

**Application No: 18/00307/VAR Variation / Removal of Condition**

**Site:** Land Rear Of Primrose Cottage, Cuckoo Hill, South Gorley, Fordingbridge, SP6 2PP

**Proposal:** Application to remove conditions 1 and 2 (Named Operator) of Appeal Decision T/APP/B1740/A/89/131065/P7 (relating to planning application 89/41215) of planning permission reference 15/00916

**Applicant:** Mr Barrell

**Case Officer:** Katie McIntyre

**Parish:** ELLINGHAM HARBRIDGE AND IBSLEY

**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  
CP14 Business and Employment Development  
CP15 Existing Employment Sites

**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**

Ellingham, Harbridge & Ibsley Parish Council: Recommend refusal:

- Rather than the removal of condition 2, the Parish Council would welcome only the named operators being removed from condition 2, as

this condition states once the site ceases to be occupied, all materials and equipment brought to the site shall be removed.

- The remaining conditions 3-7 require re-examining in order to control the number of vehicle movements and the size of vehicles used on the rural track to the site within the National Park, the impact on neighbouring properties and the appropriateness for the use of this site.
- Should the above not be possible, the Parish Council would welcome a new application setting out the future intended use of the site, along with proposed activity, in order to allow appropriate and stringent conditioning to regulate the site.

## **8. CONSULTTEES**

No consultations required

## **9. REPRESENTATIONS**

9.1 Two objections received:

- Removal of the personal condition could result in multiple users of the site.
- Condition of the original permission to use this site is now out of date in view of the size of the business and associated vehicle numbers and size.
- Site being used as a tree surgery business.
- The original consent was only granted due to circumstances specific to Mr Barrell.

## **10. RELEVANT HISTORY**

10.1 Application to vary conditions 1 and 2 (named operator) of appeal decision T/APP/B1740/A/89/131065/P7 relating to planning application 89/41215 (15/00916) granted on 16 February 2016

10.2 Use of land for log cutting, storage and mulch storage (89/41215) refused on 11 May 1989. Appeal allowed on 9 March 1990

## **11. ASSESSMENT**

11.1 The application site consists of an area of land measuring approximately 0.3ha, which was granted permission in 1990 on appeal, to be used for log cutting, log storage and mulch storage. The site is accessed via a single-width unmade track which serves two other residential properties and is also a bridleway. The permission granted in 1990 was subject to several conditions that limited / controlled aspects of the use including the following personal restrictions:

*"The uses hereby permitted shall be carried on only by Mr J Barrell and should be used for a limited period being the period during which the site is occupied by Mr J Barrell."*

*"When the site ceases to be occupied by Mr J Barrell the uses hereby permitted shall cease and all materials and equipment brought on to the site in connection with the uses shall be removed."*

The above two conditions were varied in 2016 (15/00916) and granted by Members to allow both Mr J Barrell and/or Mr R Heron to operate from the site. This application seeks consent for the removal of these two conditions to allow any persons to operate from the site.

- 11.2 By way of background, in 1990 the site was owned and operated by Mr Barrell who also owned the adjacent land (edged blue on the submitted block plan) which was used as a nursery primarily for the growing of Christmas trees. It is important to note that the land edged in blue did not form part of the appeal as this land was being used in accordance with permitted development rights relating to forestry and as such did not require planning permission; this situation has not changed and this application does not relate to this parcel of land.
- 11.3 Since early 2015, the site was leased by another landscaping contractor (Robert Heron). He has since left the site and Mr Barrell, whilst still in occupation of the site, also wishes to find another party to operate the yard within the terms of the original permission. It is not however possible to market the site or make it available to another occupier with the personal conditions still in place. This application therefore seeks to remove these two conditions from the consent. All other restrictive conditions (use of the site, restriction on hours of use for machinery, no retail sales and a restriction relating to the hours of burning) would remain.
- 11.4 The relevant issues to consider are whether the proposed removal of the two conditions relating to a personal consent would have a greater impact upon the character and appearance of the area and the amenities of the nearby residential properties than if Mr Barrell or Mr Heron were to be operating at the premises in accordance with the permission.
- 11.5 Two objections have been received from the occupants of the neighbouring properties 'Primrose Cottage' and 'Chibdons' raising concerns in relation to the intensification of activity including the possibility of multiple businesses operating from the site and the ability of the Authority to enforce the remaining conditions if the personal consent is removed. The Parish Council have also objected to the application on the grounds that all conditions require re-examining in order to control the number of vehicle movements and size of vehicles which use the access track.
- 11.6 The Inspector considered that the *"activities taking place at the site although not strictly forestry, by their nature are related to*

*forestry and to a degree would be expected to be found in countryside areas". Furthermore, the site is "well screened from the main road and it does not have a serious impact on the character and appearance of this part of the green belt". The Inspector also had regard to the fact that the permission was granted "having particular regard to the circumstances of the appellant and the use he makes of the site" but that the use would be acceptable "subject to stringent controls being placed on a permission to ensure that subsequent intensification does not take place". It was previously considered that a change in occupier of the site to Mr Heron has not had any greater impact upon the character and appearance of the conservation area than if Mr Barrell were to be operating from the site as there was no change in the lawful use of the site. Furthermore, it was not considered that this change in operator had a greater impact upon the neighbouring properties amenities because the conditions controlling the use, such as restriction on hours of use of machinery and hours of burning were to remain and were still being complied with.*

- 11.7 Any conditions imposed on a consent must meet the six condition tests as set out in the Planning Practice Guidance being necessary; relevant to planning and to the development permitted; enforceable; precise; and reasonable in all other aspects. The Planning Practice Guidance states that a "*condition used to grant planning permission solely on grounds of an individual's personal circumstances will scarcely ever be justified in the case of permission*" this is because the permission runs with the land and it is rarely appropriate to provide otherwise. As stated in the latter paragraph, it was found in 2016 that the change in the named operator of the site did not have any greater impact as the intensity of the use of the site is controlled by virtue of conditions 3-7 of the original consent. It is considered this would be the case for any other named operator of the site and as such it is not considered it would be reasonable for the Authority to raise an objection to the proposal to remove conditions 1 and 2 relating to the personal consent.
- 11.8 Notwithstanding the above, it is considered necessary to attach a suitably worded condition to ensure that the removal of the personal consent would not result in multiple users of the site, as this could have the potential to result in an increased level of activity beyond which was assessed by the Inspector. The agent has been informed of this and no objections have been raised by the applicant to this condition. It is not considered that the removal of the personal consent would affect the Authority's ability to enforce the remaining conditions and there has been no evidence of a breach of these conditions at the site since the 2016 permission to allow Mr Heron to operate.
- 11.9 The Parish Council have requested that all remaining conditions of the appeal consent shall also be re-examined. When

determining an application under Section 73 of the Town and Country Planning Act 1990, the local planning authority can grant such permission unconditionally or subject to condition, including different conditions. Therefore it is appropriate and necessary to review the other conditions of the previous permission in order to ensure they are fit for purpose and up to date with correction where necessary and this has been undertaken as part of the recommendation. The Parish Council have suggested that a condition restricting vehicle movements should be attached to any consent issued. This request is not however considered to be reasonable as the Planning Inspectorate when considering the use stated "*although it is narrow and in fairly poor condition the level of additional usage arising from the appeal activities is very low and in terms of wear and tear on the track, congestion and highway safety I consider that the impact of allowing the use to continue, at this sort of level of usage, would be minimal*".

- 11.10 To conclude, the use of the site for log cutting, log storage and mulch storage has been deemed acceptable on appeal. On balance, it is not thought the removal of the conditions relating to the personal consent to allow any persons to operate from the site would have a greater impact upon the character and appearance of the conservation area or the amenities of the nearby residential properties, subject to a condition ensuring that the site is not used by multiple businesses. It is therefore recommended that permission is granted.

## 12. RECOMMENDATION

Grant Subject to Conditions

### Condition(s)

- 1 The site shall only be occupied as a single unit at any one time, and shall not be split into multiple parts or occupied by more than one business.

Reason: To ensure the development would not lead to a more intensive use of the land and in the interests of the amenities of the surrounding neighbouring properties in accordance with Policy DP1 of the New Forest National Park Core Strategy and Development Management Policies (DPD) (December 2010).

- 2 The permission hereby granted shall relate to the use of the site for log storage, log cutting and mulch storage and for no other purpose.

Reason: Planning permission is granted on the basis of the case submitted for the specific use applied for. An unrestricted use would be likely to have an adverse impact on the amenities of neighbouring occupiers, contrary to Policy DP1 of the New Forest

National Park Core Strategy and Development Management Policies (DPD) (December 2010).

- 3 No machinery shall be used on site in connection with the log storage, log cutting and mulch storage hereby permitted, except between the hours of 08:00 and 18:00 Mondays to Fridays and 09:00 and 13:00 hours on Saturdays and not at all on Sundays or bank Holidays.

Reason: In the interest of the amenity of the surrounding neighbouring properties in accordance with Policy DP1 of the New Forest National Park Core Strategy and Development Management Policies (DPD) (December 2010).

- 4 Within the permitted hours of operation in Condition 3 above, the use of wood cutting machinery, including hand-held chain saws, shall be limited to no more than 1 working day per week and the use of major tree sawing equipment to no more than 5 days per year.

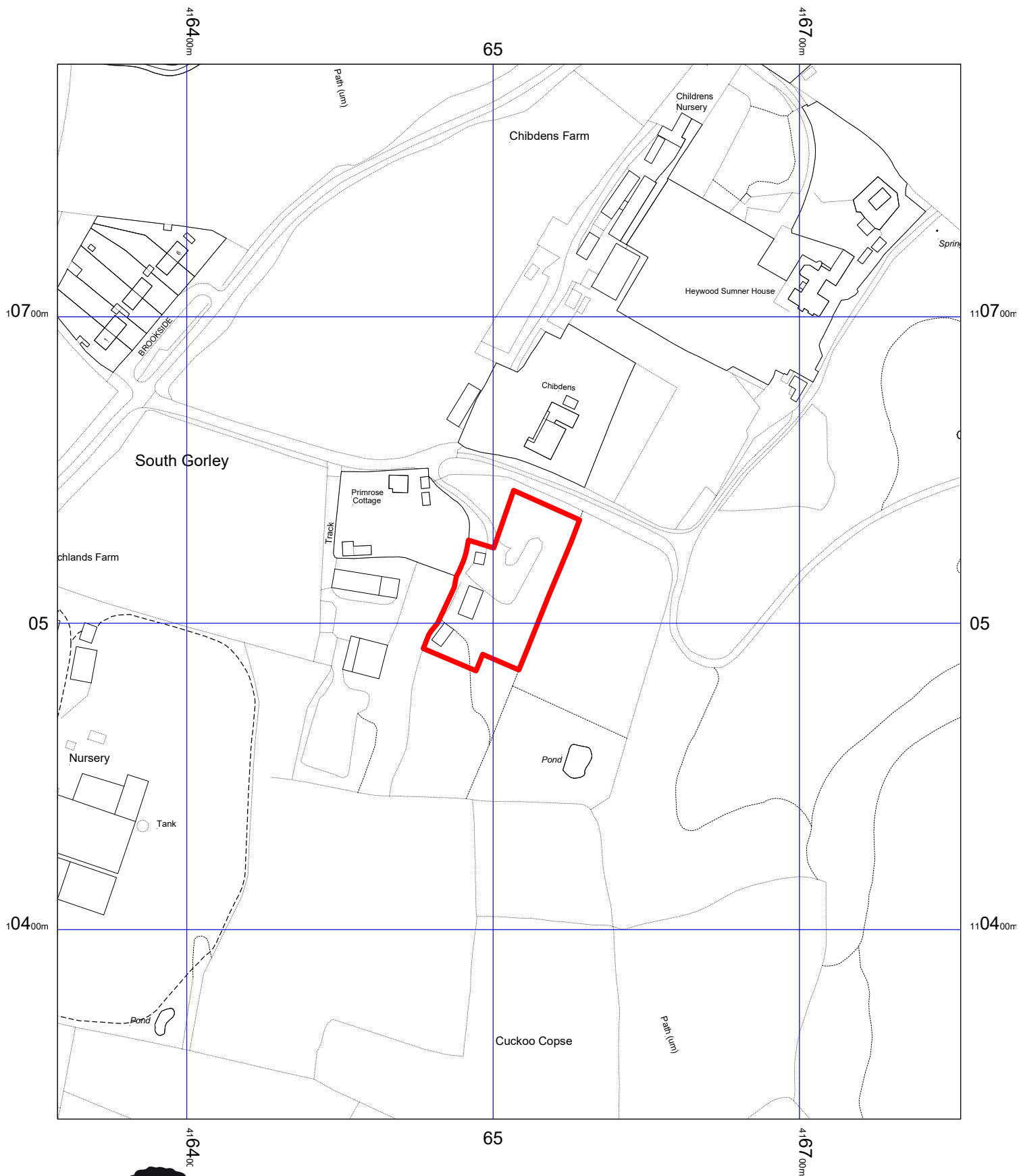
Reason: In the interest of the amenity of the surrounding neighbouring properties in accordance with Policy DP1 of the New Forest National Park Core Strategy and Development Management Policies (DPD) (December 2010).

- 5 No burning of material shall take place on site except between the hours of 08:00 and 18:00 Mondays to Fridays and not at all on Saturdays, Sundays and Bank Holidays.

Reason: In the interest of the amenity of the surrounding neighbouring properties in accordance with Policy DP1 of the New Forest National Park Core Strategy and Development Management Policies (DPD) (December 2010).

- 6 No retail sales, in connection with the uses hereby permitted, shall take place from the site.

Reason: In the interest of the amenity of the surrounding neighbouring properties in accordance with Policy DP1 of the New Forest National Park Core Strategy and Development Management Policies (DPD) (December 2010).



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