

Report to	Planning Committee
Date	8 March 2018
By	Director of Planning
Title of Report	Summary of Appeal Decisions Received From 28 November 2017 to 22 February 2018
Purpose of Report	To update SDNPA Members on appeal decisions received.

Recommendation: To note the outcome of appeal decisions between 28 November 2017 and 22 February 2018.

I. Overview

- I.1 The attached table (**Appendix I**), ordered by date of decision, provides Members with a summary and brief commentary on the appeal decisions recently received by the Authority. This covers both those appeals dealt with by the host authorities and directly by the Authority.
- I.2 6 appeal decisions were received in this period, of which all were dismissed. Additionally 2 costs decisions were received, one of which was partially allowed and one of which was refused.
- I.3 For the financial year to 22 February 2018 68% of appeals have been dismissed. Members can view all appeal decisions on the Authority's Intranet.
- I.4 Whilst the appeal decisions are individually important none raise issues of wider strategic importance to the National Park as a whole. However, there was a partial award of costs made against the Authority and the lessons from this have been distributed internally.

TIM SLANEY
Director of Planning
South Downs National Park Authority

Contact Officer: Mike Hughes
 Tel: 01730 819325
 email: mike.hughes@southdowns.gov.uk
 Appendices: I. Appeal Decisions
 SDNPA Consultees: Director of Planning, Legal Services
 Background Documents:

Application No.	Authority	Site	Description of Development	Decision and Appeal Method
APP/Y9507/C/17/3171500 Enforcement notice issued under delegated powers	Chichester	The Mill Eartham Lane Eartham, PO18 0NA	The change of use of the building to a single dwelling house. The appellant made an application for costs	The appeal was dismissed (8 December) and the application for costs refused (11 December) Public Inquiry
<p>Commentary – Inspector’s Reasoning</p> <p>Appeal Decision</p> <ul style="list-style-type: none"> The main ground of appeal was that at the date when the Enforcement notice was issued no Enforcement action could be taken. For change of use to a single dwelling house to be lawful 4 years continuous occupation in this use needs to be demonstrated, with the burden of proof lying with the appellant. All of the oral evidence to the Inquiry was taken under oath or affirmation. The Inspector found that The Mill had been used as a dwelling for part of the previous 4 years but, based on the totality of the evidence, the Inspector was not persuaded that the use began more than 4 years before the notice was issued and continued without material interruption for a period of 4 years thereafter. The Inspector stated that the appellant’s own evidence appeared to be inconsistent. The Inspector held that on the balance of probabilities the change of use to a single dwellinghouse did not occur until around October 2015 and given that the Enforcement notice was issued on 2 February 2017 the use had only been in existence for 15 months. The appeal on this ground therefore failed as 4 years continuous use as a single dwelling had not been demonstrated. The appellant also appealed on the basis that the requirements of the Enforcement notice exceeded what was necessary to achieve the purpose of the notice. Save for deleting the requirement to remove radiators (the Inspector noting that their removal was not necessary as they do not facilitate the residential use) the requirements of the Enforcement notice and period for compliance (6 months) were upheld. <p>Costs Decision</p> <ul style="list-style-type: none"> The Inspector considered that the Council’s actions were not unreasonable and that the Council had acted in accordance with the SDNPA’s Enforcement Guide. The Council were considered to have been open to hearing what the applicant had to say at all stages. Even after the appeal was submitted the Council responded promptly to requests from the appellant to review the evidence as it emerged and gave reasons as to why it did not prove the applicant’s case. The award for costs was thus refused as unreasonable behaviour had not been demonstrated. 				

Application No.	Authority	Site	Description of Development	Decision and Appeal Method
SDNP/17/01650/HOUS (delegated refusal) APP/Y9507/D/17/3180896	East Hampshire	39 Tilmore Road Petersfield, GU32 2HJ	Retention of a dormer roof extension and the retention of a pitched roof to replace a partially flat roof	Dismissed (22 December) Written representations
Commentary – Inspector’s Reasoning				
<ul style="list-style-type: none"> The Inspector considered the dormer roof extension to dominate the rear of the property. The width of the dormer (at nearly 9m across) was considered to subsume almost the entire rear part of the original roof, giving a top heavy appearance to the property. This was accentuated by the full length height of both windows which are significantly larger in scale than window openings below. The Inspector considered that with other significant extensions to the property the combined impact had resulted in an incongruous addition, harmful to the character of the dwelling. It was acknowledged that the rear dormer was not prominent within the street scene but the Inspector noted that it was very apparent from neighbouring properties where it appeared out of scale with those properties. The harm caused by the dormer roof extension was considered to be significant and the appeal was dismissed. Although not a decisive factor the Inspector noted that the full length windows in the dormer gave direct views into neighbouring rear gardens and this added to his overall concerns in relation to the development. The Council and Inspector had no objection to the pitched roof over the single storey rear extension. 				
Application No.	Authority	Site	Description of Development	Decision and Appeal Method
SDNP/17/01971/HOUS (delegated refusal) APP/Y9507/D/17/3184424	Chichester	Upperton House Upperton Road Upperton, GU28 9BQ	Proposed outbuilding with home office, machinery and attic store to serve the main house and driveway extended to road access for safety.	Dismissed (22 December) Written representations
Commentary – Inspector’s Reasoning				
<ul style="list-style-type: none"> The site for the new outbuilding is located well away from the main dwelling and on the edge of the settlement in an open setting. The proposal is within the grounds of a listed building and within the Upperton Conservation Area. The Inspector noted that the proposal would introduce a substantial new structure with a ground floor area of 70 square metres and a ridge height of over 5m into what is a currently remote part of the extensive curtilage of Upperton House. The proposed building was considered to be unrelated to the principal dwelling and, although in itself well designed, the Inspector found that such a substantial building would appear as a dominant feature within the landscape and would fail to conserve and adversely impact the parkland setting of the listed Upperton House. It was also at odds with the mostly linear form of development within the Conservation Area. 				

- The introduction of a large building into an open and undeveloped part of the appeal site was considered to harm the character and appearance of the Conservation Area and would fail to accord with the statutory purposes of the National Park.
- The existing vehicle access from the dwelling (onto a narrow road with generally slow moving vehicles) was not considered to represent an exceptional circumstance that would justify development upon this scale within such an isolated location away from the main dwelling.

Application No.	Authority	Site	Description of Development	Decision and Appeal Method
SDNP/17/00097/FUL (delegated refusal) APP/Y9507/D/17/3184660	SDNPA (Wealden DC area)	Acorn Cottage Back Lane Wilmington, BN26 5RN	Proposed ancillary domestic outbuilding and removal of 2 existing outbuildings, fruit cages and green house. The appellant made an application for costs	The appeal was dismissed and the application for costs partially allowed (10 January) Written representations

Commentary – Inspector’s Reasoning

Appeal Decision

- The appeal proposal was for a detached outbuilding measuring approximately 13 metres by 7 metres in the rear garden, approximately 48 metres from the main house. It was considered that the proposal would introduce a substantial building into the rear garden and despite its intended occupancy as ancillary residential accommodation the Inspector considered its scale, massing and distance from the host dwelling would lend it the appearance of a separate dwelling. The roof was considered as a substantial component, appearing capable of accommodating further living space. The Inspector acknowledged that this may not be the appellant’s intention but that the potential existed nonetheless. The new building would not appear as a typical domestic adjunct in the same way the existing miscellany of buildings in the garden do.
- The Inspector considered that the introduction of a building of this scale into the rear garden would not be subordinate to the host dwelling and would suburbanise the garden and detract from the rural ambience and scenic beauty of the area, contrary to the first purpose of National Park designation. The Inspector noted that existing outbuildings, a greenhouse and fruit cages would be removed which have no aesthetic merit themselves but that these are structures that are typically found in a domestic garden setting and that they lack the physical presence and permanence of the proposed building.
- Policy DC19 of the Wealden Local Plan requires that in the case of an annex the proposal should normally be physically attached to the dwelling and not lend itself to future subdivision to form a new dwelling. The Inspector explained that whatever the appellant’s genuine intentions regarding occupancy of the annex it was clear that its scale and functional separation from the host dwelling would lend itself to future subdivision to form a new dwelling, contrary to Development Plan policy.
- The site lies an Archaeological Notification Area and, in the absence of an appropriate assessment which was not requested by the Authority, the Inspector found that the appeal proposal would have the potential to adversely impact on archaeological remains. In the absence of further information concerning the nature and significance of any such remains she did not consider (had she been minded to allow the Appeal) that this matter could have been satisfactorily dealt with by way of condition. It was therefore found that the proposal did have the potential to harm

archaeological remains, contrary to the first purpose of National Park designation.

Costs Decision

- The basis for the claim for costs was on two grounds:
 - i) That the Authority treated the proposal as an independent dwelling when this is not what was proposed
 - ii) That the Authority should not have validated the application without an archaeological report, that it failed to require further information in this regard after the application was registered and that it failed to address the matter via planning condition.
- In relation to the first ground the Inspector found that the Authority were not alleging that the development was a dwelling but rather that by virtue of its scale and separation from the main house it would create the *appearance* of a dwelling; a view with which the Inspector concurred. The Inspector noted that this was not an unreasonable position to take, particularly given Local Plan policy DC19 which states that any annex should not lend itself to future subdivision to form a new dwelling. The application for costs on this ground was therefore refused.
- In relation to the second ground the Inspector noted that the Authority should have requested the extra information (an Archaeological Assessment) and should not have refused planning permission on the grounds of insufficient information, without requesting that information. Had the Authority done so it would not have avoided the appeal but it would have potentially reduced the reason for refusal from two to one. The failure to ask for this information that the Authority felt was lacking was found to be unreasonable and led to the appellant incurring unnecessary expense in making submissions in relation to this reason for refusal. On this matter therefore the Inspector ordered a partial award of costs to the appellant.
- Given the location of the site within an Archaeological Notification Area with a reasonable likelihood of archaeological remains being in the vicinity and potentially affected by the development the Inspector agreed with the Authority that the matter could not be dealt with by way of planning condition. No award of costs was made to the appellant in relation to this point.

Application No.	Authority	Site	Description of Development	Decision and Appeal Method
SDNP/17/02742/FUL (delegated refusal) APP/Y9507/W/17/3183111	Lewes	The Chalkpit Hodderm Farm Hodderm Farm Lane Peacehaven, BN10 8AR	The conversion and extension of an existing agricultural building to create a new dwelling	Dismissed (8 February) Written representations

Commentary – Inspector’s Reasoning

- The proposal was considered to be in an isolated location for the purposes of paragraph 55 of the NPPF.
- The Inspector noted that the existing building has a degree of historical interest and value (although it is not listed) and that the scale, height, massing, alignment and site coverage of the proposed extension would dominate and overwhelm the original building. The wide range of glazing and irregular shaped and positioned windows was found to detract from the simple character of the cart shed and for these reasons the new building was considered to cause significant harm to the significance of the original building.

- The proposed new dwelling was not considered to be of exceptional quality nor especially innovative and the Inspector stated that it would not help raise the standard of design in the area, as required by paragraph 55 of the NPPF. The Inspector also determined that the large dwelling with associated parking and access would domesticate and urbanise much of the chalkpit. While the proposal would not be in view from any public areas the proposal would cause harm not only to the existing dwelling but also to the intrinsic beauty of the pit itself. The Inspector attached great weight (as required by the NPPF) to conserving the landscape and scenic beauty of the National Park.
- It was noted that the appellant planned to build the scheme himself but this benefit (of providing a plot for a person willing to build their own home) was not considered to outweigh the harm identified and the appeal was dismissed.

Application No.	Authority	Site	Description of Development	Decision and Appeal Method
APP/Y9507/C/17/3173496 Enforcement notice issued under delegated powers	Chichester	Land to the South of the Old Stables Mill Lane Stedham, GU29 0PR	Retention of a hardsurface access track	Dismissed (16 February) Written representations

Commentary – Inspector’s Reasoning

- The track leads from close to the open southern boundary of the residential curtilage to a private access way which is used to access a narrow strip of land which has been subdivided into small paddocks, a feed and machinery store and agricultural parking and turning facilities.
- The Inspector determined that the site could be serviced in alternative ways without use of the access track that had been constructed. Given the all-terrain vehicles available to the appellant, the limited size of the holding and low numbers of animals the argument of an essential or functional need for a hard surfaced track to be used solely for agricultural purposes was found to lack cogency by the Inspector. Accordingly it was accorded little weight.
- The Inspector considered that the construction of the access track had resulted in a harsh feature which is totally inappropriate in the rural setting. The Inspector judged that the urban character and form of the track is incongruous at best and inappropriate in this gentle countryside setting which is characterised by rolling farmland and a rural informality. It was acknowledged that the visibility of the track in the wider countryside is not significant but this did not outweigh the harm arising to the natural beauty of the National Park.