noise. There is no concern that the applicant would be able to overlook the neighbour.
- 11.7 Whilst visible from the street scene, the outbuilding would not adversely impact upon neighbour amenity or the character of the area. Outbuildings constructed of natural materials, such as the one proposed, are of a quality considered acceptable. The proposal is not of excessive bulk and would not constitute an appearance of overdevelopment within the plot, despite being sited at the principal building line. The character of varied dwellings and associated subservient outbuildings along Balmer Lawn Road would be retained.
- 11.8 The outbuilding is compliant with the stipulations set out within Policy DP12. It is located within the domestic curtilage, would not provide habitable accommodation and would be used incidentally to the main dwelling. The overall form and location of the structure would ensure that it is read as an incidental outbuilding and this use can be secured through condition.
- 11.9 The Oak tree to the front of the property is not protected by a TPO. It is, however, a tree of amenity value to the street scene. There is no concern that the tree would be adversely affected by the development. The existing access is to remain and the garage is sited far enough from the tree to likely not impact upon the root area.
- 11.10 The proposal would be sited in an appropriate location where neighbour amenity would remain unaffected, there would be no detriment to the street scene and character of the wider area. The proposal would therefore comply with policy and permission is recommended to be granted subject to condition.

12. RECOMMENDATION

Grant Subject to Conditions

Condition(s)

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 The building the subject of this permission shall only be used for purposes incidental to the dwelling on the site and shall not be used for habitable accommodation such as kitchens, living rooms and bedrooms.

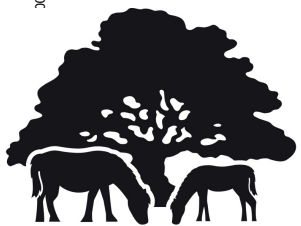
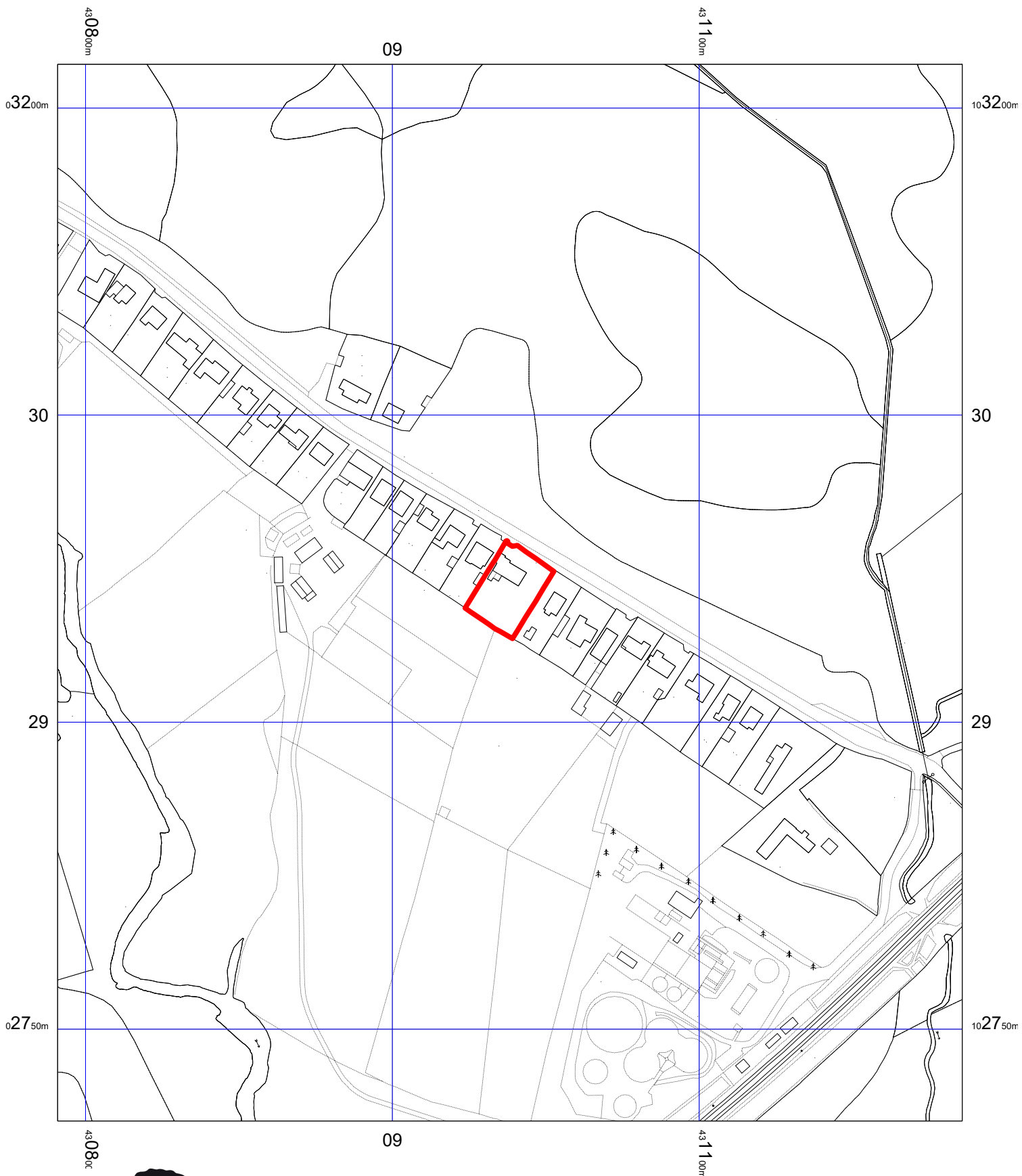
Reason: To protect the character and appearance of the countryside in accordance with Policies DP11 and DP12 of the adopted New Forest National Park Core Strategy and Development Management Policies (DPD) (December 2010).

- 3 Development shall only be carried out in accordance with drawing nos: 01, 02, Front & Side views -1, Front & Side views -2, Front & Side views -3, Front & Side views -4, Floorplan/Layout, Door & Window technical dimensions. No alterations to the approved development shall be made unless otherwise agreed in writing by the New Forest National Park Authority.

Reason: To ensure an acceptable appearance of the building in accordance with policies CP7, CP8, DP6 and DP1 of the New Forest National Park Core Strategy and Development Management Policies (DPD) December 2010.

- 4 All materials, machinery and any resultant waste materials or spoil shall be stored within the red line application site unless otherwise agreed in writing by the local planning authority.

Reason: In the interests of protecting the New Forest Site of Special Scientific Interest in accordance with Policy CP2 of the New Forest National Park Core Strategy and Development Management Policies (DPD) (December 2010).



NEW FOREST
NATIONAL PARK

New Forest National Park Authority
Lymington Town Hall, Avenue Road,
Lymington, SO41 9ZG

Tel: 01590 646600 Fax: 01590 646666

Date: 01/11/2017

Ref: 17/00712/FULL

Scale: 1:2500

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Application No: 17/00784/FULL Full Application

Site: Battramsley Farm, Shirley Holms Road, Boldre, Lymington, SO41
8NG

Proposal: Conversion of barn to 1no. new dwelling and associated works

Applicant: Mr C Powell

Case Officer: Carly Cochrane

Parish: BOLDRE

1. REASON FOR COMMITTEE CONSIDERATION

Contrary to Parish Council view

2. DEVELOPMENT PLAN DESIGNATION

No specific designation

3. PRINCIPAL DEVELOPMENT PLAN POLICIES

DP1 General Development Principles
DP6 Design Principles
CP8 Local Distinctiveness
CP12 New Residential Development
DP13 Agricultural, Forestry & Other Occupational Dwellings

4. SUPPLEMENTARY PLANNING GUIDANCE

Boldre Parish Design Statement

5. NATIONAL PLANNING POLICY FRAMEWORK

Sec 7 - Requiring good design
Sec 11 - Conserving and enhancing the natural environment
Sec 3 - Supporting a prosperous rural economy

6. MEMBER COMMENTS

None received

7. PARISH COUNCIL COMMENTS

Boldre Parish Council: Recommend Permission. In this specific case, setting no precedent, the Council believes that the National Planning Policy

Framework guidance should be considered in precedence to the NPA guidance. Specifically, the Council feels that the following items from paragraph 55 are applicable:

- the essential need for a rural worker to live permanently at or near their place of work in the countryside
- where the development would re-use a redundant or disused buildings and lead to an enhancement to the immediate setting

In the event that permission is granted, the Council request that an Agricultural Occupancy restriction is applied.

8. CONSULTEES

No consultations required

9. REPRESENTATIONS

9.1 60 letters of representation have been received, in support of the application. The main points raised are summarised as follows:

- Applicant is genuine farmer, with a long family history of farming in the area
- Concern that refusal of the application would result in the sale of the farm, cessation of farming activities, and subdivision of land for more intensive purposes
- Application would:
 - Tidy up the area
 - Maintain the working farm as a viable business
 - Enhance appearance of wider farm area
 - Attract nesting birds
 - Support the agricultural heritage of the New Forest
 - Not harm the landscape or beauty of the National Park
 - Maintain the vitality of a rural community- the loss of the farm would be detrimental to the local area
 - Conversion would provide housing and result in one less greenfield site elsewhere being lost
 - Be an example of sustainable development
 - Retain a tourist experience.

9.2 One letter of support has been received from the Applicants Planning Solicitor, re-emphasising the relevant policies and considerations.

9.3 Friends of the New Forest: Object:

- Contrary to local planning policy
- Query whether the building is genuinely redundant given that planning permission was granted in 2014
- Even if permitted development rights were removed, this would not prohibit the use of domestic paraphernalia
- The character of agricultural and forestry building does not

lead to tidy yards- dwelling houses inevitably bring with them an urban orderliness that jars with the agricultural character.

- Landscape will not be enhanced
- Insufficient grounds exist to set aside DP1, the purposes of the National Park and NPPF 55

10. RELEVANT HISTORY

- 10.1 Conversion of barn to agricultural worker's dwelling (16/00294) Refused 02 June 2016
- 10.2 Application under Part 6 of the Town and Country Planning (General Permitted Development) Order 1995 in respect of siting, appearance and design of an agricultural building (14/01051) Prior Approval Not Required 09 February 2015
- 10.3 Determination as to whether Prior Approval is required for proposed change of use of office building (Use Class B1a) to dwelling (Use Class C3) (14/01052) Details Not Required 27 January 2015
- 10.4 Determination as to whether Prior Approval is required for proposed change of use of a section of an agricultural building and associated land to a flexible use within shops, financial and professional services, restaurants and cafes, business, storage or distribution, hotel or assembly or leisure (Additional details) (14/000492) Details Not Required 05 November 2014
- 10.5 Change of use and alterations to barn one to light industrial/office use (Class B1); erect external staircase; extend and change use of barn to B8 storage; erect freezer/cooler building; demolish building four to create parking spaces (04/80476) Granted 20 April 2004
- 10.6 Conversion of redundant farm building to B1 use (01/72082) Granted 21 November 2001
- 10.7 Erection of agricultural building (NFDC/94/54645) Granted 19 July 1994
- 10.8 Farmhouse (land at Battramsley Farm) (NFDC/OUT/78/09338) Refused 30 March 1978

11. ASSESSMENT

- 11.1 Battramsley Farm comprises an agricultural holding of 68.32 hectares, located to the south of Shirley Holms and west of the A337 Southampton Road. The agricultural site also includes some commercial units as part of the farm diversification, and the wider holding comprises pasture and woodland. In addition, Battramsley Farm Cottage is located adjacent to Shirley Holms, at the entrance to the site, which the applicant owns and currently resides in.

- 11.2 An application for the change of use of the barn, the subject of this application, to an agricultural worker's dwelling was refused by the Authority on 2 June 2016. The reasons for refusal related to conflict with Policies CP12 (New Residential Development), DP19 (Re-use of Buildings outside the Defined Villages) and DP13 (Agricultural, Forestry and Other Occupational Dwellings). Further, no SPA mitigation measures had been put forward, alongside there being no assessment of the potential impact on protected species at the site (contrary to CP1: Nature Conservation Sites of International Importance and CP2: The Natural Environment), and no consideration was given to the heritage significance of the barn, as required by Section 12 of the NPPF and contrary to Policy DP6 (Design Principles) of the Core Strategy. The Planning Statement submitted made reference to *"the essential need for a rural worker to live permanently at or near their place of work in the countryside and/or where development would reuse redundant or disused buildings and lead to an enhancement to the immediate setting"*, as set out in Paragraph 55 of the National Planning Policy Framework (NPPF) (2012) in order to support the application, however it was not considered that the proposal demonstrated that exceptional circumstances should prevail over the Authority's adopted policies.
- 11.3 This application seeks planning permission for the conversion of a barn located to the southern part of the site, to a dwellinghouse for occupation by the applicant. The conversion would provide a 3 bedroom dwellinghouse across a single storey, to include a farm office. No habitable floorspace has been shown at first floor level; part of the first floor is shown as loft storage. Whilst there would be no changes to the external dimensions, with an eaves height of 4 metres and ridgeline height of 7.6 metres, the building could reasonably provide first floor habitable floorspace. This is demonstrated through the proposed provision of a first floor bedroom and ensuite submitted as part of the previous application (16/00294). However, as per the Authority's Planning Information Leaflet, which notes that as planning permission is not required to extend or add a mezzanine floor within a dwelling, double height living rooms will be regarded as having two floors. However, there is no glazing proposed at first floor level, and the addition of any glazing can reasonably be controlled by condition. As such, and including the ground floor only, the conversion would result in a habitable floorspace of 145m².
- 11.4 The application has been submitted alongside a Unilateral Undertaking, which sets out the 'Enhancement Measures' the applicant would carry out should planning permission be granted. These works include the application of timber cladding to an existing building; demolition and restoration of buildings; surrender of lawful use of a building and its restoration to provide ancillary accommodation; removal of open storage and prevention of all non-agricultural open storage; removal of existing signage

and prevention of any further signage other than a single sign, and; replacement of a fuel storage tank. The Unilateral Undertaking also notes the requirement to pay the Habitat Mitigation Contribution.

- 11.5 By way of background, this application has been made in order for the applicant to "buy-out" his two siblings, following the gifting of the farm in equal shares by the applicant's father. One sibling has already been bought out by way of a bank loan. The sale of the existing dwelling on site, Battramsley Farm Cottage, would therefore allow the applicant to "buy-out" the second sibling, however in the process severing the dwelling from the farm; the proposal would then allow the applicant to continue to reside at his place of work.
- 11.6 It is acknowledged within the submitted Planning Statement that an argument for an essential need for a further dwelling at the site cannot be made as there is currently a viable dwelling on site, and as such the applicant's case is based on the provisions of the third bullet point within Paragraph 55 of the NPPF, which sets out that *"local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as...where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting"*. It is stated that the application must be determined on this basis only.
- 11.7 However, the applicant also puts forward that planning permission should be granted because Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 allows the conversion of agricultural buildings to residential uses as permitted development in areas not within Article 2(3) land. However, National Parks are Article 2(3) land, and such, these permitted development rights do not exist. This argument therefore holds no weight in the determination of this application.
- 11.8 When determining planning applications, paragraph 2 of the NPPF states that *"planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise"*. Paragraph 211 of Annex 1 then states that *"policies within the Local Plan...should not be considered out-of-date simply because they were adopted prior to the publication of this Framework"*. Indeed, whilst the policy pre-dates the publication of the NPPF, policies within the Core Strategy have been found to be sound when tested at Appeal. Paragraph 215 of the NPPF states that *"due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)"*. The Core Strategy policies on housing development (CP12 in this instance) aim to protect the special qualities of the New Forest, whilst also

recognising the requirement for development to meet the needs of local communities. With regard to the 'need', in this instance, as the case for an agricultural worker's dwelling under Policy DP13 is not being made (as this has been determined as part of 16/00294, and the applicant recognises the inability to demonstrate a legitimate need) the proposal is considered as a single new dwellinghouse in a location outside of one of the four Defined New Forest Villages, which is not in accordance with any other relevant permissive policy, for example, replacement dwellings. As such, the proposal would be contrary to policy, as to allow new residential development in this isolated location would harm the special qualities of the New Forest. Paragraph 115 of the NPPF states that "*great weight should be given to conserving landscape and scenic beauty in National Parks...which have the highest status of protection in relation to landscape and scenic beauty*". Policy CP12 is considered to be consistent with the Framework in this respect.

- 11.9 With regard to the provisions of bullet point 3 of Paragraph 55, these can be broken down into what has been referred to in previous Inspectors' reports as 'pre-conditions', i.e. 1) the development would re-use redundant or disused buildings, and 2) the development would lead to an enhancement to the immediate setting. In relation to 1), whilst Paragraph 55 purely states that the development has to relate to a redundant or disused building, and does not require any evidence with regard to the condition of a building, by virtue of the Prior Notification reference 14/01051 for the erection of an agricultural building, it would appear that there is a need on site for an additional agricultural building. It is noted within the submission that the barn, the subject of this application does not meet current modern agricultural needs and practices, however, no information has been submitted to demonstrate that the barn is truly redundant in its agricultural use, or indeed the agricultural building proposed to be demolished could not fulfil this need; simply the assertion that the barn is 'redundant and disused.' If this were to be the stance taken to subsequently allow the conversion of barns or other agricultural buildings to dwellinghouses across the National Park, then this would allow a case to be made for any agricultural building which may happen, intentionally or not, to be empty or disused. The cumulative conversion of such outbuildings to dwellinghouses would result in a significant adverse impact upon the character and appearance of an area and the special qualities of the National Park, undermining the policies within the Core Strategy which have been found to be consistent with the NPPF.
- 11.10 Much has been made within the submission with regard pre-condition 2), and a Unilateral Undertaking has been submitted in order to ensure that 'enhancement' works are carried out on site. The works put forward to be carried out are independent from the proposed conversion scheme, and could reasonably be carried out without the grant of this planning permission (subject

to any necessary consents). Whilst the works would 'tidy up' the site by reducing the amount of buildings and remove the open storage of non-agricultural items, in general, the 'enhancement works' would diminish the agricultural character of the site. The creation of a domestic curtilage around the barn, as shown on drawing number 3851.003, which necessitates the removal of an existing agricultural building, would in fact alter the agricultural character of the site. Whilst permitted development rights could reasonably be removed for any domestic outbuildings, this would not prevent the siting of domesticated paraphernalia, such as garden furniture, washing lines or children's play equipment. It could be argued that the introduction of the residential use would be more harmful than the retention of the buildings/works to be carried out, as it introduces a more formal, suburban appearance.

11.11 Further, the Structural Report submitted highlights that in order to convert the barn to habitable space, there would need to be significant strengthening works to the roof; the walls are not currently structurally sound or weather proof, and there is no damp proof course. Further, it has not been determined whether the current foundations are capable of bearing the additional weight, and overall there are significant works required to the building before it could be occupied. It is considered reasonable to suggest that the required works may result in the altered appearance of the barn, as there is potential for the introduction of new materials which would detract from the current agricultural nature of the building.

11.12 A recent (16 May 2017) Appeal Decision (APP/B9506/W/16/3165402) for the reuse of a building for residential purposes at 'Little Timbers' within the National Park, has been submitted in support of the application. Whilst this appeal was dismissed, the submitted Planning Statement focuses on the assertion that 'the conflict with CP12 cannot, on its own, be a reason for refusal, and each case must turn on its own merits'. To quote paragraph 11 of the Inspectors Report, whilst, as discussed in paragraph 11.9 of this report, the building would on face value appear redundant and disused, the Inspector did *"not see how, in the context of a semi-rural area, the change of a rural building to a dwelling with a residential curtilage would achieve that [enhancement of the immediate setting]. To my mind, the upgrading of the timber building...the provision of parking areas, gardens, domestic enclosures and paraphernalia would result in a marked change from a low-key rural site to a more manicured and obviously residential site. This would not result in an enhancement to the site's immediate setting; rather it would harm the semi-rural qualities that contribute to the attractiveness of the area, and would conflict with both local and national policies which aim to protect the special qualities of the New Forest"*. It is considered that the Inspectors comments are applicable to this proposal.

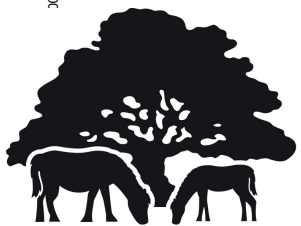
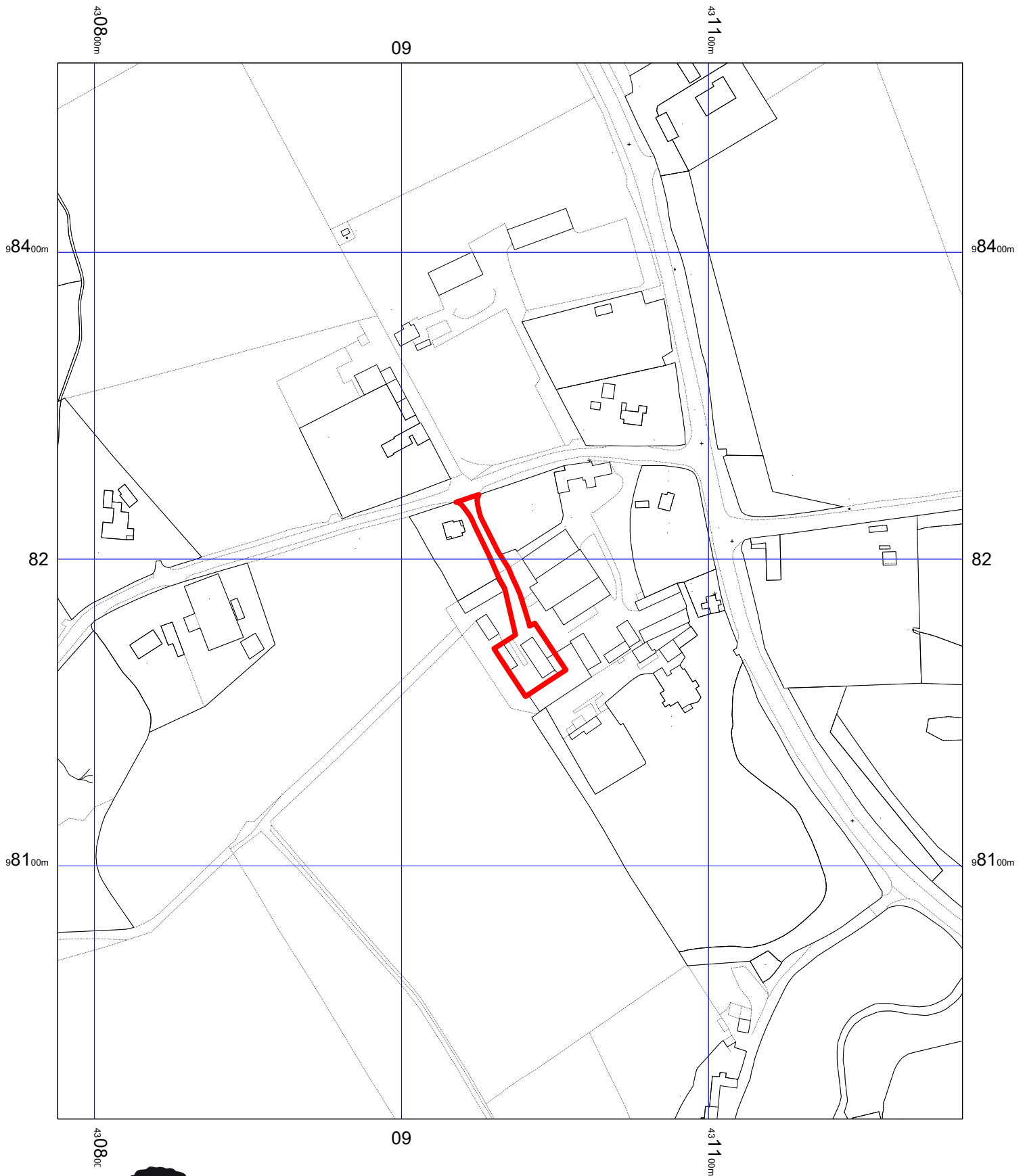
- 11.13 No consideration has been given to the age, date or construction of the barn in relation to whether it could be considered to be of heritage interest, in accordance with Section 12 of the NPPF. Should this be considered to be the case, the change of use to residential would need to demonstrate that this is the optimum viable use of the building, however no evidence has been submitted.
- 11.14 Comments made within the letters of support highlight the concern that, should this application be refused, the holding may have to be subdivided and sold off, and as such, it was the consensus that the proposed conversion should be granted. What has been omitted from these considerations is the fact that there is currently a dwellinghouse which serves the farm, which the applicant currently resides in. The personal circumstances of the applicant require the severance of this dwelling from the rest of the farm; this act in itself would result in the subdivision of the holding, notwithstanding the conversion of other units for commercial purposes as part of farm diversification, which has already been undertaken. Converse to the stance taken by representees, that the refusal of this application would result in the farm being 'broken up', it is the grant of this planning permission which would result in the farm being severed. Whilst the situation of the applicant is acknowledged, it does not form a material planning consideration, nor is it within the remit of the planning system to allow development which would otherwise be considered contrary to adopted policy in order to overcome an applicant's personal, non-planning matters.
- 11.15 Overall, it is considered that the proposal fails to fully meet the requirements of Paragraph 55 of the NPPF. For reasons mentioned in paragraph 11.8 of this report, the proposal also fails to accord with Policy CP12 of the Core Strategy, and it is not considered that there are such exceptional circumstances which are material considerations to depart from and override the policies of the Core Strategy. It is apparent that in order to overcome personal constraints, the applicant is in need of a dwellinghouse in this location. The previous application (16/00294), which was considered under Policy DP13 of the Core Strategy and also mentioned bullet point 1 and pre-condition 2) of bullet point 3 within the submission, was unsuccessful, and no appeal against the decision of the Authority was made. An application under bullet point 3 of Paragraph 55 is therefore the only remaining option. It should be noted that the Core Strategy does provide for agricultural worker's dwellings; as this is ultimately why the dwellinghouse is required, it is considered that this is the appropriate route for the applicant to take.
- 11.16 It is therefore recommended that the application be refused.

12. RECOMMENDATION

Refuse

Reason(s)

- 1 The proposed conversion cannot be reconciled with National Planning Policy Framework paragraph 55 in that the dwelling would not lead to an enhancement to the immediate setting. As such, the proposal would introduce a residential use and character in an isolated location which would be harmful to the agricultural character and appearance of the area. The proposal would therefore be contrary to policies DP1 and CP12 of the New Forest National Park Core Strategy and Development Management Policies (DPD) (December 2010), and contrary to guidance within the National Planning Policy Framework (2012).



NEW FOREST
NATIONAL PARK

New Forest National Park Authority
Lymington Town Hall, Avenue Road,
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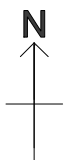
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Date: 01/11/2017

Ref: 17/00784/FULL

Scale: 1:2500

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Application No: 17/00813/FULL Full Application

Site: Land At Bartley Forest Farm, Lyndhurst Road, Cadnam, SO40 2NR
Proposal: Continued stationing of a mobile home for an agricultural worker for a period of three years
Applicant: Mr D Ap Dafydd, Bartley Forest Farm Ltd
Case Officer: Paul Hocking
Parish: COPYTHORNE

1. REASON FOR COMMITTEE CONSIDERATION

Recommendation to decline to determine the planning application

2. DEVELOPMENT PLAN DESIGNATION

Conservation Area

3. PRINCIPAL DEVELOPMENT PLAN POLICIES

DP1 General Development Principles
DP6 Design Principles
DP13 Agricultural, Forestry & Other Occupational Dwellings
CP7 The Built Environment
CP8 Local Distinctiveness
CP1 Nature Conservation Sites of International Importance

4. SUPPLEMENTARY PLANNING GUIDANCE

Development Standards SPD

5. NATIONAL PLANNING POLICY FRAMEWORK

Sec 7 - Requiring good design
Sec 11 - Conserving and enhancing the natural environment

6. MEMBER COMMENTS

None received

7. PARISH COUNCIL COMMENTS

Copythorne Parish Council: Any comments subsequently received to be reported to Committee

8. CONSULTTEES

No consultations required

9. REPRESENTATIONS

9.1 Four representations received in objection and six in support

10. RELEVANT HISTORY

10.1 Temporary Stop Notice dated 28 August 2015 directed against unauthorised caravans and building works

10.2 Enforcement Notice and Stop Notice dated 11 September 2015 directed against unauthorised mobile home - appeal dismissed on 27 March 2017

10.3 Temporary Stop Notice dated 24 November 2015 directed against unauthorised track

10.4 Enforcement Notice and Stop Notice dated 10 December 2015 directed against unauthorised track - appeal dismissed on 27 March 2017

10.5 Temporary Stop Notice dated 19 October 2017 directed against unauthorised building

11. ASSESSMENT

11.1 The application site is located to the east of the A337 near Cadnam and is accessed by a track that runs from the road, in a southerly direction through protected woodland towards the site. The adjacent land to the north, south and west is predominantly open forest subject to the highest level of protection by virtue of its designations. The adjacent forest to the south of the site comprises a typical New Forest car park along with rural cricket pitch. To the east lies more pasture land and the grounds of a Grade II Listed former royal hunting lodge which is now used as a rural country house hotel.

11.2 This application seeks to secure planning permission to retain a residential mobile home for a 3 year period for an agricultural worker. The mobile home is the subject of an Enforcement Notice which should have been complied with by 27 September 2017. No compliance was forthcoming and this planning application was submitted and consequently registered by the Authority the day prior.

11.3 The key consideration is whether this application is intended to frustrate compliance with an Enforcement Notice or whether it materially differs in substance from the factual background before the Inspector who determined the enforcement appeal following a

4 day Public Inquiry earlier this year.

- 11.4 With this in mind, the Authority wrote to the applicant's planning agent to request how this application differed in substance from the factual background to the enforcement appeal. In response, it was confirmed the physical elements remained the same; namely this application relates to the same mobile home in the same location. It was also confirmed that there have been no changes in national or local policy since the dismissed appeal. It was however stated that stock numbers have increased substantially and the applicants now have 6 children living at the site. In respect of stock numbers, during the appeal process the numbers put forward by the applicants differed (and increased) throughout their papers and the appeal process. It was consequently not possible to corroborate the numbers. Whilst a further increase is now suggested, it is similarly not possible to corroborate.
- 11.5 The ground (a) planning merits appeal was dismissed on the following basis:
1. There was not a functional need for an agricultural worker's dwelling, contrary to policy;
 2. The enterprise had not been planned on a sound financial basis, contrary to policy;
 3. Harm to the character and appearance of the Conservation Area, contrary to policy;
 4. Effect on the New Forest SPA, contrary to policy;
 5. Intentional unauthorised development, as identified in August 2015 Ministerial Statement.

The complete appeal decision is appended to this report.

- 11.6 Section 70C of the Town and Country Planning Act allows for a Local Planning Authority to 'decline to determine' an application if it would involve granting planning permission for development specified in a pre-existing Enforcement Notice as constituting a breach of planning control. This would be the case here. The Government's stated intention when introducing this provision was to provide planning authorities with a mechanism to prevent the use of retrospective planning applications as a means of delaying enforcement action. It is considered that the purpose of this planning application is to frustrate and delay rightful compliance with the Enforcement Notice that was upheld only recently at appeal. It remains the case that the development, namely the mobile home applied for, is not in accordance with planning policy and cannot be made acceptable through the imposition of planning conditions.
- 11.7 This planning application does not raise new material matters and is retrospective to retain the same mobile home. A different business plan does not alter this. In respect of the birth of a sixth child, this is not confined to the planning merits of the

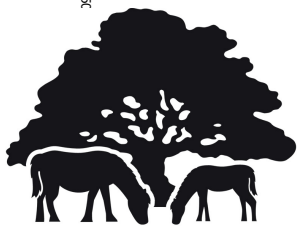
developments undertaken but a consideration of the family's rights under Article 8 of the European Convention of Human Rights. It is however not considered that the best interests arising from the birth of a sixth child would alter the balance of considerations to reach an alternative view to that expressed by the Inspector when there were 5 children living at the site.

- 11.8 The recommendation to decline to determine this planning application represents a positive decision to exercise the Section 70C power in light of the serious nature of the breaches of planning control and the need to protect the National Park against a proliferation of unjustifiable residential development. In light of the enforcement history here, it is considered appropriate to decline to determine this application to enable the Authority to proceed with immediate further action to secure compliance with the outstanding Enforcement Notices at this site.

12. RECOMMENDATION

Decline to Determine

- 1 Section 70C of the Town and Country Planning Act 1990 (as amended) allows for a Local Planning Authority to 'decline to determine' an application if it would involve granting planning permission for development specified in a pre-existing Enforcement Notice as constituting a breach of planning control. The information submitted in support of this planning application details the retention of a residential mobile home. It is clear that the intention underpinning this application is to seek to obtain planning permission for the residential mobile home specified in the Enforcement Notice dated 11 September 2015 and in doing so delay compliance.



NEW FOREST
NATIONAL PARK

New Forest National Park Authority
Lymington Town Hall, Avenue Road,
Lymington, SO41 9ZG

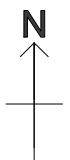
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Appeal Decisions

Inquiry opened on 1 November 2016

Site visit made on 31 October 2016

by Paul Dignan MSc PhD

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

Decision date: 27 March 2017

Appeal A: APP/B9506/C/15/3136274

Bartley Forest Farm, Lyndhurst Road, Cadnam, Hampshire, SO40 2NR.

- 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 Dan Ap Dafydd against an enforcement notice issued by New Forest National Park Authority.
 - The enforcement notice, numbered EN/15/0178, was issued on 11 September 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 comprising agriculture and: i. The stationing of caravans for residential purposes; and ii. The storage/siting of non-agricultural items and paraphernalia including cars, boats, trailers and domestic items: and Without planning permission the erection of buildings shown in the approximate positions hatched green on the Plan attached to this notice.
 - The requirements of the notice are 1) Cease the use of the land affected for the stationing of caravans for residential purposes; 2) Cease the use of the land affected for the storage/siting of non-agricultural items and paraphernalia including cars, boats, trailers and domestic items; 3) Remove all caravans from the land affected; 4) Remove all non-agricultural items and paraphernalia including cars, boats, trailers and domestic items from the land affected; 5) Demolish or dismantle the buildings shown in the approximate positions hatched green on the plan attached to this notice to ground level; 6 Remove all debris and materials arising from compliance with all the requirements from the land affected.
 - The period for compliance with the requirements is 12 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
-

Appeal B: APP/B9506/C/15/3140428

Bartley Forest Farm, Lyndhurst Road, Cadnam, Hampshire, SO40 2NR.

- 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 Dan Ap Dafydd against an enforcement notice issued by New Forest National Park Authority.
 - The enforcement notice, numbered EN/15/0251, was issued on 10 December 2015.
 - The breach of planning control as alleged in the notice is without planning permission engineering operations pursuant to the construction of a track in the approximate position hatched green on the Plan attached to this Notice.
 - The requirements of the notice are 1. Remove the hardcore, aggregates and any other materials used in the construction of a track shown in the approximate position hatched green on the Plan attached to this Notice from the land affected; and 2. Restore the land shown in the approximate position hatched green on the Plan attached to this Notice to surrounding ground levels using soils and reseed with grass.
-

- The period for compliance with the requirements is 6 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Decisions

Appeal A

1. The enforcement notice is corrected by the deletion in Section 3.1 of the words "and: i. The stationing of caravans for residential purposes; and ii. The storage/siting of non-agricultural items and paraphernalia including cars, boats, trailers and domestic items" and their replacement by the words "the stationing of caravans for residential purposes."; by the deletion of Section 3.2 entirely, and by the deletion in Section 4(1) of the word "DP19" and its replacement by the word "DP13"; and varied by the deletion in Section 5 of Requirements 2, 4 and 5; by the replacement of Requirement 4 as follows "4) Remove from the Land all items and paraphernalia associated with the use of the Land for residential purposes;" and by the deletion at Section 5, after the words "Time for compliance:" of the words "12 weeks after this Notice takes effect." and their replacement by the words "6 months after this Notice takes effect.". Subject to these corrections and variations 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 corrected by the deletion at Section 5, after the words "Time for compliance:" of the words "6 weeks after this Notice takes effect." and their replacement by the words "6 months after this Notice takes effect." Subject to this variation the appeal is dismissed and the enforcement notice is upheld

Application for costs

3. At the Inquiry applications for costs were made by Mr Ap Dafydd and New Forest National Park Authority against each other. These applications are the subject of separate Decisions.

Background and preliminary matters

Inquiry notification

4. After the first sitting day of the Inquiry it transpired that the local planning authorities had not satisfactorily advised all those who had expressed an interest in the appeal of the details of the Inquiry. Before the resumption this was rectified, but to avoid any prejudice to those who had not been properly notified I required that the resumption include the opening submissions for the main parties and that Mr Smith be recalled as a witness. Mr Readhead and Mr Baker were called as witnesses on the first day, but since their evidence was confined to factual matters and given on oath I did not require them to be heard again. Rev Dr Bruce and Mr Stevenson also gave evidence on the first day, but as interested parties only. In the event I consider that no party's interests were prejudiced by this approach.

The site

5. The appeal site is a 4.86ha piece of agricultural land within the New Forest National Park. It abuts the forest itself, and also the New Forest Special Protection Area (SPA), and it lies within the Forest North East Conservation Area (CA). Access is from a private road passing the north-eastern edge of the land, leading to Bartley Lodge Hotel, a Grade II listed building. The appellant bought the land in August 2015. The previous owner did not farm the land, but kept the majority of it in permanent pasture, selling a standing hay crop annually. In the southern corner he fenced and hedged off a portion of the land which he used for occasional caravan holiday purposes along with family and friends, equipping it with water and electric hook-up points.
6. When the appellant bought the land he was living with his family in rented accommodation in the area. From that property he and his wife were running a poultry business, breeding, rearing and selling show quality rare breed poultry and hatching eggs. The tenancy ceased at the same time as the land was purchased and the family moved a mobile home onto the land and started to live there. A touring caravan was brought onto the land to accommodate Mr Ap Dafydd's father who was helping them set up a farming business. Their domestic possessions and their poultry business were also moved to the land. All of this was mainly within the part of the site that the former owner set up for caravan use. The preparations for farming use involved setting up poultry pens and related facilities, some fencing, and the erection of 2 timber sheds. Since then pig, sheep, goat and cattle production have been introduced, with pig arks and other animal shelters. The appellant also rents other land in the wider area, some 1.6 ha in Beaulieu, about 20 miles away, from which haylage is taken, and 1.6 ha in Romsey, some 6.5 miles away, on an annual grazing tenancy, currently used mainly for grazing sheep.

The Appeal A Notice

7. The description of the breach of planning control in the Appeal A notice included matters which are essentially ancillary to the mixed use alleged. It is not necessary to include these in the description and accordingly I shall correct the notice to remove reference to them. I shall also vary the relevant requirement for clarity. This causes no injustice.
8. The notice, in the Reasons section, also referred to an incorrect policy. I shall correct that.
9. I should also note that a number of the grounds pleaded in both appeals were initially framed, or partly predicated upon, the contention that the part of the site used for the caravans had planning permission for use as a caravan site with a driveway access, but by the time the Inquiry opened the appellant had established that this was not the case.

APPEAL A

Ground (b)

10. It was initially submitted that the material change of use to a mixed use had not occurred because the residential use was part and parcel of the agricultural use of the land. This is simply not arguable and was rightly not pursued by the appellant's barrister once she took over the case. The remainder of this ground

of appeal falls away with my correction of the allegation, and I do not propose to deal with it further.

Ground (c)

11. This ground is that the matters alleged do not constitute a breach of planning control. The appeal on this ground relates to parts of the notice only, namely the stationing of a second caravan on the land for residential purposes, the touring caravan, and the erection of buildings, the 2 sheds.

Touring caravan

12. The touring caravan was on the land for a period of 4-5 months. It accommodated Mr Ap Dafydd's father while he helped them setting up pens and fencing, and was on the site when the notice was issued. The basis of the appeal on this ground is that planning permission for the use was granted by the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO).
13. Part 5 of Schedule 2 to the GPDO permits the use of land as a caravan site under certain circumstances. These refer to exemptions from caravan site licensing under the Caravan sites and Control of Development Act 1960 (the 1960 Act). The exemption relied upon is that set out in Schedule 1 paragraph 7. This provides that a caravan site licence is not required for the use of land as a caravan site for the accommodation during a particular season of a person or persons employed in farming operations on land in the same occupation. The argument put forward is that Mr Ap Dafydd's father was an agricultural worker. However, the exemption is not a general exemption, but applies specifically to accommodation for seasonal workers. The work the appellant's father was said to be doing while living in the caravan is not seasonal work. Accordingly the 1960 Act exemption does not apply and planning permission is not granted by the GPDO.

The sheds/buildings

14. The argument here is that the 2 sheds enforced against are not buildings, but are mobile structures sited on the land, chattels essentially, and not development as defined in section 55 of the 1990 Act. This can be argued under grounds (b) or (c). The relevant tests are well established. They relate to size, physical attachment to the land, and permanence. In terms of size, these are large sheds, about 2.7m by 5.5m, supplied as a propriety product and brought onto the site in sections and erected there. They are not fixed to the ground but sit on 4" by 4" timbers. They did not appear to me to be readily transportable and there is no apparent apparatus or arrangement to facilitate their relocation, and as far as I am aware they have never been moved since they were erected. However, they do not rely on a hardstanding or foundations for support and have no fixed services or drainage arrangements. While they may have taken some time to construct, they could have been assembled without the specialist assistance of a builder, and as far as I could see they could also be relatively easily dismantled and re-erected elsewhere on the site, or alternatively mounted on skids. On balance therefore, as a matter of fact and degree, I have come to the conclusion that they are lightweight moveable structures and not buildings, and hence not operational development for the purposes of the 1990 Act.

Conclusions on ground (c)

15. I have found that the siting of a caravan for the temporary residential use is development that requires planning permission, in the absence of which the relevant part of the appeal on this ground cannot succeed. However, I have concluded that the 2 sheds are not buildings for the purposes of the 1990 Act, and the appeal on this ground succeeds to that limited extent. I shall deal with this by correcting the notice and varying the requirements accordingly.

Ground (a) and the deemed planning application

Main Issues

16. This ground is that planning permission should be granted for what is alleged in the notice. A permanent planning permission is sought, but in the alternative temporary planning permission for a period of 3 years is sought in order to establish the viability of the enterprise.
17. The main issues are whether there is sufficient justification for the development, having regard to the strict control on residential development in the countryside, the effect of the development on the character and appearance of the Conservation area and the New Forest National Park, whether the development, either alone or in combination with other development, is likely to have a significant effect on the New Forest SPA, and whether or not there are other material considerations which would justify a grant of permanent or temporary planning permission.

Planning Policy

18. The development plan for the National Park includes the Core Strategy and Development Management Policies DPD December 2010 (CS). CS Policy DP12 provides that planning permission for new residential caravans or mobile homes will only be granted in accordance with CS Policy DP13, which deals with agricultural, forestry and other occupational dwellings. CS Policy DP13 is a permissive policy that essentially expects proposals to meet the tests set out in Annex A of Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7), which I discuss in more detail below. Other relevant policies include CS Policies DP1 and CP8, which seek to ensure that new development enhances local character and distinctiveness, CS Policy DP20 which relates to the provision of appropriate agricultural buildings, and CS Policy CP1, which sets out the approach to protecting the integrity of the SPA.
19. The Nation Planning Policy Framework (NPPF) post dates the CS and is a material consideration of particular significance. In line with CS Policy DP12, it advises that new isolated homes in the countryside should be avoided unless there are special circumstances, but it identifies the essential need or a rural worker to live permanently at or near their place of work in the countryside as one such circumstance. The NPPF also replaces PPS7.
20. Paragraph 215 of the NPPF explains that the weight to be given to local plan policies that pre-date the NPPF depends on their degree of consistency with the framework. The reliance of CS Policy DP13 on the detailed guidance in Annex A of PPS7, and the specific test of financial viability it sets out, which is not repeated in the NPPF, indicates a degree of inconsistency with the NPPF. However, as section 38(6) of the Planning and Compulsory Purchase Act 2004 requires, the application must be determined in accordance with the

development plan unless material considerations indicate otherwise. Hence CS Policy DP13 remains the starting point so far as justification for a rural dwelling is concerned, and consideration must therefore be given to PPS7 Annex A. I should make clear however that this does not keep Annex A alive.

Whether there is sufficient justification for the development

Functional need

21. The text accompanying CS Policy DP13 makes it clear that the exception for agricultural forestry and other occupation dwellings in the countryside is subject to the establishment of a genuinely essential need. This objective is fully in accordance with the NPPF. The mix of livestock on the site and particular aspects of their husbandry means that there is almost certainly a requirement for a full time worker, but that does not equate to a need for a worker to live on the site. PPS7 Annex A provides useful guidance on this. Noting that it will often be as convenient and more sustainable for such workers to live in nearby towns or villages, it recognises that there will be some cases where the nature and demands of the work concerned make it essential for one or more people engaged in the enterprise to live at the site of their work. Whether this is essential in any particular case will depend on the needs of the enterprise concerned and not on the personal preferences or circumstances of any of the individuals involved.
22. The business on the site as it has developed comprises poultry, pig, sheep, cattle and goat production. There is little in the needs of the sheep, cattle and goat parts of the enterprise that would justify more than an occasional night-time presence. Indeed, much of these are to be carried out away from the Cadnam site or partly within the forest. Regarding the pig rearing, there will be occasions, mainly farrowing, where night-time care may be necessary, but having regard to the relatively small numbers involved, this is likely to be infrequent, and, in the main, predictable for an experienced pig worker.
23. The appellant's agricultural advisor put forward the view that the need for a residential presence on the site was based on the amount of labour required, but what is in fact required is a genuine functional need to be present on site day and night. In this respect he accepted that it is the poultry enterprise that is central to the argument that there is a functional need for an overnight presence, on the basis of animal welfare and security. The problems of predation were raised, and Mr and Mrs Ap Dafydd both gave an example of an incident where there was significant stock losses which would have been greater if they were not on site to respond immediately. This concerned the loss of some 20 ducks when a mink got into their housing, but that was a pig ark rather than purpose built and it seems clear that it was not adapted to provide an appropriate level of protection. On the matter of the risk of predation generally, while it is difficult to completely eliminate, the risk is controlled in very many cases by appropriate housing and fencing. It is an ever-present problem in livestock farming and poultry in particular. Having regard to the relatively low numbers of stock involved, some 250 mature chickens and much smaller numbers of other fowl, and the potential to provide a satisfactory level of protection by other means, I do not give this matter significant weight. Similarly, locking up stock at night and letting them out in the morning are normal tasks for poultry enterprises and only contribute a small amount of weight to the justification for a residential presence.

24. Another aspect of animal welfare that was put forward is the need to be able to respond quickly to power failures or equipment malfunction. This mainly concerns hatching and chick rearing. The potential for harm arising from such instances can be controlled by the use of backup or alarm systems, but the argument put forward here is that the enterprise is too small scale to consider such measures. However, it seemed clear to me that little consideration had been given to such measures. If the small scale of the enterprise is relied on as justification for not using technological solutions, that must lessen the weight that can be attached to the need.
25. Other problems encountered have been essentially security related, such as intruders from the nearby hotel or dog walkers, but while regrettable, these provide little support in my view. The particularly high value of the poultry and the fear of theft carry some weight, but considering all of the evidence I am not persuaded that there is an essential functional need for a residential presence on the site, having regard to the nature and demands of the work and the welfare of the animals. In this regard I have considered the appellant's argument that the agricultural consultant contracted by the NFNPA to assess the enterprise accepted that there was a functional need, but that is not my interpretation of his report. He put forward the view that a case for essential on-site accommodation could be made, but that was qualified as being impossible to determine given the lack of detail available at that stage. Criticism of this aspect of his report was made on the basis that he had not had due regard to the appellant's Business Plan, but he had interviewed the appellant, visited the site and saw the plan, which he referred to as a draft plan. His overall conclusion on this matter was essentially that the NFNPA had not been provided with justification for a dwelling, on-site or nearby.

Whether the enterprise has been planned on a sound financial basis

26. Having regard to my conclusion above, it is not strictly necessary for the purposes of CS Policy DP13, or indeed national policy, to address the financial aspects of the development, but it occupied considerable time at the Inquiry and I shall consider it briefly. It is also relevant to the costs applications.
27. Central to this matter is the appellant's Business Plan. When the family moved onto the site, it is their evidence that they had prepared a business plan, albeit in handwritten form. I see no reason to doubt this, but this handwritten document was never provided to the NFNPA. After the enforcement notice was issued and the appeal made, Mr Carter took the handwritten plan and used it as a basis for the relatively structured document that was before the Inquiry. Mr Smith, the appellant's agricultural consultant, had been engaged by the time this more formal Business Plan was prepared, and this is the document which the NFNPA's agricultural consultant referred to as a draft business plan.
28. The Business Plan was subsequently reviewed by Mr Smith who considered it to be sound and sufficient to justify a permanent dwelling on the site. It showed the business moving from a profit of £198 in 2014 rising to £17297 in the period January to September 2015, then projected to rise to £22701, £51088 and £48482 in the years 2016, 2017 and 2018 respectively, after paying salaries rising from £25000 in 2016 to £42000 in 2018. However, the projections have very little in the way of detail. They appear to make no allowance for items such as mortgage repayments, capital expenditure, machinery, overheads, interest and depreciation. Audited accounts provided

subsequently do little more than confirm the cash flow through the poultry business, which operated from a domestic rented property for most of the audited period and was not in fact the farming business being appraised. There appear to be no fixed costs. Further, there appeared to be no robust analysis of the capacity of the land to carry the levels of stock proposed, nor was there any considered analysis of the potential contribution of the New Forest commons rights.

29. Mr Smith's evidence at the Inquiry, well into the Business Plan projected period, was that it was on track, but it appeared to me to be falling well short of the projections and had yet to pay any wages, notwithstanding that Mr Smith's appraisal considered it to be "very profitable". Issues with the track the subject of Appeal B did not provide a satisfactory explanation for the apparent underperformance in my view.
30. Mr Smith also considered the tests for a permanent dwelling in PPS7 Annex A and found them to be met. But that could not be so. Paragraph 3(iii) of Annex A requires that the unit and the agricultural activity concerned have been established for at least 3 years. Whilst the poultry business, which could not in my view be characterised at that stage as a wholly agricultural activity in any case, or as farming, may have been established for 3 years, that was not the enterprise being appraised. Nor was the relevant unit, what is now known as Bartley Forest Farm and operating from the appeal site, established for more than a few months. Indeed, at the time Mr Smith formed his opinion that the business was soundly managed, profitable and had a sound financial basis, no wages had been paid, the pig enterprise was in its very early stages, the sheep and cattle were not there and the land was subject to a mortgage. In my view it was artificial in any case to assess the farming business on which the appellant was basing his case for an agricultural dwelling as though it was a well established farm that had simply transferred its operations to the appeal site.
31. The Ap Dafydd family have shown dedication and commitment to the enterprise, and appear competent. Overall, however, I found the Business Plan to be rudimentary and lacking realistic accounting, and even having regard to the appraisal and the further financial information provided in the course of the appeal, the material as a whole did not, in my view, provide a good basis for a conclusion that the enterprise has been planned on a sound financial basis.

Character and appearance

32. The portion of the appeal site used for residential purposes is enclosed by hedgerows, but these are patchy and deciduous along the boundary with the local cricket ground and open heathland to the south. This has a public car park and appears well used by walkers. From this land the residential character of this part of the appeal site is evident and the appearance of the mobile home and associated domestic paraphernalia has a distinctly urbanising effect that is incongruous and discordant in this forest edge landscape. The residential development erodes the local rural character and distinctiveness, and hence is contrary to CS Policies DP1 and CP8.
33. The forest edge landscape is also an important component of the character of the CA, and ensuring that the rural and character of the area are preserved is one of the reasons given for designation of the CA. The site is just inside the western edge of the CA, and the CA Character Appraisal notes the importance

of ensuring that development at or near the edge does not have a detrimental impact on views into and out of the CA. In this context the discordant urbanising appearance cannot be said to preserve or enhance the character or appearance of the CA. In NPPF terms, this harm would be considered as less than substantial, and should be weighed against the public benefits of the proposal. However, no specific public benefits have been put forward, and while the harm would be less than substantial, such harm to a heritage asset must still be given significant weight.

Effect on the New Forest SPA

34. New residential development close to the New Forest SPA can harm the integrity of the SPA. CS Policy CP1 expects new residential development within 400m of the SPA to demonstrate that adequate measures are put in place to avoid or mitigate any potential adverse effects on the ecological integrity of the SPA. This is normally achieved by means of a financial contribution towards mitigation, as detailed in the NFNPA's adopted Development Standards Supplementary Planning Document (September 2012). The appellant has submitted a Unilateral Undertaking which would provide the appropriate mitigation, but he disputes the need for it. The argument is that the development includes exercising the common rights of pasturage (livestock grazing) and pannage or mast (pig foraging) which have a beneficial effect on the SPA which would outweigh any adverse effects due to residential use. In support an exchange with a Senior Adviser at Natural England, the statutory advisor on SPA matters, was adduced. This suggests that the benefits of commoning should be taken into consideration, and refers to another development, Shirley Holms Farm, where commonage was taken into consideration, NE did not object and a mitigation contribution was not required.
35. This evidence was introduced in the form of an exchange on an informal basis between Mr Carter and an officer of NE who operates in a different area. It is not the formal view of NE itself, and, aside from making it clear that developments can be considered on their own merits, cannot carry significant weight. What it does state however is that a level of detail similar to that provided in the Shirley Holms Farm case, essentially an ecological report, would be required before an NE objection would be waived. No proper evaluation has been provided, and in reality the Shirley Holms Farm case was very different, being for a commoners dwelling, a strictly controlled category of affordable housing which has stringent commoning history requirements. I have been provided with little more than assertion as to the benefits of the development. Since I must take a precautionary approach, I consider on the basis of the evidence that I am unable to conclude that the development, without mitigation, would not have an adverse effect on the SPA, either alone or in combination with other developments. The undertaking would therefore be necessary to make the development acceptable in SPA terms.

Other Material considerations

36. The Ap Dafydd's have aspirations to farm, and as far as I can see have put all of their resources into Bartley Forest Farm. Living on the land is no doubt important to them, and at present they have nowhere else to live. That provides some weight in favour of the development. The ecological benefits that would accrue from the exercise of common rights is also cited, but these are not dependent on the residential use of the land.

37. On 31 August 2015 the government introduced a planning policy to make intentional unauthorised development a material consideration that should be weighed in the determination of planning applications and appeals received from that date. In this case the appellant argues that he was not aware that he needed planning permission to live on the site. I find it hard to believe that the Ap Dafyddds were completely unaware of the need for planning permission. Any reasonable person looking to invest a considerable sum and change the direction of his/her life would do at least some basic research. Mr Ap Dafydd comes from a farming background and claims in his business plan that he has done his research. Some of his research has been through the "Field to Farm" internet forum, on which the topic of planning permission looms large. I found his own evidence on this, and indeed on other aspects, to be less somewhat evasive and not convincing. Moving onto the appeal site for residential purposes is unauthorised development, and I consider, on the balance of probabilities, that the appellant must have been aware of this. I consider therefore that it was clearly intentional. This is a material consideration that weighs against a grant of planning permission.
38. I should note also that I raised the question during the Inquiry whether the appellant's poultry enterprise should be considered to be wholly agricultural. Certainly a part of it appears to involve the raising of poultry for ornamental or showing purposes, or as pets, and there is case law that clarifies that livestock for the purposes of the planning definition of agriculture must be for the production of food, wool, skins or fur or for use in farming the land. However, as it turned out it was not something that I needed to resolve to determine the appeal.

Conclusion

39. The appellant has not demonstrated a functional need to live on the appeal site, nor has he provided sufficient evidence to show that the business is planned on a sound financial basis. As such the residential use of the land, on either a permanent or temporary basis, fails to accord with CS Policy DP13. The policy is not completely consistent with the NPPF because it relies on detailed guidance that has been replaced by the NPPF, and it is also relevant that the NPPF approach to new residential development in the countryside is less onerous. However, I consider that CS Policy DP13 should still be afforded significant weight, and the development is in any case in conflict with the NPPF policy of strict control on new residential development in the countryside. The development also conflicts with other relevant development plan policies which seek to protect the character of the area, a National Park which has the highest status of protection in relation to landscape and scenic beauty and a Conservation Area to whose character and appearance special attention must be paid. Overall I consider that it is not in accordance with the development plan as a whole. This conflict is not outweighed by other material considerations. The development may have some environmental and social benefits, though these are uncertain, but overall I consider that the adverse impacts would clearly significantly and demonstrably outweigh any such benefits when assessed against the NPPF policies taken as a whole. I conclude therefore, having considered all other matters raised, that planning permission should not be granted, even on the temporary basis sought in the alternative. The appeal on this ground does not therefore succeed.

40. The dismissal of the appeal will deprive the Ap Dafydd family of their home on the appeal site. Given their current circumstances, I accept that such a decision would represent an interference with the family's rights under Article 8 of the European Convention on Human Rights. However, the protection of the countryside is an important aim of local and national planning policies, incorporated in adopted development plan policies and in the NPPF. The pursuit of these policies is therefore a legitimate objective in the public interest, and has a clear basis in the relevant planning legislation. In these circumstances, some interference with Article 8 rights is permissible. In the present case, the aims of the policies in question could not be safeguarded by any other means than by the refusal of planning permission.
41. In all the circumstances, it seems to me that the interference with the rights of the appellant and his family under Article 8 would be justified and proportionate, in order to avoid harm to the countryside and the National Park. The best interests of the 5 children living on the site is a primary consideration to which I have had regard. However, it has not been suggested that there would be a significant risk of harm to their interests, in terms of their welfare or prospects, by having to move elsewhere.

Ground (f)

42. This ground is that the requirements exceed what is necessary to remedy the breach of planning control, or the harm to amenity, as the case may be. It is clear from the notice, and confirmed at the Inquiry, that the requirements seek to remedy the breach of planning control.
43. Firstly, there are variations to the requirements that I consider necessary in any case, following directly from my correction of the notice to delete the reference to the storage/siting of certain items. It is sufficient and appropriate to vary the requirements by deleting requirement 2 entirely and varying requirement 4 so as to simply require the removal of domestic items and paraphernalia associated with the use of the land for residential purposes.
44. Regarding the 2 sheds, notwithstanding my conclusion that they are not buildings, their removal could nonetheless be required if they were integral to the unauthorised residential use. However, I consider that these are not primarily associated with the residential use and hence it is not necessary to require their removal to remedy the breach of planning control.
45. The remaining submission on this ground is that the requirement to remove all caravans from the land affected would effectively interfere with aspects of the lawful use of the land for agriculture, including permitted development rights. However, the Court of Appeal judgement in *Duguid*¹ makes it clear that no enforcement notice could take away legally permitted rights of use, and it is not necessary for the enforcement notice to specify that rights under the GPDO are unaffected because those rights are clearly defined by the Order itself.

Ground (g)

46. This ground is that the time for compliance, 12 weeks in this case, is too short. A minimum period of 6 months was sought, and the NFNPA no longer opposes this. Given the need to look for alternative accommodation, I consider that a

¹ *Duguid v SSETR and Anor.* [2000] EWCA Civ 241

compliance period of 6 months is reasonable in the circumstances and this ground succeeds accordingly.

APPEAL B

Grounds (b) and (c)

47. This concerns the allegation of works for the formation of an access track. There is an undisputed access track from the private way along the north eastern side of the site leading through the site to the neighbouring field to the east. The disputed track leads from that track to the portion of the site where the mobile home is stationed. The appellant claims that the works the subject of the appeal are works of maintenance and repair of an existing track.
48. The previous owner's statement describes laying a track along the route to the area where he parked caravans, the line of the disputed track essentially. He stated that hardcore, brick rubble and crushed concrete was simply laid on the soil surface. This was in about 1995/96. He claims that the track was still there when he sold the land to the appellant, and the sale brochure refers to a track serving the land. This has a photograph of what appears to be a grassed track fenced off from the main field.
49. Mr Readhead, the neighbouring landowner recalled the track being laid by the previous owner, Mr Moore, and that it eventually grassed over. A sequence of aerial photographs from 1999 through to 2014 show a slightly lighter green along the route of the track compared to the rest of the field, but by 2011 it is indistinguishable. A photograph taken during a site visit by the Council on 2 November 2015 shows what appears to be a mix of hardcore and broken bricks being laid along the wheel tracks. This was apparently done by Mr Ap Dafydd using a wheelbarrow. He described the pre-existing track as having been overlaid by organic matter and dirt. He subsequently employed a Dial-a-Digger company, Positano Ltd, to upgrade the track. The then manager described in a letter scraping back the organic matter on the track to expose an existing hard surface and using imported material to make good the exposed track. Mr Baker, the digger driver who did the actual work, gave evidence at the Inquiry. The works were stopped before completion by the Council, and the notice was issued shortly after. Photographs of the progress of the works, dated 23 November 2015, were in evidence.
50. I see no reason to doubt Mr Moore's statement. It seems clear to me that there had been bearing materials laid on the ground to assist access to the caravan area, and it seems clear also that this surface had been subsumed into the landscape. Such a surface continues to provide vehicle bearing and assists traction for some time, and no doubt can be called a track. Nor do I have any real doubt that if the surface soil is scraped away, the hard surface would be evident. However, what might amount to repair and maintenance of such a track would have to be proportionate to what is already there, and whether that can be said of the works carried out by Positano is a matter of fact and degree.
51. I have looked closely at the photographs of 23 November 2015 and concluded that the works that are evident go well beyond what could reasonably be considered to be works of repair and maintenance of what was there before. It is clear that a considerable quantity of materials have been brought onto the site and laid on the line of the track, there have been significant engineering

works including digging a drainage ditch to assist the works, and a fair degree of land surface raising seems apparent. The works were not complete, but, on the balance of probability, I conclude as a matter of fact and degree that the works amounted to works for the construction of a new track and not for the repair and maintenance of what was there before. It follows that the appeal on ground (b) must fail.

52. As mentioned in the preliminary matters above, it is now accepted that there had never been planning permission for an access track. So far as the GPDO permitted development right for the formation or alteration of a private way on an agricultural unit of 5ha or more is concerned, if that were relevant then it requires an application for prior approval, which can only be made before works commence. There is no other basis upon which an appeal on ground (c) could succeed.

Ground (f)

53. I do not have an appeal on ground (a) or a deemed planning application to consider and in these circumstances an appeal on this ground cannot consider anything more than whether the steps exceed what is necessary to remedy the breach. This can only be done by restoring the land to the condition it was in before the breach took place. The requirements go no further than that.

Ground (g)

54. The period specified for compliance is 6 weeks, but it is reasonable in the circumstances to align the compliance period with the 6 months allowed in Appeal A. This appeal succeeds to that extent.

Paul Dignan

INSPECTOR

DOCUMENTS

- 1 NFNPA Core Strategy and Development Management Policies, and New Forest Management Plan
- 2 Letter of notification of the Inquiry
- 3 Map accompanying David Readhead submission
- 4 NFNPA list of proposed conditions
- 5 Draft unilateral undertaking – SPA mitigation
- 6 Letter of notification – resumed Inquiry
- 7 Appellant’s opening submissions
- 8 List of appearances - appellant
- 9 Natural England consultation response
- 10 NPA memo re. issuing of 1st enforcement notice
- 11 Email exchange between MH Planning and NFNPA
- 12 NFNPA Local Enforcement Plan
- 13 Statement – Phoebe Ap Dafydd
- 14 Letter re employment of Dan Ap Dafydd
- 15 Verderers of the New Forest Marking Fees receipt – 11 pigs
- 16 Copy of NFNPA email to Natural England (NE) re SPA contribution
- 17 Email exchange between Roger Carter and Marc Turner (NE)
- 18 NFNPA planning committee report re Shirley Holms Farm
- 19 Letter of objection – Lesley Flack plus signatories
- 20 Costs application - NFNPA
- 21 Closing submissions - NFNPA
- 22 Closing submissions - appellant
- 23 Signed unilateral undertaking – SPA mitigation
- 24 Costs application - appellant

Documents submitted after the Inquiry closed

- 25 Costs response – appellant plus index bundle
- 26 Costs response - NFNPA
- 27 Final costs response - appellant

Application No: 17/00816/FULL Full Application

Site: The Lodge Malwood, Lyndhurst Road, Minstead, Lyndhurst, SO43
7HA

Proposal: Creation of Access; entrance gates and fencing

Applicant: Mr J Williamson

Case Officer: Liz Young

Parish: MINSTEAD

1. REASON FOR COMMITTEE CONSIDERATION

Contrary to Parish Council view

2. DEVELOPMENT PLAN DESIGNATION

Conservation Area
Ramsar Site
Site of Special Scientific Interest
Special Protection Area
Special Area of Conservation

3. PRINCIPAL DEVELOPMENT PLAN POLICIES

DP1 General Development Principles
CP1 Nature Conservation Sites of International Importance
CP2 The Natural Environment
CP8 Local Distinctiveness
DP6 Design Principles
CP7 The Built Environment

4. SUPPLEMENTARY PLANNING GUIDANCE

Not applicable

5. NATIONAL PLANNING POLICY FRAMEWORK

Sec 11 - Conserving and enhancing the natural environment
Sec 12 - Conserving and enhancing the historic environment

6. MEMBER COMMENTS

None received

7. PARISH COUNCIL COMMENTS

Minstead Parish Council: Recommend approval subject to the existing access being closed up and that the new access would be used only by the occupants of Malwood Lodge.

8. CONSULTEES

- 8.1 Landscape Officer: No objection.
- 8.2 Ecologist: Comments awaited.
- 8.3 Tree Officer: No objections subject to conditions.
- 8.4 Forestry Commission: No comments received.
- 8.5 Verderers of the New Forest: No comments received (no objections raised in respect of previous application, 17/00231).
- 8.6 Highways England: No objections.
- 8.7 Highway Authority (HCC): No objections subject to conditions.
- 8.8 Natural England: Insufficient information to assess impact upon designated sites.
- 8.9 Building Design & Conservation Area Officer: Comments awaited.

9. REPRESENTATIONS

- 9.1 One letter of support from a neighbouring property:
 - Proposal would be sympathetic and estate fencing would be in keeping with the local area.
 - Would offer highway improvements.
 - Suggest that a drainage pipe should be included in the scheme.

10. RELEVANT HISTORY

- 10.1 Creation of access; entrance gates (17/00231) refused on 18 May 2017
- 10.2 Application for a certificate of Lawful Development for a proposed completion of single storey extension (17/00323) Permitted Development 05 May 1017

11. ASSESSMENT

- 11.1 The Lodge is a characterful Victorian building located in a wooded garden near to the A31 junction. The Lodge post-dates Castle

Malwood House, and was built between 1872 and 1897. The lodge historically had wooded grounds surrounding it and it is accessed via the Castle Malwood slip road from the A31 or round from Lyndhurst Road. The site lies within the Forest Central (south) Conservation Area (Character Area A, Minstead), and the locality comprises a dispersed, linear rural settlement set against mature woodland. The Lodge is specifically noted within the Conservation Area Character Appraisal for its vernacular interest. The verges immediately adjacent to the site boundary all form part of the designated New Forest Site of Special Scientific Interest (SSSI), Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar Site.

Proposal

- 11.2 Permission is sought for an access track onto Lyndhurst Road at the side / rear of the property. When the dwelling was built, it occupied a wooded location with no real curtilage, as confirmed by historic maps of the area. The eastern boundary of the curtilage is not clearly defined, having been overgrown for a long time, however it is clear that the access would cross a historical field boundary, as well as a ditch and a grassed forest verge (designated as part of the open forest SSSI/SAC as well as Crown Land) before it reached the carriageway of Lyndhurst Road. Certificate B has therefore been signed and notice has been served on the Forestry Commission.

Background

- 11.3 This application has been submitted as a follow up to a previously refused scheme which was turned down for four reasons:
- Harmful impact upon / net loss of designated sites (SSSI, SAC, SPA).
 - Insufficient parking and turning.
 - Inappropriate boundary treatments.
 - Cattle grid would have a harmful impact upon tree roots.
 - An ecology report has now been submitted detailing habitat creation and mitigation measures (including return of land to grazing).

The main issues to assess therefore relate to whether this latest application overcomes the concerns set out above. The cattle grid is proposed in the same location as the previous application, although an arboricultural report and ecology survey has been provided. The main vehicular gate is no longer proposed and the proposed fence has been simplified. The plans also indicate that part of the existing curtilage would become part of the open verge to compensate for the loss of part of the SSSI (although this was also the case with the previous scheme).

Consideration of Issues

- 11.4 Whilst the submitted plans indicate that some of the existing curtilage would be opened up as forest verge following the reconfiguration of the curtilage boundary, this does not sufficiently address the concerns raised at the time of the previous application in relation to the impact upon the designated SSSI, SAC, SPA and Ramsar sites, particularly as this approach was not considered to offer adequate mitigation at the time of the previous application. Whilst an ecological survey has accompanied the application, Natural England consider that it is still not clear how mitigation would be achieved, or what the value of the area is which would be lost. In short it remains the case that the proposal is still not capable of being delivered without harm to the designated sites, by providing suitable compensation for the loss of the area of designated site. Natural England state that the extra grazing area does not ensure no net loss of the designated site. As such the proposal fails to comply with Policy CP1 and CP2 of the New Forest National Park Core Strategy.
- 11.5 The Conservation Area Character Appraisal describes Minstead as being characterised by small irregular fields edged by mature boundary hedgerows and parkland associated with the country estate. The appraisal states that boundaries to plots are formed by hedgerows, metal estate fencing or low timber fencing. The piecemeal loss of hedgerows is one of the key issues identified affecting the Conservation Area along with the dominance of cars in the landscape (the provision of off road parking at the expense of boundary hedgerows is also referred to). As noted previously the current character of the lane adjacent to the site is one with an established hedge line and enclosed verdant forest edging with the Lodge sitting discretely within the site and the surrounding open space forming a key part of its character and appearance. The Lodge is very much orientated at the west of the site and is closely associated with the driveways and access point to Malwood House. In contrast the site of the proposed access is characterised by trees, vegetation and understorey growth.
- 11.6 Notwithstanding the simplified fence and the absence of any objection from the Tree Officer, the proposed removal of up to 10 metres of boundary hedge with wide vehicle overruns and additional driveway (unchanged since the previous scheme) would result in a harmful impact upon the rural setting and would erode the verdant character of the roadside, opening up views into the site to the detriment of both the character of the Lodge and the wider conservation area. It remains the case that there is very little information on the proposed hardstanding and landscape details and the proposal would harm the setting of an undesignated heritage asset. Pages 11, 12 and 63 of the Design Guide Supplementary Planning Document set out the importance of ensuring the retention of hedged enclosures and historic features, avoiding forced grandeur, providing low key parking,

retaining roadside boundaries and strengthening the characteristics of rural lanes. The proposal is not considered to adhere to these requirements and would therefore be contrary to Policies DP1 and CP8 of the New Forest National Park Core Strategy, the requirements of Section 12 of the National Planning Policy Framework and the Design Guide Supplementary Planning Document.

Conclusion

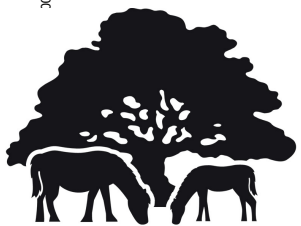
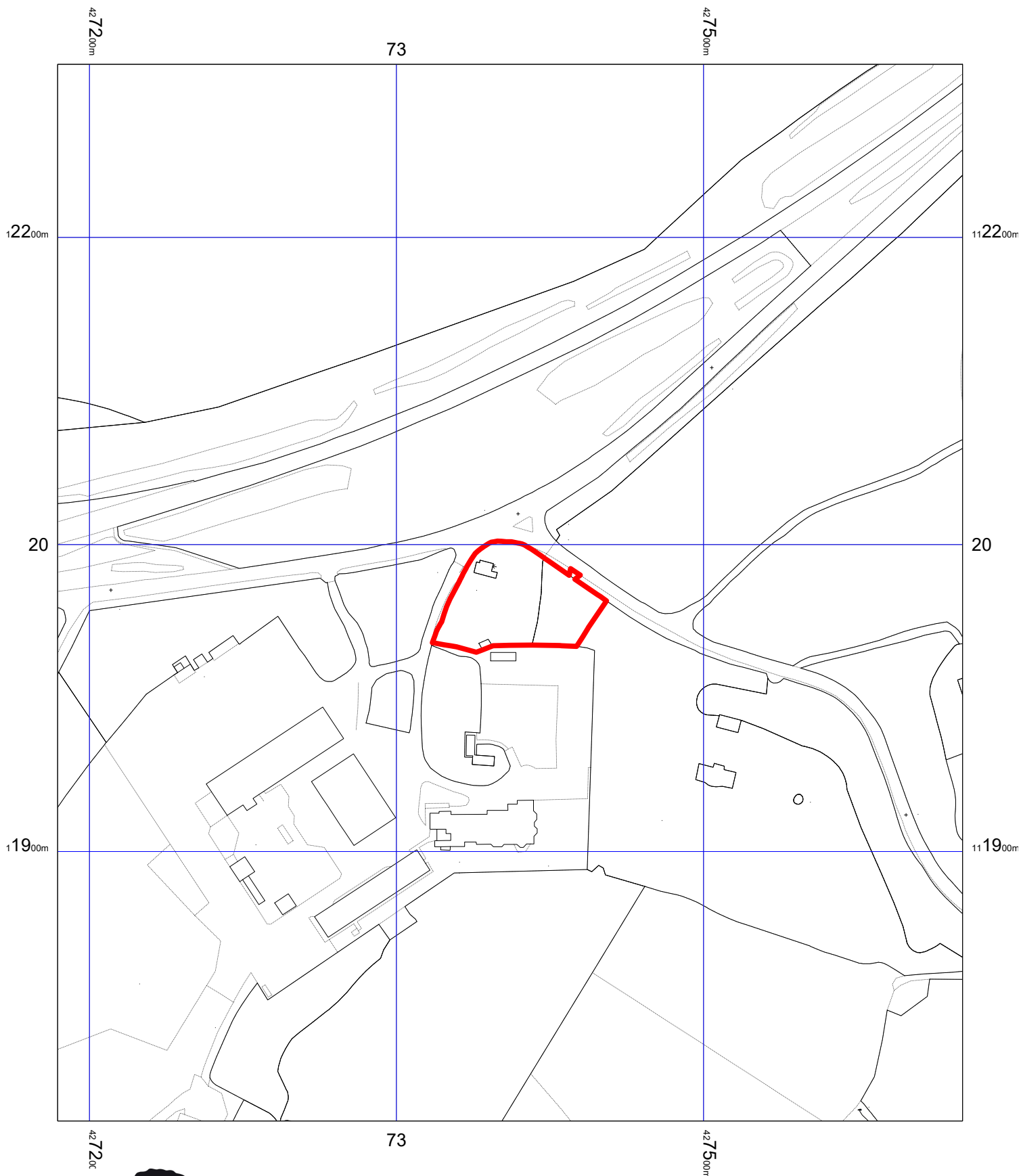
- 11.7 Notwithstanding the fact that Tree Officer and Highways concerns have been addressed (and that the retention of the existing access was not raised specifically as an issue at the time of the previous application), there is still insufficient information accompanying the application to demonstrate that the development would not lead to direct harm and irreversible loss of the New Forest SSSI, SAC, SPA and Ramsar Site. Furthermore the combined impact of the removal of a substantial section of hedgerow and the formation of a substantial new area of hard surfacing would have an unacceptably harmful impact upon the setting of The Lodge (which already benefits from adequate access) and the character of the wider Conservation Area. It is therefore recommended that the application should be refused.

12. RECOMMENDATION

Refuse

Reason(s)

- 1 It has not been demonstrated that the proposal could be provided without harm to the Special Area of Conservation (SAC)/ Site of Special Scientific Interest (SSSI) adjacent to the site. As such the proposal is contrary to Policies CP1 and CP2 of the New Forest National Park Core Strategy and Development Management Policies (DPD) (December 2010), as well as the National Planning Policy Framework (in particular Section 11).
- 2 The proposed accessway and necessary removal of hedgerow would present an overly formal, polite and domesticating form of development into an otherwise rural landscape, adversely impacting upon the forest character of the Conservation Area at this point. As such the proposal is contrary to Policies DP1, DP6, CP7 and CP8 of the New Forest National Park Core Strategy and Development Management Policies (DPD) (December 2010) along with the requirements of the Design Guide Supplementary Planning Document.



NEW FOREST
NATIONAL PARK

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Tel: 01590 646600 Fax: 01590 646666

Date: 09/11/2017

Ref: 17/00816/FULL

Scale: 1:2500

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