



Appeal Decisions

Hearing held on 14 June 2023

Site visit made on 14 June 2023

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 November 2023

Appeals A: APP/B9506/C/21/3274799 & APP/B9506/C/21/3274800 Land at Paysanne, Godshill Wood, Fordingbridge SP6 2LR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Ian Vickers and Mrs Angela Vickers against an enforcement notice issued by the New Forest National Park Authority.
 - The enforcement notice was issued on 26 February 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the construction of:
 - (1) A dwelling in the approximate position shown hatched blue on the plan attached to this Notice (which has not been constructed in accordance with approved plans for a replacement dwelling); and
 - (2) An outbuilding in the approximate position shown hatched in green on the plan attached to this Notice.
 - The requirements of the notice are:
 1. Demolish the dwellinghouse in the approximate position shown hatched blue on the plan attached to this Notice, including all above-ground level and below-ground level elements forming part of the structure, to create a cleared site commensurate with the immediately adjacent ground levels.
 2. Demolish the outbuilding in the approximate position shown hatched in green on the plan attached to this Notice.
 3. Permanently remove all materials, external lighting, debris and associated paraphernalia from the land affected.
 4. Install a layer of growing depth of topsoil and seed with a native grass and retain as such.
 - The period for compliance with the requirements in full is 18 months after this Notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/B9506/W/23/3316787 Paysanne, Godshill Wood, Fordingbridge, Hants SP6 2LR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mrs Angela Vickers against the New Forest National Park Authority.
 - The application Ref 22/00695/FULLS is dated 13 September 2022.
 - The development proposed is described as '*Retention of and alterations to house*'.
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Formal Decisions

Appeal A

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

Appeal B

2. The appeal is allowed and planning permission is granted for a replacement dwelling, a detached garage with office over, and a sewage treatment plant, in accordance with the terms of the application ref 22/00695, dated 13 September 2022, and subject to the conditions set out in the attached Schedule.

Preliminary Matters

3. Mrs Angela Vickers is now the sole appellant.
4. I have altered the description of the development as was set down on the application form to better reflect the development involved. Also, the sewage treatment plant has not been raised as an issue by the Authority and, due to its domestic scale and the fact that these features are not uncommon in rural areas, I agree with this approach.
5. The Authority's witness indicated in evidence that had it still been able to determine Appeal B, officers would have re-presented the application to the planning committee, with a recommendation to approve. Should the committee have then resolved to grant conditional planning permission, then the officers' intention would either be to withdraw the enforcement notice or, alternatively, to amend its wording to require that the dwelling be altered to accord with the drawings thereby approved.

Background

6. Planning permission was granted under ref 18/00262 in 2018 for a replacement dwelling to a bungalow, built in the early twentieth century. The bungalow was demolished but the new dwelling permitted was not built in accordance with the approved drawings.
7. In an attempt to regularise the planning position the owner then submitted an application under s73 of the 1990 Act (as amended) seeking permission to vary the dwelling's design, which was subsequently refused (ref 20/00903). This was followed up with the Authority considering it expedient to issue an enforcement notice requiring that both the dwelling, as built, and an outbuilding be demolished. The notice was issued in February 2021.
8. In response, in September 2021, a further s73 application (ref 21/00807) was submitted which proposed modifications to the dwelling in an attempt to address the reasons for refusal given for the previous application. Permission was subsequently granted, but the Authority's decision was ultimately successfully challenged by way of judicial review brought by a neighbouring occupier.
9. Nonetheless, in September 2022 the owner had submitted an application for full planning permission for the dwelling, as built. The application was reported

to the Authority's planning committee in January 2023, with a recommendation to grant permission. However, the committee resolved to defer making a decision until the outcome of the judicial review was known and, in the circumstances, an appeal was lodged on the basis of the Authority's non-determination in February 2023.

Current Planning Position

10. On the above basis planning permission ref 18/00262 has lapsed unimplemented, as a dwelling, significantly different to that approved, and on a adjusted footprint, was built. In essence there is no fallback position available to the appellant. Accordingly, in the circumstances, the enforcement notice can justifiably require for the dwelling's demolition.
11. Given the above the specific design considerations, and the potential effect on neighbouring land from that scheme, the assessment of which, together, brought about the Authority granting planning permission in 2018, are no longer relevant. Nor should these be cross referenced with the current proposal, the subject of Appeal B. Similarly the application (ref 21/00807) which was the subject of the judicial review, no longer holds any relevance.
12. The court's judgement was handed down in March 2023 and confirmed, amongst other things, that the 2018 permission had not been implemented and could not therefore be completed. Further, it was adjudged that the Authority had been unreasonable to conclude that the amendments proposed by way of the 2021 scheme only constituted minor material amendments. In other words the application accepted by the Authority went significantly beyond the scope of the changes possible by way of a s73 application.
13. Accordingly, a new full application was required in order to regularise the planning position and the starting point should merely be that the principle of residential development is acceptable given that the development involves a replacement dwelling following its demolition. The judicial review did not stipulate or even indicate that either the original bungalow or the dwelling approved in 2018 should be the baseline on which future proposals should be measured against
14. The Hearing which I presided over therefore concerned two appeals; firstly, against the enforcement notice issued, and secondly, that concerning the application on which the Authority failed to reach a decision. Both schemes must therefore be determined on their respective individual merits and impacts, with reference to the development plan and taking account of any other material considerations.

Appeal A

The appeal on ground (a); the deemed planning application (DPA)

Main Issues

15. The reasons for refusal given on application ref 20/00903, which prompted the enforcement notice's issue, clearly informed the reasons for issue as set out in the notice. They are largely identical, with the notice also mentioning that, cumulatively, the changes and alterations from that approved under permission ref 18/00262, has resulted in an unacceptable form of development.

16. In summary, the issues relate to the size of the dwelling, when considering the particular orientation of its footprint, its effect on the surrounding landscape, whilst having regard to its location within the Western Escarpment Conservation Area, and also the considered effect on the amenities of neighbouring occupiers.
17. As mentioned, as the Authority now accepts that the 2018 planning permission expired unimplemented, no comparison can now be reasonably made and, should the notice's requirements be upheld, then the site is effectively a blank canvass.
18. In the circumstances the main issues in both these appeals are:
 - 1) The development's effect on the character and appearance of the surrounding area and landscape, with particular regard to its conservation area location; and
 - 2) The development's effect on the living conditions of neighbouring occupiers.
19. Accordingly, it would be appropriate to compare and contrast the elements of the two developments up for determination.

Reasons

Character and appearance

20. Purely for information, the replacement dwelling's intended footprint, as approved in 2018, was similarly orientated to that of the original bungalow, although it was set back from what was the bungalow's north west facing elevation. Instead, the new dwelling, as now built, has had its footprint pivoted to face roughly due north.
21. The Western Escarpment Conservation Area, like the local landscape, is characterised by its dramatic topography, its tranquility, and also the typical pattern of dwellings which nestle comfortably into the landscape. In this connection attractive views are gained across the escarpment to the south of the dwelling. However, this should not be considered as an undeveloped landscape, not only because there was previously a house on the site, but because of the scattering of local residential properties, albeit distanced from one another. All these, though, commonly benefit from substantial and mature landscaping.
22. Policy SP7 of the New Forest National Park Local Plan 2016-2036 (LP), adopted in August 2019, says that weight will be given to conserving the National Park, and development should conserve and enhance the character of its landscape. Particular regard will be paid to the proposed design, layout, massing and scale.
23. LP policy DP2, headed 'General Development Principles' indicates that new development must be sustainable, sympathetic in scale, and with the use of appropriate materials and boundary treatments. In this particular instance the dwelling is principally a pegged oak frame structure with oak weather board cladding and a plain clay tiled roof. These are natural materials, sourced locally and constructed using the vernacular carpentry traditions which are an inherent part of the local character and distinctiveness of the area.

24. Leaving aside for a moment the dwelling's size and setting, and also its effects on neighbouring occupiers, for the moment, I find that in purely aesthetic terms the dwelling's form, timber cladding and general appearance is not inconsistent with the aims and objectives of both LP policies DP2 and DP18.
25. Nonetheless, the dwelling's width and massing has resulted in an over-prominent building which is somewhat at odds with the more modest neighbouring dwellings. Further, the substantial glazed bay window, whose height reaches to a gable feature that pitches into the north facing elevation, exacerbates the dwelling's impact by drawing attention to the development. The bulk of the kitchen wing is also accentuated by the overlying roof's ridge height and its steep pitch.
26. A further policy consideration relates to LP policy SP15 which requires that mitigation measures be provided if the proposal will lead to noise, visual intrusion or unacceptable environmental impacts on the National Park and its special qualities.
27. Turning to the conservation area location a Heritage Statement has been commissioned by the appellant to assess the merits of the dwelling, as built. Whilst I don't necessarily fully agree with all the report's findings I have had regard to the salient points made.
28. Firstly, the report's starting point is that the building has replaced a prominent and unattractive white painted house on the site. The bungalow had been subject to cumulative alterations and did not reflect the local distinctives of the hamlet setting. This might be the case but, as already mentioned I don't believe, from the circumstances, that a comparison should or can be made. The dwelling, as built, should be assessed only on its own individual merits and impacts.
29. I do, though, agree with the report where it says that the building will continue to weather and mellow or "nestle" into its landscape setting. Such, an approach is part of the ongoing evolution of the Forest and in line with English Heritage guidelines on constructive conservation for a positive and collaborative approach to conservation that focuses on actively managing change.
30. It appears that the Authority's general aim on this matter is to recognise and reinforce the historic significance of places, whilst also accommodating the changes necessary to ensure their continued use and enjoyment.
31. In line with my statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 I have paid special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
32. I find the development to be in partial conflict with policy SP16 'The Historic and Built Environment' and it fails to preserve either the character or appearance of the Western Escarpment Conservation Area. Although the harm would be less than substantial for the purposes of the National Planning Policy Framework (the Framework) there are no public benefits to offset this; only private interests.
33. My approach to disregard comparisons between the previous bungalow and

the dwelling in situ is reinforced by LP policy DP35 which would allow for replacement dwellings, but subject to certain criteria. However, it is stated in the policy's explanatory text that this policy does not apply to former dwellings which have been demolished. Instead, LP policy DP36 allows for extensions to dwellings to a maximum increase of 30% on that of the original floorspace.

34. The replacement dwelling approved in 2018 had a total floorspace of 160 sqm which equated to a 30% enlargement over that of the bungalow. It should be noted, though, that scale and character are additional considerations for such. In turn, the Authority calculated that the dwelling as built has a floorspace of 167 sqm and is thereby greater than the stated 30% maximum.
35. As regards the outbuilding (a detached garage with an office above) LP policy DP37 indicates that domestic outbuildings should be proportionate, clearly subservient to the dwelling, and should not provide additional residential accommodation. In this particular instance I must agree with the Authority's view that the outbuilding, in the absence of any authorised dwelling, represents an isolated structure; and one unrelated to the enjoyment of a dwellinghouse which is obviously the function of a residential outbuilding.
36. I have had regard to previous appeal decisions put forward by the appellant. Whilst I note that some similar issues arise, with cases being determined on their individual circumstances including matters pertaining to the particular site involved, parallels are not easily drawn.
37. On this main issue I conclude that the proposal unduly impacts on the character and appearance of the area and is at odds with the objectives and requirements of LP policies SP7, SP15, SP16, DP2, DP18, DP36 and DP37. Admittedly, the conflict identified is to varying degrees but, taken together, these are of particular significance.

Living conditions

38. The newly built dwelling is set back approximately 20 metres from the site's northern boundary beyond which is the vehicular track which serves as the sole vehicular and pedestrian access to, in particular, Paysanne, Bluebell Cottage and Long Orchard. The latter's substantial curtilage has a common boundary with the appeal property and, although Paysanne's west flank elevation faces towards the boundary the Long Orchard dwelling itself is situated some distance westwards.
39. From the access track the land climbs sharply northwards and it is important to note that the Bluebell Cottage dwelling is similarly, and significantly, set into its curtilage and, as such the dwelling looks down on Paysanne which is located a significant distance to the south.
40. Given the relative physical relationships, the sharp change in levels and distance between Paysanne and Bluebell Cottage, along with the proliferation of vegetative screening, I consider that actual overlooking and privacy is not reasonably a determinative issue in this appeal. However, I do acknowledge that certain objectors seemingly have a perception of being overlooked from the existing dwelling.
41. LP policy DP2 indicates that development within the New Forest National Park should not, amongst other things, result in unacceptable adverse impacts associated with matters such as light pollution.

42. Following on, LP policy SP15, which is concerned with mitigating environmental impacts, mentions also visual intrusion and light spillage pollution. Here, due to the external lighting and degree of fenestration, the spillage is generally without mitigation and to a potentially inappropriate level given the dwelling's setting.
43. Instead, from the paperwork, and in particular my site visit observations, I consider that light spillage emanating from the Paysanne dwelling is both a potential and continuing problem, and one which the dwelling, as built, does not appropriately mitigate against. The existing external lighting installed plus the markedly tall bay window aggravates the position.
44. Accordingly, I find that the development is harmful to the living conditions of neighbouring occupiers, and is in material conflict with the aims and objectives of LP policies DP2, DP18 and SP15.

Other Considerations

Human Rights

45. There is a positive duty by virtue of Article 8 of the Human Rights Act to facilitate the traditional and nomadic way of life of travellers.
46. However, in considering the proportionality of a requirement to leave one's home it is relevant whether or not the home was established unlawfully.
47. Article 8 of the European Convention on Human Rights, enshrined in UK law through the Human Rights Act 1998, provides that everyone has the right to respect for his private and family life, his home and correspondence. In this regard there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary, amongst other things, for the protection of the rights and freedoms of others.
48. Accordingly, if Article 8 is engaged, then interference with those rights can be justified by the Council if it is a legitimate planning purpose in accordance with the law and necessary in the public interest.
49. Here, I consider that the enforcement notice issued does serve a legitimate planning aim and the Council was quite reasonably entitled to consider it expedient to issue the enforcement notice to address the harm caused. Nonetheless, whilst I agree that the Authority's actions were justified, that is not to say that the appellant losing her place of residence is not a significant consideration to be factored in.
50. Having weighed up these factors I find this issue as finely balanced.

Conclusions on the ground (a) appeal

51. For the reasons given above I conclude that, in terms of planning merits and impacts, this appeal turns on the dwelling's significant and undue massing by reason of its overall size, and also its prominence being amplified due to light spillage therefrom. Physically, as built, its impact is not capable of being mitigated from conditions that could reasonably be imposed on a planning permission, should I allow this appeal.
52. In terms of the Human Rights issue I have paid regard to there being a second appeal before me with modifications to the dwelling proposed. In this

connection I have ascribed weight to the fact that the Authority's officers' case report indicates that were it still be able to determine the planning application (ref 22/00695) it would have either withdrawn the enforcement notice or amended its requirements to accord with the drawings submitted.

53. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the DPA.

The appeal on ground (f)

54. Appeals on this ground are that the requirements in the enforcement notice go beyond what is necessary to remedy either the breach itself or the harm to amenity. In this instance it would appear that the notice serves as a remedial tool to the identified breach given the circumstances that the dwelling has been erected without the benefit of planning permission. The considered harm to amenity is a consequence of such.
55. The appellant considers that any outstanding issues can be readily controlled by conditions without requiring for the dwelling's demolition. It is put forward, in particular, that the window space could be reduced, the external lighting removed and additional planting be made. Indeed, I consider that these measures would be effective, but they would not in themselves address the concerns as to the dwelling's size and massing. The appellant has also mentioned that some internal changes would reduce the internal floorspace slightly. Nonetheless, this has no effect on the dwelling's visual impact in its setting.
56. In the event I must conclude that no lesser steps would be effective to counteract the harm that I have highlighted.
57. Accordingly, the appeal on ground (f) does not succeed.

Appeal B

Main Issues

58. The same issues apply here as those I have already set out for Appeal A.

Reasons

Character and appearance

59. It is proposed that the dwelling be subject to a series of physical alterations in order to lessen its impact. The most significant and visibly apparent change would be a reduction in the kitchen wing's ridge height along with both the wing's reduction in width by some 1.75m, and its depth lessened by some 1.1m.
60. A hipped roof cap would also be added to the double height glazed stair enclosure, with the angle of pitch matching that of the modified kitchen roof. The capping would not just reduce further any actual overlooking – despite my findings that this is not significant – it would also significantly ameliorate the neighbours' perception of such.
61. The south facing elevation's gabled projection would be reduced by approximately 1m, with the first floor balcony also set back. In total, as a

result of all the proposed alterations, the floorspace increase would be reduced to some 27%, thereby within the limitations set out in LP policy DP36. Security lighting installed at first floor level would be removed and details of any replacement or new external lighting will be required to be submitted for written approval, along with a significant reduction in the degree of glazed fenestration.

62. I consider that the proposed physical alterations and other changes would reasonably bring the dwelling within the scope of a development that would have only a neutral impact on either the character or appearance of the conservation area. Importantly, the courts have held that neutral effects would amount to the preservation of such. I would therefore consider that the proposal is in accordance with the advice within paragraph 197 of the Framework and also in reasonable accordance with LP policy SP16.
63. More widely, given that the alterations would reasonably amount to a dwelling of acceptable scale and size, I would then consider that the related outbuilding is not inappropriate or harmful to its surroundings in its particular setting. Overall, I am satisfied that the proposed changes, taken together, would significantly reduce the current visual effects, and not cause significant harm to the visual amenities of the wider landscape beyond the site boundary.
64. Accordingly, on this main issue I conclude that the proposal would not be harmful to the character and appearance of the area, and is consistent with the objectives and requirements of LP policies SP7, SP15, SP16, DP2, DP18, DP36 and DP37, and also relevant advice in paragraph 197 of the Framework.

Living conditions

65. As I have mentioned earlier, due to the circumstances I regard the issue of overlooking as one of perception as opposed to actuality. On this point I consider the objections raised to be borne out of the dwelling, as built, being a significant departure from both the original bungalow and also the replacement dwelling permitted in 2018, in terms of design, height and form.
66. I have given consideration to the conclusions of the appellant's Lighting Report. Notwithstanding these, to reinforce my findings the north facing glazed window would be capped and also further landscaping is proposed. I consider that this will improve the perceived position and policy SP7 would be observed with the additional planting involving indigenous species.
67. I note now that the Authority is satisfied that, due to the modifications and the sloping land, any spillage from the ground floor level lights on the north facing elevation would be captured and contained by the retaining wall beyond and landscaping between the dwelling and its northern boundary. The two lights on the south façade would be downward facing. Accordingly, I consider that these changes would provide safeguards to significantly reduce light spillage pollution.
68. I consider, therefore, that the various changes would be such as to allow for a dwelling whose glazing and features would represent a significant degree of modification such as to allow for a building which would not be harmful to the living conditions of neighbouring occupiers.
69. On this main issue I conclude that the proposed development would not be harmful to the living conditions of neighbouring occupiers and would not be in

material conflict with the aims and objectives of LP policies DP2, DP18 and SP15.

Other considerations

70. I find that the acceptability of the development, if modified as proposed, would not leave the appellant uncertain as to whether her home will be retained. Hence the intended changes would be consistent with the provisions of Article 8 of the European Convention of Human Rights.
71. Whilst I have discussed the grounds of concern put forward by neighbouring occupiers and the Parish Council I have also had regard to the considerable support for the development; this being evident from the number of representations received to this end and also the heavy presence of supporters at the Hearing.

Conclusion on Appeal B

72. I have concluded that the cumulative effects resultant upon the proposed modifications would sufficiently ameliorate the existing adverse impacts arising from the extent of the dwelling currently in situ. Accordingly, for the reasons given above the appeal is allowed and planning permission is granted subject to the conditions set out in the attached schedule.

Overall Conclusion and Conditions

73. Whilst I have upheld the enforcement notice s180(1) of the 1990 Act, as amended, says that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.
74. Accordingly, in this instance as I am allowing Appeal B and granting planning permission for that scheme, the enforcement notice will cease to have effect.
75. Regarding the conditions I am imposing I have had regard to the government's guidance in its Planning Practice Guidance. Conditions 1, 2, 3 and 4 and 7 are imposed to ensure that the approved modifications are carried out to ensure a satisfactory form of development, both in terms of the dwelling's size, scale and appearance and its effect on the living conditions of neighbouring occupiers.
76. Conditions 5, 6 and 8 are similarly concerned with maintaining the area's character and condition 9 relates to restricting the dwelling's internal floorspace to limit the dwelling's cubic volume.
77. Finally, the Authority has suggested a condition relating to a restriction on the use of the outbuilding. However, I consider this unnecessary as any use for purposes not considered reasonably incidental to the dwellinghouse would amount to a material change in planning terms. This would require the benefit of planning permission and, should the planning position not be regularised, the Authority holds remedial powers in this respect.

Timothy C King

INSPECTOR

Schedule of Conditions

1. The development hereby approved shall be carried out in accordance with the following plans: Drawings Nos SGA-143-102D, SGA-143-104N and the amended plan, BLA062-001.
2. Within two years of the date of this decision, the dwelling in situ shall be modified in accordance with drawing no SGA-143-104N.
3. The additional planting shown on drawing no BLA062-001 shall be carried out in the first planting season following the date of this permission.
4. The external facing materials to be used in the development shall match those used on the existing building, unless otherwise agreed in writing by the New Forest National Park Authority.
5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) England Order 2015 (or any re-enactment of that Order) no extension (or alterations) otherwise approved by Classes A, B or C of Part 1 of Schedule 2 to the Order, garage or other outbuilding otherwise approved by Class E of Part 1 of Schedule 2 to the Order shall be erected or carried out without express planning permission first having been granted.
6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any re-enactment of that Order) no means of enclosure otherwise approved by Class A of Part 2 of Schedule 2 to the Order shall be erected or carried out without express planning permission first having been granted.
7. No external lighting shall be installed, or retained, at the site except that shown on drawing number SGA-143-104N PL2 unless details of such additional lighting proposals have been submitted to and approved in writing by the New Forest National Park Authority.
8. All materials, machinery and any resultant waste materials or spoil shall be stored within the red line application site unless otherwise agreed in writing by the local planning authority.
9. The areas covered by the balconies along the southern elevation shall at no point be in-filled or incorporated into the main dwellinghouse.