



Appeal Decisions

Inquiry held on 10 March 2026

Site visit made on 10 March 2026

by **J Moss BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 April 2026

Appeal A Ref: APP/B9506/C/25/3375133

Appeal B Ref: APP/B9506/C/25/3375134

**Land to the west of Lynwood, Rossiters Lane, Woodlands, Southampton
SO40 7HX**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Ms Charlotte Fantelli (Appeal A) and Mr Gabriele Fantelli (Appeal B) against an enforcement notice issued by New Forest National Park Authority.
- The notice was issued on 24 September 2025.
- The breach of planning control as alleged in the notice is: Without planning permission the erection of a building in the approximate position shown shaded green on the plan attached to this Notice¹.
- The requirements of the notice are to:
 - i. Demolish the building shown in the approximate position hatched green on the plan attached to this Notice;
 - ii. Restore the Land to match the surrounding level and conditions
 - iii. Removal all material and debris resulting from compliance with steps (i) to (ii) above from the Land.
- The period for compliance with the requirements is three months after the notice takes effect.
- The appeals are proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 (as amended). Appeal A is also proceeding on the ground set out in 174(2)(a). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary DecisionS: The appeals succeed in part. Otherwise, they are dismissed and planning permission is refused.

Ground (a) and the deemed application for planning permission – Appeal A only

Preliminary Matters

1. The appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.
2. Part 3 of the notice states that the matters which appear to constitute the breach of planning control comprise the erection of a building, the location of which is specified. The Notice does not specify a use of the building. Neither does it allege a material change of use. In view of this, there is no dispute that the enforcement notice targets only operational development. Furthermore, the appellant has not made the case that the operation comprising the erection of a building has not occurred and that this is not development requiring the benefit of express planning

¹ Reference here and elsewhere in the banner heading to a plan is to a plan attached to the enforcement notice.

- permission. Accordingly, the deemed planning application is for the erection of a building alone.
3. With regard to the building in question, its external elevations appear complete; it has a solid timber finish with door or window openings in certain elevations. The building has a roof, although the appellant indicates that this has not been finished. Internally, the building has not been completed with a floor and the timber frame upon which the building has been erected was exposed. As such, the building did not appear to be in active use and there is no suggestion that the building has been put to any use since its erection.
 4. In view of the above, I understand why the notice does not specify the purpose to which the building has been put. Nevertheless, in making their ground (a) appeal, the appellant seeks planning permission for the building used in accordance with what they say is the lawful use of the land.
 5. The appellant suggests that the lawful use of the land is for 'holiday accommodation' and it appears that the building was erected with this intended use in mind. The Authority does not agree with this and suggests that the lawful use of the land is for the purposes of agriculture. This leaves me with some difficulty with the ground (a) appeal.
 6. I can agree with the appellant that, where there is an allegation of a breach of planning control comprising the erection of a building without reference in the notice to how the building is used, it is entirely within my power under section 177(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) to determine the ground (a) appeal on the basis of the use of the building in accordance with (or for purposes ancillary to) the lawful use of the land. However, section 177(1)(a) does impose a limit on what I am able to grant planning permission for, which is either the whole or part of the matters alleged, but nothing more. Accordingly, if a material change of use is not alleged in a notice and the grant of planning permission on the deemed planning application would result in permission for a material change of use, then this would take me beyond my powers under section 177(1)(a).
 7. In the case before me, there is no agreed position on what the lawful use of the land is. Furthermore, there is no means within the remit of this appeal for me to determine what the lawful use of the land is². I say this because the notice does not allege a material change of use of the land to a use for holiday accommodation. If it did, it would allow for the appeal to be brought on the grounds that the use is lawful and immune from enforcement action. In view of this, the difficulty I have is that, if I were to grant planning permission for the building to be used for holiday accommodation (for example, by imposing a condition to that effect), and that use is not in fact lawful, doing so would inadvertently authorise a material change of use. This would take the decision beyond the scope of my powers under section 177(1)(a).
 8. In view of the uncertainty with regard to the lawful use of the land, I have considered in the planning balance the use of the building for both agriculture and, in the alternative, holiday accommodation. However, whether my powers would allow me to grant permission for the latter remains in question.

² The exercise I undertake later on in this decision with regard to the suggested fallback position is not a determination equivalent to the determination of a lawful development certificate appeal or the determination of a ground (d) appeal.

Main Issues

9. The main issues in this case are identified as:
 - i. The effect of the development on the character and appearance of the site and the surrounding area, having regard to its location within the New Forest National Park (NFNP); and
 - ii. Whether or not the development preserves or enhances the character and appearance of the New Forest North East Conservation Area (NECA).

Legislation, Planning Policy and Guidance

10. The appeal site is located within the NFNP. Section 11A of the National Parks and Access to the Countryside Act 1949 as amended imposes a strengthened duty where, in exercising or performing any functions in relation to, or so as to affect, land in any National Park, a relevant authority must seek to further the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the National Park, promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public.
11. Chapter 15 of the National Planning Policy Framework (the Framework) emphasises the importance of protecting and enhancing valued landscapes in a manner commensurate with their statutory status or identified quality in the development plan. Paragraph 189 informs that great weight should be given to conserving and enhancing the landscape and scenic beauty in National Parks, which have the highest status of protection in relation to these issues. I have also had regard to the additional advice at national level provided in the Planning Policy Guidance on the Natural environment (PPGNE).
12. As the appeal site is located within a designated heritage asset, the NECA, I must have regard to the duty imposed under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended. This requires that, in determining this appeal, I must pay special attention to the desirability of preserving or enhancing the character or appearance of the NECA.
13. The guidance in the historic environment chapter of the Framework informs that heritage assets should be conserved in a manner appropriate to their significance. Paragraph 212 informs that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 213 goes on to say that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. I have also had regard to the advice in the Planning Practice Guidance on the Historic Environment (PPGHE).
14. The development plan for the area includes the New Forest National Park Local Plan 2016 – 2036, adopted August 2019 (NFLP). Within this, Policy DP2 (general development principles) requires new development to demonstrate high quality design and construction which enhances local character and distinctiveness. This is to be achieved by ensuring, amongst other matters that development is appropriate and sympathetic in terms of scale, appearance, form, siting and layout; and that it respects the natural, built and historic environment, landscape character and biodiversity. This aligns with the requirements within Policy DP18 (Design

- principles) and its particular requirement to enhance the built and historic environment of the NFNP and not harm the valued components of the landscape.
15. In addition to aligning with the advice in paragraph 189 of the Framework, Policy SP7 (Landscape character) informs that development proposals will be permitted if they conserve and enhance the character of the New Forest's landscapes and seascapes. The Policy sets out that development should demonstrate, amongst other matters, that the design, etc. of proposals conserve and enhance existing landscape character; that they do not detract from the natural beauty of the National Park; and that the character of largely open and undeveloped landscapes between and within settlements will not be eroded or have their setting harmed.
 16. Policy SP17 (Local distinctiveness) informs that built development and changes of use which would individually or cumulatively erode the Park's local character, or result in a gradual suburbanising effect within the National Park will not be permitted.
 17. There has also been reference to NFLP Policy DP37 (Outbuildings) which relates to domestic outbuildings; Policy DP50 (Agricultural and forestry buildings); and Policy DP52 (Field shelters and stables). These are specific policies relevant to the type of development stated in their title. There is no dispute that any of these relate to development used for the purposes suggested by the appellant (i.e. holiday accommodation). Indeed, the appellant confirms in their written evidence that these are not relevant. I understand the Authority's reasons for including these Policies in the reason for the issue of the notice, which is that the development would not comply with them. Nevertheless, as the appellant does not seek to rely on their provisions, their relevance to this appeal is limited.
 18. Notwithstanding the above, the appellant refers to NFLP Policy SP46 (Sustainable tourism development), which informs that sustainable tourism will be supported where it provides opportunities for the understanding and enjoyment of the special qualities of the NFNP in a way that enhances or does not harm its special qualities. The appellant points to the criteria of the policy which sets out the circumstances where the policy provides support.
 19. I also note the appellant's reference to various parts of the Framework which advise on the approach to decision making and the principles of good design. They also refer to chapter 6, which informs that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.
 20. Finally, I have been provided with the New Forest National Park Partnership Plan 2022–2027, published July 2022 (NFPP), which sets out the special qualities of the NFNP and the Authority's ambitions. The Authority have also provided relevant extracts of the New Forest National Park Landscape Action Plan dated 2013 (NFLAP) and the New Forest National Park Landscape Character Assessment dated 2015 (NFLCA). I have also been provided with relevant extracts of the New Forest National Park Design Guide, adopted January 2022 (NFDG) and the Forest North East Conservation Area Character Appraisal (CACA).

Character and Appearance – NFNP

21. The NFLCA informs that the appeal site is within the Copythorne Forest Farmlands Landscape Character Area (LCA). Pertinent to the location of the appeal site, the

NFLCA identifies the key characteristics of this LCA as including small-scale irregular fields enclosed with hedgerow and mature hedgerow trees and distinctive linear roadside development of traditional cottages. The NFLCA identifies these as positive landscape attributes.

22. Although located close to the settlement of Woodlands, the appeal site and its adjoining residential property, Lynwood, is detached from the more built up part of the settlement by field parcels. The appeal site and its immediate surroundings (save for Lynwood) have the appearance and character of an irregular field parcel described in the NFLCA.
23. It is agreed that the appeal site is not within the curtilage of Lynwood and is not, therefore, in use as a domestic garden. The site is occupied by a small barn, the design of which is typical of a building in agricultural use. As such, this contributes to the site's character as that of agricultural land. The existing barn is located close to the roadside edge and the site is enclosed with an established hedge, within which there are mature trees. In all, the site demonstrates elements of the positive landscape attributes identified in the NFLCA and, therefore, makes a positive contribution to the special qualities of the NFNP.
24. The building subject of this appeal has an overtly domestic design. In particular, its window and door openings are typical of a building in some form of residential use. I acknowledge that these openings are on an elevation facing away from the highway and that the other materials used in the construction of the building (the timber, in particular) almost replicate those used in the existing barn. Nevertheless, the building has a domestic scale and has a design that is not sympathetic to the existing barn. Although not highly visible from public vantage points, the domestic character of the building is notable when viewed from the west, further along Rossiters Lane, however I acknowledge that this is a view of the building against the backdrop of the dwelling at Lynwood in the distance.
25. Unlike the existing barn, the location of the building is set off the boundary of the site within the highway. I understand that this location was chosen because it was the location of the former building on the site. Nevertheless, this former building has been demolished. The appeal building's chosen location does not conform with the pattern of development that characterises the LCA. Indeed, when viewed from the west, the building appears detached from the barn and, therefore, prominent within the landscape.
26. I have had regard to other built development in the locality. Although there are other buildings that compare in their location to the appeal building, these appear to be in use for agriculture or equine purposes, and do not have the overtly domestic design of the appeal building. The buildings to the east of the appeal site, also off Rossiters Lane, are prominent, but these are particularly close and, therefore, well related to the Woodlands settlement. They also appear to be a collection of historic and/or converted agricultural buildings, rather than new development of a domestic design.
27. I acknowledge that the development occupies only a small area of the wider field parcel and it has had no effect on the sites established hedgerow enclosure. Nevertheless, the presence of the development within this field parcel and its prominent location, set off the roadside edge, means that it is out of step with the

- key characteristics and positive landscape attributes of the LCA. It results in an unacceptable encroachment of domestic development into the rural landscape.
28. The appellant has suggested that the appearance of the building could be altered, secured by way of a condition, in order to change the roof finish and the finished colour of the timber on the external elevations. A corrugated roof finish to match the finish of the barn roof might well mean that the appearance of the building is more in keeping with the existing built development. However, as I note above, the existing external finish of the timber is already comparable to the timber finish of the barn and a change to the roof materials would have a limited effect on the domestic character of the building. Furthermore, these changes would not overcome the harm caused by reason of the location of the building.
29. For the above reasons, I conclude that the development causes harm to the special qualities of the NFNP. It is, therefore, inconsistent with the duty to seek to further the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the NFNP. The development has an unacceptable effect on the character and appearance of the site and, therefore, the surrounding area and is, as a consequence, in conflict with NPLP Policies DP2, DP18, SP7 and SP17. It is also in conflict with the NPLAP and NPLPP, as well as the relevant national advice in the Framework and PPGNE.

Character and Appearance - NECA

30. The CACA lists the key characteristics of the NECA. From this list, the Authority point to hedge and tree field boundaries, irregular medieval fields, and dispersed farmsteads. The list also identifies 19th century development that is generally linear in nature, forming areas of ribbon development along roadsides.
31. The appeal site is located within the 'Historic edge of Forest encroachment' character area of the NECA. The CACA states what this character area is formed by; this includes 'dispersed farmsteads, with associated field systems' and 'a mosaic of irregular shaped fields interspersed with small woodlands'. This part of the NECA is clearly characterised by its agricultural landscape and dispersed built development.
32. The appeal site demonstrates some of the key characteristics of the NECA, particularly those common to this part of the conservation area. It is part of the irregular field pattern enclosed by established row and mature trees. Notwithstanding the claimed lawful use, the appeal site has the character of agricultural land, albeit agricultural land that is not in active use. Although modern, the existing building on the site is clearly agricultural in character and located close to the roadside edge. Notwithstanding this, the site is close to the settlement of Woodland which demonstrates the linear, roadside, 19th century development referred to in the CACA.
33. Pertinent to this main issue, the CACA makes clear that the special interest and significance of the NECA is derived in part from the pattern of development and the rural landscape, which is predominantly in agricultural use and demonstrates a historic irregular field pattern, particularly in the vicinity of the appeal site. Having regard to the character and appearance of the appeal site, as set out above, the site makes a positive contribution to the special interest and significance of the NECA

34. In determining the effect of the development, having regard to its location in the NFNP, I have noted that the building subject of this appeal has an overtly domestic design, scale and character, whilst being located outside of the garden of Lynwood and on land that is agricultural in character. I have also noted that its location is detached from the existing barn and is away from the roadside edge.
35. Again, I acknowledge that the development occupies only a small area of the wider field parcel and that it has had no effect on the hedgerow and tree lined enclosure of the site. Furthermore, the site may not have an open character and I acknowledge that it is already occupied by other development. Nevertheless, the building has a domestic appearance that is out of character with the existing barn and the wider site. Its presence within this field parcel, in its detached and prominent location, changes the character of the site, particularly as it appears as an encroachment of domestic development into the rural landscape.
36. Even if the site were within the nearby, more built up area of the NECA, the location of the building would be out of accord with the historic pattern of development, which is close to the roadside edge.
37. That the building might not be highly visible from public vantage points does not change that the development is out of step with the key characteristics of the NECA.
38. I have already mentioned the conditions suggested by the appellant, which might secure a change to the external finish of the building. Whilst these changes might well mean that the appearance of the building would be more in keeping with the existing built development, they would do little to change the domestic character of the building and would not be sufficient to overcome the harm caused by the development.
39. All things considered, I can only conclude that the development is detrimental to the contribution the appeal site makes to the special interest and significance of the NECA. It neither preserves nor enhances the character or appearance of the NECA.

Heritage Balance:

40. For the purposes of the relevant paragraphs of the Framework, I find the harm caused to the heritage asset is less than substantial, but nevertheless of considerable importance and weight. In these circumstances, paragraph 215 of the Framework informs that, where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
41. As I have noted above, the development that is before me has no specified use. No public benefits have been suggested for the building without a use, and none are obvious to me.
42. Although permission for an agricultural use of the building is not part of the appellant's case, if the development were to be used for this purpose, I acknowledge that some public benefits to the rural economy might flow from this. However, as the appellant does not dispute, the building has not been designed for the purposes of agriculture. Furthermore, what agricultural purposes the building

might be put to are not obvious to me. Nevertheless, some public benefits might result. However, having regard to the size of the building, I give these benefits little weight.

43. In the alternative, if I were able to grant permission for the use of the building for holiday accommodation, I acknowledge that other public benefits might flow from the development, including those to the local economy. Such benefits might result from the visitors brought to the area by the development. However, having regard to the size of the building, it would provide only a very modest form of accommodation for one or two occupants. The public benefits that would flow from its use would, therefore, be of limited weight.
44. All things considered, I have concluded that the development would have an unacceptable effect on the character and appearance of the surrounding area and that the development fails to preserve or enhance the character or appearance of the NECA. Having regard to the limited weight that would result from the development, even if used as holiday accommodation, I cannot be satisfied that there is any clear and convincing justification for the harm it causes. The Framework makes clear that great weight should be given to the conservation of a heritage asset. The public benefits I have identified are not sufficient to outweigh the harm to the character and appearance and thus significance of the NECA.
45. Accordingly, I conclude that the development is in conflict with Policies DP2, DP18 and SP17 of the NPLP. The development also conflicts with the advice in the NFDG relevant to the historic environment, as well as the Framework and the advice in the PPGHE.

Material Considerations

46. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be in accordance with the plan unless material considerations indicate otherwise. For the reasons set out above, the development is contrary to the development plan when read as a whole. It is, therefore, necessary for me to consider whether there are any material considerations of sufficient weight to indicate that my determination should be made otherwise than in accordance with the development plan.

Fallback:

47. The appellant refers to what they say is the lawful use of the land and suggests that, if permission is not granted for the development that is the subject of this appeal, they would be entitled to site a caravan on the land and use it for the purposes of holiday accommodation, without the need for planning permission. This is suggested as a fallback position.
48. I have indicated above that I am unable to determine within the remit of this appeal whether or not the use of the land for holiday accommodation is lawful. However, I am required to consider whether the suggested fallback position is a material consideration in this case and, if so, determine what weight should be attributed to it in the planning balance.
49. Having regard to the case made by the appellant, I am satisfied that if the use of the land for the purposes of holiday accommodation were lawful, the stationing of a

caravan on it and its use for these purposes would be likely. Furthermore, I have no doubt that the stationing of a caravan on the site would be less desirable in terms of the harm that it would cause when compared to the appeal building. Accordingly, I must consider the weight that I attribute to the likelihood of such a use of the land being found lawful. The test applied to the evidence is the balance of probability and the onus of proof rests with the appellant.

50. The evidence submitted by the appellant includes a statutory declaration from the relative of a former owner of the site, Mr John Greenwood. He says that the former building was constructed in around 1940 and comprised a kitchen sink fed by rain water, a paraffin cooker, a store cupboard and furniture, including beds. He says that when the hut was in use, it was served by a chemical toilet in a nearby shed, although the location of the shed is not specified and is no longer present on the site.
51. Mr Greenwood says that the building was used as short term accommodation during the war. He also recalls spending several holidays in the hut with his family, referring to holidays in the mid-1950s, as well as a holiday in June 1966. He says that the building was then used as temporary living accommodation 'a few years later' by another family member.
52. A use that commenced before 1 July 1948 (the appointed date) is lawful under the provisions of the 1990 Act. Although the appellant's evidence does not refer to a use of the former building for holiday accommodation prior to the appointed date, it indicates that the building was used for some form of accommodation some time prior to this date. This evidence also indicates that the accommodation was separate from the dwellinghouse at Lynwood. Although this element of the appellant's evidence is briefly stated, it is provided in a declaration that carries significant weight, in view of the sanctions that could be imposed should it contain false or misleading evidence. Furthermore, the Authority's evidence is not sufficient to contradict what is said. Accordingly, I find it more likely than not that a use of the building for the provision of accommodation commenced before the appointed date and was, therefore, lawful by reason of the provisions of the 1990 Act.
53. Notwithstanding my findings above, there is no suggestion that the accommodation use extended beyond the confines of the former building. Whilst there is reference to a chemical toilet in a shed, the evidence is not sufficiently precise in identifying its location. The use that became lawful by reason of the 1990 Act is, therefore, confined to a small part of the appeal site, that being the former building and the land it occupied. This finding is not, however, fatal to the appellant's case. I say this because it is agreed that the appeal building occupies the same footprint as the former building.
54. Where a use is found to be lawful, the use rights may only be lost through a subsequent material change of use, implementation of a planning permission that required the lawful use to cease, by a condition, or by abandonment. There is no suggestion that there has been a material change of use of the land on which the lawful use rights are more likely than not to have been established. Whilst there may have been a use of the land for agriculture, this would not amount to development by reason of section 55(2)(e) of the 1990 Act. Furthermore, there is no reference to a planning permission or planning condition that requires the accommodation use to cease.

55. I turn, therefore, to the matter of abandonment. The appellant refers to *Trustees of Castell-y-Mynach Estate v Taff-Ely BC* [1985] JPL 40, which established four criteria to consider when determining whether or not lawful use rights have been lost. I have summarised these as follows:
- i) the period of non-use;
 - ii) the physical condition of the land or building;
 - iii) whether there has been any other use; and
 - iv) the owner's intentions as to whether to suspend the use or to cease it permanently.
56. The appellant also refers to *Bramall v SSCLG* [2011] JPL 1373, which makes clear that the weight attributed to each of the four criteria is a matter of judgment for the decision-maker.
57. I start with the period of non-use, which the evidence indicates is substantial. The last use of the building for which a date has been provided is June 1966. Whilst Mr Greenwood says that the building was used for accommodation after this date, he does not indicate when this was, other than stating that it was a few years later.
58. In his email dated 10 February 2026, Mr Greenwood provides photographs of the building which he says 'are from 2006 which is after the last time the building was occupied'. Contrary to the appellant's claims, he does not say that these are photographs 'from the last time it was stayed in'. As such, this evidence does not demonstrate that the building was last used for accommodation in 2006, as suggested. Indeed, the photographs taken of the inside of the building show it in a particularly poor and unkept appearance. In view of this, I find it unlikely that the building was in use for accommodation at the time these photographs were taken. Accordingly, Mr Greenwood's email and the photographs provide no further clarity with regard to the date the building was last used for accommodation, other than that it was before the time the photographs were taken.
59. Even if after June 1966, the 'few years later', mentioned by Mr Greenwood, takes us into the 1970s, this is likely to be at least 40 years prior to the date the enforcement notice was issued. I consider this to be a considerable period of time during which the building had not been actively used for accommodation. Indeed, the evidence indicates that the building had not been used for accommodation for more than half of its existence.
60. I acknowledge that the period of non-use is comparable to that in some of the appeal decisions brought to my attention³. However, in those cases weight was given to the evidence submitted in respect of the other criteria set out in *Trustees of Castell-y-Mynach Estate*. This is the approach endorsed in *Bramall*, and is why I move on to consider the other criteria
61. With regard to the physical condition of the land and building, the appellant acknowledges that in the years up to its demolition, the building had fallen into disrepair. There is no suggestion that during this time it was capable of providing accommodation. Indeed, having regard to the most recent photographs of the former building, I would suggest that it was not safe to be used for these purposes.

³ Appeals reference APP/X/97/T2350/002711, APP/C3810/X/15/3035706, APP/E2001/X/19/3232649 and CLUD-130-2007.

How long it had been in this condition is not clear, although the appellant suggests that it had always been the intention of the former owner to carry out repairs, indicating that the condition of the building was poor prior to the appellant's purchase of it in 2016.

62. Notwithstanding the above, the evidence indicates that the accommodation use commenced by reason of the erection of a building and its use for the purposes of providing accommodation. The use was, therefore, reliant on the former building and it was this use of the former building that is likely to have become lawful. Indeed, in all of the appeal decisions referred to by the appellant, the residential use resulted from the use of a building, which in most cases appeared to be a dwellinghouse. I must, therefore, consider the implications for this case of the demolition and almost complete removal of the former building.
63. In most of the appeal decisions presented, large parts of the buildings in question were still present on the site at the time of the appeal decision. In two of the cases it was concluded that the active use of the building could recommence, following works that would not require permission. I can see that in the Church Farm Bungalows case only the slabs, the footings up to damp-proof course and a pair of chimneys remained. This is, however, substantially more than what remains at present of the former building in the case before me. Indeed, in order to attempt to continue what the appellant suggests is the lawful use, it has been necessary to erect a new building for which planning permission is required, but has not been obtained. Other than a timber frame at the base, no other elements of the former building were incorporated into the new development.
64. This ground (a) appeal must be determined, having regard to the present circumstances. That includes my determination of the weight I attribute to the suggested fallback position, which is a proposed proposition for the future, in the event that planning permission on this ground (a) appeal is refused. Relevant to the fallback position is the matter of abandonment. In order for me to determine whether any lawful use of the land has been abandoned or could continue in the future, I must take account of the physical condition of the land and building at the present time, rather than considering some point in the past, prior to the demolition of the former building, as suggested by the appellant.
65. On this basis, it is of great significance that the former building has been almost completely removed and what remains on site is incapable of being used for the purposes of providing accommodation without, as has occurred, the erection of a new building for which planning permission is required.
66. Turning to the remaining criteria, I have already considered (iii) above and have concluded that there have not been any other intervening uses that might result in the loss of the use rights.
67. As for criterion (iv), the evidence indicates that there was a substantial period of non-use of the building during the time it was owned by the previous owners. I must, therefore, consider the previous owners' intentions, as well as those of the appellant. In this regard, I heard evidence at the hearing that the land was sold to the appellant at a premium, on the basis that it enjoyed the established lawful use rights. I also note above the appellant's suggestion that the former owner had intended to carry out repairs to the building. There is, however, little evidence to

substantiate these claims or to demonstrate why those intended repairs were not carried out.

68. As for the appellant's intentions, save for the claim of paying an elevated price for the land and the carrying out of works to erect a retaining wall adjacent to the building, there is little before me to demonstrate the appellant's intentions to continue the use. I note in some of the appeal decisions referred to above there is reference to a history of planning applications for development that would, if carried out, continue the lawful residential use in question. Weight has clearly been attributed to this in those cases. The appellant's divorce may have prevented the planned renovations and improvements to the building. However, there is little evidence to substantiate the claim that these works were planned. Such evidence might include builders' quotes for the works or plans drawn up for the building. In all, there is limited evidence before me to demonstrate the appellant's and the previous owners' intentions to continue the accommodation use.
69. Bringing all of the above together, I have found it more likely than not that an accommodation use of the former building had commenced prior to the appointed date and was, therefore, lawful by reason of the provisions of the 1990 Act. There is no evidence of there having been an intervening use. Nevertheless, my findings with regard to the remaining criteria set out in *Trustees of Castell-y-Mynach Estate* indicate that, if the use for holiday accommodation was lawful, it has been abandoned, on the balance of probability. I find as such, having regard to the limited evidence of intention to continue the use, the substantial period of time during which the evidence indicates that the building was not in use for accommodation, and the condition of the land and the building at the present time.
70. The suggested fallback position is dependant on the lawfulness of the use of the land for the purposes of holiday accommodation. Accordingly, I am only able to attribute it very little weight in the planning balance, having regard to my findings above based on the evidence before me.

Other Matters:

71. The appellant suggests that the appeal site is brownfield land. The Framework regards this as the same as previously developed land. Having regard to the definition of previously developed land, the Framework's support for its use would extend only to the footprint of the former building and not to the entirety of the appeal site. Nevertheless, in order to support the rural economy, the Framework provides support for the use of previously developed land in a location such as this. This support must, however, be on the basis that benefits to the rural economy would flow from the development.
72. In this regard, I have already attributed little weight to the benefits that might arise from the use of the building for agriculture. In the alternative, I have found that any benefits that might flow from the use of the building for holiday accommodation would be limited.
73. The appellant has referred to NFLP Policy SP46, which provides support for tourism development in certain circumstances. The Policy stipulates in three criteria how the sustainable tourism it supports would be facilitated. With regard to criterion a), the site is outside of the four defined villages and, as such, visitor facilities will only be supported by the Policy through the re-use or extension of existing buildings and as part of a farm diversification scheme. The development

before me does not satisfy any part of this criterion. As for criterion b), having regard to my findings on the suggested fallback position, I cannot be satisfied that the development would retain **existing** serviced visitor accommodation. And finally, there is no suggestion that the development is of the sought supported by criterion c). In short, the development, if used for holiday accommodation, would not, in my judgement, benefit from the support of NFLP Policy SP46. Even if it did, this would have a neutral effect in the planning balance.

74. I have considered whether conditions would overcome the harm caused in this case, but conclude that they would not.
75. On a separate matter, in response to the two main issues identified in this case, both parties have compared the appeal building with the former building, and they do so in making their case with regard to the effect of the development. Furthermore, the appellant takes issue with the Authority's reference to the development as 'new built development'. They suggest that, instead, the building is a 'replacement'.
76. There is no dispute that the former building has been demolished. It is, therefore, no longer existing development on the appeal site. There is also no suggestion that the former building could be re-erected without the need for planning permission. Accordingly, the former building does not form part of the context of the appeal site against which the acceptability of the appeal development should be judged. Furthermore, as I have already noted, the appellant has not made the case that the operation comprising the erection of a building has not occurred and that this is not development requiring the benefit of express planning permission. It is, therefore, right to regard the building as new development. Accordingly, that the appeal building replaces a former building on the site is of little consequence in the determination of this appeal.

Planning Balance and Conclusion

77. The suggested fallback position, the use of previously developed land and the benefits that flow from the agricultural use of the building are material considerations in this case. However, the weight I attribute to these is low for the reasons given. Even if, in the alternative, I were able to grant permission for the building to be used as holiday accommodation, the benefits of this would be limited. These matters are to be balanced against the great weight that should be given to the conservation of a heritage asset and the great weight that should be given to conserving and enhancing the landscape and scenic beauty in National Parks.
78. All things considered, I have not been able to identify any material considerations of sufficient weight to indicate that the determination of the appeal should be made otherwise than in accordance with the development plan, when considered as a whole. For this reason, I conclude that permission ought not to be granted and that the ground (a) appeal must fail.

Ground (f) – Appeals A and B

79. The purpose of the notice is to remedy the breach of planning control alleged. Accordingly, the ground (f) appeals are made on the basis that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control alleged in the notice.

80. The case made by the appellants was that the requirements of the notice were excessive in that they required works to be removed that had previously existed prior to the erection of the building. These were, namely, the retaining wall to the rear of the building and the timber frame upon which the building had been erected.
81. At the case management conference held prior to the hearing, the Authority agreed that these works existed prior to the breach. The concession was, therefore, that they were not comprised in the breach of planning control. I have no reason to disagree with this agreed position.
82. Having confirmed that the notice was not intended to target these works, the parties agreed in their statement of common ground to certain variations to the requirements of the notice so as to make clear what was necessary to remedy the breach of planning control.
83. I agree that the requirements might read as requiring the removal of the timber frame base and the retaining wall. Accordingly, having had regard to my findings above, I conclude that they exceed what is necessary to remedy the breach of planning control. The ground (f) appeal succeeds to that extent.
84. I am satisfied that varying the requirements in the manner agreed would not cause injustice to any party, not least as they would make the notice less onerous. Accordingly, I intend to use my powers under section 176(1)(b) of the 1990 Act to vary the terms of the enforcement notice in line with what has been agreed.

Ground (g) – Appeals A and B

85. An appeal on ground (g) is that the period specified in the notice falls short of what should reasonably be allowed. The notice specifies a period of three months from the date it takes effect. The appellants suggest that a period of 6 months would be required to comply with the notice.
86. Whilst I note the agreed position that the period for compliance should be varied to allow a period of 6 months, for me to agree with this, I must nevertheless satisfy myself that the period specified in the notice falls short of what should reasonably be allowed.
87. Whilst the appellants suggest an extension of time would be proportionate and would not undermine the purpose of the enforcement notice, such matters do little to demonstrate that the period for compliance would be unreasonable in order to carry out the works required.
88. My decision on this case will be issued at the start of the warmer months, when the weather conditions would be more favourable for carrying out the required works of demolition.
89. The appellants point to the time needed to coordinate contractors to carry out the required works, dismantle and remove the building, and appropriately dispose of the waste. The building is a simple structure and, as such, it is not obvious to me that it would take a substantial amount of time to demolish or dismantle it and remove it from the land. Furthermore, the appellants do not provide corroboratory evidence to suggest that securing an appropriate contractor and disposing of waste would be particularly difficult in the local area.

90. Nevertheless, in agreeing to the 6 month period suggested by the appellants, the parties refer to current local circumstances. It must, therefore, be the case that the appellants' claims with regard to obtaining the services of contractors and waste disposal holds some water. In view of this, I conclude that, on balance, the period specified in the notice falls short of what should reasonably be allowed. The ground (g) appeal should, therefore, succeed and I shall vary the period for compliance with the notice to 6 months.

Overall Conclusions – Appeals A and B

91. For the reasons given above, I conclude that the ground (a) appeal on Appeal A should not succeed. However, I conclude that the requirements of the notice are excessive to remedy the breach of planning control and that the period for compliance with the notice falls short of what is reasonable. Appeals A and B on grounds (f) and (g) succeed to that extent.

92. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

Formal Decision – Appeals A and B

93. It is directed that the enforcement notice is varied by:

- The deletion from part 5 of requirement ii. in its entirety;
- The deletion from requirement iii. of part 5 the words 'steps (i) to (ii)' and their replacement with the words 'step i.'; and
- The deletion from part 6 'Three months' and its substitution with 'Six months' as the period for compliance.

94. Subject to the variations, the appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

J Moss

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

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Charlotte Fantelli Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Lucie Cooper New Forest National Park Authority
Liz Young BSc MRTPI New Forest National Park Authority
Katherine Pullen New Forest National Park Authority