

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.
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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.
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- 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.
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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 Dafydd 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

APPEARANCES

Roger Carter	Mr Carter appeared for Mr Ap Dafydd on the first day only
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He called David Readhead Adam Baker Howard Smith MRICS	Neighbour Positano Ltd Rural practice surveyor
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Melissa Murphy	Of Counsel, from day 2, instructed by Howard Smith
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She called Dan Ap Dafydd Howard Smith MRICS Phoebe Ap Dafydd Roger Carter	The appellant Rural practice surveyor
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FOR THE LOCAL PLANNING AUTHORITY:

Felicity Thomas	Of Counsel, instructed by Legal Dept. New Forest National Park Authority.
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She called Paul Hocking	New Forest National Park Authority
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INTERESTED PERSONS

Rev. Dr James Bruce Tim Stevenson Cllr Diane Andrews Lesley Flack	St Michaels Church, Lyndhurst Neighbour Councillor, New Forest District Council Local resident
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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