



Appeal Decisions

Site visit made on 12 August 2020

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 October 2020

Appeal A Ref: APP/B9506/W/20/3244404

Land at St Martha's, (formerly Linford Park Nursing Home), Linford Road, Linford BH24 3HX

- 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 Roger White of Coombe Healthcare against the decision of New Forest National Park Authority.
 - The application Ref 19/00618, dated 25 July 2019, was refused by notice dated 26 November 2019.
 - The development proposed is Retention of access track.
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Appeal B Ref: APP/B9506/C/20/3244413

Land at St Martha's, (formerly Linford Park Nursing Home), Linford Road, Linford BH24 3HX

- 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 Roger White of Coombe Healthcare against an enforcement notice issued by New Forest National Park Authority ('Notice 1').
 - The enforcement notice, numbered 18/0200/EN1, was issued on 11 December 2019.
 - The breach of planning control as alleged in the notice is without planning permission engineering operations resulting in the creation of a track across agricultural land, shown hatched blue on the plan attached to this Notice.
 - The requirements of the notice are: (1) Lift and remove the track in the approximate position hatched blue on the plan attached to this Notice and cease the use of that land for care related operational purposes; (2) Permanently remove all materials associated with the track from the site and dispose of them in a suitable lawful location; and (3) Reinstatement of the ground from which the track has been removed with soil capable of growing grass and seeding with native pasture grassland to match the agricultural field the site lies within.
 - The period for compliance with the requirements is 18 months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal C Ref: APP/B9506/W/20/3244411

Land at St Martha's, (formerly Linford Park Nursing Home), Linford Road, Linford BH24 3HX

- 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 Roger White of Coombe Healthcare against the decision of New Forest National Park Authority.
 - The application Ref 19/00512, dated 17 June 2019, was refused by notice dated 26 November 2019.
 - The development proposed is Retention of two bunds/bladders for drainage purposes.
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Appeal D Ref: APP/B9506/C/19/3244415

Land at St Martha's, (formerly Linford Park Nursing Home), Linford Road, Linford BH24 3HX

- 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 Roger White of Coombe Healthcare against an enforcement notice issued by New Forest National Park Authority ('Notice 2').
 - The enforcement notice, numbered 18/0200/EN2, was issued on 11 December 2019.
 - The breach of planning control as alleged in the notice is without planning permission engineering operations for the creation of drainage bunds and the siting of bladders and associated works, shown marked green on the plan attached to this Notice.
 - The requirements of the notice are: (1) Dismantle and remove the 2 bund and bladder areas within the approximate positions marked green on the plan attached to this Notice; (2) Permanently remove all materials associated with the drainage bladders and earth bunds from the site and dispose of them lawfully; and (3) Reinstate the ground from which the bunds and bladders have been removed by restoring it to the levels of the immediately adjacent land ensuring the land is capped with soil capable of growing grass and seeding with native pasture grassland to match the agricultural field the site lies within.
 - The period for compliance with the requirements is 18 months after the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. Appeal A - The appeal is allowed and planning permission is granted for Retention of access track at Land at St Martha's, (formerly Linford Park Nursing Home), Linford Road, Linford BH24 3HX in accordance with the terms of the application, Ref 19/00618, dated 25 July 2019, and the plans submitted with it, subject to the conditions set out in the attached Schedule 1.
2. Appeal B - The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely without planning permission engineering operations resulting in the creation of a track across agricultural land, shown hatched blue on the plan attached to this Notice on land at Land at St Martha's, (formerly Linford Park Nursing Home), Linford Road, Linford BH24 3HX referred to in the notice, subject to the conditions set out in the attached Schedule 1.
3. Appeal C - The appeal is allowed and planning permission is granted for Retention of two bunds/bladders for drainage purposes at St Martha's, (formerly Linford Park Nursing Home), Linford Road, Linford BH24 3HX in accordance with the terms of the application, Ref 19/00512, dated 17 June 2019, and the plans submitted with it, subject to the conditions set out in the attached Schedule 2.

Appeal D - The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely engineering operations for the creation of drainage bunds and the siting of bladders and associated works on land at St Martha's, (formerly Linford Park Nursing Home), Linford Road, Linford BH24 3HX

referred to in the notice, subject to the conditions set out in the attached Schedule 2.

Preliminary Matters

4. The site addresses given by the appellant, in the appeal forms and submissions, differ from those given by the Council, in its notices and decisions. For the sake of clarity, I refer to the site as the Linford Park Nursing Home ('LPNH') below.
5. The appeals relate to developments on land in close proximity to one another. Appeals A and B relate to an access track that has been created. The former refers to a planning application to retain it, whilst the latter refers to an enforcement notice directed against it. Appeals B and D relate to foul drainage facilities that have been created at either end of the track. The former refers to a planning application to retain them, whilst the latter refers to an enforcement notice directed against them. Given their geographical proximity and the linked reasoning for the two developments, it makes sense to make decisions on them in a single decision letter.
6. Although I have considered each proposal on its individual merits, to avoid duplication I have dealt with the proposed developments and their associated appeals together, except where otherwise indicated.

Appeals A and C, and Appeals B and D

Ground (a) and the Deemed Planning Applications

Main Issues

7. The main issues are the effect on the character and appearance of the area, including the New Forest National Park (NP) and the Western Escarpment Conservation Area (WECA); and the effect of traffic movements arising from the use of the development on the living conditions of those living in the vicinity of the site.

Reasons

Character and Appearance

8. LPNH lies in extensive grounds in the open countryside, a short distance to the east of Ringwood. It has a long history of care-related use and is presently run as a care and nursing home that specialises in dementia patients.
9. The developments that are the subject of the appeals lie to the south of the home, a short distance to the north of an access to LPNH from the public highway. A track has been formed that runs west to east across the upper ends of two gently undulating fields. This track has been cut into the generally southerly trend of the fields' slope to varying degrees.
10. The track provides access to a hardstanding next to a sewage treatment plant (STP) that it serves. The STP drains to two 'bladders'. Each comprises a bladder tank set into the ground, which has been lined with uPVC sheeting, and surrounded by earth bunds and fencing. Outfall from the STP drains by gravity to the bladders. Firstly, to the easternmost bladder that is close to the STP in the corner of its field close to woodland, and thence to the westernmost one,

which is close to the drive leading to the buildings at LPNH. The resulting effluent is then removed by tanker.

11. When the appellant bought the property, foul drainage was to a septic tank that then discharged to the Lin Brook, a small watercourse that runs east to west to the south of the two fields. The appellant company discovered that the consent to discharge for that septic tank had lapsed. It made arrangements for a new package treatment plant, the STP, which has been installed largely below ground level. It transpired that the Environment Agency could not issue a licence for its discharge to Lin Brook, due to the levels of ammonia and nitrates.
12. The appellant states that this led to the installation of the bladders on a temporary basis, to allow a permanent solution to be found.
13. The main building at LPNH lies towards the north of its extensive grounds. Condition 5 attached to a planning permission relating to its C2¹ use (Council reference NFDC/84/27216) sets out that the use of the fields in which the track and bladders lie shall be restricted to grazing purposes only. The reason for the condition includes references to policies not allowing new dwellings or other urban development, and safeguarding agricultural land. It concludes by stating that any ancillary facilities should be confined to those reasonably required to support this main use.
14. No conclusive evidence has been submitted to show whether the land is agricultural or some mixed grazing use. However, whilst the condition is clear in its aim to restrict its use to grazing, this cannot be considered to be 'set in stone' and might be altered by subsequent planning permissions. Whilst the bladders and track that have been formed are for purposes ancillary to the use of the main care home use, it is agreed by parties that they require planning permission. Applications for development that might be at odds with the terms of Condition 5 of NFDC/84/27216 must be determined on the basis of section 38(6) of the Planning and Compulsory Purchase Act 2004. That is to say, in accordance with the development plan unless material considerations indicate otherwise.
15. Amongst their terms, Policies DP2, SP7, SP17 and DP18 New Forest National Park Local Plan 2016-2036, (adopted August 2019) ('LP') aim to protect landscapes from inappropriate or harmful development. LP Policy SP16 refers to historic environments, including conservation areas. Amongst its terms, it reflects the statutory requirement in section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. Amongst its terms, LP Policy SP15 seeks to avoid development causing noise nuisance.
16. The Western Escarpment Conservation Area Character Appraisal, March 2009, identifies the site as lying in the Highwood and Hangersley Character Area of the WECA. It describes this as being as an area of dispersed settlement with a mixture of small fields and paddocks, coppices and woodland plantations served by a network of intersecting lanes. This description is appropriate to the area in which the developments lie.

¹ Town and Country Planning (Use Classes) Order, 1987, as amended

17. The two fields, in which the track and bladders lie, slope gently up from the Lin Brook. They are grassed and fringed with trees and woodland and are, save for the features that are the subject of these appeals, largely undeveloped. Their character and appearance is of the open countryside. This is the case notwithstanding that LPNH is fairly close. Due to the land's topography and, especially, the intervening trees, it is not clearly seen in conjunction with the developments. The fields make a positive contribution to the WECA.
18. The appellant acknowledges that the developments have resulted in an intrusion into the countryside that is inappropriate. Their introduction has had a suburbanising effect on the landscape. The western bladder, with its associated fencing, can be seen from the public highway, at the gate from where the drive leads to LPNH. The eastern bladder and the excavations that have been undertaken to cut the track into the hillside can be seen from points in the public realm alongside Lin Brook. Although it is proposed that there would be few vehicle movements along the track, when this occurs it further draws attention to the developments.
19. Whilst not strictly speaking a public vantage point, the drive from the public road to LPNH is used by members of the public visiting the home as well as staff working there. This runs immediately adjacent to the western bladder and the western end of the track. Both are clearly seen from the drive and the harm they cause is readily apparent to its users.
20. Although the bladders are not large features, both individually and cumulatively with the track they, nonetheless, have an adverse effect on the character and appearance of the countryside. The harm that is caused is significant and, due to the area's topography and tree cover, this is not mitigated by its proximity to LPNH. Although the proposed use of the Grassroad system would soften the appearance of the track, and would allow grazing upon it, this would not mitigate the harm to the character and appearance that it causes. I realise that the land has been used to provide sewage treatment facilities historically, but I have not been provided with evidence to show that this caused the harm that I have identified here.
21. For the above reasons, I find that the track and bladders fail to preserve or enhance the character or appearance of the WECA and cause significant harm to the character and appearance of the countryside in which they sit. Therefore, these developments are contrary to the terms of Policies SP16, DP2, SP7, SP17 and DP18 of the LP.
22. The harm that is caused to the WECA is, in the terms used in the National Planning Policy Framework, 'less than substantial'. Its paragraph 196 states that this harm must be weighed against the public benefits of the proposal. Similarly, I have to assess whether there are material considerations that indicate that a decision should be made that is contrary to the terms of the LP. I will do so following the assessment of the other main issue.

The Effect on Living Conditions

23. In the Planning Statement that accompanied the application, it was reported that the installed sewage system would require 5-6 tankers per day to empty the discharge to the western bladder. The appellant's statement of case sets out that this was a mistake and that the figure would initially be 5-6 tankers

per week, rising to 15 per week on full occupancy of LPNH. This also states that groundwater ingress issues have already led to tanker movements at this higher figure. However, it also says that these issues have since been addressed. The Council's Officer's report and its statement of case both refer to the higher figure of 5-6 tanker visits per day, however.

24. Noise is generated by tankers pumping the sewage system's outfall from the bladders, their reversing alarms and from their movements to and from the bladders.
25. The Officer's report makes reference to the views of New Forest District Council's Environmental Health Team (EHT). It considered that the proposed number of vehicle movements would not significantly impact on the noise levels of the area, and therefore would not result in any significant adverse impact upon neighbouring amenity. Further, its opinion was that whilst the movement of the vehicles used to empty the bladder tanks would be discernible, this would not be dissimilar to that of agricultural vehicles using Linford Road. The EHT comments were based on the higher figure of 5-6 tanker visits per day.
26. Although the National Park Authority disagreed with this advice, the evidence it put forward in support of its position is scant. The nearest dwellings are quite some distance from the western bladder and, from the evidence before me and what I saw at my site visit, I find that noise generated during pumping operations would not have a significant effect on their occupants' living conditions. Although the area is undoubtedly a peaceful one, even at the higher level referred to the level of tanker movements would not be significant. I find the response of the EHT to be compelling and that the noise arising from the tankers would not significantly harm residents' living conditions to the point where planning permission should be refused.
27. As such, on this main issue I find that the development would accord with those terms of LP Policies DP2 and SP15 that seek to avoid noise pollution that would cause harm to residential amenity or the tranquillity of the NP.

Harm to the WECA and Public Benefits, and Material Considerations

28. I have described how the proposal would have a negative effect on the significance of a designated heritage asset, the WECA, but this would result in "less than substantial" harm. Nevertheless, such harm needs to be given considerable importance and weight.
29. As set out in the Framework, where a proposal would result in less than substantial harm to the significance of a designated heritage asset this harm should be weighed against the public benefits of the proposal.
30. LPNH offers high quality dementia care in a restful setting. The evidence put forward by the appellant shows that there is a shortage of this form of care both nationally and locally. This has not been challenged by the New Forest National Park Authority (NFNPA), so I take it to be the case. Bringing LPNH back into use to provide much-needed care and accommodation for a significant number of residents is a material consideration and represents a public benefit to which I attach considerable weight.

31. However, to run the home requires an appropriate sewage treatment system. The STP cannot discharge to the Lin Brook and, therefore, cannot be used in its initially installed form without causing pollution. The bladders provide a solution. They allow for the treated discharge to drain in a controlled manner to the western bladder where it can be collected by lorries and taken elsewhere for final disposal. The track allows for access to both bladders for this collection and on-going maintenance, so is an integral part of their function. A consequence of this sewage treatment system is that LPNH would be able to continue to provide the much-needed care and accommodation.
32. I find that the weight of these public benefits outweighs the harm that has been caused. However, this is only on the basis of the retention of the track and bladders for a temporary period.
33. A planning application to connect the foul drains of LPNH to the mains sewerage system, some 1.2kms away, has been approved by the NFNPA. The works to construct the link to the mains and its associated infrastructure would appear to be considerable.
34. To allow this to be constructed, including time for the possibility of multiple applications and appeals for the link, the appellant has requested a temporary permission for up to 4 years. In the Officer's report into the developments, it was determined that a 2-year temporary permission should be given. The Council's view, in its enforcement notice is that 18 months would be sufficient.
35. All the proposed time frames are considerable for temporary permissions/periods for compliance. Long periods for compliance with the requirements of enforcement notices can not only blunt the urgency of remedying the breach of planning control, but may call into question the expediency of issuing the notice in the first place. However, in exceptional circumstances it can be appropriate to allow long periods for compliance.
36. Given that the alternative scheme has been approved, the need for additional time for re-submitting applications and lodging appeals is negated. Therefore, I do not find that the appellant has justified his proposed 2, 3 or 4 year periods. From the evidence, it would seem that the 18 months in the Council's enforcement notices would give sufficient time for both the completion of the new mains connection and to comply with the requirements of the notice.

Other Matters

37. Comments have been made by the Ellingham, Harbridge & Ibsley Parish Council, and residents of the area at both the application and appeal stages. Those relating to the main issues have been taken into account, above. However, there are several other matters that have been raised.
38. I have not been provided with appropriate evidence to show that the bladders' materials and means of construction are inappropriate and might lead to the pollution of Lin Brook and harm to wildlife sites. The claim that there is inadequate security for the bladders is not fully explained, and I have no reason to find that the security fencing and netting that has been erected would be insufficient in this regard. The Council did not object to the developments on the grounds that they have ill-effects on wildlife and habitat, and I have not been provided with evidence that would allow me to find against

them on this basis. The reinstatement of the land can be achieved through the proposed conditions.

39. The reported Care Quality Commission registration might allow for a range of patients at LPNH, but I have addressed the appeal on the basis of those that the appellant states will be cared for. Should the use of LPNH not accord with that permitted, the NFNPA could choose to exercise its enforcement powers.
40. The Officer's report addressed the issue of highway safety and the NPNFA's decisions did not include this as reasons for refusal/issuing the notices. From what I saw and the evidence before me, I find no reason to contradict its position on this, including on the safety of cyclists. I have been told that tankers visiting the site damage the verges along roads in the area. I have not been given evidence to show that this occurs or that it is tankers that cause this.

Conditions

41. The National Park Authority has proposed two conditions in relation to both the track and the bladders development. In each case, one allows the development for a temporary period and the other requires the development to accord with a list of plans. The appellant has no objections to these, save that the temporary period should be as set out in his submissions. I have addressed the question of the duration of the temporary permissions and I have revised the temporary time-limiting conditions to reflect this. The plans conditions are required for the avoidance of doubt and in the interests of proper planning.

Conclusion

42. Appeal A is allowed and planning permission is granted for Retention of track at Land at St Martha's, (formerly Linford Park Nursing Home), Linford Road, Linford BH24 3HX in accordance with the terms of the application, Ref 19/00618, dated 25 July 2019, and the plans submitted with it, subject to the conditions in the attached Schedule 1.
43. For the reasons given above, I conclude that the Appeal B succeeds on ground (a). I shall grant planning permission for the development as described in the notice, subject to the conditions in the attached Schedule 1.
44. Appeal C is allowed and planning permission is granted for Retention of two bunds/bladders for drainage purposes at Land at St Martha's, (formerly Linford Park Nursing Home), Linford Road, Linford BH24 3HX in accordance with the terms of the application, Ref 19/00512, dated 17 June 2019, and the plans submitted with it, subject to the conditions in the attached Schedule 2.
45. For the reasons given above, I conclude that the Appeal D succeeds on ground (a). I shall grant planning permission for the development as described in the notice, subject to the conditions in the attached Schedule 2.
46. The appeals on ground (g) in Appeals B and D do not therefore fall to be considered.

Roy Curnow

INSPECTOR

SCHEDULE 1

Appeals APP/B9506/C/19/3244404 and APP/B9506/C/19/3244413

- 1) The track shall be removed on or before 18 months from the date of these decisions and the land restored to a condition which has first been agreed in writing by the New Forest National Park Authority.
- 2) Development shall only be carried out in accordance with drawing nos: NFNP-ID-257.7.01 Rev A, NFNP-ID-257.7.02 Rev A, NFNP-ID-257.7.03. No alterations to the approved development shall be made unless otherwise agreed in writing by the New Forest National Park Authority.

SCHEDULE 2

Appeals APP/B9506/C/19/3244411 and APP/B9506/C/19/3244415

- 1) The bladder tanks, bunds and fence shall be removed on or before 18 months from the date of these decisions and the land restored to a condition which has first been agreed in writing by the New Forest National Park Authority.
- 2) Development shall only be carried out in accordance with drawing nos: NFNP-ID-257.8.01 Rev B, NFNP-ID-257.8.02 Rev B, NFNP-ID- 257.8.03, NFNP-ID-257.8.04. No alterations to the approved development shall be made unless otherwise agreed in writing by the New Forest National Park Authority.