
Appeal Decisions

Site visit made on 16 October 2018

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2018

Appeal A Ref: APP/B9506/C/18/3194434

5 Avon View Cottages, Sandy Balls Estate, Godshill, Fordingbridge SP6 2LX

- 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 Robert Bigger against an enforcement notice issued by New Forest National Park Authority.
- The enforcement notice was issued on 5 January 2018.
- The breach of planning control as alleged in the notice is without planning permission the construction of a raised platform shown in the approximate position coloured blue on the plan attached to the notice.
- The requirements of the notice are 5.1 Permanently remove the raised platform shown in the approximate position coloured blue on the plan attached to the notice from the land affected. 5.2. Restore the land to its previous condition and remove any resultant debris arising from compliance with step 5.1 from the land affected.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Appeal B Ref: APP/B9506/W/18/3194960

5 Avon View Cottages, Sandy Balls Estate, Godshill, Fordingbridge SP6 2LX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Robert Bigger against the decision of New Forest National Park Authority.
- The application Ref 17/00943, dated 31 October 2017, was refused by notice dated 20 December 2017.
- The development proposed is for erection of rear raised decking and handrail.

Summary of Decision: The appeal is dismissed.

Procedural Matter

1. In the banner heading above I have omitted the reference on the application form to Appeal B being retrospective, as this does not involve an act of development.

Appeal A

Ground (a) appeal

Main Issue

2. The appeal site and its surroundings are within the Western Escarpment Conservation Area (CA). The CA comprises an extensive linear area of New

Forest landscape and settlements in the western part of the New Forest National Park (NP). Therefore, the main issue on this ground of appeal is whether the raised platform preserves the character or appearance of the CA and conserves the landscape and scenic beauty of the NP.

Reasons

Character or appearance of the CA, landscape and scenic beauty of the NP

3. The site contains a twin unit residential mobile home and its associated front and rear gardens. It forms part of an established group of similar mobile homes set in maturing gardens, occupying a woodland setting on the edge of a complex of holiday units. At the rear of the site and the adjacent properties is the edge of a wooded escarpment which slopes away steeply towards the river Avon and open countryside beyond. The general absence of substantial boundary fencing or other tall or solid forms of boundary enclosure and the appreciable lack of large scale built structures in back gardens provides a soft edge to the residential development and creates a sense of gradual transition into the woodland. This contributes significantly to the character and appearance of the surroundings. The woodland between the escarpment and the river is the subject of a Tree Preservation Order (TPO)¹. The site is between Character Areas E and F in the CA Character Appraisal prepared by the National Park Authority (NPA). Character Area E identifies the topography of the landscape and in particular the heavily wooded, steeply edged slopes of the escarpment as being characteristic of this part of the CA.
4. The raised platform covers a significant part of the appellant's back garden. Due to the steeply sloping landform towards the end of the garden, the platform is in excess of two metres in height from ground level at its highest point. A balustrade constructed of timber and glass encloses the outer edge of the platform above its surface. Timber boarding has been erected between the outer edge of the platform and the slope to enclose the land underneath the platform surface. Consequently, the platform is of a substantial size and it has created a significantly more solid and harsh outer edge to the site. Moreover, due to its situation towards the end of the back garden, the platform extends a significant distance away from the mobile home and other built features.
5. Due to the above factors, the platform contrasts starkly with the more naturalistic appearance of the adjacent woodland slopes and it is not well related to other residential development in the vicinity. Therefore, the platform appears as a residential intrusion into the woodland, giving the site and its environs a significantly more built-up and suburbanised appearance. The substantial elevation of the platform above the adjacent ground level and the envelopment by the platform of the trunks of four maturing Beech trees emphasises the sense of residential intrusion into the woodland, even though there is no physical encroachment beyond the rear garden boundary. It follows that the platform appears entirely at odds with its woodland setting and it is viewed as an alien feature which appreciably erodes the heavily wooded, steeply edged character of the woodland slopes.
6. In terms of the effect on the wider landscape, there is no external lighting on the platform and leaf cover restricts views during the summer and autumn. Nevertheless, due to the factors identified above during the winter and spring

¹ Ref: TPO/0054/17 Avon Valley Woodland.

the platform is likely to be an obvious, residential built feature in the landscape which does not integrate satisfactorily into its context. Therefore, the visual harm identified above is likely to be more readily apparent over a wider part of the CA for a considerable part of the year.

7. In reaching the above conclusions I appreciate that there are examples of decking, porches and ancillary buildings at adjacent properties. In particular, a conservatory has been erected at the rear of 6 Avon View Cottages next door, following the grant of planning permission by the NPA in 2010. However this conservatory and other domestic structures are, on the whole, relatively modest in size, well related to their respective mobile homes, set back from the steeper slopes of the escarpment and no trees appear to have been enveloped or removed. Consequently, development at adjacent properties is not comparable with the platform in terms of its scale and visual impact.
8. According to the appellant's arboricultural survey construction of the platform has not harmed any trees and there is no firm evidence to suggest otherwise. Nevertheless, the survey accepted that the circular gaps left around the trees enveloped by the platform needed to be significantly increased in size to allow for future tree growth. For a similar reason, the gaps would also have to be increased at intervals in the future. A suitable planning condition could be used to secure an initial increase in the size of the gaps. However, any condition requiring future enlargement of the gaps is unlikely to meet the test of enforceability at paragraph 55 of the revised National Planning Policy Framework (the Framework), as in practice it would be difficult to detect a contravention. Therefore, I cannot rule out the possibility of future movement of the trees including flexing of their trunks causing damage to the platform.
9. Moreover, although I accept that the appellant regards the trees in question as an asset to his enjoyment of the platform in terms of the shading they provide, there is no assurance that future occupiers of the mobile home would share the same opinion. Accordingly, it would not be unreasonable to anticipate that future occupiers might wish to take steps to reduce leaf litter or increase sunlight and/or views over the Avon valley by reducing the extent of tree coverage in the environs of the platform.
10. Consequently, although the trees in question are protected the continued presence of the platform seems to me to create an appreciable risk of pressure being exerted on the NPA to consent either to substantial works being undertaken to the trees or to their removal at some stage in the future. This would particularly be the case if the NPA was faced with an argument from future occupiers that they would be entitled to compensation for loss or damage caused by the trees in the event that consent was withheld. The arboricultural survey assessed two of the trees enveloped by the platform as making a significant visual contribution to their surroundings. Therefore, although the trees form only a small part of the woodland, future substantial works to the trees or their removal is likely to lead to a further erosion of the character and appearance of the area identified above.
11. For the above reasons and whilst I have taken the support from interested local residents into account, I find that the platform does not preserve the character and appearance of the CA. The appellant's wish to provide a solid level surface for use by people of all ages and physical abilities within his otherwise sloping garden is entirely understandable. However, any benefit provided in this

respect would be private and not public. Therefore, whilst the harm to the significance of the CA would be less than substantial, the platform provides no public benefits which might outweigh that harm. Moreover, for the above reasons the platform also fails to conserve the landscape and scenic beauty of the NP.

12. The appellant suggested that the platform did not need to be completely dismantled, as either the gaps around the trees could be increased in size, or the platform could otherwise be reduced in size and the glass balustrade replaced with timber. Although these matters were raised on ground (f), given s177 (1) (a) of the Act it is appropriate to deal with them on ground (a). Increasing the size of the gaps around the trees has already been dealt with above. The appellant has given no clear indication of extent of any proposed reduction in the size of the platform. In particular, no detailed drawings have been provided of the reduction in size. In any event, a smaller platform with a similar siting is still likely to be a substantial built structure, with similar effects on its surroundings including trees. As a result, the appellant's suggestions do not represent an obvious alternative to the notice requirements.
13. Therefore, the platform fails to accord with Policy DP1 of the New Forest National Park Core Strategy and Development Management Policies DPD (CS), as it does not demonstrate high quality design which enhances local character and distinctiveness, it is not appropriate and sympathetic in terms of scale, appearance and siting and it does not respect the natural environment and landscape character. The platform fails to accord with CS Policy CP2, as it does not protect features that characterise the New Forest. The platform also fails to accord with CS Policy CP8, as it erodes the NP's local character and it has a suburbanising effect. Furthermore, the platform is inconsistent with the Framework at section 12 concerning the achievement of well-designed places, as it is not sympathetic to local character and the landscape setting. The failure to conserve the landscape and scenic beauty of the NP is also inconsistent with section 15 of the Framework. Moreover, as there is less than substantial harm to the significance of the CA and there are no public benefits the platform is also inconsistent with section 16 of the Framework. CS Policy DP12 is primarily directed at ensuring that residential outbuildings are required for incidental purposes and not used as accommodation. Therefore, it is of limited relevance to this appeal.

Conclusion on ground (a)

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

Ground (f) appeal

15. This ground of appeal concerns whether the steps required to be taken by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity. The notice alleged that unauthorised operational development had taken place. It required the platform to be removed, as opposed to its modification or retention in part. Therefore, although the notice does not state so explicitly its purpose must be to remedy the breach of planning control by restoring the land to its condition before the breach took place, as opposed to remedying any injury to amenity.

16. The appellant's suggested alternatives to removal of the platform were dealt with on ground (a). Reducing the requirements to stop short of removal of the platform would not remedy the breach of planning control described in the notice. Therefore, any requirement other than removal of the platform would not fulfil the purpose of the notice of restoring the land to its condition before the breach took place. Consequently, the requirements of the notice do not exceed what is necessary to remedy the breach and the appeal on ground (f) must fail.

Ground (g) appeal

17. This ground of appeal concerns whether the time given to comply with the requirements of the notice is too short. The NPA specified a three month compliance period. The appellant considered that this should be extended to five years to allow for a review of the impact on the trees.
18. To my mind, three months is not an unreasonably short compliance period. It strikes an appropriate balance between remedying the planning harm caused by the platform whilst allowing the appellant sufficient time to engage contractors and for them to undertake the specified remedial works. The longer period of time suggested by the appellant would perpetuate the visual harm caused by the breach and would be tantamount to granting a temporary planning permission. Consequently, the appeal on ground (g) must also fail.

Appeal B

19. This appeal is materially similar to the ground (a) appeal on Appeal A. Therefore, a similar conclusion applies in relation to this appeal.

Formal Decisions

20. Appeal A is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
21. Appeal B is dismissed.

Stephen Hawkins

INSPECTOR