

PC 445/24 – Report Item 6

NEW FOREST NATIONAL PARK AUTHORITY

PLANNING COMMITTEE MEETING – 20 FEBRUARY 2024

NON-COMPLIANCE WITH BREACH OF CONDITION NOTICE

21/0194 RAMSLEY, SOUTHAMPTON ROAD, BOLDRE, LYMINGTON, SO41 8PT

Report by: Lucie Cooper, Enforcement Manager

1 Summary

- 1.0 This report concerns the non-compliance with an Enforcement Notice (Breach of Condition) at Ramsley, Lyminster. In October 2021 the Authority received a complaint that a detached outbuilding at the site had not been built in accordance with the approved plans of planning permission 19/00434 which came before members at Committee in September 2019. The Authority issued a Breach of Condition Notice on 4 August 2022 requiring the development to be permanently altered so that it accords with the plans approved by committee on or before 4 August 2023.
- 1.1 To date the requirements of the Notice have not been complied with. The owner is now claiming that the presence of bats in the building is preventing him from complying with the Notice but no evidence that this is the case has been provided to the Authority.
- 1.2 This report therefore seeks Members' approval to proceed with further action against those owners who continue to breach the Notice - to the detriment of the landscape and neighbouring owners.

2 Background

- 2.0 Following complaints received by the Enforcement Team, an initial site visit was carried out in November 2021 when it was found that the detached outbuilding had not been built in accordance with the approved plans of 19/00434. It was found that dormer windows had been built on the outbuilding as opposed to the rooflights shown on the approved plans. Officers subsequently entered into correspondence with the owners in an attempt to get them to take remedial steps voluntarily, but the owner did not take the opportunity to do so. On 4 August 2022 a Breach of Condition Notice was served which identified the relevant planning permission and condition as:
- i. The permission granted by the Authority on 17 September 2019 under planning application number 19/00434 for a detached outbuilding with office over.
 - ii. The following condition of planning permission 19/00434 has not been complied with:
 - iii. 2. Development shall only be carried out in accordance with drawing nos: 6517 PL 01 and 6517 PL 02 Rev A. No alterations to the approved development shall be made unless otherwise agreed in writing by the New Forest National Park Authority

- iv. Reason: To ensure an acceptable appearance of the building in accordance with Policies SP16, SP17, DP18 and DP2 of the adopted New Forest National Park Local Plan 2016- 2036 (August 2019).

2.1 The Notice required the owners to:

- 5.1 Permanently alter the building so that it strictly accords with approved plan 6157 PL02 REV A. For the avoidance of doubt this would involve at a minimum the removal of three dormer windows, replacing them with rooflights in accordance with the aforementioned approved plan.
- 5.2 Remove all materials and debris resulting from compliance with step 5.1 from the land affected

2.2 A Breach of Condition Notice does not carry with it a right of appeal and the Notice took effect immediately on service (4 August 2022) and provided a significant compliance period of 12 months (until 4 August 2023) to allow them to consider and explore how best to resolve the matter and make the necessary arrangements for the Notice to be complied with.

2.3 Following the issuing of the Notice the owner submitted a Section 73 application (minor material amendment) (22/00706) in an attempt to secure the retention of the dormer windows. That application was refused by decision notice dated 15 December 2022. An appeal was lodged against the refusal in June 2023. The Authority has queried the validity of the appeal due to the extant breach of condition notice but to date the appeal has commenced but not yet been determined.

2.4 Following a site visit in August 2023 it was clear to the Enforcement Officer that the Breach of Condition Notice had not been complied with and the unauthorised dormer windows remained. Since that visit, on notification of the Authority's intention to commence prosecution proceedings, officers have been advised that the presence of bats in the building was preventing compliance with the Notice. No evidence to support this claim has been forthcoming to date and the Authority's ecologist has been consulted.

3 Next steps

3.0 The Authority should now decide the most appropriate course of action in the circumstances.

3.1 The Authority may now choose to prosecute the landowners for non-compliance with a Breach of Condition Notice which is an offence under section 187A of the Town and Country Planning Act 1990, as amended (the 'Act'). All owners are responsible for ensuring compliance with the Notice.

3.2 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. 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.

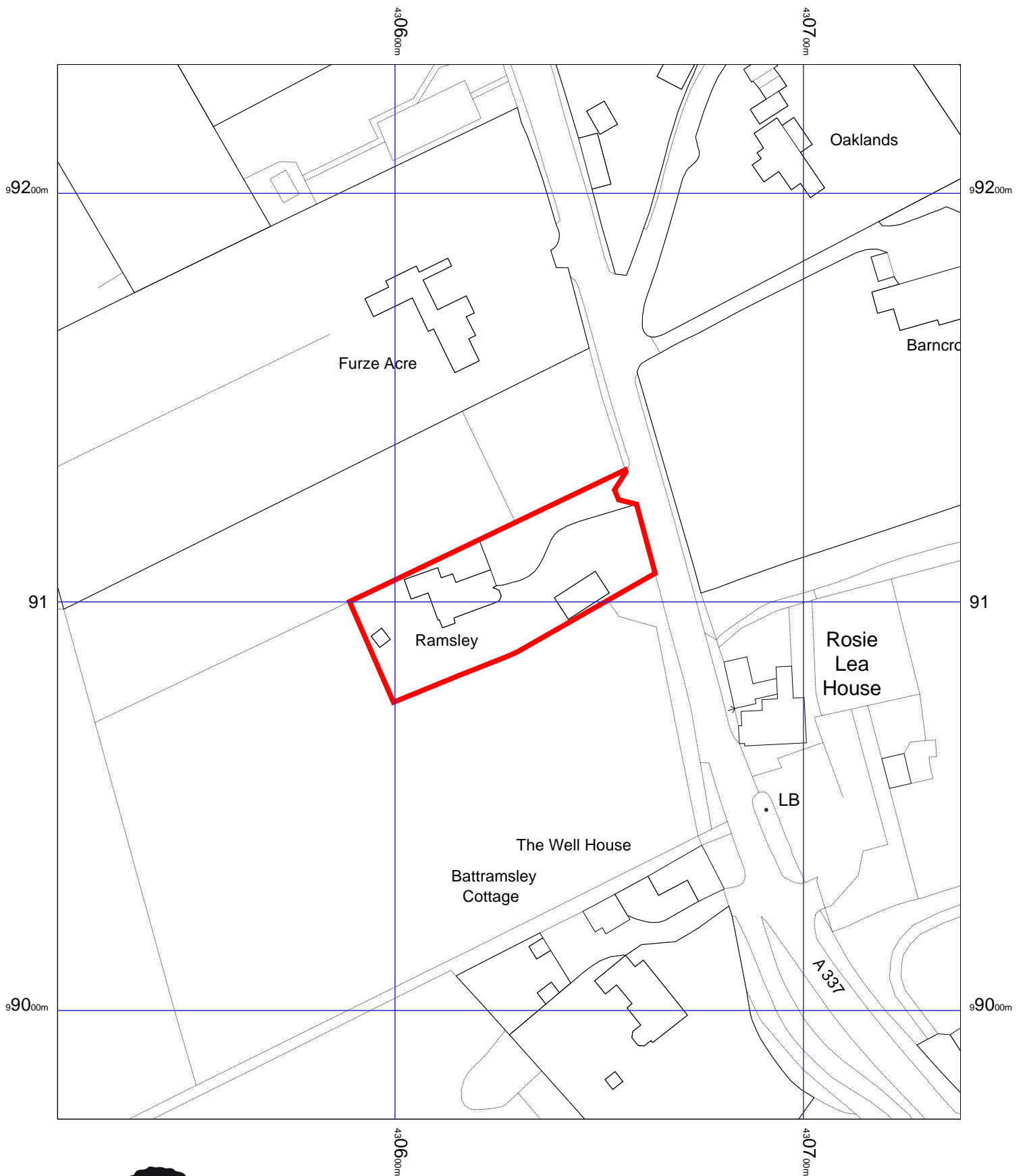
- 3.3 Noncompliance with a Breach of Condition Notice leaves the owner liable, on summary conviction, to a fine not exceeding level 4 on the standard scale (the equivalent of up to £2,500).
- 3.4 In the alternative, the Authority may choose to extend the compliance period of the Enforcement Notice under S173A. The owners have already been provided with a significant compliance period (12 months) which was not used productively. Rather than immediately appealing the refusal a period of 6 months elapsed with no reasonable explanation. Whilst extending the compliance period would allow for the presence of bats to be ruled out, no evidence to their presence has been provided. This course of action may undermine the enforcement process by prolonging the presence of a significant breach of planning control which has already had a significant timeframe for compliance.
- 3.5 The Authority also 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. We may recover any reasonably incurred expense in exercising our direct action powers by placing a charge on the land.
- 3.6 In any event, 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 this breach. Allowing the unauthorised dormer windows to be retained would undermine the Authority's strong stance that such windows on incidental outbuildings are inappropriate to the subservient character of such buildings.
- 3.7 It is therefore considered expedient, necessary, and proportionate to take further enforcement action given the history of the site as set out above, subject to consideration of any further evidence that may be received regarding non-compliance. It is recommended that members authorise officers to consider any 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 any material submitted. In taking further action as recommended by this report, the Authority will bear in mind any progress of the appeal referred to in paragraph 2.4 above as to whether it is appropriate to delay should the planning inspectorate proceed with the appeal.

RECOMMENDATION:

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

- (i) consider the further evidence, if any, submitted in respect of the purported 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 owners of Ramsley, Southampton Road, Boldre, Lymington, SO41 8PT in respect of their non-compliance with the Enforcement Notice issued in August 2022; 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 owners, including arranging for a charge to be placed on the land.**



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