

PLANNING STATEMENT IN SUPPORT OF A PLANNING APPLICATION FOR THE
RETENTION OF A
TWO-STOREY DWELLING AT PAYSANNE, GODSHILL WOOD

INTRODUCTION

1. The following statement sets out the rationale for the submission of a planning application for the retention of a two-storey dwelling at Paysanne, Godshill Wood.

2. The background to the application is that consent was granted for the redevelopment of a single-storey building on site. However, once constructed a number of deviations from the permitted plans were identified which included variations in siting, scale and massing and window sizes. An application to obtain retrospective consent for the dwelling as built was subsequently refused. The LPA then chose to serve an Enforcement Notice seeking the demolition of the dwelling.

3. The applicants have submitted an appeal in respect of the Enforcement Notice which will be determined by the Planning Inspectorate. The appeal process has, however, enabled the applicants to focus on the issues raised by the LPA in refusing the previous application and serving the Enforcement Notice. Having done so, clarification can now be provided in respect of the actual differences between the approved and constructed dwellings, which in turn, has enabled a more precise assessment of the impacts and how they might be addressed.

4. The current application therefore provides the opportunity for the LPA to consider the merits of the dwelling in light of this clarification and suggested alterations and amendments put forward by the applicants to remedy and/or mitigate any harm. The LPA has stated that it is amenable to such an application in correspondence with the Planning Inspectorate. To approve the scheme, subject to appropriate conditions, will avoid the need for an enforcement appeal.

5. The purpose of the following statement is to set out how the applicants intend to address any concerns that are outstanding and not to repeat all the points made in the appeal statement. However, the appeal statement is attached as an appendix to this statement and will be referred to throughout this note, where relevant.
6. It will be demonstrated that many of the changes that were incorporated into the constructed dwelling are not material. They do not result in harm to local residential amenities or the character of the local area, as set out in the supporting documents identified in paragraphs 8 and 17 below.
7. There is, accordingly, only a limited need to undertake alterations to the building. This notwithstanding, the applicants are happy to incorporate changes to the scheme in order to achieve a consent, including the provision of additional landscaping to reduce impact of light spill on a neighbouring dwelling; window alterations; and a reduction in the dwelling size.
8. The application is supported by the following:
 - Landscape and Visual Impact Assessment
 - Heritage Statement
 - Verified Views of the Site
 - Lighting Assessment
 - Landscaping Scheme
 - Floor Plans
 - Elevations.

SITE AND SURROUNDING AREA

9. The application site refers to a detached two-storey property located to the south of a vehicular track in Godshill Woods. The site is a relatively large one, at 0.227 hectare, and the existing dwelling on site is centrally located on site. The site is well screened by mature planting on the site's boundary. Whilst the dwelling is visible from public

vantage points, views are from at least 20m from such points and largely filtered by the existing vegetation.

10. The following extract shows the application site edged in red in relation to the vehicular track and Bluebell Cottage to the north of the site and public right of ways to its east and south (of the stream).



11. It is to be noted that there is a gap in the vegetation on the site's northern boundary – of some 5m or so. This gap currently affords a view of a full height stairwell on the

northern elevation of the constructed building from a neighbouring property, Bluebell Cottage, albeit the distance between windows is some 43m.

12. There are local level changes and the application site is located on a valley slope. Thus, Bluebell Cottage is sited some 8m higher than the appeal property – accentuating LPA and neighbour concerns with regard to the potential for overlooking.
13. The application dwelling is also visible from an adjacent public right of way that skirts the eastern boundary of the site (some 24m from the dwelling); and another on the valley floor, some 80m to the south of the site.
14. The constructed dwelling is a timber clad building that will weather into its immediate surroundings. This combined with local level changes and the presence of mature trees means that the dwelling will nestle into its immediate surroundings in due course.

PLANNING HISTORY

15. Consent was granted for a two-storey dwelling in 2018 (application no. 18/00262). Once constructed, it became apparent that the dwelling had deviated from the approved plans. These deviations include the following:
 - a. The footprint of the building as rotated by some 7 degrees.
 - b. The consequence of the rotation is that a stairwell window on the dwellings northern elevation is now some 1m further away from Bluebell Cottage.
 - c. The building is larger than approved. The overall size of the dwelling is some 166sq-m (the LPA consider it to be 167sq-m, but the difference between the two measurements is immaterial). The width, height and depth of the dwelling is larger than that approved.

- d. The constructed dwelling has larger windows than approved. The stairwell window is wider and higher than the consented scheme – resulting in a 17.9% increase in fenestration. In addition, kitchen windows on the southern elevation are larger.

16. The specific concerns set out in the LPA reasons for refusal and in the reasons for serving the Enforcement Notice are asserted to be as follows:

- a. The proposals are contrary to Policies DP35 and DP36 of the adopted Local Plan. These policies seek to restrict the size of replacement dwellings (or extensions to existing dwellings) in order to protect both the pool of small dwellings within the New Forest National Park and the character of the New Forest. Policy DP36 refers to an overall permitted increase of 30% over and above the size of the original dwelling. In this instance, the original dwelling was some 124sq-m in size. The dwelling as approved was at the upper limit of the permitted floorspace allowance at (124 x 130% = 161.2sq-m.) However, as built the floorspace of the replacement dwelling is 166sq-m and therefore 4.8sq-m larger than permitted by policy advice.
- b. The revised footprint location and increases in dwelling and stairwell window size now means that the stairwell window is visible from both the rear garden and living room window of Bluebell Cottage. This has resulted in two potential problems that, the LPA contend, would not have arisen if the house had been built in accordance with the approved plans. The first is that there is potential overlooking between the applicants and the residents of Bluebell Cottage, both to their living room and garden. The second is that the residents of Bluebell Cottage might be subjected to excessive light pollution as they have a direct view of the lit stairwell, during the hours of darkness, from their living room window.

- c. The increase in the bulk of the building has resulted in a larger building that, it is claimed, harms the character of the conservation area and National Park.
- d. The proposals include larger kitchen windows on the building's southern elevation which, it is claimed, result in increased light spill during the hours of darkness.

RESPONSE TO LPA CONCERNS

17. The appeal process has enabled the applicants to undertake further research and compare the deviations between the approved and constructed plans and it is clear that many of the concerns that the LPA has raised are not as significant as the LPA appear to have thought. The applicants are very happy, therefore, to provide the following as additional information to assist in the determination of the current application:

- a. A verified comparative view of the approved and constructed stairwell window as seen from the living room window of Bluebell Cottage;
- b. A lighting assessment to compare the amount of light created by the windows on both the approved and constructed dwellings;
- c. A verified view from the valley floor of the approved and constructed scheme;
- d. A Landscape and Visual Impact Assessment;
- e. A Heritage Statement assessing the impact of the constructed dwelling on the Conservation Area and National Park; and
- f. Comparative floorplans of the approved and constructed dwellings.

18. The applicants' response to the various issues raised by the LPA is set out below.

Stairwell Window

19. The concerns raised by the LPA with regard to the stairwell window were that if the dwelling had been built in accordance with the approved plans, the stairwell window would not be visible from Bluebell Cottage due to the presence of intervening vegetation, whereas the deviations from the approved plans (the increased window size and the moving and rotation of the footprint) had brought the window into the view of the residents of Bluebell Cottage as seen from their living room window.
20. However, the following image comprises a verified view of the approved stairwell window from Bluebell Cottage:



21. It is clear from this image that if the applicants had built the dwelling in accordance with the approved plans, the stairwell would not have been screened by intervening vegetation and the residents of Bluebell Cottage would still have had a clear view of the stairwell window. In addition, the overlaid image (i.e. that of the approved elevation) shows a bathroom window to the immediate right hand side of the stairwell, which has instead been built elsewhere. In doing so the potential for nuisance as a result of light pollution has been reduced.

Lighting Assessment

22. The Lighting Assessment compares the impact of lighting of both the approved and constructed scheme. It shows, conclusively, that there is no material impact on the surrounding area. In particular, and despite the fact that the overall size of the stairwell window has increased by some 17.9%, this has not resulted in an increase in luminance and no additional harm to residential amenities is therefore created as a result of the changes. The rationale for this is that it is the light bulb (or bulbs) in the stairwell which generate light. Window enlargement, however, does not create more light; rather it spreads the same light over a wider area. The smaller window would have concentrated the light and thus have the same overall impact.
23. In particular:
- a. Appendix 4 of the Lighting Assessment provides a plan showing the site boundaries on which the lighting assessment has been made. The northern boundary of the site is identified as NB02.
 - b. Table 3 on page 20 of the Assessment identifies the amount of (vertical) light falling on the northern boundary/NB02 for both the approved and constructed scheme.
 - c. The Table identifies slight (but imperceptible to the naked eye) reduction in both the average and maximum luminance from the approved scheme (the slight fall can be explained by the fact that the stairwell window is sited slightly away from northern boundary).
24. The fact that the impact of the window on the northern boundary is, in effect, no different to that approved means that there is no material difference on the residential amenities of the residents of Bluebell Cottage.

Impact on Valley Floor

25. A verified view is provided below to show the relative impact of the revised southern elevation as viewed from the valley floor:



26. The image shows that whilst the dwelling is slightly larger than as approved, the impact of that is marginal when viewed from the public right of way. In particular, the dwelling is located in the midst of a number of mature trees which filter views of the dwelling and provide a backdrop to it. Moreover, the photograph was taken in mid-April when the trees were not in full leaf. During the summer months, the views of the dwelling will be significantly reduced as a result of this intervening vegetation.
27. Further, the use of timber cladding - which will darken and weather over time - will ensure that the dwelling blends in with the surrounding area, reducing its impact on the immediate area. This is in sharp contrast with a number of neighbouring buildings which are painted white and stand out in the local landscape.

Landscape Visual Impact Assessment

28. The purpose of the Landscape and Visual Impact Assessment (LVIA) is to make an assessment of the dwelling, as built, on the surrounding area. The LVIA identifies that views of the dwelling from the public domain are limited and invariably filtered by

intervening vegetation. It concludes that, given the siting of the dwelling on a large plot and within the context of mature vegetation on the site boundary and in the immediate area of the dwelling, the dwelling as built does not harm the character of the area and is acceptable

Heritage Statement

29. The application is supported by a Heritage Statement that assesses the impact of the proposals on the Conservation Area and demonstrates that there will be no harm to the character and appearance of the same,
30. Moreover, when considering the refused application the Conservation Officer noted that the majority of the changes to the dwelling would not harm the Conservation Area and focused only on the potential harm that might be created by reason of the in previous applications clearly demonstrates that the fenestration changes would not result in increased lighting, it is assumed that the issues raised with regard to impact on the Conservation Area will melt away.

Increased Dwelling Size

31. Policy advice requires that increase in dwelling sizes should be restricted to a maximum increase of 30% over and above the size of the original dwelling. In previous applications, the LPA, have agreed that the floor area of the original dwelling was 124sq-m. As noted above, applying a 30% uplift would mean that a policy compliant dwelling should be no more than (124 x 1.3= 161.2sqm). However, the floorspace of the replacement dwelling is 166sq-m and, therefore, 4.8sq-m larger than permitted by policy advice.
32. This marginal increase over and above the policy guidance is to be considered by reference to the two reasons that underpin the imposition of the 30% uplift in dwelling size – namely:
 - a. To protect the pool of small dwellings; and

- b. To prevent harm to the National Park.

The Pool of Small Dwellings

33. With regard to dwelling size, a small dwelling is defined as one of no more than 80sq-m in size. Given that the original dwelling was some 124sq-m, however, it clearly falls well outside the definition of a small dwelling. To grant consent for the dwelling as built would not, therefore, result in the loss of a small dwelling.

The National Park

34. Attention is, therefore, to be focused on the impact on the character of the local area and, especially, the National Park. In these regards:
- a. The submitted Heritage Statement and LVIA clearly demonstrate that the dwelling does not harm the Conservation Area or the character of the area;
 - b. The Lighting Assessment also clearly demonstrates that increased window sizes do not result in increased light spill; and
 - c. The verified views from public vantage points help clarify the relative changes in design and bulk and clearly show that there is no demonstrable harm in respect of the character of the local area.

West Wellow Decision Letter

35. Reference is also drawn to a recent appeal decision at Pine Lake, West Wellow decision (Appeal Ref: APP/B9506/W/20/3245038), dated 19th May 2020, in which the Inspector provided a useful analysis of Policies DP35 and DP36 (within the context of the removal of permitted development rights) with specific reference to larger buildings and the two separate purposes underpinning the policies identified in paragraph 32 above. There are in fact two decision letters that reference Pine Lake and these are attached as Pine Lake 3245038 and Pine Lake 2066468.

- a. As for “the protecting the pool of small dwellings” purpose of Policies DP 35 and DP36, the Inspector found¹ (consistent with the analysis in paragraph 33 above) that the size of the existing dwelling disqualified it from being classed as a small dwelling for the purposes of the Local Plan and it therefore followed that to allow further extensions would not affect the balance of housing stock in the vicinity insofar as maintaining a stock of smaller sized houses was concerned as any extension would be to an already large dwelling.
- b. As for “the preventing harm to the National Park” purpose of Policies DP35 and DP36, the Inspector found² that there would not be any adverse impact to the special qualities of the New Forest National Park should development rights be retained, taking into account plot size, the dwelling location, and screening. In the instant case, guided by the same material considerations as the Inspector, the dwelling is centrally located within a large plot and at least 20m away from public vantage points. Local level changes mean that the adjacent road is elevated relative to the dwelling thus diminishing the impact of the dwelling. Level changes and the presence of intervening vegetation mean that there are only partial views of the site.

36. Given the plot size, the dwelling location, topography and screening, to reduce the dwelling by 4.8sq-m will not materially change the impact of the dwelling on the surrounding area and the National Park. There is therefore no demonstrable harm as a result of the marginal increase in floor area.

POTENTIAL CHANGES

37. In order to address any potential concerns that the LPA may still have, the following alterations to the dwelling are nonetheless proposed in order to address any residual

¹ At [12] of the decision letter.

² At [14]-[17] of the decision letter.

concerns regarding the stairwell window; the kitchen window; external lighting; and dwelling size.

Stairwell Window

38. It is clear from the verified view of the stairwell window and the Lighting Assessment that the constructed window creates no additional harm to local amenities as compared to that approved. As such, there is no need for any remedy here as there is no harm. However, in light of concerns raised a landscape scheme is proposed that provides for a tree near the boundary of the site that will serve to obscure views of the stairwell window when viewed from Bluebell Cottage. The landscape scheme also shows how four holly trees can be provided in the gap on the northern boundary which will provide an instant remedy to perceived issues of loss of privacy and light spill and will become more effective over a 2-3 year period as the planting become established and matures.

Kitchen Window

39. The application seeks to replace the larger kitchen windows with ones as per the approved plans.

External Lighting

40. The application seeks consent to incorporate external lighting to the dwelling. The lighting assessment sets out how lighting can be installed that minimizes light spill – by directing light downwards in a localised manner so as not to harm the wider area.

Reductions in Dwelling Size

41. The submitted plans show how the internal floor area of the dwelling can be reduced by removing an area of floorspace under the staircase. In practice this means that a wall will be constructed making this space an external space. The application plans show how this can be achieved. Undertaking these works will reduce the floor area of the dwelling by 3.4sq-m, resulting in a dwelling size of 162.6sq-m, just 1.4sq-m above the policy advice (or 0.87%) which is within normal construction tolerances.

42. In making this suggestion, it is appreciated that the external appearance and/or size of the dwelling will be unchanged. However:

- a. Policies DP35 and DP36 refer to the internal habitable area;
- b. Bringing the internal habitable area within the normal construction tolerances of the policy advice would enable the policy to be complied with; and
- c. For the reasons given above, the dwelling as built causes no harm to either of the purposes underpinning Policies DP35 and DP36 in any event.

PLANNING BALANCE

43. It is clear that whilst the as built dwelling differs from that which was permitted, these differences are not as significant as the LPA had previously assumed. Attention has previously been focused on the comparative impact of the approved and as-built stairwell windows with the assumption being that the approved stairwell window would not create as much harm as that as constructed. However, the verified views and Lighting Assessment clearly demonstrate that there is no additional harm created as a result of these changes. Whilst mitigation in respect of the relationship with Bluebell Cottage is not required, the applicants are happy to minimise impact on their neighbour and the suggested measures are therefore proposed. Mitigation measures also include the provision of kitchen windows in line with the consented scheme.

CONCLUSION

44. For all of the above reasons, the differences between the dwelling as built and as permitted do not result in harm to local residential amenities, to the character of the Conservation Area, or to the National Park. Further, insofar as there is (currently) a notional breach to the size guidance in Policies DP35 and DP36, this can readily be addressed as proposed, alongside additional mitigation measures as above. Planning permission should therefore be granted.

Appeal Statement - Appendix 1

TOWN AND COUNTRY PLANNING ACT 1990 – S174 APPEAL

PLANNING APPEAL SUBMITTED IN RESPECT OF THE DECISION OF THE NEW FOREST NATIONAL PARK TO SERVE AN ENFORCEMENT NOTICE FOR THE ALLEGED UNAUTHORISED CONSTRUCTION OF A DWELLING ON LAND AT PAYSANNE, GODSHILL WOOD, FORDINGBRIDGE, SP6 2LR

1. INTRODUCTION

1.1. This Appeal Submission sets out the grounds of appeal on behalf of Mr. Ian Vickers and Mrs. Angela Vickers (the Appellants) against the decision of the New Forest National Park (the LPA) to serve an Enforcement Notice regarding the construction of a dwelling on land at Paysanne, Godshill Wood, Fordingbridge.

1.2. The background to this appeal is that the Appellants obtained a consent from the LPA for a two-storey house (Planning Permission No. 18/00262). Once constructed, it was identified that a number of deviations from the approved plans had taken place, including the following:

(1) The footprint of the building has rotated by 7 degrees compared to the approved plan.

(2) The width, height and depth of the dwelling are marginally greater than permitted, in consequence of which the internal floor area of the dwelling exceeds the parameters allowed by Policy DP35 of the New Forest National Park Local Plan 2016-2036 (adopted August 2019) which seeks to contain the increase in dwelling sizes outside the defined villages.

(3) The kitchen windows are larger than permitted, resulting in concerns with regard to overlooking land and a public footpath to the rear and the potential for light spill and light pollution.

(4) The stairwell window to the north is larger than permitted, likewise resulting in concerns with regard to overlooking neighbouring dwelling and the potential for light spill and light pollution.

- 1.3. An Enforcement Notice in respect of the above was served on the Appellants on the 26th February 2021. The alleged breach of planning control was the unauthorised construction of a dwelling and an outbuilding. The effective date of the Enforcement Notice is the 12th May 2021.
- 1.4. This Appeal Submission will expand on the Appellants' Grounds of Appeal, quantifying the extent of the differences of Paysanne, as built, from the approved plans and assessing the additional impact (if any) thereby occasioned on the tranquillity, character and appearance of the surrounding area and on local residential amenity. It will place the as built changes within the context of the New Forest National Park Local Plan 2016-2036 and address the concerns raised by both the LPA in its Reasons for Refusal, Committee Report and Consultee Comments (and, also, comments by local residents).
- 1.5. The Appellants will argue that any alterations to the building are not of such significance as to warrant enforcement action and that consent should be granted for the dwelling as built. Accordingly, an appeal has been made under Ground (a), namely that planning permission ought to be granted for the proposed development.
- 1.6. In addition and in the alternative, it will also be argued that the required remedy is excessive and any outstanding concerns (if any) can be mitigated through the grant of Planning Permission for an amended scheme under Grounds (a) and (f) – See: *Tapecrown v First Secretary of State* [2006] EWCA Civ 1744¹ (“...the inspector should bear in mind that the enforcement procedure is intended to be remedial rather than punitive”); and *Mahfooz Ahmed v Secretary of State for Communities and Local*

¹ At [46].

Government [2014] EWCA Civ 566², regarding the power to amend the steps required to be taken by an Enforcement Notice and grant Planning Permission for Alternative Proposal put before an Inspector on appeal.

2. SITE AND SURROUNDING AREA

- 2.1. The appeal site refers to a detached property located to the south of an unmade road, which is known as the Lower Track, within Godshill Wood, and located 1km to the north of Godshill.
- 2.2. The dwelling is centrally located within a plot of 0.227 hectare in size. The footprint comprises some 99sq-m and thus occupies 4.3% of the plot area. In addition, there is a swimming pool on site and associated outbuildings. The site is bounded by existing fencing. There are a number of mature trees on the site, the majority of which are located on the site's periphery, together with soft landscaping.
- 2.3. The dwelling is located at least 20m from the adjacent highway and public right of way. Appendix 1 is a plan showing minimum dimensions to all relevant boundaries.
- 2.4. The dwelling is sited on the slope of a valley which contains fifteen detached single and two-storey dwellings, all typically in generous plots, many of which have views over the adjacent valley. The nature of the local area means that there are local level changes and the lane to the immediate north of Paysanne is some 5.5m higher than the dwelling. Appendix 2 is a site section showing the relationship of the as built dwelling to Bluebell Cottage to its north.
- 2.5. The dwelling itself is an oak framed two-storey building with a single-storey element and is a replacement dwelling. The original dwelling comprised a white painted single storey building with an internal floor area of 124sq-m³. Appendix 3 contains a series of photographs of the original building.

² At [34].

³ This is the internal floor size not the footprint which would have been larger.

- 2.6. There are mature trees on site that are peripherally located provide some screening, particularly towards the lane to its north. However, it is acknowledged that there is currently a gap in landscape screening to the immediate north of the stairwell on the northern elevation of Paysanne⁴.
- 2.7. This is due to the owners laying a section of boundary hedge in order to regenerate growth.
- 2.8. Immediately to the north of the appeal site are two detached dwellings, Bluebell Cottage and Highfield, as shown in the following aerial photograph:



⁴ The Appellants have not removed any hedging along this boundary, except for site access where permitted, and have now replanted with native hedging.

2.9. Bluebell Cottage is a single storey building with habitable room windows facing the appeal site. The ridge height of Bluebell Cottage is 8.45m higher than the ridge of Paysanne. The distance between the stairwell window at Paysanne and Bluebell Cottage is 46.5m.

2.10. The existing dwelling on site is a self-build constructed by the Appellants. The approved design mirrors their previous house, "Joycol" (renamed "Hidden Oak" after demolition and rebuild), which is located in Well Lane, Godshill, just 1.25km to the south of the appeal site: This is particularly relevant in that:

(1) The northern elevation of the Well Lane property contains a large stairwell window of the same size as that approved at Paysanne; and

(2) Identical materials were used in its construction - it is also an oak frame building that has now weathered.

3. PLANNING POLICY CONTEXT

Local Planning Policy

3.1. The adopted Local Plan (LP) is the New Forest National Park Local Plan 2016-2036 (adopted August 2019). Policy DP35 provides as follows with regard to replacement dwellings:

"Policy DP35: Replacement dwellings

The replacement of existing dwellings will be permitted except where the existing dwelling:

- a) is the result of a temporary or series of temporary permissions or the result of an unauthorised use; or
- b) makes a positive contribution to the historic character and appearance of the locality.

A replacement dwelling may be sited differently than the dwelling to be replaced, providing that there are clear environmental benefits.

Caravans and mobile homes may not be replaced by permanent dwellings.

In the case of small dwellings and those permitted by Policies SP19 – DP31 of this Local Plan, replacement dwellings must not result in the total internal habitable floor area exceeding 100 square metres.

In the case of other dwellings outside the Defined Villages, the replacement dwelling should be of no greater floorspace than the existing dwelling.

In exceptional circumstances, a larger dwelling may be permitted if it is essential to meet the genuine family needs of an occupier who works in the immediate locality. In respect of this exceptional circumstance, the maximum habitable floorspace of the replacement dwelling must not exceed 120 square metres.”

3.2 The supporting text to Policy DP35 states *inter alia* as follows at paragraph 7.76:

“To address concerns raised regarding the long-term urbanisation and the erosion of local distinctiveness within the New Forest, as well as a reduction in the stock of smaller dwellings, successive local plans have sought to limit the impact of replacement dwellings through the use of appropriate planning policies. A tighter approach to replacement dwellings is taken outside the Defined Villages as the landscape impact of replacement dwellings in these more rural locations can be greater.”

3.3 Policy DP35 on replacement dwellings is to be read alongside Policy DP36, which provides as follows with regards to extensions to dwellings:

“Policy DP36: Extensions to dwellings

Extensions to existing dwellings will be permitted provided that they are appropriate to the existing dwelling and its curtilage.

In the case of small dwellings and new dwellings permitted by Policies SP19 to DP31 of this Local Plan, the extension must not result in a total internal habitable floorspace exceeding 100 square metres. In the case of other dwellings (not small dwellings) outside the Defined Villages the extension must not increase the floorspace of the existing dwelling by more than 30%.

In exceptional circumstances a larger extension may be permitted to meet the genuine family needs of an occupier who works in the immediate locality. In respect of these exceptional circumstances, the total internal habitable floorspace of an extended dwelling must not exceed 120 square metres.

Extensions will not be permitted where the existing dwelling is the result of a temporary or series of temporary permissions or the result of an unauthorised use.”

3.4 The supporting text to Policy DP36 states *inter alia* as follows at paragraph 7.79:

“Successive development plans for the New Forest have included such policies which strike an appropriate balance between meeting changes in householder requirements and maintaining a stock of smaller sized dwellings.”

3.5 There is a significant difference in the wording of the two Policies, DP35 and DP36, in that Policy DP35 does not allow for an overall increase in the size of a replacement dwelling, whereas DP36 provides for a 30% uplift where a house is extended. The approved scheme comprises a replacement dwelling, but it is clear from the wording of the Officer’s Reports with regards to the reasons for issuing the Enforcement Notice, the grant of Planning Permission No. 18/00262, and the refused scheme, that the policies in this regard are read as one – see:

(1) The Officer’s Report for the Planning Application No. 18/00262/FULL (see Appendix 4) which, in paragraph 11.6, identifies that the site is outside the defined villages and is not a small dwelling. Policy DP10 of the former Local Plan, superseded by Policy DP35, states that for “all dwellings which are not small dwellings and located outside of the Defined Villages, the replacement should be of no greater floorspace than the existing dwelling. At the same time, however, an extension can be considered under Policy DP11, and this policy restricts this increase to no more than 30% of the original floorspace. The proposed replacement would have a total habitable floorspace of 160m², which would comply with the 30% additional floorspace limitation.”

(2) The Officer’s Report for the refused scheme (see Appendix 5) the states, also in paragraph 11.6, that “Local Plan Policy DP35 relates to replacement dwellings and Policy DP36 to extensions. Policy DP35 states that for all dwellings which are not small dwellings and are located outside the defined New Forest villages, a replacement should be of no greater floorspace than the existing dwelling. At the same time, however, an extension can be considered under Policy DP36, and this policy restricts this increase to no more than 30% of the gross internal habitable floorspace that existed at the site in 1982. The approved

replacement would have had a total habitable floorspace of 160m², which equated to a 30% enlargement over the floor space that existed in the demolished dwelling.”

(3) Section 4 of the Enforcement Notice states that “Policies DP35 and DP36 of the adopted New Forest National Park Local Plan 2016-2036 (August 2019) seek to limit the proportional increase in the size of such dwellings.”

3.6 Policy DP36 of the current Local Plan is a revised version of Policy DP11 of the previous Local Plan. The LPA has on their website, a document entitled “Planning Information Leaflet Extensions to Dwellings”, which provides advice on the calculation of floorspace, including as follows:

“**Small dwelling** means a dwelling with a floor area of 80sq. metres or less as it existed on 1 July 1982.

“**Floorspace of original, existing and small dwellings** will be measured as the total internal habitable floorspace of the dwelling but will not include floorspace within conservatories, attached outbuilding and detached buildings (irrespective of whether the outbuilding’s current use is as habitable room floorspace.”

3.7 No reference is made in the advice to the standard RICS methodology in calculating internal floor area.

3.8 Policy DP2 states the following with regard to “General development principles”:

“**Policy DP2: General development principles**

All new development and uses of land within the New Forest National Park must uphold and promote the principles of sustainable development. New development proposals must demonstrate high quality design and construction which enhances local character and distinctiveness. This includes, but is not restricted to, ensuring:

- a) development is appropriate and sympathetic in terms of scale, appearance, form, siting and layout;
- b) development respects the natural, built and historic environment, landscape character and biodiversity;

- c) development takes opportunities to protect and enhance the setting of groups and individual trees, hedges and hedgerows and to include new planting of native trees and hedges where appropriate;
- d) materials and boundary treatments are appropriate to the site and its setting;
- e) development would not result in unacceptable adverse impacts on amenity in terms of additional impacts, visual intrusion, overlooking or shading; and
- f) development would not result in unacceptable adverse impacts associated with traffic or pollution (including air, soil, water, noise and light pollution).

New development must also comply with required standards for:

- g) car parking (see Annex 2)
- h) open space (as set out in Policy DP10)."

3.9 Policy SP16 states the following with regard to the historic and built environment:

"Policy SP16: The historic and built environment

Proposals should protect, maintain or enhance nationally, regionally and locally important sites and features of the historic and built environment, including local vernacular buildings, archaeological sites and designed and historic landscapes, and, where appropriate, help secure a sustainable future for those heritage assets at risk.

- a) Proposals will be supported where they conserve and enhance the significance or special interest of designated or non-designated heritage assets, i.e. they:
 - (i) do not harm the special interest, character or appearance of a conservation area, including spaces, street patterns, views, vistas, uses and trees which contribute to that special interest, character or appearance, having regard to the relevant conservation area character appraisal and management plan; and
 - (ii) do not harm the significance, or result in the loss of a:
 - scheduled monument (or a non-designated asset of archaeological interest of demonstrably equivalent significance); or
 - listed building, including through inappropriate siting, size, scale, height, alignment, materials, finishes (including colour and texture), design and forms; or
 - registered park and garden, and particularly its layout, design, character, appearance and key views within, into and out; and

- (iii) make a positive contribution to, or better reveal, or enhance the appreciation of, the significance or special interest of a heritage asset or its setting; and
 - (iv) help secure the long-term conservation of a heritage asset.
- (b) Proposals will be resisted where they would harm the significance or special interest of a heritage asset unless any harm is outweighed by the public benefits of the proposal, proportionate to the degree of harm and significance of the asset, including securing its optimum viable use
- (c) All development proposals that affect, or have the potential to affect, the significance or special interest of a designated or non-designated heritage asset, either directly or by being within its setting, will need to be accompanied by a clearly evidenced heritage impact statement proportionate to the development and the significance or special interest of the asset, setting out the impact of the development on that significance or special interest and how any harm has been avoided or minimised through careful design and mitigation
- (d) Where proposals are likely to affect a site of known or potential archaeological interest, and appropriate desk-based assessment will also be required, including field evaluation where necessary.”

3.10 Policy SP15 states the following with regard to tranquillity:

“Policy SP15: Tranquillity

New development should avoid, or provide mitigation measures, if the proposal will lead to noise, visual intrusion, nuisance and other unacceptable environmental impacts on the National Park and its special qualities.

This should include reducing the impacts of light pollution on the ‘dark skies’ of the National Park and control of development to prevent artificial lighting from eroding rural darkness and tranquillity.

Development proposals that seek to remove visually intrusive man-made structures from the landscape will be supported.”

3.11 Policy SP7 states the following with regard to landscape character:

“Policy SP7: Landscape character

Great weight in planning decisions will be given to conserving the landscape and scenic beauty of the National Park and to its wildlife and cultural heritage. Development proposals will be permitted if they conserve and enhance the character of the New Forest’s landscapes and seascapes by demonstrating that:

- a) they are informed by New Forest National Park Landscape Character Assessment and are compatible with the distinct features and type of landscape in which the development is located;
- b) the design, layout, massing and scale of proposals conserve and enhance existing landscape and seascape character and do not detract from the natural beauty of the National Park;
- c) the character of largely open and undeveloped landscapes between and within settlements will not be eroded or have their setting harmed; and
- d) landscape schemes reinforce local landscape or seascape character.

Where planting is appropriate, it is consistent with local character and native species are used.

3.12 The LPA has adopted a Supplementary Planning Document, "Design Guide December 2011",

3.13 The Design Guide seeks to achieve high standards of design whilst retaining the distinctive character of the natural and built environment, without prescribing a particular building style.

3.14 On page 6, the Design Guide refers to considerations in respect of new development:
 "New development should aim to fit comfortably, respecting the character of local buildings. Early considerations should include the wider impact a development might have, such as levels of activity or light pollution, the effect on boundaries, access and highway impacts."

3.15 On page 11, the Design Guide seeks to avoid suburbanisation, including through:
 "Minimising the impact of glazing, including at night by placing in least conspicuous locations, avoiding extensive upper floor glazing and varying scale and size of openings."

National Planning Policy

3.16 The National Planning Policy Framework (NPPF) sets out the Government's national planning policies and how they should be applied.

3.17 Paragraph 2 of the NPPF states the following:

“Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions.”

3.18 Paragraphs 7 and 8 refer to the requirement to achieve sustainable development:

“7. The purpose of the planning system is to contribute to the achievement of sustainable development. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs.

8. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):

- a) **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;
- b) **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities’ health, social and cultural well-being; and
- c) **an environmental objective** – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.”

3.19 Paragraph 47 reinforces the requirement to determine planning applications in accordance with the development plan unless material considerations indicate otherwise:

“47. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.”

3.20 Paragraph 54 refers to the use of planning conditions to make an otherwise unacceptable scheme acceptable:

“54. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.

3.21 Paragraph 58 specifically refers to enforcement, stating that it should be proportionate to the breach:

“58. Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.”

3.22 Paragraph 172 assigns the weight given to conserving National Parks, as follows:

“172. Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks and the Broads. The scale and extent of development within these designated areas should be limited. Planning permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:

- a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
- b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and
- c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.”

3.23 Paragraph 189, 192 and 196 requires applications to assess the significance of heritage assets and consider potential impact on heritage assets:

“189. In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected including any contribution made by their setting. The level of detail should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance.”

“192. In determining applications, local planning authorities should take account of:

a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;

b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and

c) the desirability of new development making a positive contribution to local character and distinctiveness.’

“196. 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.”

4. BACKGROUND/PLANNING HISTORY

Introduction

- 4.1. The Appellants have built their family home on the appeal site. It is acknowledged that the house as has not been built in accordance with the approved plans and that there are deviations, particularly in terms of scale and massing and window size. Sections 4 and 5 of this Appeal Submission seek to set out the extent of these changes and place them in context.

“Hidden Oak”, Well Lane, Godshill

- 4.2. The Appellants purchased the existing bungalow of Paysanne and its plot in on 28th July 2017 with benefit of an extant planning permission for a replacement dwelling (Planning Permission No. 16/00828). At that time, the existing dwelling on site comprised a single storey dwelling of some 124sq-m in size (i.e. well in excess of the LPA definition of a small dwelling, as set out in Policy DP35 of the LP).

- 4.3. Whilst the site had a consent for the replacement dwelling, the Appellants decided to obtain an alternative consent that was closely based on the house that they had previously built and occupied on a site 1.25km to the south of the appeal site (Hidden Oak), a two-storey, detached, replacement dwelling located at the southern end of Well Lane for which permission was granted on 20th July 2011 (Planning Permission No. 11/96244).
- 4.4. The design of Hidden Oak is strikingly similar to that of Paysanne and, like Paysanne, includes a stairwell window on the northern elevation and is a wooden frame building with oak cladding. However, being seven years older than Paysanne the weathering of the timber has created a significantly darker appearance, helping the dwelling to blend into the surrounding area. The same will occur with Paysanne.

Paysanne Planning History: Planning Permission No. 18/00262

- 4.5. As noted above, prior to the purchase of the appeal site by the Appellants the LPA granted consent for a replacement dwelling on the 20th December 2016 (Planning Permission No. 16/00828). The elevational details of this consent are attached as Appendix 6. This consent was not implemented. Rather, the Appellants obtained Planning Permission No. 18/00262, dated 14th September 2018, with the intent of developing that instead, essentially re-building their former home at Hidden Oak on the appeal site.
- 4.6. The approved scheme was granted consent under delegated powers, with the Officer's Report noting as follows:
- (1) No comments were made by Members in respect of the development proposals (Section 6).
 - (2) The Parish Council were happy for the application to be determined under delegated powers but expressed some concerns regarding overlooking from the balconies (on the southern elevation); the steep terrain of the site; the need

to retain trees on site; and that no external lighting should be installed on site (Section 7).

(3) No objection was raised to the proposals by the Tree Officer and/or Ecologist (Paragraph 8.1).

(4) Concerns were raised by the Landscape and Building Design and Conservation Officer with regard to the increased scale of the dwelling as compared to the original single-storey dwelling (Paragraphs 8.3 and 11.7). In response, however, the Officer's Report stated that the increase in the ridge height of 300mm would not result in visual impact when viewed from the north (Paragraph 11.7), concluding as follows:

“... it is not considered that the proposal would appear unduly prominent or have any significantly harmful visual amenity upon the wider area.”

(5) The Officer's Report also noted and addressed similar concerns raised by neighbouring properties (Paragraph 11.10), as follows:

“Concern has been raised by neighbours that, by virtue of the increased height, presence of balconies and removal of vegetation within the site, the proposal would give rise to levels of overlooking and loss of privacy not currently experienced. The first floor windows upon the front elevation would not be at a dissimilar height to those existing. Whilst the removal of vegetation within the site does remove screening, this makes the site itself more exposed, rather than impacting on neighbouring properties. As such, it is not considered that the proposal would result in any significantly adverse impact upon neighbouring amenity.”

(6) The Officer's Report stated as follows regarding the visual impact of the proposal (Paragraph 11.7):

“A 'Perspective Visual Comparison' has been submitted, as well as a number of photographs, showing the existing and proposed dwelling when viewed from the south, across the valley. By virtue of its white painted brickwork, the existing dwelling is discernible between the trees and vegetation, and it is the neighbouring property to the west, a two storey white painted dwellinghouse with solar panels, which is particularly prominent. The comparison shows that the proposed dwelling, which would be timber clad in oak, would blend in with its

surroundings, and as such, would be less prominent than the existing dwelling, despite its increase in bulk. As such it is not considered that the proposal would appear unduly prominent or have any significantly harmful visual amenity impact upon the wider area.”

(7) The Officer’s Report noted in this regard (Paragraph 11.8) that the proposal would be bulkier than Permission No. 16/00828 by reason of increased height. However, the overall the footprint would not be greater than the existing⁵.

(8) The Officer’s Report further noted as follows with regard to materials and glazing (Paragraph 11.8):

“The use of oak cladding is considered appropriate and would assist in the building harmonising with its rural setting. Whilst there is a large area of glazing upon the rear elevation, this is considered to be acceptable, particularly considering the levels of glazing previously approved on the front (south) elevation. Overall, it is not considered that the proposed replacement dwelling would result in any significant adverse impact on the character and appearance of the conservation area.”

4.7 The Officer’s Report raised no concerns with regard to the potential for light pollution from the approved dwelling. Further, whilst reference was made to the presence of increased glazing, this was with regard the rear southern elevation only and was considered acceptable. Importantly, given the importance of consistency in the making of planning decisions⁶ (and noting that Hidden Oak had itself been approved with strikingly similar glazing), no reference was made in the Officer’s Report to the extent of glazing to the stairwell window, nor its impact in terms of light pollution, all of which was clearly considered entirely acceptable.

4.8 In this regard it is also to be noted that whilst some concerns were raised by third party objectors to the proposal with regard to the proposal’s size and its impact on the

⁵ In this regard, please note that the footprint proposed by 16/00828 was far greater than the original bungalow and the “as built” is smaller than the footprint of the original bungalow.

⁶ See: *North Wiltshire v Secretary of State for the Environment* [1993] 65 P&CR 137.

Conservation Area, none expressed concerns over the extent of glazing and/or harm on the night sky as a result of light pollution.

4.9 It is further to be noted that there were third-party comments in support of the proposal, including statements to the effect that:

(1) The proposed dwelling would be sympathetic to its surroundings and to its general rural ethos.

(2) The use of oak cladding would reduce the visual impact of the dwelling on site, particularly compared to the neighbouring properties which are white painted.

(3) The building will be of appropriate and sympathetic scale.

4.10 Planning Permission No. 18/00262 (see Appendix 7) was granted subject to conditions, including as follows:

(1) Development was required to be carried out in accordance with the approved plans (Condition No. 2).

(2) Permitted development rights with regard to alterations to the walls and roof of the dwelling and in respect of outbuildings were removed (Condition No. 6).

(3) Permitted development rights were also removed for means of enclosure (Condition No. 7).

(4) No external lighting was to be installed (Condition No. 11).

4.11 No condition was placed on the consent with regard to landscaping.

Extant Building

4.12 It is now clear that when the Appellants commenced development on site, there was some deviation from the approved plans (notwithstanding that throughout the development, LPA Officers were regular visitors to the site, taking measurements, and expressed no grave concerns). Accordingly, and in response to concerns raised by the LPA, the Appellants submitted a retrospective planning application to regularise matters (Planning Application No. 20/00903), as follows:

“Application to vary condition 2 of planning permission 18/00262 Dwelling; detached garage with office over; sewage treatment plant; demolition of existing dwelling and outbuilding to allow minor material amendment.

4.13 The application was refused on 15th February 2021 for the following reasons (see Appendix 8):

“1. In order to help safeguard the long term future of the countryside, the Local Planning Authority considers it important to resist the cumulative effect of significant enlargements being made to rural dwellings, whether through extension or replacement. Consequently Policies DP35 and DP36 of the adopted New Forest National Park Local Plan 2016- 2036 (August 2019) seek to limit the proportional increase in the size of such dwellings in the New Forest National Park recognising the benefits this would have in minimising the impact of built development on the countryside, and in maintaining a balance in the housing stock. The revised design of this dwelling has resulted in a building which is unacceptably large in relation to the original dwelling and would undesirably add to pressures for change which are damaging to the future of the New Forest National Park Authority countryside.

2. The revised design, extent of glazing and re-orientation of the dwelling has resulted in adverse impacts on neighbouring amenity, as well as on the immediate locality, the wider Conservation Area and the landscape of the National Park, contrary to policies DP2, SP16, SP15 and SP7 of the New Forest National Park Local Plan 2016-2036 (August 2019).”

4.14 The decision to refuse the application was made under delegated powers. The Officer’s Report identified the following discrepancies between that which was built and that which was approved (Paragraph 11.3):

- (1) The scale and massing of the dwelling was larger than the approved scheme. It is 1.2m longer, 0.67m wider has a ridge height of 0.8m higher than what was approved (though noted that slab level 0.3m lower).
- (2) The dwelling had been located to the south and closer to the south west boundary by 3.2m.
- (3) The double height glazed stairwell window was larger and, as a result of the re-orientation of the house, was closer to the west and faced north to north west.
- (4) Security lighting had been installed in breach of condition.
- (5) In addition, there were some other window changes.

4.15 The Officer's Report stated, *inter alia*, as follows with regard to the above discrepancies:

- (1) Paragraph 11.5: The approved dwelling was at the limits of acceptability in terms of small dwelling policy and impact on neighbouring amenities.
- (2) Paragraph 11.6: Policy DP35 requires that dwellings should not increase by more than 30% of gross internal habitable floor space in respect of dwellings constructed on 1 July 1982 – which creates a limit of 160sq-m. As built, the dwelling was 167sq-m and contrary, therefore, to Policy DP35.
- (3) Paragraph 11.8: The proposed retention of the dwelling as built was considered to create less than substantial harm to the Conservation Area. The reorientation of the footprint caused the stairwell window to be less well screened by boundary vegetation and topography and also meant that the (larger) windows would have greater impact on the valley. (Increased window sizes will increase light pollution).

(4) Paragraph 11.8: The slope of the site has necessitated a large supporting plinth and pool and terracing made the dwelling more prominent and striking. The dwelling could be seen some distance away particularly at night – esp. at upper levels.

(5) Paragraph 11.8: The solid timber fencing and non-native species boundary treatment was unsympathetic.

(6) Paragraph 11.9: The reorientation of the dwelling and moving it some 3m to the west meant that it is possible to gain views of the patio and rear windows of Bluebell Cottage:

“This degree of overlooking, albeit from a distance of some 50m, is unacceptable in the context of the complete privacy and seclusion previously enjoyed by its occupiers.”

4.16 It is to be noted, however, that whilst there were five letters of objection to the application, there were also (indeed more) letters of support, including statements to the following effect:

(1) The design of house as built was a significant improvement on the previously approved scheme and the original house.

(2) The resultant building was one of the best recent buildings in the Forest and in keeping with other dwellings in the area and the bottom track with its steeped pitched tile roof and prominent gable.

(3) The house had been built to the highest specification, using materials selected with great care and is entirely in keeping with, and enhancing, the hamlet of Godshill Wood.

(4) The new house nestled discreetly in the side of the hill and looked as if it belonged there.

(5) Existing vegetation provided effective screening to the house. As landscaping will mature, the screening will be even more effective.

(6) The house comprised a beautiful and harmonious forest dwelling that has an uplifting visual impact, does not affect neighbouring properties, and has made great use of landscaping.

4.17 The LPA served an Enforcement Notice in respect of the alleged breach of planning control on 26th February 2021. The effective date is the 12th May 2021 and required works include the demolition of the house and outbuilding.

4.18 The reasons for issuing the Enforcement Notice, as set out in Section 4, are as follows:

“It appears to the Authority that the above breach of planning control has occurred within the last 4 years.”

“The dwelling that has been constructed differs, in terms of its positioning, footprint and dimensions, from the approved plans of planning permission 18/00262 for a replacement dwelling. Accordingly, it is development without planning permission, as is the outbuilding. The dwelling as constructed is larger than that permitted, and its revised orientation, among other factors, alters the impact on amenity compared with what has been permitted. Cumulatively the changes and alterations result in an unacceptable form of development.”

“In order to help safeguard the long-term future of the countryside, the Local Planning Authority considers it important to resist the cumulative effect of significant enlargements being made to rural dwellings whether through extension or replacement. Consequently, Policies DP35 and DP36 of the adopted New Forest Local Plan 2016-2036 (August 2019) seek to limit the proportional increase in size of such dwellings in the New Forest National Park recognising the benefit this would have in minimising the impact of build development on the countryside, and in maintaining the balance in the housing stock. The revised design of this dwelling has resulted in a building which is unacceptably large in relation to the original dwelling and would undesirably add to pressures for change which are damaging to the future of the countryside. “

“The revised design, extent of glazing and re-orientation of the dwelling has resulted in adverse impacts on neighbouring amenity, as well as on the immediate locality, the wider Conservation Area and the landscape of the National Park,

contrary to policies DP2, SP16, SP15 and SP7 of the New Forest National Park Local Plan 2016-2036 (August 2019).”

“The Authority do not consider that planning permission should be granted because conditions could not overcome the objections referred to above.”

4.19 The required works are as follows:

“5.1 Demolish the dwelling house in the approximate position shown hatched blue on the plan attached to this Notice, including the above-ground level and below-ground level elements forming part of the structure, to create a cleared site commensurate with the immediately adjacent ground levels.

5.2 Demolish the outbuilding in the approximate position shown hatched in green on the plan attached to this Notice.

5.3 Permanently remove all the materials, external lighting, debris and associated paraphernalia from the land affected.

5.4 Install a layer of growing depth of topsoil and seed with a native grass and retain as such.”

5. THE BREACHES OF PLANNING CONTROL

Introduction

5.1 The grant of Planning Permission No. 18/00262 is of considerable importance in assessing the acceptability of the discrepancies between that which has been built and that which was permitted since we know that the permitted scheme was considered to be entirely acceptable in this location in terms of its impact of the landscape; heritage; and neighbouring residential amenity. It is therefore a true benchmark against which the impact of the variations to the permitted scheme can be considered. (We know, for example, that the LPA consider that both the materials used and a substantial glazed feature in the stairwell and on the northern elevation are entirely acceptable in this location). The variations between that which was permitted and that which has been built are, accordingly, detailed in the sub-section of this Appeal Submission which follows. The sub-section immediately thereafter explains how those variations came to occur and places them in the context of the proper approach to enforcement.

5.2 It should, however, be noted at the outset that some of the works of which complaint has been made are not in breach of planning control and did not require planning permission. For example, whilst permitted development rights have been removed in respect of means of enclosure, the Appellants have simply retained, rather than replaced, the existing fencing. Similarly, a condition was not placed on Planning Permission No. 18/00262 requiring the submission and approval of a landscaping scheme. The Appellants have kept the majority of plants and shrubs and simply tidied them up and augmented where appropriate.

The Differences Between ‘As Built’ and ‘As Permitted’

5.3 With respect to the specific differences between the approved plans and the completed house these are particularised below by reference to: (1) Internal size; and (2) External alterations with regard to (a) orientation; (b) fenestration; and (c) external lighting.

(1) Internal Size

The gross internal floor areas, calculated using IPMS 3B/RICS GHIA guidance are as follows:

	Footprint (ground floor) GIA (sq-m)	Overall (both floors) GIA (sq-m)
Original dwelling	124	-
Approved scheme	94	160
As built	99	166

(IPMS (International Property Measurement Standards Coalition))

(2) External Alterations

(a) Orientation

The footprint of the building has rotated by 7 degrees with the consequence that the western flank of the building has rotated some 3m to the south-west. The building has moved some 2.2m to the west of that approved. A comparative site plan showing the footprint of the original, approved and as built footprint is attached as Appendix 9.

(b) Height and Width

The following table sets out the differences in the width and depth of the footprint and the eaves and ridge height:

	Width (m)	Depth (m)	Eaves height (m)	Ridge height (m)
Approved	17.895	8.614	4.958	7.55
As built	18.325	9.191	4.778	8.438

Please note that the ground floor finished floor level is 100mm lower in the as built which makes the eaves height difference 80mm. The comparative floorplans and elevations are attached as Appendix 10.

(c) Fenestration

Northern Elevation

The approved plans include a gabled stairwell on the northern elevation with glazing of 2.4m wide and 5.5m high. The extent of glazing is some 10.42sq-m in area. The as built stairwell incorporates additional glazing and has an area of 12.286sq-m – an increase of 1.866sq-m, or 17.9%. Fenestration details are as follows:

	Width (m)	Height (m)	Glazing m ²	Additional glazing m ²	Additional glazing (%)
Approved dimensions	2.5	5.4	10.42	-	-
As built dimensions	2.8	6.4	12.286	1.866	17.9

In addition, an approved first-floor window has not been installed west of the stairwell.

Southern Elevation

Larger kitchen windows have been installed than permitted as detailed below:

	Width (m)	Height (m)	Overall Glazing m ²	Additional glazing (m ²)	Additional glazing (%)
Approved dimensions	0.85	0.8	1.361	-	-
As built dimensions	1.8	0.9	3.464	2.103	254

In addition, larger bi-fold doors have been installed than approved.

Appendix 11 comprises sets of glazing details.

Western Elevation

An additional first floor window has been installed.

Eastern Elevation

An additional ground floor window has been installed on the return of the living room.

Explanation of Variations

5.4 There are perfectly innocent explanations for the more substantial differences between that which was permitted and that which has been built (the orientation and size of the building and stairwell glazing). In particular:

- (1) The rotation of the approved building by seven degrees is explained by the difference between true north and magnetic north (the same seven degrees). The footprint of the dwelling was set out by use of a compass and the magnetic variation caused this (relatively common) error to occur. The re-orientation has secured no benefit to the Appellants and was accidental.
- (2) Similarly, the width of the building is greater than that approved by reason of a simple misinterpretation of the plans during the setting out process. The external dimensions were confused with the internal dimensions. The difference in the two external walls comes to just 0.6m.
- (3) The increase in the width of the building has, in consequence, led to an increase in the width of the stairwell window. This in turn has increased the extent of glazing to the stairwell by reason of the increase in window width and the apex.

5.5 Other alterations primarily relate to ground floor fenestration changes. The as built plans, for example, show a window on the eastern elevation which is not shown on the approved elevation. However, this is a drafting omission in the approved plans in that the window is clearly shown on the approved floor plans. By incorporating this window, the Appellants sought to remedy this omission. Other ground floor window changes, including the increase in size of the kitchen windows and bi-fold doors on the southern elevation, were undertaken by the Appellants to increase the amount of light entering the dwelling and to improve views of the surrounding area.

5.6 These alterations are considered to be relatively minor and have little impact on the overall impact of the dwelling on the wider area. However, should the Inspector take a different view, in accordance with the correct approach to enforcement as considered in the following section of this statement, then they can be easily remedied.

5.7 With regard to the more substantial alterations, that is to say the increase in footprint, orientation of the footprint, changes to the scale and massing of the building, and the location of the stairwell window they comprise simple errors. They should be judged within the context of the precedent of what the LPA have previously deemed to be acceptable, both with regard to the previously approved scheme and at Hidden Oak. The alterations are considered to be relatively minor and not to create unacceptable harm to local amenities. However, if the Inspector were to take a different view, and harm to local amenities can be readily resolved without the need to take the draconian and punitive measure as set out in the Enforcement Notice, which requires the demolition of a dwelling that is very similar to that previously granted consent on site.

6. **CORRECT APPROACH TO ENFORCEMENT**

Not Punitive

6.1. The correct approach to enforcement entails that it is not punitive – See: *Tapecrow v First Secretary of State* [2006] EWCA Civ 1744 at [46]:

“...the inspector should bear in mind that the enforcement procedure is intended to be remedial rather than punitive.”

- 6.2. The above reflects the scope of a Ground (f) appeal, whereby an Appellant is entitled by statute to appeal against an Enforcement Notice upon the basis that the steps required by the Notice to be taken exceed what is necessary to remedy any injury to amenity which has been caused by the breach.

Power to Grant Permission for Alternative Scheme

- 6.3. Furthermore, and to avoid punitive over-enforcement, an Inspector on an Enforcement Notice appeal has power, under a Ground (a) and Ground (f) appeal in combination, both to amend the steps required to be taken and to grant planning permission for an alternative scheme. Indeed, and as a matter of law, an Inspector is obliged to consider any such proposal which has been squarely put before him – See: *Mahfooz Ahmed v Secretary of State for Communities and Local Government* [2014] EWCA Civ 566 at [34]:

“34. ... The inspector's reasoning under ground (f) was to the effect that he did not have the power to produce a result whereby Mr Ahmed was required to fall back on the 2005 scheme rather than removing the building as a whole. But as explained above, that power potentially existed through the route of granting planning permission for the 2005 scheme under ground (a). That was a route that he failed to consider. Mr Ahmed had not raised it under ground (a) but Mr Ahmed's submissions under ground (f), albeit addressed in terms to remedying the injury to amenity rather than remedying the breach of planning control, should have alerted the inspector to the possibility as an obvious alternative. Mr Whale said that it was not "an obvious alternative which would overcome the planning difficulties, at less cost and disruption than total removal" (the words of Carnwath LJ in *Tapecrown*). It would have been a matter for the inspector, however, to assess whether the 2005 scheme would overcome the planning difficulties at less cost and disruption than total removal. He made no such assessment because he did not apply his mind to the question. Similarly, it would have been for the inspector to decide whether there had been any material change to the planning considerations that had led to the approval of the 2005 scheme on the conditions then imposed, though the enforcement notice itself did not suggest any such change but relied on the differences between the 2005 scheme and the development as built; and it would have been for him to decide whether a variation of the enforcement notice consequent upon the grant of permission for the 2005 scheme would cause any "injustice" to the local planning authority within section 176(1), though again none had been suggested”

Human Rights

- 6.4. Finally in these regards, it is be noted that the step required to be taken by this Enforcement Notice (for what are either relatively minor breaches of control or, so far as the more substantial ones, innocently explained) is the total demolition of the Appellants' home. That plainly engages Article 8 of the European Convention for the protection of Human Rights (ECHR)⁷.
- 6.5. In *R (RLT Built Environment Ltd) v Cornwall Council* [2016] EWHC 2817 (Admin), Hickinbottom J set out, at [81-83], the following propositions with respect to the relationship between ECHR Article 8 and decisions in respect of planning permission or enforcement, including as follows:
- (1) Article 8 does not give a right to a home, or to have a home in a particular place.
 - (2) However, where someone has a home in a particular dwelling, it may interfere with the Article 8 rights of him and/or his family to require him/them to move.
 - (3) Whilst those rights demand "respect", they are not guaranteed. In this context, the public interest and/or the rights and interests of others may justify interference with an individual's Article 8 rights.
 - (4) Where Article 8 rights are in play in a planning control context, they are a material consideration.
 - (5) Any interference with such rights caused by a planning control decision has to be balanced with and against all other material considerations and the issue of justification for interference with Article 8 rights being dealt with by way of a fair balance analysis.
 - (6) That balancing exercise was one of planning judgement.

⁷ And Article 1 of Protocol One to the ECHR.

7. **THE APPELLANT'S CASE**

Ground (a) Appeal: Permit As Built

Dwelling Size

- 7.1. Policies DP35 and DP36 refer to the need to maintain a stock of smaller houses. The definition of a small dwelling is set at 100sq-m. The original single storey building on site, as identified in previous planning applications, had a floor area of 124sq-m. The original dwelling therefore fell well outside the definition of a small dwelling. Thus, to increase the floor area of the approved dwelling from 160sq-m to 166sq-m will not result in the loss of a small dwelling and will not upset at all the balance of the housing stock.
- 7.2. It is in these regards to be noted that a relatively recent appeal decision (Appeal Ref: APP/B9506/W/20/3245038), dated 19th May 2020, considered related matters in a S78 appeal in respect of Pine Lake, Crawley Hill, West Wellow, also located within the New Forest National Park. This 2020 decision letter should be read alongside an earlier, 2008, decision letter (Appeal Ref: APP/B9506/A/08/2066468). These decision letters are attached as Appendix 12.
- 7.3. Put shortly, the 2008 decision letter allowed a replacement dwelling as built (notwithstanding that it represented an increase in built volume by over 50%), after the Inspector found that it would not be harmful to the character and appearance of the area. Having considered the issue of permitted development rights, the Inspector expressly found no exceptional reason to curtail them by condition. Although a replacement dwelling was constructed at the site, it differed from the scheme allowed at appeal (albeit the scale of the building as built was not significantly different in terms of floorspace). Retrospective permission was sought and granted for the replacement dwelling as built. However, the LPA this time imposed a condition removing permitted development rights and the Appellant appealed against the imposition of that condition.

7.4. It was in these circumstances that the 2020 appeal looked at requirements of Policies DP35 and DP36, with specific reference to larger buildings and the following two separate elements explicit to the policies:

(1) The desire to maintain a suitable balance of housing stock (i.e. retain a suitable number of smaller dwellings); and

(2) The impact of the increased size of dwellings on the character of the area.

7.5. In paragraphs 12, 13, 14, 15 and 17 of the 2020 decision letter, the Inspector stated as follows:

“12. The substantial size of the existing dwelling at the site disqualifies it from being classed as a small dwelling for the purposes of the LP... It follows that any other further extensions ... would not affect the balance of housing stock in the vicinity insofar as maintaining a stock of smaller sized houses is concerned as any extension would be to an already large dwelling. Consequently, it is not shown that harm would result to the countryside in this regard and therefore the proposal would not conflict with the underlying aim of policy DP36 ...”

“13. Therefore, it is appropriate to consider what impact on the locally distinctive character of the area might arise from extensions and alterations...”

“14. The appeal site has substantial grounds, with the modern dwelling set back considerably from the road and centrally positioned with established tree cover within and around the site. As such, it is difficult to see built form within the site from the road or surrounding area...”

“15. Hence, taking into account the likely extensions, ... it seems unlikely that the present spacious and leafy appearance of the site would materially change as a result of such development.”

“17. I am mindful of paragraph 172 of the Framework which requires great weight to be given to conserving and enhancing landscape and scenic beauty in National Parks. The special qualities of the New Forest National Park are derived, amongst other things, from the mosaic of woodland, heath, rivers and picturesque villages. It is not shown that there would be any adverse impact to the special qualities of the New Forest National Park.”

7.6. The Inspector therefore held that:

- (1) Once a dwelling was considered a large dwelling, i.e. in excess of 100sq-m, the impact on housing stock was not relevant.
- (2) In such an instance, policy requires only that attention should be paid to the impact on the character of the area.
- (3) In this regard, the plot size, the dwelling location, and screening were material considerations.

Landscape and the Character of the Area

7.7. The Appellants have commissioned a Landscape and Visual Appraisal (LVA) in respect of the impact of the as built dwelling to the surrounding area. The LVA confirms that the context of the site is one of neighbouring houses and there is an expectation to see the built form. There are limited opportunities to view the site from public views and impact is mitigated intervening landscaping. The LVA is attached as Appendix 13.

7.8. With reference to the impact of Paysanne, as built, on the character of the area in which it is located, it is to be noted that the appeal property is in a large plot with significant mature planting on the site boundary. The house is located some 20m away from the highway and 23m from the public right of way to the east of the appeal site. There are significant local level changes and the highway is higher than the house, thereby reducing the impact of the dwelling to highway users. There is no one view of the whole dwelling from the highway, or the public rights of way, and it is not viewed in isolation. The presence of peripheral vegetation will mean that views of the dwelling will be filtered, even during the winter months.

7.9. Further, the context of the site is such that it is located within a group of other houses – built form is a characteristic of the local area – and there is, therefore, an expectation

from users of the highway and public right of way that they will see houses. From a distance, such as from the public right of way to the south, the dwelling will always be seen in the context of other properties. The cumulative effect of all these considerations clearly demonstrates that the impact of the as built dwelling on the character of the local area is acceptable.

7.10. Moreover, the approval of the dwelling, as permitted, is clearly a material consideration when assessing the additional impact (if any) of the dwelling, as built, on the countryside and the character of the area. The Officer's Report on Planning Permission No. 18/00262 is, accordingly, particularly relevant.

7.11. In this regard it is to be noted, so far as materials are concerned, that the Officer's Report expressly found that:

(1) The original, white painted, dwelling would be more prominent than that proposed; and

(2) The approved scheme would be clad in oak and blend in with its surroundings.

7.12. As the LPA fully appreciated, the oak cladding will weather and this will ensure that the dwelling, over time, will blend in with the surroundings, in contrast to neighbouring white painted buildings that are considerably more prominent. Moreover, this is amply demonstrated at Hidden Oak as the following photographs show:



7.13. Furthermore, there is considerable support for this approach in the New Forest National Park Local Development Framework Design Guide Supplementary Planning Document, which makes the following points:

- (1) “Buildings should nestle into the contours of the landscape” (page 6).
- (2) “The use of traditional material combinations can help integrate a building” (page 8).
- (3) “Buildings should play a part in the broader landscape composition...by using materials that tone with natural features” (page 12).

(4) The Design Guide also provides numerous examples of timber clad dwellings as examples of good design (including pages 56 and 66).

7.14. As for bulk, the proposed dwelling is only marginally larger than that approved. Such differences, particularly when viewed from distance will be very difficult to discern and do not make a previously acceptable house now unacceptable. In particular, the dwelling as built sits well within its spacious plot and is well screened. It cannot be described as a cramped form of development. Whilst there are alterations to the house as compared to the approved scheme, these are relatively minor and do not harm the character of the area. The following image provides a comparative view of the approved and as built from the valley below:



Comparative visualisations are attached as Appendix 14.

7.15. The image shows the approved scheme in dark lines and clearly demonstrate that any changes are marginal at best. The view is filtered by intervening trees and as the wooden external cladding will weather down, the dwelling will nestle into the landscape further. The image comprises a verified view of the appeal site from a public right of way and users of the pathway would not perceive the as built dwelling as

harmful. The dwelling as built does not harm the landscape character of the area, especially when viewed in the context of the neighbouring 'white painted' dwelling clearly visible in the preceding photograph. Local 'white painted' buildings are far more prominent in the landscape compared to the as built dwelling - which has been designed to use materials that are recessive when viewed within the context of the landscape.

- 7.16. The LVA states that the proposed dwelling is in character with the local area and protects the qualities of the National Park. It has only a minor impact at the local level and a marginal impact on the National Park. Paragraph 172 of the NPPF requires that development proposals conserve and enhance the landscape and scenic beauty of National Parks and assess the detrimental effect to the environment and landscape. The marginal changes associated with the as built scheme creates no unacceptable harm to the National Park.

Potential Light Pollution

- 7.17. Having earlier permitted Hidden Oak in the National Park, just a short distance away from the appeal site, in September that the LPA was happy to grant Planning Permission No. 18/00262 for a replacement dwelling on the appeal site which also incorporated a number of large windows both on the southern and northern elevations: on the southern elevation, fenestration included a set of bi-fold doors; and on the northern elevation, a stairwell window. No reference was made in the Officer's Report to the issue of light pollution and no concerns were raised. Rather, this is first referred to in the reasons for refusal for the retention of the dwelling as built. It is clear, accordingly, that these concerns relate solely to the impact occasioned by the additional glazing.
- 7.18. The concerns of Mr. and Mrs. Atwill of Bluebell Cottage are noted. In particular, they refer to the fact that they have a direct view of the stairwell window during both daylight hours and when the stairwell light is on in the evening period. In this regard the photos submitted as Figures 4, 5 and 6 of the letter from Mr J Cain on the 12th

January 2021 are useful. (Please note, however, that Figures 5 and 6 taken in September showing the lighting at night emanating from the glazed stairwell do not accurately depict the true situation in that, at that time, painters and decorators were working in the property to complete it prior to the Appellants moving in and were working using halogen site lights which are more intensive than everyday domestic lighting). The photographs show that intervening vegetation does not shield the view of the stairwell window. However, they also show that the lower portion of the stairwell window is not visible from the living room window and views are confined to its upper portion. Further, the photographs also show other elements to the northern elevation of Paysanne, namely the elevation to the east of the stairwell (i.e. to its left hand side when viewed from Bluebell Cottage).

- 7.19. It is clear, therefore, that if the stairwell had been built in the correct position and to smaller dimensions, it would still be in the line of sight of the living room window and, during the hours of darkness, the stairwell window would still serve as a means of illumination to the immediate area and be visible to the residents of Bluebell Cottage. The following image provides a comparative view of the approved and as built stairwell window using 3-d models of both the approved and as built and the photograph supplied by Mr. and Mrs Atwill (Figure 4 as set out in the letter to the LPA dated 12th January 2021 - See Appendix 14):



7.20. The image clearly shows that had the approved scheme been built then the stairwell window would still clearly have been visible from the living room window of Bluebell Cottage. Thus, potential light spill towards the residents of the Bluebell Cottage would have occurred if the approved scheme had been built precisely as permitted. This was not considered by the LPA to be a reason to refuse permission.

Privacy

7.21. As for privacy, the specific concerns raised by the LPA refer to the potential for overlooking from the stairwell to the garden of Bluebell Cottage (and it is also noted that objections raised by the residents of Bluebell Cottage themselves refer to loss of privacy from the stairwell window to the habitable rooms of Bluebell Cottage). In this regard, the distance between these windows is in excess of 43m and there are level changes between the two dwellings, quantified as being some 10.5m. Further, it would appear from photographs of the appeal property taken from the living room of Bluebell Cottage, that the upper floor of the stairwell is significantly more visible than the lower portion – which is obscured by the garage to Bluebell Cottage.

7.22. It should be noted that the original dwelling on site was built on a raised terraced with a ground floor level 1.3m higher than that of the as-built property. As such, subject to intervening landscaping, there may well have been views of windows of the original dwelling from Bluebell Cottage.

7.23. The LPA does not appear to have any specific minimum privacy requirements between dwellings. Standard planning practice typically refers to a minimum distance between habitable rooms of some 21m. However, it is acknowledged that elevation can lead to an increased opportunity for overlooking and thus it may well be, for example, that a three-storey building should be set at least 28m (i.e. an additional 7m) from a neighbouring property.

7.24. Applying the above considerations to this appeal:

- (1) The stairwell at Paysanne does not comprise a habitable room and will be used only occasionally by occupiers accessing their bedrooms when they will be unlikely to dwell at the window looking at the neighbouring property; and
- (2) The distance between the two relevant windows is some 43m, well in excess of the 28m expected separation between an elevated window in a habitable room to a lower habitable room window. (In practice, with distances in excess of 28m any asserted loss of privacy is much less relevant by reason of the fact that individuals may occasionally be visible but, if they are, they will be indistinct).

Conservation Area

- 7.25. The presence of the site within the Conservation Area is noted and the appeal is supported by a Heritage Statement (attached as Appendix 15) that evaluates the impact of the new dwelling on the character and appearance of the Conservation Area and in respect of the impact on the significance of any non-designated heritage assets affected by the development. This analysis recognises that the consented scheme comprises a dwelling of similar scale, massing, layout, materials and fenestration; and that the approved scheme was clearly acceptable to the LPA in heritage terms. However, the Statement acknowledges that there are differences between the approved and as built dwelling and their impact on heritage assets needs to be assessed.
- 7.26. The assessment is that the dwelling as built assimilates into the character and appearance of the Conversation Area without being out of character or harming the identified significance. Similarly, the building does not cause harm to the significance of any non-designated assets. The nature of the external materials means that the dwelling will continue to integrate into its landscape setting. As such, it has a neutral impact, indeed it is an enhancement to the local distinctiveness of the area when considered in the relation to the contribution made by the former dwelling on the site.

- 7.27. The Heritage Statement acknowledges that the increased size of the stairwell window will result in additional light spill, but that this can be adequately mitigated.

Conclusions on Ground (a) Appeal

- 7.28. Whilst it is noted that there are deviations between the approved plans and the as built dwelling, this appeal provides an opportunity for the Appellants to set out in detail the extent of these changes and place them in context.
- 7.29. The LPA raise concerns over potential conflict with Policies DP35 and DP36 that seek to limit the size of replacement (or extended dwellings) in order to protect the stock of smaller dwellings and protect the landscape character of the area.
- 7.30. However, the original and approved dwellings do not fall within the LPA definition of a small dwelling and thus the marginal increase in dwelling size does not result in the loss of such a dwelling – the stock of small dwellings will be preserved.
- 7.31. Further, the changes to the approved scheme are relatively minor, particularly when the site context is noted – the dwelling is located in a large plot with significant mature peripheral planting and local level changes. In consequence, there are limited views of the site from the public domain and the as built changes do not make the dwelling unacceptable. Many passers-by would not notice any material differences.
- 7.32. The LPA also raise concerns with reference to impact on local amenities and harm to the Conservation Area. Loss of privacy is raised as a concern, but the distances involved are far in excess of what would normally be construed as problematic in this regard.
- 7.33. It is acknowledged that the northern stairwell will create light spill to the immediate area and to the neighbouring dwelling. However, the Appellants have clearly demonstrated that had the stairwell been correctly positioned, then such light spill would still have occurred. Further, and as summarised in the Section of this Appeal

Submission which follows, if considered necessary, any additional light spill as a result of the dwelling as built can be adequately mitigated.

Ground (f) Appeal: Permit an Amended Scheme to Remedy any Injury Caused by Breach of Planning Control

7.34. The case law set out in Section 6 above concerning the proper approach to enforcement makes it clear that:

(1) Enforcement is intended to be remedial rather than punitive - See: *Tapecrowne v First Secretary of State* [2006] EWCA Civ 1744 at [46], which reflects the scope of a Ground (f) appeal upon the basis that the steps required by the Notice to be taken exceed what is necessary to remedy any injury to amenity which has been caused by any such breach.

(2) To avoid punitive over-enforcement, an Inspector on an Enforcement Notice appeal has power, under a Ground (a) and Ground (f) appeal in combination, both to amend the steps required to be taken and to grant planning permission for an alternative scheme - See: *Mahfooz Ahmed v Secretary of State for Communities and Local Government* [2014] EWCA Civ 566 at [34].

(3) This power has special relevance and importance where, as here, the step currently required to be taken by the Enforcement Notice is the draconian one of requiring demolition of the Appellants' family home, thus directly engaging Article 8 of the ECHR as a material planning consideration⁸ – See: *R (RLT Built Environment Ltd) v Cornwall Council* [2016] EWHC 2817 (Admin), at [81-83].

7.35. Moreover, it is clear that in this case any outstanding issues (if any) can readily be remedied and controlled by condition (and other measures), without requiring demolition of a family home recently erected to a very high standard and only

⁸ And Article 1 of Protocol One to the ECHR.

marginally different to that which the LPA approved (and which is warmly appreciated by those local residents who do support the appeal proposals).

7.36. The increased size of windows on both the front and rear elevations has been noted. However, if it is felt that these windows create an unacceptable level of light pollution, the Appellants are happy to explore ways of mitigating such impact. To these ends they have retained the services of a specialist lighting consultant who is in the process of assessing the impact of the increased glazing on the wider area with a view to providing mitigation in a combination measures, (possibly) including the following:

(1) The replacement of windows on the southern elevation so that they revert to their former size as shown in the approved drawings.

(2) The provision of tinting on the stairwell window.

(3) The provision of fixed external louvres to the stairwell window.

(4) Additional landscaping on the northern site boundary to provide screening to between the stairwell window and Bluebell Cottage.

7.37. To address the issue of external lighting the Appellants could be required simply to remove all forms of external lighting.

7.38. With respect to concerns over the size of the dwelling and the failure to comply with Policies DP35 and DP36, the concern raised by the LPA is that the dwelling as built is of some 167sq-m. However, the actual floorspace is 166sq-m, and thus comprises some 6sq-m larger than the permitted house at 160sq-m. Moreover, it is quite possible to amend the existing layout to ensure that the dwelling is 160sq-m in size, calculated using IPMS 3B/RICS GHIA guidance. In particular, this can be achieved by, for example, reducing the internal floor sizes in the kitchen and bathroom by 2sq-m (which has already been done such that the internal floorspace is now 164sq-m); and

providing a recessed, externalised area under the staircase, which reduces the floor area by an additional 3.5sq-m.

8. **PROCEDURE AND WITNESSES**

8.1. The appeal should be heard by way of Public Inquiry, in accordance with section 2.7 and Annex K of the Planning Procedural Guide (March 2021). In particular:

- (1) There is a clearly explained need for the evidence to be tested through formal questioning by an advocate, especially with regard to the injury caused by any breach of planning control and how it can be remedied.
- (2) The issues related to light and visual impacts are complex and technical and need to be provided in the form of expert evidence.
- (3) The appeal has generated substantial local interest sufficient to warrant an Inquiry as opposed to dealing with the case by a hearing – it concerns breaches of planning control in a National Park and has led to an Enforcement Notice requiring the demolition in its entirety of the Appellants’ family home. Understandably, this has given rise to considerable press interest as well as being of grave concern to the Appellants.
- (4) It is an enforcement appeal in which evidence needs to be given on oath with regard to whether the boundary fencing was erected as permitted development.
- (5) It is an enforcement appeal wherein the requirements of the Notice are particularly contentious and engage the ECHR as above: the demolition of the Appellants’ principal home.

Witnesses

8.1. The Appellants provisionally intend to call the following witnesses to provide expert evidence at such Inquiry:

(1) Mark Sennitt B.A.(Hons), P.G.Dip.Law, B.Pl, M.R.T.P.I. – on planning matters.

(2) Stephen Graeser MA DipMS MRTPI – on planning matters.

(3) Stephen Wadsworth B.A.(Hons), DipLA, Dip.UD, CMLA– on landscape matters.

(4) Sarah Homer BA (Hons)TP, Grad Dip TP, Grad Dip AA (Historic Building Cons), BA (Hons) Arch IHBC – on heritage matters.

(5) Ryan Carroll BSc (Hons) IEng MILP – on lighting matters.

(6) Geoff Thompson RIBA – on detailed scheme comparison, lighting and mitigation matters.



Appeal Decision

Site visit made on 18 July 2008

by **Gareth Symons BSc(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State
for Communities and Local Government

The Planning Inspectorate
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Temple Quay House
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Decision date:
29 July 2008

Appeal Ref: APP/B9506/A/08/2066468
Pine Lakes, Crawley Hill, West Wellow, SO51 6AP

- 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 Chatmohr Estates against the decision of New Forest National Park Authority.
- The application Ref: 07/91709, dated 11 June 2007, was refused by notice dated 21 December 2007.
- The development proposed is a replacement dwelling.

Decision

1. I allow the appeal and grant planning permission for a replacement dwelling at Pine Lakes, Crawley Hill, West Wellow, SO51 6AP, in accordance with the terms of the application, Ref: 07/91709, dated 11 June 2007 and the plans 06-1348-101 Rev F, 06-1348-102 Rev F, 06-1348-103 Rev F, 06-1348-104 Rev B, 06-1348-105, 06-1348-106 Rev A, subject to the following conditions:
 - 1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.
 - 2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 3) No development shall take place until full details of both hard and soft landscape works, including details of structures associated with the lake and existing trees and shrubs to be retained, have been submitted to and approved in writing by the local planning authority. All hard and soft landscape works shall be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme agreed with the local planning authority.
 - 4) No development shall take place until a schedule of landscape maintenance for a minimum period of five years has been submitted to and approved in writing by the local planning authority. The schedule shall include details of the arrangements for its implementation. Development shall be carried out in accordance with the approved schedule.

- 5) No development shall take place until details of the acoustic fencing marked A-B on the hereby approved plan 06-1348-104 Rev B, including its exact position, have been submitted to and approved in writing by the local planning authority. The fence shall only be erected in accordance with the approved details and prior to the first occupation of any part of the hereby permitted development.

Main Issue

2. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

3. The existing dwelling has a suburban appearance that, in my view, is out of keeping with its semi rural setting. The new house, in design terms, would be an improvement. Aspects of the scheme such as the glazed atrium and large windows would not detract from its overall traditional form. Controlling the use of external materials by condition would further ensure that the house and the outbuilding/garage blended with their surroundings.
4. The proposed house would be large and exceed the 50% increase in volume normally allowed for replacement dwellings. However, the new house and its outbuilding would sit more than comfortably within the extensive plot. Their very well setback position from the road with intervening woodland also means that they would be well screened and discretely sited. Views of the buildings from other directions would be relatively distant where they would not be prominent in the wider landscape. The outbuilding, although slightly away from the house, would be well related to some buildings next door. The new acoustic fence would be inside fairly dense existing planting that would effectively hide it from view. Exact details of this structure could also be controlled by condition.
5. Overall I find that the proposal would not harm the natural beauty of the national park. Therefore the landscape protection aims of policies ENV06, SET11 and SET13 from the Test Valley Borough Local Plan would be met.
6. Regarding the outbuilding I note in the reason for refusal concern about whether it would be incidental to the main house. In siting terms I have found this to be acceptable. While there would be certain habitable rooms in the roof space, these do not constitute a self contained dwelling. The appellant also confirms that their use would be ancillary to the main house. I am therefore content about the subsidiary relationship with the dwelling.
7. I note concerns expressed by a resident in Canada Road. However, due to its distance away, the new dwelling's height and windows would not unduly affect matters of outlook and privacy.

Conditions

8. I have looked at the conditions contained in the planning officer's report to the Planning Development Control Committee in the context of circular 11/95 and made any adjustments where required. Those imposed are needed to safeguard the character and appearance of the area. I find no exceptional justification for removing permitted development rights. A condition requiring

incidental use of the outbuilding is not necessary because the future control over development sought would require planning permission.

Conclusion

9. For the above reasons and taking account of all other matters raised, I conclude that the appeal should succeed.

Gareth Symons

INSPECTOR

Appeal Decision

Site visit made on 18 May 2020

by **Helen O'Connor LLB MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 May 2020

Appeal Ref: APP/B9506/W/20/3245038

Pine Lake, Crawley Hill, West Wellow, Romsey, Hampshire SO51 6AP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs Christopher and Sonia Emslie against the decision of New Forest National Park Authority.
 - The application Ref 19/00417, dated 17 May 2019, was refused by notice dated 16 July 2019.
 - The application sought planning permission for the retention of replacement dwelling and outbuilding as built (revised scheme to 07/91709 and 08/92800) without complying with a condition attached to planning permission Ref 17/00360, dated 8 June 2017.
 - The condition in dispute is No 1 which states that: *'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) England Order 2015 (or any re-enactment of that Order) no extension (or alterations) otherwise approved by Classes A, C or D of Part 1 of Schedule 2 to the Order, garage or other outbuilding (or any alterations to outbuildings) otherwise approved by Class E of Part 1 of Schedule 2 to the Order shall be erected or carried out without express planning permission first having been granted.'*
 - The reason given for the condition is: *'To ensure the dwelling remains of a size which is appropriate to its location within the countryside and to comply with policies DP10, DP12 and DP11 of the New Forest National Park Core Strategy and Development Management Policies (DPD) (December 2010).'*
-

Decision

1. The appeal is allowed and planning permission is granted for the retention of replacement dwelling and outbuilding as built (revised scheme to 07/91709 and 08/92800) at Pine Lake, Crawley Hill, West Wellow, Romsey, Hampshire SO51 6AP in accordance with the application Ref 19/00417 dated 17 May 2019, without compliance with condition number 1 previously imposed on planning permission Ref 17/00360 dated 8 June 2017 and subject to the following condition:
 - 1) The outbuilding the subject of the permission reference 17/00360 shall only be used for purposes incidental to the dwelling on the site and shall not be used for habitable accommodation such as kitchens, living rooms and bedrooms.

Procedural Matters

2. Notwithstanding that retention of a building is not an act of development, in my heading above I have replicated the description of development that appears in decision reference 17/00360 which granted permission for the dwelling that is the subject of this appeal.
3. Since the Authority made its decision the New Forest National Park Local Plan 2016-2036 (LP) was adopted in August 2019. This is now the development plan for the Authority and supersedes the policies in the New Forest National Park, Local Development Framework, Core Strategy and Development Management Policies, Development Plan Document, December 2010 (CS). Policy DP36 (Extensions to dwellings) of the LP replaces the equivalent policy DP11 of the CS but does not fundamentally change the Authority's policy on this matter. Moreover, given the advanced stage of the LP at the time of the Authority's decision, reference was made to the emerging policies in the LP at the time of the decision and both parties have had the opportunity to refer to the LP as part of the appeal process. Therefore, I am satisfied that no party will be prejudiced by my consideration of the appeal against the LP policies due to this change in circumstances.

Main Issue

4. The main issue is whether the condition is necessary, relevant to the development permitted, and reasonable having particular regard to local distinctiveness and the mix of housing stock with reference to local and national planning policies.

Background

5. There is a notable planning history relating to the appeal site. However, the principal events so far as this appeal is concerned are that planning permission was granted at appeal¹ for a replacement dwelling at the appeal site. The information submitted² indicates that this was a substantial dwelling with a swimming pool and detached garage. Notwithstanding that it represented an increase in volume of over 50%, the Inspector found it would not be harmful to the character and appearance of the area and having expressly considered the issue of permitted development rights, found no exceptional reason to curtail them by condition.
6. Although a replacement dwelling was constructed at the site, it differed from the scheme allowed at appeal, but the evidence does not suggest its scale was significantly different at approximately 500 square metres in floorspace³. Retrospective permission was sought and granted for the dwelling under reference 17/00360 dated 8 June 2017. Condition 1 removed or restricted the permitted development rights normally afforded to householders under Schedule 2, Part 1, Classes A (enlargement, improvement or other alteration of a dwelling house), C (other alterations to the roof of a dwellinghouse), D (porches) and E (buildings etc incidental to the enjoyment of a dwellinghouse) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended)(hereafter referred to as the Order).

¹ Reference APP/B9506/A/08/2066468 29 July 2008

² Appendix 1, Appellant's Appeal Statement

³ Paragraph 11.7 Authority delegated report.

7. The reason given on the decision notice for the restriction was to ensure that the dwelling remained of a size appropriate to its location within the countryside in order to accord with policies DP10, DP11 and DP12 of the CS. These policies related to replacement dwellings, extensions to dwellings and outbuildings. The explanatory text behind them set out the two main underlying concerns of the Authority relating to the incremental effect that pressure for replacement dwellings and/or their extension might have unless steps were taken to guard against that impact. Namely, firstly, the overall impact on the local distinctiveness of the New Forest National Park from creeping urbanisation and secondly, the reduction in smaller housing stock across the Authority thereby resulting in an imbalance. The term 'small dwelling' is consistently defined in the CS and LP. It means '*a dwelling with a floor area of 80 sq. metres or less as it existed on 1 July 1982, or as the dwelling was originally built or legally established, if the residential use post-dates 1 July 1982*'.
8. The appellant seeks to remove the restriction on permitted development rights imposed by condition 1 on the basis that it fails to meet all 6 tests referred to in paragraph 55 of the National Planning Policy Framework (the Framework). The Council disagree and consider that the condition continues to serve a useful planning purpose that meets the requisite tests. This is essentially the central issue for my consideration. In deciding an application under section 73⁴, the decision maker must only consider the question of the conditions subject to which planning permission should be granted.

Reasons

9. The explanatory text behind policy DP36 of the LP reiterates the two main concerns of the Authority that may, unless steps are taken to safeguard against incremental harm, otherwise damage the countryside in the New Forest National Park. As already outlined, these refer to the impact on the local distinctiveness of the New Forest National Park from creeping urbanisation and the potential imbalance to the overall housing stock from the loss of smaller dwellings. The use of conditions to remove permitted development rights to otherwise extend a dwelling without reference to the Authority is noted as one method that may assist in maintaining this approach. The justification in relation to the size of housing stock is reinforced by the comments in the Local Plan Inspectors report⁵ which have been brought to my attention.
10. Policy DP36 states that extensions to existing dwellings will be permitted provided that they are appropriate to the existing dwelling and its curtilage but sets a broad cumulative limit in the case of dwellings (not small dwellings) outside the Defined Villages such that extensions must not increase the floorspace of the existing dwelling by more than 30%. The baseline is the floorspace of the dwelling as it existed on 1 July 1982, or as the dwelling was originally built or legally established, if the residential use postdates 1 July 1982. Policy DP36 would only be relevant where an extension to a dwelling required planning permission and therefore, extensions that could be carried out under permitted development would not normally be assessed against such a policy unless there was a condition restricting permitted development already in place. The proposal before me effectively seeks to remove the condition, it does not of itself propose a specific extension to the dwelling.

⁴ Section 73(2) Town and Country Planning Act 1990 (as amended)

⁵ Paragraphs 80 and 89 Local Plan Inspectors Report, Appendix 1, Authority's Written Statement

11. Advice in the Planning Practice Guidance (PPG) states that blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity⁶. It reminds local planning authorities that there are alternative powers to use for blanket removal of permitted development rights where justified. Policy DP36 of the LP does not advocate the blanket removal of permitted development rights for all dwellings. Moreover, the approach set out in the LP does not dispense with the need to ensure that a condition to restrict permitted development rights meets the six tests for conditions set out in paragraph 55 of the Framework in each individual case.
12. The substantial size of the existing dwelling at the site disqualifies it from being classed as a small dwelling for the purposes of the LP and condition 1 is exclusive to the appeal building. It follows that any further extensions otherwise permitted under the Order would not affect the balance of housing stock in the vicinity insofar as maintaining a stock of smaller sized houses is concerned, as any extension would be to an already large dwelling. Consequently, it is not shown that harm would result to the countryside in this regard and therefore, the proposal would not conflict with this underlying aim of policy DP36 as referred to in the Inspectors Local Plan report. Accordingly, this issue would not justify the continued imposition of such a condition.
13. Therefore, it is appropriate to consider what impact on the locally distinctive character of the area might arise from extensions and alterations that are currently prevented by condition 1. The general nature of development permitted within the curtilage of a dwellinghouse under Schedule 2, Part 1 of the Order is relatively minor. Furthermore, these are restricted to a greater extent in National Parks as these are classed as Article 2(3) land under Schedule 1, Part 1 of the Order. Therefore, the more restrictive nature of the provisions in the Order already take account of the sensitive context of National Parks but do not rule out extensions or alterations altogether.
14. The appeal site has substantial grounds⁷, with the modern dwelling set back considerably from the road and centrally positioned with established tree cover within and around the site. As such, it is difficult to see built form within the site from the road or surrounding area. This was referred to by the Inspector in the appeal decision in 2008⁸. The limitations imposed on the permitted development would generally prevent extensions forward of the principal elevation towards the road or increases in the overall height. Class D which would allow a front porch, is restricted to a ground area of 3 square metres, which by comparison with the existing dwelling would be inconsequential in terms of its visual impact on the wider area.
15. Hence, taking into account the likely extensions, alterations and outbuildings permitted under Classes A, C, D and E of Part 1, Schedule 2 of the Order it seems unlikely that the present spacious and leafy appearance of the site would materially change as a result of such development.

⁶ Paragraph 017 reference ID 21a-017-20190723

⁷ Site Location Plan reference 01-01 Rev A

⁸ Paragraph 4, APP/B9506/A/082066468 29 July 2008

16. The Authority refers⁹ to the feasibility for two single storey extensions to the rear of the dwelling and the potential use of the existing roof space for accommodation, both of which could increase floorspace for living accommodation at the property unless condition 1 remains in place. Be that as it may, this falls short of explaining why such alterations would cause harm to the locally distinctive character of the built environment of the New Forest or the overall balance of housing stock which, in part, underpin policy DP36 of the LP. Particularly given that, in the case of the latter, it is acknowledged that it would not be necessary to change the roof shape¹⁰. Therefore, based on the information presented, I am not persuaded that condition 1 is necessary in order to protect the locally distinctive character of the area.
17. I am mindful of paragraph 172 of the Framework which requires great weight to be given to conserving and enhancing landscape and scenic beauty in National Parks. The special qualities of the New Forest National Park are derived, amongst other things, from the mosaic of woodland, heath, rivers and picturesque villages. It is not shown that there would be any adverse impact to the special qualities of the New Forest National Park arising from minor domestic extensions and alterations within the existing curtilage of the dwelling that would otherwise normally be permitted under the Order.
18. The Authority point out that the Inspector in the 2008 appeal decision was considering the proposal against the Test Valley Borough Local Plan and that there have been subsequent changes to local policy that are more restrictive in certain circumstances. I have considered the proposal on its own merits against those local policies. I have also considered the changes that have taken place in terms of national policy in relation to the use of planning conditions, as well as the Order in the intervening period.
19. My attention is drawn to three appeal decisions whereby Inspectors allowing appeals for residential development elsewhere in the Authority imposed a condition restricting permitted development rights¹¹. However, none of the examples concerned an application to remove a condition that had been previously imposed nor do they have a similar planning history to the case before me. Therefore, each case appears to be significantly different to the appeal proposal and as such, are only of general relevance. Hence, they are of limited weight to the application of the six tests for conditions in this case.
20. I acknowledge that condition 1 is generally relevant to planning, worded precisely and would be capable of enforcement. However, all six of the tests in paragraph 55 of the Framework should be met. Therefore, this would not justify the imposition of the condition.
21. The explanation for policy DP36 of the LP refers to the need to strike an appropriate balance between meeting changes in householder requirements and maintaining a stock of smaller sized dwellings as well as the need to protect the nationally designated landscape of the national park. Given the planning history, size of the curtilage and nature of the existing dwelling, I find that Condition 1 does not strike an appropriate balance in these circumstances and is unjustified when considered against policy DP36 of the LP. It follows that imposing such an unnecessary restriction is unreasonable and therefore, the

⁹Paragraph 11.8 Authority's delegated report

¹⁰ Paragraph 11.8 Authority's delegated report

¹¹ Referenced APP/B9506/D/17/3181867, APP/B9506/W/17/3182917 and APP/B9506/W/17/3171773

condition fails the tests of reasonableness and necessity. Moreover, it is not relevant to the specific circumstances of this case.

22. In allowing the appeal, a fresh decision is made. The PPG indicates that decision notices for the grant of planning permission in these circumstances should repeat the relevant conditions from the original planning permission, unless they have already been discharged. Condition 2 of planning reference 17/00360 prevents the outbuilding permitted from being used other than incidentally to the dwelling in order to protect the character and appearance of the area. I have seen no evidence to suggest that this is no longer required and therefore, have little basis to dispute its continued need.

Conclusion

23. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition and restating the undisputed condition that is still subsisting and capable of taking effect.

Helen O'Connor

Inspector