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## Appeal Decision

Hearing held on 24 September 2024

Site visit made on 24 September 2024

**by D Szymanski BSc (Hons) MA MRTPI**

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

**Decision date: 18 October 2024**

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**Appeal Ref: APP/B9506/W/24/3343614**

**Lynton, Partridge Road, Brockenhurst, Hampshire SO42 7RZ**

- 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 P Ledger against the decision of the New Forest National Park Authority.
  - The application Ref 23/01040FULL, dated 11 August 2023, was refused by notice dated 21 November 2023.
  - The development proposed is subdivision of the plot and construction of one self-build, wheelchair accessible single storey dwelling, using existing access from Highwood Road.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are:
  - the effect of the proposed development upon the character and appearance of the area, including the New Forest National Park (the NP);
  - the effect of the proposed development upon protected trees;
  - the effect of the proposed development upon designated habitats sites; and,
  - whether or not there are material considerations to outweigh any policy conflicts or harm that might be identified in relation to the above matters.

### Reasons

#### *Character and appearance*

3. The appeal site lies within the defined village of Brockenhurst, which is within and over washed by the NP. The character and qualities of such settlements are an inherent part of the NP. Highwood Road is one of several parallel streets off Sway Road. Streets to the north and south of it predominantly comprise residential dwellings of varying scale and architectural styles fronting the highway in a linear layout, resulting in them having a residential character.
4. Highwood Road differs somewhat. Though there has been a plot subdivision around the Sway Road junction, and dwellings adjacent to the railway line, these do not reflect the prevailing development pattern. On its northern side

the street scene is fronted and strongly defined by the rear of long back gardens of dwellings on Partridge Road enclosed by various fences and a wide variety and age of vegetation, including some notable mature oak trees, with occasional generally limited ancillary buildings. The roadside is edged by informal grass verging with no public footway.

5. The south side includes the village hall, car park, a scout hut, multi-use games area and doctor's surgery. These buildings are set back, and much of the highway is lined by fencing, trees, hedgerows, and some sizeable greenspace areas. Despite the facilities, it doesn't feel a village centre or suburban location. Though I heard proposals are being considered for future development to the north, these have not been built out, so have little influence on the character and appearance as I saw. I note the landscape characterisations referred to by the appellant. Despite varying boundary treatments and some non-native vegetation, the road has a strongly sylvan and verdant lining with a very much semi-rural character and appearance, including within the vicinity of the appeal site. The semi-rural feel has synergy with and contributes to the landscape and scenic beauty of the NP.
6. The appeal site includes lawned and landscape land bisected by a gravel access drive, modest outbuildings, and a parked motorhome. Though purchased as separate land, as it joins the garden, it gives the impression of being part of it. This reflects the prevailing development pattern on this side of the road. The absence of significant built development and its predominantly verdant composition is in keeping with the character and appearance of the area.
7. The proposal includes a sizeable new building occupying a significant proportion of the plot and associated development including increasing and formalising the extent of driveway. The building height, width, depth, and overall scale would be significantly greater than the limited outbuildings on this side of Highwood Road on and close to the appeal site. It would be strident and harmfully at odds with the pattern of development on this side of Highwood Road, would relate poorly to, and very much lack cohesion with its surroundings. Its comparatively modest plot size, ratio, spacing, and the much-increased urbanisation would appear a contextually intense form of development, and of a density appearing harmfully at odds with its visual context and surrounds.
8. The building off-set from the boundaries appears comparable with those to the north and activity may be little greater than existing. In reaching the above views I take into account that the existing fencing would be removed, hard and soft landscaping can be retained and enhanced, the absence of external lighting, that there is no objection to the architectural style and materials. Also, that the scheme complies with some aspects of named policies of the New Forest National Park Local Plan (2019) (the LP) and the New Forest National Park Design Guide Supplementary Planning Document (2022), and the scope of securing various details by suitably worded planning conditions.
9. This appeal scheme differs in its design attributes in many ways from that at Cranemoor<sup>1</sup>. However, it would still fundamentally and harmfully be at odds with the pattern of surrounding development and result in increased urbanisation of the appeal site, which are overriding attributes of the scheme, resulting in significant harm, which conditions could not adequately mitigate.

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<sup>1</sup> Ref. APP/B9506/W/21/3286472.

10. The harm would be visible from limited lengths of Highwood Road, some land opposite to the south, and some residential properties. As with many other over washed parts of settlements, the areas qualities and character are a constituent part of the NP. The strident and urbanising nature, and visibility of the harm of this appeal scheme in this location, would erode, and have some adverse effects upon the landscape and scenic beauty of the NP. Therefore, the scheme would neither conserve or enhance the landscape and scenic beauty of the NP, in conflict with paragraph 182 of the National Planning Policy Framework (2023) (the Framework).
11. Were the appeal scheme to be allowed, it would not become the prevailing development type in the area. It appears many plots are in differing ownerships, so it is by no means certain more would come forward for similar schemes, or as indicatively shown, on a comprehensive basis. However, allowing the appeal would make it more difficult for the Authority to resist proposals for ad hoc schemes that are harmful to the character and appearance of the area, and the landscape and scenic beauty of the NP.
12. The proposal would be significantly at odds with and harmful to the character and appearance of the area and the NP. It would conflict with Policies DP2, SP17 and DP18 of the LP. In combination and amongst other things these require development is of a high quality of design that enhances local distinctiveness, respects and enhances the built environment, is contextually appropriate, sympathetic in terms of its scale, siting and layout, would not erode the Park's character, or result in a suburbanising effect. It would also conflict with the aims of paragraph 182 of the Framework, which gives great weight to the landscape and scenic beauty of the NP, which has the highest status of protection in relation to these issues.

#### *Protected trees*

13. The mature protected Oak on the southeastern boundary is approximately 13 – 15m high, with the greater crown spread on its northern side. It is of good health and vigour, making a significantly positive contribution to character, appearance and amenity, visible along a moderate section of Highwood Road and Partridge Road. It may not get much larger if at all but is likely to positively contribute to the area for a significant number of years.
14. The small, protected sapling Oak to the west had some browsing damage but now appears to be afforded good natural surrounding protection. The main parties agreed I have no reason to assume that it will not grow to make a positive contribution to character, appearance and amenity in the future. In this regard, in 50 years' time, I am of the view it is possible it may reach a similar stature to the mature Oak when it was surveyed.
15. Tree reductions can result in harmful effects to a tree's contribution to the character, appearance, and amenity, and to tree health. I note the findings in Ref. APP/B1740/W/23/3324227 regarding the awareness of future purchasers. However, from what I saw and the evidence before me the future felling or death of the mature oak, or the sapling when mature in the future, would be significantly harmful and erosive to cover, from a species that is an integral characteristic of NP, its settlements, with a cultural, historic and wildlife value.

16. The shape of the young oak crown shadow in the Daylight Study<sup>2</sup> (the DS) is not a typical or likely form of the oak in 50 years. The Authority has well-founded concerns about this, and their view of crown height and shape seem more reflective of its future form. However, the DS modelled the trees as part of the worst-case scenario as opaque. Oaks even in full leaf are not opaque, and the BRE guidance<sup>3</sup> advises normally trees and shrubs need not be included, partly as the dappled tree shade is more pleasant than solid shadow and the aim for a site should be for some dappled shade and some full sun.
17. The primary influence of both trees would be over the front garden which is likely to be used for parking but would have a small under cover seating area. It would be the rear garden which would provide the main private outdoor living space. The Authority has not referred me to specific rear garden standards necessary to ensure satisfactory living conditions. This new rear garden would be between around 4.1 – 6.8m in depth, but across a rather wide plot. From what I heard it would receive the minimum acceptable light levels as a percentage of the whole space.
18. Based upon what I heard and noting outlook, daylight, sunlight, shape and area, the rear garden would provide satisfactory utility and living conditions for future occupiers. While there might be some desire to utilise the front for some activities, it would not be necessary to provide satisfactory living conditions. Even with a much greater crown than in the DS, any future application for harmful works due to the light in the front space would be unlikely to be justified upon this ground alone, so this attracts little weight.
19. The internal spaces exceed recommended daylight levels by at least 60% and in some spaces, there may well be over lit, meaning the level of light might make the spaces unusable without mitigations. Having regard to the shadow from the smaller oak being a future typical form suggested by the Authority, but providing dappled light/shade, this suggests levels of internal daylight would be above the standards, so ensuring satisfactory living conditions for future occupiers. I attribute future pressure from this minor weight.
20. Leaves have seasonality and dropping twigs is likely to be limited, and reduced by periodic maintenance. A gravel driveway would absorb foot pressure from acorns and could be quite easily cleansed of sap, honeydew and bird deposits. Though limited in extent, a hardsurfaced garden path providing access to someone mobility impaired, may need more onerous maintenance.
21. From the submitted plans it would appear likely that a limited part of one vehicle would need to be parked under a tree in the short term and a potentially part of a second in the longer term. The appellant reported no damage from parking under the tree to date. However, it would seem likely some deposits from birds, sap, honeydew, and acorns would drop onto vehicles. Deposits from birds and seasonally acorns from a significant height have potential to drop or be blown onto vehicles, which could result in minor vehicle damage. Mitigating this is likely to be an inconvenience for future occupiers. This might be more difficult if future occupiers have mobility impairments, although ultimately there is not full certainty of this being the case. As a concern that may result in future pressure for harmful tree works, I attribute this limited weight.

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<sup>2</sup> By Design Stage Report (Rev C) by HDS Greentech (November 2023).

<sup>3</sup> Paragraph 3.3.9 of Site layout planning for daylight and sunlight – a guide to good practice (2022).

22. The main parties agree the trees are in good health. I saw nothing to suggest a significant or imminent risk of large branch breakage or tree failure. They are within falling distance of domestic gardens and a highway. Were there to be well-founded concerns about tree health and stability, a new dwelling would be unlikely to change the threshold at which works were justified.
23. While noting the Authority's statistics on the reasons for tree works, it would be expected that works that may be harmful to protected trees should be adequately justified and assessed on their own merits. Appeal Ref. 300136 was in relation to the rear garden which is likely to be of greater importance to living conditions. That Inspector found it was likely the Authority would be unable to resist an application for works. In Ref. 3257882 that dwelling would have been the subject to acute overbearing effects. Neither circumstance is the case for this appeal scheme.
24. For the reasons set out above, the proposal would be likely to result in some limited increased pressure for works that could have prejudicial effects upon the future health and their contribution to the character, appearance and amenity of the area. In this regard the proposal would result in a limited conflict with the aims of Policies SP6 and DP2 of the LP which seeks to ensure local character and distinctiveness is enhanced, and features of importance to the local natural environment and landscape are respected and protected.

#### *Habitats sites*

25. The site is within the zones of influence (ZoI) of the New Forest (NF) Special Area of Conservation, the NF Special Protection Area, the NF Ramsar site (the NF Sites), the Solent and Southampton Water (SSW) Special Protection Area, and the SSW Ramsar site (the SSW sites), and the Solent Maritime Special Area of Conservation (SMSAC). These are habitats sites protected under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations).
26. The Regulations require where a project could result in Likely Significant Effects (LSEs) on habitats sites, a competent authority is required to make an appropriate assessment of its implications on the integrity of the sites in view of their conservation objectives. Any LSEs from a development need to be considered alone and in combination, adopting the precautionary principle.
27. The habitats sites are designated due to their importance for various populations of rare or vulnerable breeding, non-breeding and overwintering birds, invertebrates, amphibians, and vegetation, and the extent, types and range of marine, inter-tidal and terrestrial habitats they provide (the qualifying features). Their conservation objectives are to maintain and restore extent and distribution of the habitats of the qualifying features, the structure and function and supporting processes of the habitats of the qualifying features, and the population and distribution of the qualifying features within the sites.
28. Recreational impacts adversely affect the qualifying features and integrity of the NF Sites and SSW Sites. This appeal proposal would add a new residential dwelling within the ZoI resulting in more people living within a short walk or drive, and the potential for increased recreational visits to the NF and SSW sites. Therefore, this proposal has the potential to have LSEs on the integrity of the NF and SSW sites, alone or in combination with other development.

29. The New Forest Revised Habitat Mitigation Scheme SPD (2020) (the NFSPD) and Solent Recreation Mitigation Strategy (2017) (the SRMS) set out strategic mitigation measures (SMMs) supported by Natural England (NE). The SMMs are joint projects that manage and monitor the cumulative impact of new development and visitors across the respective NF and SSW sites. They include managed access, alternative greenspaces, education, awareness and promotion to mitigate the effects of increased visits. SMMs are funded by per dwelling contributions from developments.
30. The Unilateral Undertaking (UU) provides for the payment of the contributions set out in the NFSPD and SRMS. I received assurances the correct money is secured and would be used for the SMMs in time to mitigate the new dwelling. NE is satisfied the measures are deliverable and sufficient to avoid LSEs upon the sites. I see no reason why the sums would not be directed in the manner intended towards the mitigation.
31. Although payments do not bind the Authority, based on what I heard it is a sufficient mechanism to enable the delivery of proportionate and relevant mitigation. The obligations are necessary to make the proposal acceptable, directly related to it, and fairly and reasonably related in scale and kind, so passing the CIL and Framework tests. The mitigation is secured and could be delivered in a timely manner to mitigate LSEs upon the NF and SSW sites.
32. Levels of nitrogen and phosphorus input to the water environment in the SMSAC from wastewater including from houses, causes eutrophication. This disrupts the natural processes and wildlife of the protected sites, adversely affecting the qualifying features. Consequently, NE identifies that increased levels of nutrients entering the water would have a LSEs on the SMSAC.
33. The new dwelling, unmitigated, would have LSEs on the SMSAC alone and in combination with other similar development through the release of increased nitrates via the Brockenhurst Wastewater Treatment Works which discharges eventually into the SMSAC. The amount is calculated by an approved methodology. NE recommends an approach that developments achieve nutrient neutrality, by purchasing credits from approved schemes, which off-set the increased nutrients that would result from a proposed development.
34. Nutrient credits from the approved mitigation scheme at Kings Manor Farm have been purchased by the appellant. I am provided a receipt demonstrating 3.2kg of nitrogen credits have been purchased and reserved for 12 months, ensuring the mitigation is available for the implementation of any consent.
35. It is agreed between the main parties that it is appropriate to apply a condition to require the nutrient neutrality measures be implemented prior to occupation. It is demonstrated there is certainty that the mitigation will be provided and secured via the condition I have been provided with. By virtue of the way the units are sold in a rounded-up manner, the appeal scheme would result in a minor reduction in nitrates discharged into the SMSAC, resulting in a minor benefit. I am satisfied following appropriate assessment that the proposed mitigation would be appropriately secured and delivered in a timely manner.
36. For the reasons set out above the proposal would secure mitigation so that it would not result in LSEs, or adversely affect the integrity of the designated habitats sites, when considered alone and in combination with other developments. Therefore, the proposal accords with the Regulations.



### *Other Material Considerations*

37. The dwelling would meet Part M4(3) of the Building Regulations, which is a greater level of accessibility than mandatory under those Regulations or the Disability Discrimination Act, and from what I heard, schemes that are built or allocated in the NP. Around 1,050 people living in the NP could need such housing, and between 1 in 3 to 1 in 7 disabled persons live in unsuitable homes<sup>4</sup>. There is an ageing population with an older age structure in the NP than the surrounding area. Anecdotally the appellant and an interested party with firsthand experience suggested a significant shortfall in such dwellings.
38. Under the Public Sector Equality Duty (PSED) in s149(1) of the Equality Act 2010 I must have due regard to the need to eliminate discrimination, harassment, victimisation, and any other prohibited conduct; advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. Article 14 of the Human Rights Act 1998 (HRA) requires protection from discrimination of those with particular characteristics, which can include a seemingly neutral action that creates a disadvantage for people with a particular characteristic. The HRA is qualified right rather than an absolute right.
39. The first future occupiers do not have protected characteristics that currently need a wheelchair accessible dwelling. However, allowing the appeal could meet their potential future needs and would add one dwelling to the stock of suitable housing to meet the needs of others with protected characteristics at some point in the future. It would advance equality for those with protected characteristics meeting the aims of the PSED and contribute to protecting those with protected characteristics from discrimination and reduce disadvantage.
40. The Self-Build and Custom Housebuilding Act 2015 (the Act) imposes a duty upon the Authority to grant permission for enough serviced plots to meet the demand for self-build and custom housebuilding (SB&CH) arising in each base period. Changes in the Levelling-Up and Regeneration Act 2023 (LURA) have taken effect, though the details of the regulations are unclear. This does not alter the question of whether SB&CH needs have been met to date by sufficient permissions. The appellant is on the SB&CH register and the UU secures the construction and occupation of a Self-Build dwelling in accordance with the Act.
41. There are minor differences between the main parties in respect of numbers on the register, but significant differences in respect of suitable permissions. The Authority considers permissions having regard to the Planning Practice Guidance (the PPG)<sup>5</sup>, suggesting an oversupply of 7 dwellings including base period 5, and a shortfall of 78 in base period 6. However, because needs could be met by permissions granted after 31 March 2024, the suitable permissions after period 5 are currently unknown. An absence of Community Infrastructure Levy means there is no declaration to provide an indicator. The Authority views its approach as pragmatic, and while it may not be that all dwellings built under those permissions will be SB&CH, its approach accords with the PPG.
42. The appellant's analysis of 144 of the permissions indicates 23 provided evidence they were likely to be SB&CH, for 64 there was no information, and for 57 there is evidence they were not or unlikely to be SC&CH. This suggests

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<sup>4</sup> Page 26 of the Planning Statement by Wessex Planning.

<sup>5</sup> PPG ID: 57-028-20210508.

the indicators used by the Authority will not necessarily provide an accurate indicator of SB&CH plots. Based upon the analysis and what I heard, it is indicative that a significant number of permissions have not met the SB&CH needs, and I favour the appellant's view upon the likely deficit. Though the Authority may be able to demonstrate a 6.2-year housing land supply, I take the view it has not met its duties under the Act as amended. There is no dedicated SB&CH policy in the plan. However, there are other relevant policies that such proposals must be assessed against.

43. None of the appeal decision letters<sup>6</sup> are within the NP, there are of varying differing levels of impacts and benefits identified, and all but one propose more dwellings than sought in this appeal, in some cases a considerable number of SB&CH plots. In the case of the scheme for a single wheelchair accessible SB&CH dwelling no harm was identified to the character and appearance of the area. Therefore, none are directly comparable to this appeal proposal. However, based upon the evidence before me, meeting the legislative requirements for SB&CH, the provisions of the HRA and the PSED are very important matters that attract significant weight.
44. Any decision of the Authority must have regard to carrying out and furthering the purposes of conserving and enhancing the natural beauty, wildlife, and cultural heritage of the area, and promoting opportunities for the understanding and enjoyment of the special qualities of the NP by the public. In doing this it shall seek to foster the economic and social well-being of local communities. However, due to its adverse effect upon the character and appearance of the area, I cannot agree the appeal scheme would overall conserve or enhance the natural beauty of the NP. That the scheme could result in some future limited potential for pressure for tree felling means it would also be at odds with the other legislative duties.
45. There would be a limited temporary economic benefit during construction, and once constructed a small on-going benefit to the local economy, and support to local services and facilities. The scheme would meet Framework objectives to significantly boost housing supply. It would make more efficient use of land in an area where house prices are particularly high, satisfy a need for smaller dwellings, suitable for younger families, where house building is very restricted outside designated settlements. The weight to be given to the benefit of a single dwelling in these regards, is this moderate.
46. A high-quality landscaping scheme with biodiversity enhancement measures would be likely to result in a limited benefit. Drainage measures might result in some benefit to drainage, though there is little to suggest it would be anything other than a small benefit. The proposal would be constructed in a resource and energy efficient manner with proven technology to Passivhaus standards. Solar panels and batteries would generate around 5,000 kWh of energy against a use estimated to be 3 – 4,000 kWh, resulting in a net benefit in renewable energy export. Benefits of the magnitude suggested attracting limited weight.
47. I take note of anecdotal accounts of criminal and antisocial activities that occur on Highwood Road and that the proposal will have beneficial effects in respect

<sup>6</sup> APP/W3520/W/23/3316136; APP/A0665/W/14/2212671; APP/P0119/W/17/3191477; APP/G2435/W/18/3214451; APP/G2435/Q/18/3214498; APP/D2320/W/20/3247136; APP/H1840/W/20/3255350; APP/V3120/W/20/3265465; APP/B1930/W/20/3265925; APP/C1950/W/20/3265926; APP/L1765/W/20/3254522; APP/T0355/W/22/3309281; APP/T0355/W/23/3314990.



of natural surveillance. Surveillance would be by no means comprehensive along the road, but there would be some limited improvement, attracting limited weight. I also note the significant numbers of interested party support for the scheme.

48. Compliance with policies in respect of the location of development, the accessibility of services and facilities, and some design policies are neutral matters. Were I to agree the proposals are or could be made compliant with policies in respect of matters such as the living conditions of future and neighbouring occupiers, parking and access standards, highway safety, construction management, arboricultural protection, and protected species, these would be neutral matters in the balance.

### **Planning Balance and Conclusion**

49. Overall, having regard to all the material considerations advanced in favour of the proposed development, which include having regard to legislative duties under the Act, the HRA, the PSED to which I give due regard, and the benefits to habitats sites, they attract very significant weight in favour of the scheme. However, the proposal would be significantly harmful to the character and appearance of the area and would not preserve or enhance the landscape and scenic beauty of the NP. Overall, the harm attracts great weight. In accordance with paragraph 11d) ii) of the Framework the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing permission, so the tilted balance does not apply.
50. Overall, the weight given to the harm to the character and appearance of the area and the NP, is such that it outweighs the policy compliance and benefits of the development. Therefore, proposed development is contrary to the development plan read as a whole, and the Framework, and there are no considerations advanced, including the policies of the Framework, which outweigh these findings. Accordingly, for the reasons given, the appeal should not succeed.

*Dan Szymanski*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Mr Bob Hull DipTP MRTPI, Planning Agent;

Mr Paul Ledger, Appellant;

Mrs Sarah Ledger, Appellant's spouse;

Mr Jon Harper Cert.Arb (RFS), Harper Tree Consulting;

Mr M Tulley, CEng MIMechE. Director, Cambridge Retrofit Hub;

Mrs Clare Lodwidge, HDS Greentech;

Dr Damian Markham-Smith LCEA, CEng, IMechE, MCIBSE, B.Eng.Hons., HDS Greentech;

### FOR THE AUTHORITY:

Miss Liz Marsden BSc (Hons), DipTP, MRTPI, Planning Officer of the New Forest National Park Authority (the NPA);

Mr Nik Gruber, National Diploma in Arboriculture (BTEC), and City & Guilds Phase 3 Amenity Horticulture and Enterprise Management, Senior Tree Officer of the NPA;

Mrs Sarah Applegate BSc DipTP MRTPI, Senior Policy Officer of the NPA.

### INTERESTED PARTIES:

Mrs Ros Bowles;

Mr Mike Bowles;

Mr David Field;

Dr Caroline Bertram;

Mrs Sarah Neller;

Mr Mel Watt;

## **DOCUMENTS ACCEPTED AT THE HEARING**

PR-1: Unilateral Undertaking, dated 09/09/2024 amended 24/09/2024;

PR-2: Nitrate Mitigation Payment at Kings Manor Farm, receipt dated 20/09/2024; and,

PR-3: Enlarged site photographs A, B and C.