



## Appeal Decisions

Site visit made on 11 May 2021

**by Stephen Hawkins MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 28 May 2021**

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### **Appeal A Ref: APP/B9506/C/20/3261567**

#### **Land at The Hunters, Middle Road, Tiptoe, Lymington SO41 6EJ**

- 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 Mrs C Deacon against an enforcement notice issued by New Forest National Park Authority.
- The enforcement notice was issued on 16 September 2020.
- The breach of planning control as alleged in the notice is without planning permission, alterations to the outbuilding comprising the addition of a flue and alterations to the fenestration which materially alter the external appearance of the building.
- The requirements of the notice are: 5.1 Permanently remove the flue from the building. 5.2 Permanently removal (*sic*) all glazing from the side (north western) elevation. 5.3 Make good the side (north western) elevation so that it strictly accords with the approved plan (Dwg.3) of planning permission 16/00202 attached to the notice. 5.4 Permanently alter the glazing on the front (eastern) elevation so that it accords with the approved plan (Dwg.3) of planning permission 16/00202 attached to the notice. 5.5 Make good the front (eastern) elevation so that it strictly accords with the approved plan (Dwg.3) of planning permission 16/00202 attached to the notice. 5.6 Remove the resulting debris from compliance with 5.1 through 5.5 from the land affected.
- The period for compliance with the requirements is eleven months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) 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.

**Summary of Decision: The enforcement notice is quashed.**

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### **Appeal B Ref: APP/B9506/D/20/3260697**

#### **The Hunters, Middle Road, Tiptoe, Lymington SO41 6EJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mrs C Deacon against the decision of New Forest National Park Authority.
- The application Ref 20/00396, dated 2 June 2020, was refused by notice dated 30 July 2020.
- The application sought planning permission for retention of an outbuilding without complying with a condition attached to planning permission Ref 16/00202, dated 17 May 2016.
- The condition in dispute is No 3 which states that the building the subject of this permission shall only be used for purposes incidental to the dwelling on the site and shall not be used for habitable accommodation such as kitchens, living rooms and bedrooms.

- The reason given for the condition is to protect the character and appearance of the countryside in accordance with Policies DP11 and DP12 of the adopted New Forest National Park Core Strategy and Development Management Policies (DPD) (December 2010).

**Summary of Decision: The appeal is dismissed.**

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### **Appeal C Ref: APP/B9506/D/20/3260699**

#### **The Hunters, Middle Road, Tiptoe, Lymington SO41 6EJ**

- 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 Mrs C Deacon against the decision of New Forest National Park Authority.
- The application Ref 20/00395, dated 2 June 2020, was refused by notice dated 30 July 2020.
- The development proposed is alterations to existing outbuilding.

**Summary of Decision: The appeal is dismissed.**

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## **Appeal A**

### **The enforcement notice**

1. The allegation in the enforcement notice is the carrying out of operational development consisting of works which materially alter the external appearance of the outbuilding without the required planning permission. The notice states that the alleged breach falls within paragraph (a) of s171A (1). The building was erected following the granting of planning permission in April 2015<sup>1</sup>, further permission being granted for changes to its external appearance in May 2016<sup>2</sup>. Four conditions were attached to the 2016 permission. Condition 1 required the building to be altered to comply with the approved drawings within eight weeks, condition 2 specified the external wall and roof materials, condition 3 restricted use of the building to purposes ancillary to the dwelling and prohibited the use as habitable accommodation, whilst condition 4 restricted the installation of external lighting. Similar conditions had been attached to the 2015 permission.
2. The building is of similar external dimensions to that shown on the approved drawings accompanying the 2015 and 2016 permissions. However, the external appearance and internal layout deviate substantially from the approved drawings. As a result, the building as a whole does not benefit from planning permission. Although the notice requires the building to be altered so that its external appearance accords with the approved drawings in condition 1 of the 2016 permission, the steps do not require compliance with the terms, including the conditions and limitations, of that permission in order to remedy the breach. Therefore, if the notice as issued were to be complied with the only planning permission the building could benefit from would be that granted unconditionally under s173 (11) of the Act. Given the restrictive conditions attached to the above permissions, this cannot have been what the National Park Authority (NPA) intended.
3. The power to correct and vary the notice in s176 (1) of the Act is wide, the relevant consideration being whether there would be injustice to the appellant or the Council. I have considered whether the allegation could be corrected to

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<sup>1</sup> NPA Ref: 15/00112.

<sup>2</sup> NPA Ref: 16/00202.

refer to the erection of an outbuilding without planning permission, with a corresponding variation in the steps to include requiring compliance with the terms, including the conditions and limitations, of the 2016 permission. I have also considered whether, alternatively, the description of the breach could be corrected to refer to a breach of condition falling within paragraph 171A(1)(b), together with a corresponding correcting of the allegation to refer to a breach of condition 1 of the 2016 permission.

4. I sought the views of the NPA on the above matter in the first instance, however they have declined to comment. To my mind, correcting and varying the notice as set out in both of the above alternatives would cause injustice to the appellant. This is because in either instance, the notice would be more onerous and restrictive. The appellant would be deprived of the deemed unconditional planning permission that they would otherwise have benefitted from under s173 (11) of the Act if no appeal had been made and the notice requirements complied with.
5. Accordingly, I find the notice to be incapable of correction. It is open to the NPA to issue a fresh enforcement notice specifying the correct breach together with the corresponding requirements, should they consider it expedient to do so.

### **Conclusion**

6. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeal under ground (f) as set out in section 174(2) of the 1990 Act as amended does not fall to be considered.

### **Appeal B**

#### **Main Issue**

7. The appellant sought to remove the part of condition 3 that prohibits the use of the building for habitable accommodation such as kitchens, living rooms and bedrooms, whilst retaining the restriction on use other than for purposes incidental to the dwelling. The main issue in this appeal is therefore whether condition 3 is necessary and reasonable in the interests of safeguarding the character and appearance of the countryside, which lies within the New Forest National Park (NP).

#### **Reasons**

8. The appeal property consists of a substantial detached dwelling with associated outbuildings, sitting in generous grounds. The property occupies a predominantly rural setting, being located in an area of scattered development outside the built-up part of the village, within an undulating open landscape of fields bounded by hedges and trees together with occasional wooded tracts.
9. The building is a freestanding structure situated alongside the west boundary towards the rear of the property, with an outdoor swimming pool and tennis court nearby. During my visit, I observed that the building is arranged over two floors. The building is finished and fitted out internally to a high standard.

On the ground floor, there is a large kitchen with cupboards, a sink, work surfaces and wall units. The kitchen is equipped with a range of domestic appliances including an oven. In an adjacent area are items of furniture including a large sofa. A substantial full-height space also on the ground floor contains items of furniture including a large dining table with chairs arranged around it together with shelving, cabinets, a drinks serving area and a wood burning stove. At one end of the building there is a mezzanine floor whilst at the other end on the first floor there is a room fitted with a toilet, sink and shower, together with two other rooms each containing items of furniture including unused beds.

10. Policy DP37 of the New Forest National Park Local Plan (LP)<sup>3</sup> applies stringent criteria in respect of proposals for new domestic outbuildings, including requiring that they are used for purposes incidental to the dwelling they serve and that additional habitable accommodation is not provided. The LP supporting text makes it clear that the purpose of this policy is to safeguard the character of the NP, including by preventing the circumvention of other LP policies restricting residential extensions and replacement dwellings.
11. I am given to understand that the main purpose of seeking to vary condition 3 is to retain the kitchen. Be that as it may, the effect of the proposal would be that the use of the building as living accommodation is no longer clearly prevented by the condition. Due to its substantial size and internal layout and also having regard to the presence of kitchen and toilet/shower facilities, the building is readily capable of providing an extensive area of living accommodation. In the absence of firm evidence to suggest otherwise, in my view the scale of such accommodation would result in a considerable increase in human activity at the property. Having regard to the property's predominantly rural setting and the significant distance between the building and the dwelling, this would increase human pressure on the surroundings and would create an appreciably more suburbanised feel, thereby considerably eroding the rural qualities of the environs. Furthermore, the amount of additional living accommodation that could be provided in the building given its size would be equivalent to a substantial extension to the dwelling, thereby circumventing the LP policy restrictions on such development.
12. In addition, I am mindful that providing adequate natural light and ventilation for living accommodation is highly likely to involve significant alterations to the external appearance of the building compared with the 2016 approved scheme, with considerable adverse visual consequences as a result. The alterations to the building in Appeal C, which on the balance of probability have facilitated a use for purposes other than in accordance with condition 3, reinforces my view in this respect.
13. Moreover, the term 'incidental' refers to a use or activity that would not be expected to be found as an integral part of a use. In the context of a dwelling, an incidental use is one which is connected with and subordinate to the running of the dwelling or with the domestic or leisure activities of the persons living in it. An incidental purpose cannot itself be a dwelling; nor therefore, can it be primary living accommodation. A kitchen, living room and bedrooms are however primary living accommodation that would normally be regarded as an integral part of the main dwelling use, rather than as incidental activity. It is

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<sup>3</sup> The LP replaced the National Park Core Strategy and Development Management Policies DPD (2010) referred to in the 2016 permission in August 2019.

probable that the kitchen, together with the toilet/shower facilities, were installed in association with the use of the building as primary living accommodation. Whilst I am given to understand that such use has ceased, as a matter of fact and degree the scale and range of facilities in the building go well beyond what might reasonably be regarded to be part and parcel of an incidental use.

14. Accordingly, in my view use of the building as living accommodation in association with the dwelling would not be an incidental use and would still be restricted by condition 3, even if the condition were to be varied as proposed. It follows that the proposal would fail to achieve the outcome the appellant sought. However, varying the condition as set out above would also leave room for doubt as to whether the use as living accommodation would actually be prevented. The text of the varied condition would not make that clear. This would result in uncertainty, as condition 3 would no longer be sufficiently precise and unambiguous. Additionally therefore, as varied the condition would not satisfy the tests of precision and enforceability set out in paragraph 55 of the National Planning Policy Framework (the Framework).
15. The appellant referred to the Court's findings in *Uttlesford*<sup>4</sup> as support for the proposal. However, that case was principally concerned with whether detached residential accommodation was in a separate planning unit to the main dwelling, not whether the use was incidental. I acknowledge that the proposal would not result in the creation of a separate residential planning unit. Therefore, *Uttlesford* is of limited relevance to the matter at issue.
16. A copy of a recent appeal decision was supplied concerning the conversion of a garage to a residential annexe<sup>5</sup>. From what I can gather in that instance the dwelling was located in a more built-up part of the NP, the building was of modest scale, it was closely related to the dwelling and minimal external alterations were involved. Therefore, based on the limited details before me the circumstances in that case are not materially similar to those in this appeal.
17. As a result, I find that the prohibition on the use of the building for habitable accommodation such as kitchens, living rooms and bedrooms in condition 3 is necessary and reasonable in order to safeguard the character and appearance of the countryside within the NP and that the proposal would be contrary to that objective. The above fails to accord with criteria in LP Policy DP37 as well as LP Policies DP2, SP7, SP17 and DP18. Also, as the landscape and scenic beauty of the NP have the highest status of protection the proposal is inconsistent with the Framework.

## Conclusion

18. The proposal would not safeguard the character and appearance of the NP's countryside, it would not accord with the Development Plan and would be inconsistent with the Framework. Therefore, I conclude that the appeal should be dismissed.

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<sup>4</sup> *Uttlesford DC v SSE & White* [1992] JPL 171.

<sup>5</sup> Appeal Ref: APP/B9506/D/19/3233644.

## Appeal C

### Main Issue

19. The 2016 approved drawings show the long, east elevation of the building with three pairs of substantial vertically hung solid timber doors of similar size and four modest-sized windows, with no openings in the other elevations. This appeal concerns external alterations including significant changes to the elevational treatment of the building compared with the approved drawings. In particular, the east elevation incorporates a considerably enlarged central door opening with a fully glazed bi-fold door, together with fully glazed patio doors in the other two door openings. Additionally, the four windows have been significantly enlarged by lowering the cills to ground level. On the north-west elevation, a pair of fully glazed patio doors have been installed at ground floor level, with a similar pair of glazed doors at first floor level and windows alongside, meaning that the roof gable is largely glazed. Other alterations include installing a flue serving the wood burning stove and a lean-to log store.
20. Therefore, the main issue in this appeal is the effect of the alterations to the building on the landscape and scenic beauty of the NP.

### Reasons

#### *Landscape and scenic beauty of the NP*

21. The building is adjacent to open countryside on the side of a hill, in a relatively elevated position a considerable distance from the dwelling and other residential outbuildings. As a result, although close to outdoor domestic recreational facilities at the property, the environs of the building possess considerable rural qualities. The elevational treatment shown on the approved drawings would have contributed significantly to the building having a simple, inherently solid, functional and unassuming appearance, thereby reflecting the rural attributes of its surroundings as well as the permitted use for secondary or incidental purposes in association with the dwelling.
22. The significant increase in the extent of the openings has introduced large areas of glazing to the east and north-west elevations of the building compared to the approved drawings. The glazing is set within dark-coloured metal frames. The reflective surfaces and overall appearance of these glazing units contrasts significantly with the more muted, naturalistic tones of the timber-clad walls and has given the affected elevations a considerably more assertive appearance. The glazing units have also created an appreciable sense of rhythm on these elevations, resulting in a quite 'busy' overall effect in terms of the appearance of the building. Moreover, the arrangement of the window and door openings together with the obviously domestic style and proportions of the glazing units is suitable for and usually associated with a use as living accommodation.
23. Consequently, the alterations have made the building significantly more residential in terms of its character and appearance compared with the approved drawings. They have imbued the building with a greater sense of being additional primary living accommodation rather than a structure in incidental use, something that is reinforced by the flue, albeit in itself a small-scale feature. The above is entirely at odds with the countryside setting and



- results in the building being seen as a discordant and intrusive residential feature, harmfully eroding the rural qualities of its surroundings.
24. Furthermore, as noted above the building is substantial in scale. Although the building is not dissimilar in terms of size and bulk to that shown on the approved drawings, due to the more residential character and appearance it competes visually with the dwelling and is not obviously perceived as a subservient built feature. The absence of a clear hierarchical relationship between the dwelling and the building has in turn contributed to an appreciably more built-up and 'suburbanised' feel at the property, further harmfully eroding the visual qualities of the environs.
25. Reducing the four windows in the east elevation to the size of those shown on the approved drawings and removing both sets of patio doors in the north-west elevation would not significantly alter the more residential character and appearance of the building. Therefore, the proposed further alterations to the building would not overcome the visual harm described above.
26. I am mindful that the visual impact of the alterations is quite localised, views of the affected elevations from the wider surroundings being limited. Although the building can be seen from Middle Road, the west elevation is relatively unchanged. However, this does not weigh in favour of permitting the alterations. As noted above, the landscape and scenic beauty of the NP have the highest status of protection. It is not necessary for there to be wider views for visual harm to occur; to my mind, the limited views of the affected elevations simply reduces the ability to perceive the harm caused by the alterations. Moreover, a limit on wider views does not represent a good argument for permitting otherwise unacceptable development as it could be repeated, leading to further harm.
27. The building is adjacent to a number of pre-existing sources of artificial light including the dwelling and other residential properties in the surrounding area. Notwithstanding the predominantly rural context, artificial light sources are therefore likely to be relatively common. It is entirely probable that use of the building for secondary or incidental purposes would be on a less regular basis compared to a use as primary living accommodation. In any event, it is highly likely that curtains or blinds would be drawn over the glazing at most times when artificial light is in use in the building, either to reduce reflections and heat loss, or for reasons of privacy. Therefore, in my estimation there is limited potential for the alterations to have introduced significant additional artificial light sources or for such lighting to have caused further visual intrusion into the surrounding countryside. As a result, I am not persuaded that the alterations have materially increased light pollution in the NP. Future external lighting of the building could have been restricted by condition, had I been minded to allow the appeal and grant permission. It follows that the alterations accord with LP Policy SP15, as rural darkness and tranquillity have not been eroded by artificial lighting.
28. Nevertheless, for the reasons set out above the alterations do not conserve the landscape and scenic beauty of the NP, thereby failing to accord with LP Policy SP7. There is also failure to accord with LP Policy DP2, as the local character and distinctiveness has not been enhanced, whilst by eroding the NP's local character and having a suburbanising effect, the alterations do not accord with LP Policy SP17. By not achieving a high standard of design in terms of the

details and materials and not ensuring that the alterations are contextually appropriate, there is also failure to accord with LP Policy DP18. In addition, there is failure to accord with criterion in LP Policy DP37 as the building is not clearly subservient to the dwelling in terms of design. For similar reasons the alterations are also inconsistent with the Framework.

#### *Other Matters*

29. I acknowledge that the increased natural light provided by the alterations could reduce reliance on artificial light sources within the building. Also, I recognise that the wood burning stove and the associated flue could potentially reduce reliance on electricity and gas for heating purposes. Even so, in the context of an incidental residential building, any such benefits are small-scale and do not outweigh the visual harm described above.
30. I accept that the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) at Article 3, Schedule 2, Part 1, Class E grants planning permission for incidental buildings within the curtilage of a dwelling and that the associated limitations and conditions do not restrict the external design and materials of such structures. Furthermore, I am mindful that external alterations to an incidental building can be permitted by Class E. However, as there was no firm evidence that Class E rights represented a realistic fallback position, I have given this matter limited weight.

#### **Conclusion**

31. The alterations fail to conserve the landscape and scenic beauty of the NP, they do not accord with the Development Plan and are inconsistent with the Framework. Therefore, I conclude that the appeal should be dismissed.

#### **Formal Decisions**

32. Appeal A-The enforcement notice is quashed.
33. Appeals B and C are dismissed.

*Stephen Hawkins*

INSPECTOR