

**PC 450/24**

**NEW FOREST NATIONAL PARK AUTHORITY**

**PLANNING COMMITTEE MEETING – 19 March 2024**

**NON-COMPLIANCE WITH ENFORCEMENT NOTICE  
22/0155/EC PLOT 2, LAND ADJ EVERGLADE FARM, MOUNT PLEASANT LANE,  
LYMINGTON, SO41 8LS**

**Report by:** Katherine Pullen, Enforcement Officer

**1.0 Summary**

- 1.1 This report concerns a breach of planning control at Plot 2, Land Adjacent Everglade Farm, Mount Pleasant Lane, Lymington, SO41 8LS. In November 2020 the Authority issued an Enforcement Notice in relation to the use of a total of 10 plots which lie adjacent to each other in a linear formation along Mount Pleasant Lane. As part of the Authority's ongoing compliance monitoring of the sites, in September 2022 it was found that, as well as the previous Notice not being complied with, further breaches had occurred on Plot 2. These involved the formation of an access to the highway and associated means of enclosure as well as the importation and engineering of material to significantly alter the levels of the land. These activities were not caught by the first Notice having been carried out after it was served. The owner of the site failed to take steps to remedy the breach informally and as a result a further Enforcement Notice, specifically relating to Plot 2, was issued on 7 June 2023 requiring the unauthorised development to be removed and the land restored to its former level and condition.
- 1.2 The Notice was not appealed so the Notice took effect on 10 July 2023 and provided a compliance period of 4 months. The Enforcement Notice was therefore due to be complied with on or before 10 November 2023.
- 1.3 Following the issuing of the Notice the owner has failed to take any steps to comply with either of the Notices and has failed to engage with the Authority or respond to any correspondence since the Notice was served.
- 1.4 To date the requirements of the Notice have not been complied with and no defence has been put forward. This report therefore seeks Members' approval to proceed, as deemed appropriate based on the facts of the case, against the owners who continue to breach the Notice - to the detriment of the landscape and neighbouring properties.

**2.0 Background**

- 2.1 Following site visits carried out by the Enforcement team in respect of a previous Enforcement Notice (19/0087), a site visit in September 2022 found that the owner had undertaken further unauthorised development as well as continuing to use the land in breach of the previous Notice. Officers subsequently entered into correspondence with the owner and their representatives in an attempt to secure that remedial steps be taken voluntarily. However, no remedial steps were taken and a further Enforcement

Notice was issued on 07 June 2023 which identified the breach of planning control as being.

2.2 Without planning permission:

- (i) the material change of use of the land affected from woodland to a mixed use of woodland and leisure / recreation, and engineering operations comprising the formation of means of access to a highway in order to facilitate the unlawful change of use; and
- (ii) the importation and engineering of material resulting in an alteration to the levels of the land.

2.3 The Notice required the owners to:

1. Permanently cease the use of the land affected for leisure / recreation purposes.
2. Permanently remove the access point to the highway and associated means of enclosure. For the avoidance of doubt, this includes removing the gravel surfacing, and all hardcore, gates, and earth bunds, in the approximate location shown shaded blue on the plan attached to this Notice.
3. Permanently remove all materials brought on to the land resulting in an alteration to the levels of the land in the approximate position shaded orange on the plan attached to this Notice.
4. Permanently remove any structures, chattels or items associated with or facilitating the use of the land for leisure / recreation purposes. (For the avoidance of doubt this includes any recreation equipment, furniture, artificial pathways and electrical hook ups and other items unrelated to the use of the land as a woodland).
5. Restore the land to its former level and condition, including restoring the earth bunds which defined the boundary with the highway prior to the formation of the means of access.

2.4 As there was no appeal against the Notice, it therefore took effect on 10 July 2023 and provided a compliance period of 4 months until 10 November 2023 to allow sufficient time for the necessary arrangements to be made for the Notice to be complied with.

2.5 Following a site visit on 13 November 2023 it was clear that the Enforcement Notice had not been complied with; the unauthorised use continued and the unauthorised development remained. Since that visit, and following notification of the Authority's intention to commence further enforcement action no further correspondence has been received.

### 3.0 Next Steps

3.1 The Authority must now decide the most appropriate course of action in the circumstances.

3.2 The Authority may now choose to prosecute the landowner for non-compliance with an Enforcement Notice which is an offence under section 179 of the Town and Country Planning Act 1990, as amended (the 'Act'). In this case any prosecution deemed appropriate may run alongside, or in conjunction with, a prosecution that has already

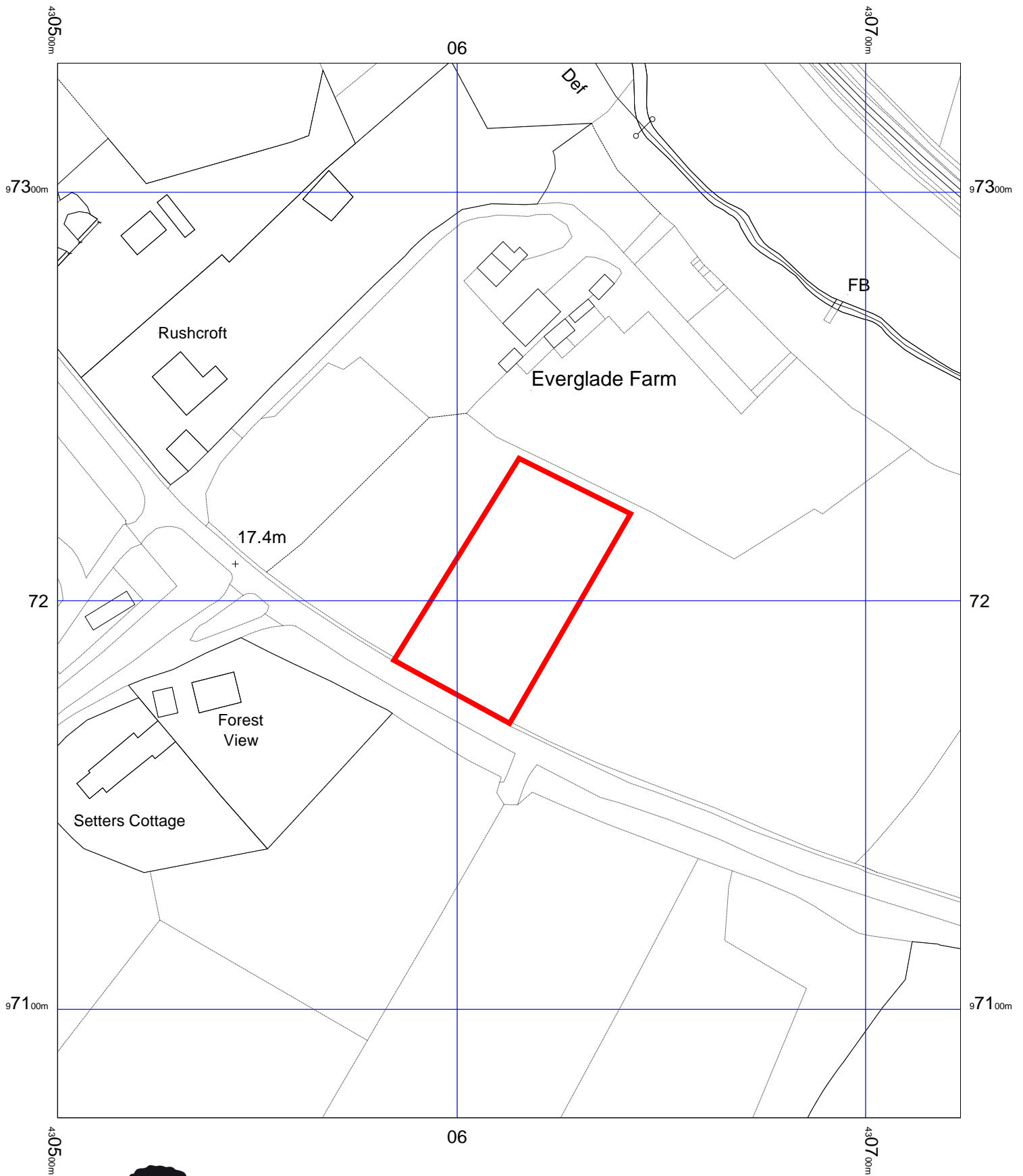
been approved by members and is underway in relation to the non-compliance with the first enforcement Notice. Prior to commencing a prosecution, the Authority needs to be satisfied firstly that there is a realistic prospect of success and secondly that commencing prosecution proceedings would be in the wider public interest. The Authority is satisfied that there is an adequate prospect of success given the evidence available. However, it is always possible that further information / evidence may be provided by the owners as to any impediment to compliance. If any further information or evidence is received, it will be considered by officers. Non-compliance with an Enforcement Notice leaves the owner liable, on summary conviction, to an unlimited fine at the discretion of the Court.

- 3.3 In addition, or in the alternative, the Authority has the power to enter land and take the steps required by notices issued under the provisions of the Act where those requirements have not been complied with in the time specified by the Notice. This would be an effective way of remedying the breach but would involve the significant outlay in employing a specialist contractor to do the works. It is open to the Authority to recover any reasonably incurred expense in exercising our direct-action powers by applying to place a charge on the land.
- 3.4 For final consideration, the Authority may choose to extend the compliance period of the Enforcement Notice under S173A. However, in this case the owner has chosen not to engage with the Authority and so no further alternative dates have been put forward and there has been no evidence of any progress whatsoever on site.
- 3.5 As to the public interest in taking action, the enforcement of planning control is in the wider public interest of the community by preventing inappropriate and harmful development within a special environment of national significance, the New Forest National Park.
- 3.6 Any further action taken by the Authority would be in accordance with the powers conferred upon it by the Act, and also appears to be both proportionate and supported by the wider public interest, especially in view of the harm caused by these breaches. Allowing the use to continue and unauthorised access and materials to remain is inappropriate and harmful to the character and appearance of the area and undermines the Authority's policies and purposes.
- 3.7 It is therefore considered expedient, necessary, and proportionate to take further action given the history of the site as set out above, subject to consideration of any evidence that may yet be received regarding non-compliance. It is recommended that Members authorise officers to consider further evidence received, if any, in order to form a view as to whether to proceed with a prosecution, and either to commence with a prosecution or to take direct action / or other enforcement steps as considered appropriate in the light of the material submitted.

**RECOMMENDATION:**

**Members authorise the Authority's Executive Director Strategy and Planning, in consultation with the Solicitor and the Enforcement Manager, to:**

- (i) consider further evidence, if any, submitted in respect of any impediment to compliance and form a view as to the appropriate course of action to achieve compliance with the Enforcement Notice; and**
- (ii) if officers are in agreement that it is appropriate to do so, in light of any further information referred to in paragraph (i) above, take all action as necessary to commence and conduct the prosecution of the owner/s of Plot 2, Land Adj Everglade Farm, Mount Pleasant Lane, Lymington SO41 8LS in respect of the non-compliance with the Enforcement Notice issued in June 2023; or**
- (iii) if it is not considered appropriate to commence a prosecution, to consider and take such other action as necessary to achieve compliance with the Enforcement Notice including taking direct action and any other steps as necessary to recover the costs of so doing from the owner, including arranging for a charge to be placed on the land.**



NEW FOREST  
NATIONAL PARK

New Forest National Park Authority  
Lymington Town Hall, Avenue Road,  
Lymington, SO41 9ZG

Tel: 01590 646600 Fax: 01590 646666

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