



Appeal Decisions

Hearing Held on 1 October 2019

Site visit made on 1 October 2019

by Katie Peerless Dip Arch RIBA

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

Decision date: 11 October 2019

Appeal A: APP/B9506/C/18/3202690

Appeal B: APP/B9506/C/18/3202691

Forest Falconry, New Road, Landford, SALISBURY SP5 2AZ

- 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 Sam Eachus (Appeal A) & Ms Karen Woods (Appeal B) against an enforcement notice issued by the New Forest National Park Authority.
 - The enforcement notice, numbered EN/18/0022, was issued on 17/04/2018.
 - The breach of planning control as alleged in the notice is: i. Development operations pursuant to the erection of breeding enclosures and hack pens shown in the approximate area coloured blue on the plan attached to the Enforcement Notice. ii. The construction of an aviary/enclosures shown in the approximate area coloured yellow on the plan attached to the Enforcement Notice. iii. Without planning permission the laying of hardstanding shown in the approximate area coloured pink on the plan attached to the Enforcement Notice.
 - The requirements of the notice are: 1.) Demolish/dismantle/remove the development operations pursuant to the erection of breeding enclosures and hack pens shown in the approximate area coloured blue on the plan attached to the Enforcement Notice. 2.) Demolish/dismantle/remove the aviary/enclosures shown in the approximate area coloured yellow on the plan attached to the Enforcement Notice. 3.) Remove the hardstanding shown in the approximate area coloured pink on the plan attached to the Enforcement Notice. 4.) Remove all materials, debris and paraphernalia arising from compliance with all the above requirements from the land affected and restore the land to its previous level and condition with soils and reseed with grass.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Appeal C: APP/B9506/W/19/3221744

Forest Falconry, New Road, Landford, SALISBURY SP5 2AZ

- 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 Keith Davies against the decision of New Forest National Park Authority.
 - The application Ref: 18/00427, dated 31/05/2018, was refused by notice dated 03/09/2018.
 - The development proposed is change of use of agricultural land to falconry, construction of 2 no. hack pens to be used in connection with an established falconry.
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Decisions

Appeal A: APP/B9506/C/18/3202690

Appeal B: APP/B9506/C/18/3202691

1. It is directed that the enforcement notice be varied by the deletion of requirement 3). Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Appeal C: APP/B9506/W/19/3221744

2. The appeal is allowed and planning permission is granted for a change of use of agricultural land to use for falconry and construction of 2 no. hack pens to be used in connection with an established falconry at Forest Falconry, New Road, Landford, Salisbury SP5 2AZ in accordance with the terms of the application, Ref 18/00427, dated 31/05/2018, subject to the conditions attached as Annex A to this Decision.

Procedural matters

3. Since the appeals were lodged, the New Forest National Park Local Plan 2016 – 2036 (LP) has been adopted (in August 2019). The policies within this LP are now the ones against which the planning application needs to be assessed. The corresponding policies to those cited in the refusal notice are now DP2, DP18, DP45, DP50, SP17 and SP42. The LP now also contains new policy SP7 which is relevant to this case.
4. The enforcement notice seeks the demolition of a 'hack pen' which has been erected in an agricultural field to the north west of the authorised site on land purchased by the appellants subsequent to the establishment of the business and the removal of an aviary/enclosure and an area of hardstanding in the centre of the site. The enclosure has been removed and the hardstanding is now authorised through the grant of a subsequent planning application.¹ The wording of the enforcement notice will be varied to reflect this.

Main Issues

5. I consider that the main issue in the planning appeal is the impact of the development on the character and appearance of the landscape of the National Park.
6. In the enforcement appeals, the main issue on ground (g) is whether the time for compliance with the notice is reasonable.

Site and surroundings

7. The appeal site lies adjacent to a falconry breeding business that has been established since 2004, before the National Park was designated, on land accessed from New Road and located within a clearing in a group of trees protected by a Tree Preservation Order (TPO). It includes a residential property linked to the business, four recently erected bird breeding enclosures (granted planning permission in 2018) and various other outbuildings connected with the running of the enterprise. Some of these outbuildings are due to be removed on completion of the breeding enclosures which replace them.

¹ Ref: 18/00734

8. The existing hack pen is a circular structure with a diameter of 30m, used to allow young birds to exercise in a safe, contained space that is large enough to let them fly freely. It is constructed of metal roofing sheets, coloured green externally and white on the inner surface, bolted together to a height of about 4m and roofed by netting supported on a central wooden pole. The pen has no foundations but there is an entrance way situated externally with double doors and a feeding enclosure to one side. The application plans for Appeal C also show an observation area on the opposite side of the entrance way.

The enforcement appeals (Appeals A & B)

9. These appeals are proceeding only on ground (g) and, as noted above, the only requirements of the notice that now need to be complied with are the removal of the hack pen and the re-seeding of the land on which it stands.
10. It seems that the appellant does not dispute that 6 months would be a reasonable time for compliance but is concerned that the timing of this Decision may mean that the re-seeding would have to take place at a time of year that would be unsuitable for this. The Park Authority has the jurisdiction to vary the time for compliance should this be necessary and I therefore conclude that the time for compliance is reasonable and the appeals on ground (g) fail.

The s78 appeal (Appeal C)

11. The application seeks planning permission for the retention of the hack pen that has already been substantially completed as well as for a second pen adjacent to it, together with a related change of use of the land on which they would be located.

Reasons

12. The reasons for the refusal of planning permission for the development were cited as being the harm that would be caused to the intrinsic landscape character and special qualities of the National Park and because it had not been demonstrated that there was a need to expand beyond the site boundary into the adjacent field in order to accommodate the hack pens.
13. There is no doubt that the proposal conflicts with policy DP45(b) of the LP which seeks to restrict non-residential buildings and uses to within existing site boundaries, which the proposed development does not. However, I consider there would be no breach of paragraph (a) of that policy as the level of activity on the site would not be materially increased from the existing agricultural use. The pens would not be labour intensive, being designed to provide exercise for the birds, as noted above.
14. Policy SP7 is concerned with the conservation of the landscape character of the National Park and accords great weight to this in planning decisions. This is supported by the National Planning Policy Framework which emphasises, in paragraph 170(b), the importance of recognising the intrinsic character and beauty of the countryside.
15. The hack pens would introduce built structures onto otherwise undeveloped land and they would therefore have an impact on its openness and consequently its character. In an analogy with 'inappropriate development' in

the Green Belt, the proposal would cause inherent harm through its presence, whether or not it was readily visible from public viewpoints. The appellants recognise this policy conflict but maintain that the benefits of allowing the proposal would be sufficient to overcome the harm caused.

16. Policies DP2 and DP18 require development to be of a high quality design that enhances local distinctiveness and which is also, amongst other things, sympathetic in terms of scale, appearance, form, siting and layout. Policy SP 17 aims to avoid development that would erode local character or create an urbanising effect.
17. The pens are of a utilitarian, rather than aesthetically pleasing, design but they do have an agricultural character that is not, I consider, out of place in this rural setting. They would also be unobtrusive from all public viewpoints and could only be glimpsed, against a backdrop of mature trees, from the A36 trunk road, some distance from the site, and then only from a couple of gaps in the hedge bordering the road. From what I saw at the site visit, that road is not frequented by pedestrians and drivers of vehicles would be extremely unlikely to catch sight of the development. I therefore conclude that the visual impact on the character of the surrounding area would be neutral.
18. Policy DP50 relates to buildings for agriculture and forestry and it was agreed that the proposed development does not fall into these categories. However, the appellant maintains that, because the proposal relates to the breeding and keeping of livestock, there are parallels between the uses and the criteria in this policy provide helpful criteria against which it should be judged.
19. The appellant submits that these criteria are generally met because there is a functional need for the facility, it has been specifically designed for its purpose, it would not be obtrusive or isolated from the remainder of the buildings on the site nor would it generate activity which would have a detrimental impact on the National Park.
20. The Park Authority has suggested that, had the planning permission for the new breeding enclosures not been implemented, it would have been possible to site at least one of the hack pens in the central part of the site, avoiding the need to erect them in the field. This would appear to be true, but the appellant has also explained that siting the pens close to the trees is problematic, because any falling branches or debris could damage the roof netting, injuring or releasing the birds. It was also explained why the pens need to be of this particular size and why separate pens are needed for exercising different breeds of falcon.
21. The Park authority argue that, knowing the restrictions of the site and the local planning policies, the appellant should have realised that the construction of the new breeding pens would not allow sufficient space for the hack pens within the existing site and should have limited the expansion of the business accordingly. It granted planning permission on the application before it in accordance with the policies in place at the time but contends that this should not be used as a justification for additional expansion outside the boundary of the established site.

22. I accept that the need created by the new breeding pens does not, on its own, justify expansion into the undeveloped field. However, in respect of the other criteria of policy DP50 that the appellant submits have a bearing on the application, I agree that the proposal would accord with these. The appellant has also confirmed that there would be no objection to a condition requiring the removal of the pens should the falconry business cease to operate. This would accord with paragraph 8.42 of the LP in the reasoned justification for policy DP50.
23. Policy SP42 gives support to the expansion of small businesses on existing sites that contribute to the land-based economy of the National Park. I consider that the business could be classified as 'land-based' because it requires a quiet rural location, so that the birds can be exercised in surroundings that are as natural as possible. It also employs a number of local people and the appellant has given details of the financial contribution to the local economy which amounts to about £100,000 in wages and about £80,000 in overheads each year. These figures were not queried by the Park Authority.
24. It seems to me that, given the limited public views of the site, the harm caused by the development would be limited to that caused by the inherent objection to any new building for business enterprises on land outside established sites. In this case, the field in which the hack pens would be sited has already been lawfully sub-divided from the parcel of land of which it originally formed a part; it has been fenced off and non-native leylandii planted along its length. This is unlikely to change even if the appeal failed but, if planning permission were to be granted, a landscaping condition could ensure that a more sympathetic planting scheme was put in place.
25. The hack pens would take up only a small percentage of the open land to the north west of the woodland subject of the TPO and south of the A36 and siting them in this position would avoid any possible damage to both the pens and the trees. The trees would provide a background to the pens in any public views of the site which, as previously noted, would appear as typical agricultural type structures in this farming landscape.
26. I must nevertheless give great weight to conserving the landscape and scenic beauty of the National Park as required by policy SP48. However, the field has few notable features and, in my opinion, it adds little to the special qualities that define the character of the National Park. I have considered the development against the important landscape characteristics related to the Park Authority's published 'Landscape Character Area 10: West Wellow Heaths and Commons', in which the appeal site is situated, and consider that the relevant reference for the site is '*a pastoral landscape of Parliamentary fields on the outer edges of the area*'. However, in this case and as previously noted, the field has already been (lawfully) sub-divided and this has already disrupted the historic pattern of use. The inclusion of the hack pens would bring about no change to this situation.
27. Provided the development were to be limited to the part of the land on which the hack pens are shown, together with the access to them, I consider that the harm caused by the development would be slight. Although the 'red line' around the application site extends slightly beyond the pens, the additional area included is minimal and would not, I consider, allow for any significant further expansion of the use.

28. With this in mind, I find that the clear advantages of the proposal, in terms of ensuring the on-going contribution the business makes to the local economy and the opportunity to secure a sympathetic landscaping scheme which would remove the non-native planting, are sufficient to overcome this harm and the conflict with LP policy.

Conditions

29. Various conditions were discussed at the Hearing in the event of Appeal C succeeding. In addition to those already discussed relating to the submission and implementation of a landscaping scheme and the requirement to remove the pens should the business cease trading, I shall impose conditions relating to the need to control their use, because part of the reason for allowing the appeal relates to the established need for the pens, and to ensure the development complies with the relevant plans to ensure the satisfactory appearance of the buildings.

30. I shall require any details of external lighting to be submitted for approval before installation to protect the character of this rural area. As the trees adjacent to the site are protected by a TPO, I shall require details of their protection during the remaining construction period to be submitted for approval.

31. There is no need for a commencement condition as the work for which planning permission is sought has already begun.

Conclusions

32. For the reasons given above I conclude that the appeal should be allowed. Planning permission will be granted for the proposal which will then supersede the requirement in the enforcement notice to remove the existing hack pen.

Katie Peerless

Inspector

ANNEX A

Conditions to be attached to planning permission 18/00427

- 1) The development hereby permitted shall only be carried out in accordance with the following approved plans: KCC2508/08A, KCC2508/09, CP/01/02 and CP/01/KD.
- 2) The buildings the subject of this permission shall only be used for the breeding and rearing of falcons and for no other commercial business or storage purposes whatsoever. Should the buildings no longer be required for these purposes they are to be removed within six months of the cessation of the use hereby permitted and the land restored in accordance with a scheme to be submitted to and agreed in writing with the New Forest National Park Authority.
- 3) The external facing materials to be used in the development shall be as indicated on the application form for the development hereby approved unless otherwise agreed in writing by the New Forest National Park Authority.
- 4) No external lighting shall be installed on the site unless details of such proposals have first been submitted to and approved in writing by the New Forest National Park Authority.
- 5) No further development, demolition or site clearance shall take place until a tree protection plan in accordance with BS 5837:2012 has been submitted to and approved in writing by the New Forest National Park Authority. The tree protection plan shall show details of:
 - The root protection area of trees
 - The location of the hack pens in relation to the root protection areas of trees
 - The location of protective fencingFurther development shall take place only in accordance with the approved details.
- 6) No further development shall take place until a scheme of landscaping of the site has been submitted to and approved in writing by the New Forest National Park Authority. This scheme shall include:
 - The existing trees and shrubs which are to be retained
 - The removal of the non-native species on the site boundaries
 - A specification for new planting (species, size, spacing and location)
 - Areas for hard surfacing and the materials to be used
 - Other means of enclosure
 - A method and programme for the implementation of the scheme and the means to provide for its future maintenance

The trees/hedges on the site which are shown to be retained in the approved landscaping plan shall be protected during all site clearance, demolition and building works in accordance with the measures set out in appendix KCC2 of Kernon Countryside Consultants Limited Supporting Statement dated May 2018 and the recommendations of BS 5837:2012.

APPEARANCES

FOR THE APPELLANT:

Tony Kernon BSc (Hons) MRICS FDIAC	Kernon Countryside Consultants Ltd.
Karen Woods	Appellant
Keith Davies	Appellant (site visit only)

FOR THE NEW FOREST NATIONAL PARK AUTHORITY (NFNPA):

Sarah Kelly BA (Hons) DipLA CMLI	Landscape Officer NFNPA
David Williams BA DipTP MRTPI	Planning Enforcement Manager NFNPA
Natalie Walter BSc (Hons) Dip (Spatial Planning) MRTPI	Principal Planning Officer NFNPA

DOCUMENTS

- 1 Letter of notification and circulation list
- 2 Signed Statement of Common Ground
- 3 NFNP Local Plan 2016 - 2036
- 4 LP Adoption Statement
- 5 Comparison of policies in new and superseded local plans
- 6 Planning permission S/2004/1711
- 7 List of suggested conditions