



## Appeal Decisions

Site visit made on 15 August 2022

by **Hilary Orr MSc, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15<sup>th</sup> September 2022

---

### **Land at Harwyn, Beaulieu Road, Marchwood, Southampton SO4 4UQ Appeal A Ref: APP/B9506/C/22/3295799**

- 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 Ken Nichols against an enforcement notice issued by the New Forest National Park Authority.
  - The enforcement notice, numbered 21/0034, was issued on 03/03/2022.
  - The breach of planning control as alleged in the notice is operational development consisting of the laying of hardstanding shown in the approximate location shaded blue on the plan attached to this Notice.
  - The requirements of the notice are:
    - 5.1 Permanently remove all the hardstanding (shown in the approximate position shaded blue on the plan attached to this Notice) from the land affected.
    - 5.2 Permanently remove all materials and debris arising from compliance with the requirement at 5.1 from the land affected.
    - 5.3 Restore the land affected to its previous level and condition with soil and reseed with grass.
  - The period for compliance with the requirements is 4 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) and (b) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- 

### **Appeal B Ref: APP/B9506/W/22/3292986**

- 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 Ken Nichols against the decision of New Forest National Park Authority.
  - The application Ref 21/00901, dated 03/10/2021, was refused by notice dated 17 January 2022.
  - The development proposed is the provision of shingle.
- 

## Decision

### Appeal A

1. It is directed that the enforcement notice is corrected by removing the reference to the blue shaded area in the allegation, by the deletion of all of the words following 'hardstanding' at paragraph 3 of the notice.
2. Subject to the correction the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

## **Appeal B**

3. The appeal is dismissed.

### **Procedural matters and the notice**

4. The allegation set out in the notice, is the laying of hardstanding, shown in the approximate position shaded blue on the plan attached to the notice. However, although the site is edged in red on the plan, it has no blue shaded area. The site plan that accompanies the related planning application shows a new parking area which accords with the development I saw on site. The Council's statement confirms that the notice was served following the refusal of the planning application, which sought retrospective consent for the shingle as constructed.
5. I have nothing to suggest that the appellant and Council are at odds over the subject development, and no reason to conclude that the development targeted by the notice, differs from that applied for in the related planning application. For this reason, I find that the notice is valid for the purposes of determining this appeal. I shall however, correct the notice by removing the reference to the blue shaded area in the allegation. I do not consider that this correction would cause injustice to either party.
6. There has been a change in the description of the development between the planning application and the allegation in the notice. The notice refers to hardstanding, whereas the planning application refers to an area of shingle. Nonetheless, it is clear that both relate to the same development. I shall therefore deal with both appeals together.

### **Ground (b)**

7. The appeal is proceeding on ground (b), that the matters alleged in the notice have not occurred. This is known as one of the legal grounds and therefore the onus of proof is on the appellant.
8. The appellant's case on ground (b) is set out in their statement. The gist of their submission is that the allegation of hardstanding is incorrect, as the development carried out is the provision of shingle, and as the shingle is permeable it does not accord with the definition of hardstanding.
9. From my site visit the development comprises a shingle finished area with a circular ornamental planted flowerbed. The land slopes down towards the boundary of Snae Fell, where the finished surface has been raised with some larger pieces of raised sub-base visible.
10. It is not clear where the definition of hardstanding the appellant refers to is derived from, or whether it relates to both hardstanding and hard surfacing as both terms appear in the evidence. Notwithstanding this, to my mind, there are a number of descriptions that could reasonably be used to describe this type of development, including those above.
11. The original use of this area vehicle parking, which has now ceased, suggests a surface of some substance, but it does not follow that such a surface cannot also be permeable or porous. A view substantiated by The Town and Country Planning (General Permitted Development) (England) Order 2015 where, in summary, Class F of refers to hard surfaces within the curtilage of a dwelling. I

acknowledge that the development is sited outside the curtilage of the dwelling. Nonetheless, Class F sets out situations where hard surfaces can be constructed without express planning permission. To comply the hard surface is also subject to a number of conditions, including that it is to be made of porous materials or provides direct run off to a permeable or porous surface.

12. Overall and from the evidence, the fact that the development is permeable does not negate it from being described as a hardstanding for the purposes of the notice. Consequently, on the balance of probability, the appellant has not demonstrated that the alleged development, as described in the notice, has not occurred. The appeal on ground (b) fails.

## **Ground (a) and the s78 appeal**

### **Main Issue**

13. I consider the main issue is the effect of the development on the character and appearance of the area.

### **Reasons**

14. National Parks have the highest level of protection. The National Planning Policy Framework (the NPPF) advises that great weight should be given to conserving landscape and scenic beauty.
15. The appeal site is located to the north of Beaulieu Road, within the New Forest National Park. It forms part of a cluster of residential properties set in wider countryside. The area has an attractive rural character.
16. Harwyn is a residential dwelling and boarding cattery, with a number of single storey buildings used in connection with the business. The appeal site is generally bounded with existing hedges and trees, limiting the views from the highway and other properties. The development has been sited outside the curtilage of the dwelling, in an area of former paddock which lies to the west of the dwelling. It was previously undeveloped, forming part of the wider countryside that generally bounds the site. As such it made a positive contribution to the rural character and appearance of the area.
17. The appellant accepts that the development was initially used for vehicle parking. Whilst this is no longer occurring, he would like to retain it to help prevent surface water run-off into his property.
18. I have been provided with the results from an environmental information request to Hampshire County Council. This seems to relate to flooding complaints they have received since August 2013 at various properties in the area around the appeal site. From this it is clear that there have been instances of flooding, although many of these appear to stem from blocked drains and culverts.
19. I do not underestimate the damage and disturbance caused by flooding from any source. However, I have no evidence before me to explain how the development provides enhanced drainage or redirects water, when compared to the original paddock surface. Moreover, there is nothing in the evidence to suggest that other less intrusive ways to control excess water have been explored, or why this development is the best or only solution.

20. The surface covers a substantial part of the former paddock, and whilst I accept that the parking use has ceased, it retains the appearance of a sizeable car park. Notwithstanding the screening, it has introduced significant development into an area where there was previously none.
21. The surface has been finished with a light coloured shingle which further accentuates its presence within the landscape. Moreover, it extends the built environment further into the open countryside, closing the gap between Harwyn and the dwellings to the west. Consequently, due to its location, scale and unsympathetic materials, it has an overly urbanising effect that jars with the surrounding rural character of the area.
22. I acknowledge that views of the development from outside the site are limited due to the boundary hedges. However, the degree of screening is likely to change from season to season and in any event, it does not overcome the harm I have identified.
23. For the above reasons, I find that the development causes unacceptable harm to the character and appearance of the area. The development is therefore contrary to Policies DP2, SP7, SP15, and DP45 of the New Forest National Park Local Plan 2016-2036 (2019). In summary these policies seek to ensure that all development demonstrates high quality design that conserves landscape value and the scenic beauty of the National Park.

#### **Other matters**

24. I have had regard to the historic permission for an equestrian manege that was sited across the garden and the paddock. From the history provided by the Council, the site appears to have supported an equestrian use at that time which is likely to have provided justification for the manege. This contrasts with the subject development where, from the evidence, there is little to support its retention.

#### **Conclusion**

##### **Appeal A**

25. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

##### **Appeal B**

26. For the above reasons I conclude that the appeal should be dismissed.

*Hilary Orr*

INSPECTOR