

# NEW FOREST NATIONAL PARK AUTHORITY

## PLANNING COMMITTEE – 20 AUGUST 2024

### NON-COMPLIANCE WITH STOP NOTICE

24/0017/EC ADJACENT RECTORY COTTAGE, PLOT KNOWN AS 'KENSINGTON LODGE', MAIN ROAD, DIBDEN, SOUTHAMPTON, SO45 5TD

**Report by:** Lucie Cooper, Enforcement Manager

## 1 Summary

- 1.1 This report concerns a breach of planning control at a plot of land known as 'Kensington Lodge' which lies adjacent to Rectory Cottage, Main Road, Dibden, Southampton, SO45 5TD.
- 1.2 Following numerous investigations regarding surrounding plots, in January 2024 the Authority received a complaint that this particular site was being used for residential purposes and open storage. It was established that, whilst there was no evidence of a residential use, the land was being used for the open storage of various items without planning permission, including the storage of a caravan. During the course of the investigation the owner compounded the matter by replacing the touring caravan that was on site with a static caravan and took no steps to remedy the breach.
- 1.3 As a result of the lack of positive steps, an Enforcement Notice, accompanied by a Stop Notice, was issued on 14 March 2024. The Enforcement Notice is currently the subject of an appeal and therefore has not yet taken effect but the Stop Notice set out the following requirements;
  - i) Cease bringing on to the Land any additional items in breach of planning control (including without limitation trailers, vehicles, boats, caravans, building materials, timber, scrap and waste material and other domestic paraphernalia).
  - ii) Remove all caravans from the land.
- 1.4 The Notice took effect on 20 March 2024 when all the requirements should have been met.
- 1.5 To date the static caravan remains on the land and as a result the requirements of the Stop Notice have not been complied with and no feasible defence has been established. This report therefore seeks Members' approval to prosecute the owner who continues to breach the Notice causing unacceptable harm to the landscape and neighbouring amenity.

## 2 Background

- 2.1 Kensington Lodge is a central plot of three adjoining plots; Rectory Cottage (dwellinghouse), Kensington Lodge (the site the subject of this report) and Oak Wood (the site of an unauthorised mobile home), that have had significant enforcement interest since 2022.
- 2.2 In 2022 the Authority investigated the use of the plot of land lying immediately adjacent to Rectory Cottage (22/0006). The site was a single plot which was formerly densely vegetated forming a wide buffer between the highway and the golf course beyond with no identifiable lawful use. The investigation found that the land had been cleared and was being used as a secure compound area by the Highways Authority carrying out works on the nearby A326. As the works were permitted development no further action was necessary at the time. Subsequently, after the highways works were completed and the land vacated by the contractors carrying out the highways works, the Authority received a further report concerning the use of the same piece of land adjacent to Rectory Cottage for car sales, storage and repairs. That case (22/0102) resulted the case being closed in February 2023 on the basis that the unauthorised storage use had ceased and the land had been cleared of unauthorised items.
- 2.3 In March 2023 the single plot adjacent to Rectory Cottage was subdivided into two and the southernmost plot (now known as Oak Wood) was used to station a residential mobile home (23/0044). That site is now the subject of a separate Enforcement Notice which is currently at appeal. Throughout 2023, despite taking swift and robust enforcement action, the Authority continued to receive reports concerning activity at Oak Wood and Rectory Cottage (23/0131) in relation to the independent occupation of a further mobile home (within the garden of Rectory Cottage) and the storage of sale of various vehicles and items across the three plots.
- 2.4 In February 2024, a site visit carried out to inspect all three plots found that the condition of the land now known as Kensington Lodge (the central plot and the subject of this report) had significantly deteriorated and was being used for the storage of vehicles, horse box trailers and a static caravan. It was reported that the land had been sold and that the owner of the site stayed on site intermittently in the touring caravan that was being stored. Officers subsequently entered into correspondence with the new owner in an attempt to secure that remedial steps be taken voluntarily. However, the owner failed to engage with the Authority positively and an Enforcement Notice accompanied by a Stop Notice was issued on 14 March 2024. The Enforcement Notice has been appealed and therefore has not yet taken effect.
- 2.5 The Authority considered it appropriate to issue a Stop Notice in this case given the level of harm caused by unauthorised use in order to prevent the breach from escalating given the enforcement history of the site. The Stop Notice, which does not carry with it a right of appeal, identified the unauthorised activities as being.
- 2.6 Without planning permission, the material change of use of the Land for B8 storage purposes including for the storage of trailers, vehicles, boats, caravans, building materials, timber, scrap and waste material and other domestic paraphernalia on the Land.
- 2.7 The Stop Notice required the owners to:

- i) Cease bringing on to the Land any additional items in breach of planning control (including without limitation trailers, vehicles, boats, caravans, building materials, timber, scrap and waste material and other domestic paraphernalia).
- ii) Remove all caravans from the land.

- 2.8 There is no right of appeal against a Stop Notice therefore the Notice took effect on 20 March 2024 by which date the requirements should have been met. This allowed a short but reasonable timeframe for any caravans to be removed from the Land.
- 2.9 Following a site visit in April 2024 and another site visit on 26 June 2024 it was clear that the Stop Notice had not been complied with and the static caravan remained. During the most recent visit Officers were advised that the caravan itself does not belong to the owner of the Land and is stationed on the land without his permission. However, the Authority have not been provided with any evidence that this is the case, nor that any reasonable steps have been taken to get the alleged owner of the caravan to remove it from the land. In any event, this is not a defence and does not prevent the site owner from removing the caravan from the land and complying with the Notice.
- 2.10 The Authority's Enforcement Officers have provided the owner with clear and comprehensive advice throughout the enforcement investigation and have taken all reasonable steps to encourage the owner to comply with the Stop Notice. Should members feel it necessary to discuss the particulars of the enforcement investigation in more detail it is likely to require the matter to be taken to Part II of the meeting due to the sensitive nature of such investigations.

### **3 Next Steps**

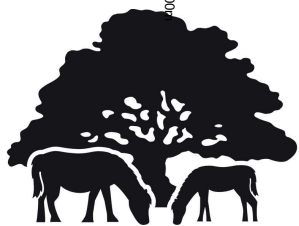
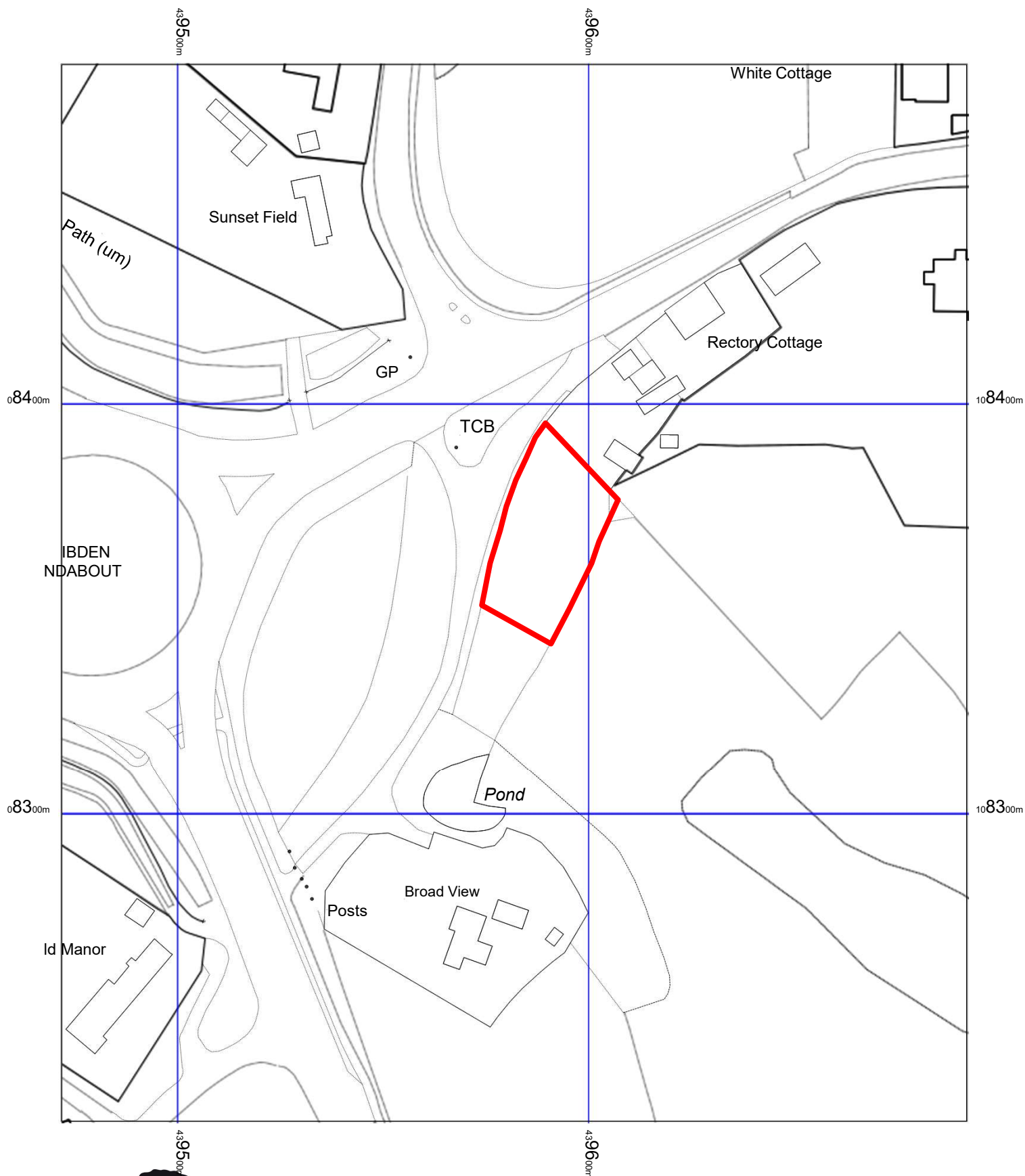
- 3.1 The Authority may now choose to prosecute the owners for noncompliance with the Notice which is an offence under section 187(1) of the Town and Country Planning Act 1990, as amended (the 'Act'). All owners are responsible for ensuring compliance with the Notice.
- 3.2 Prior to commencing a prosecution, 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. The Authority continues to receive a significant number of complaints regarding activity at this site and adjacent plots. The Authority's prosecution of the respective landowner 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.
- 3.3 Allowing the breach of the Stop Notice to continue would undermine the Authority's decision to issue a Stop Notice in order to mitigate the harm caused by the use of the land and prevent the breach from escalating given the enforcement history of the site.

- 3.3 Noncompliance with a Stop Notice leaves the owner liable, on conviction, to an unlimited fine.
- 3.4 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.
- 3.5 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.
- 3.6 It is therefore considered expedient, necessary, and proportionate to commence proceedings as outlined above, subject to consideration of any further evidence that may be received regarding noncompliance. 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.

#### **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 any purported impediment to compliance and form a view as to the appropriate course of action to achieve compliance with the Stop Notice; and**
- i. 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 the Land adjacent to Rectory Cottage, Plot known as 'Kensington Lodge', Main Road, Dibden, Southampton, SO45 5TD in respect of their non-compliance with the Stop Notice issued 14 March 2024; or**
- ii. if it is not considered appropriate to commence a prosecution, to consider and take such other action as necessary to achieve compliance with the Stop 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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NATIONAL PARK

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