

**Agenda Item 12**  
**Report PCI9/20-34**

Report to	<b>Planning Committee</b>
Date	<b>16 January 2020</b>
By	<b>Director of Planning</b>
Local Authority	<b>East Hampshire District Council</b>
Application Number	<b>SDNP/19/04275/CND</b>
Applicant	<b>Mr J Cullen</b>
Application	<b>Variation of condition 2 of planning permission SDNP/16/03835/FUL for the repositioning and revised design of the farm shop/café and cycle store.</b>
Address	<b>Broadview Farm, Blacknest Road, Binsted, Alton, GU34 4PX.</b>

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**Recommendation: That planning permission be refused for the reason outlined in Paragraph 10.1 of this report.**

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### **Executive Summary**

This application proposes amendments to a previously approved scheme consisting of a barn to be used as a café, farm shop and cycle hire, 4 tourist lodges and associated new access and car parking area. The proposals involve a re-siting and re-design of the approved barn. It would involve siting it further eastwards to seek to un-obstruct a public right of way (known as Footpath Binsted 55) which runs through the site. The barn would be re-designed with a simple rectangular footprint and gabled roof.

This application has been submitted in response to a Diversion Order, made by the SDNPA, not being confirmed by an Inspector, following a Public Inquiry, which involved re-routing the definitive route of the footpath around the development. The definitive route of the footpath runs through the siting of the barn within the approved scheme. Consequently, the decision of the Inspector has resulted in the barn not being able to be implemented in accordance with the approved plans.

In the context of the development as a whole, the proposed barn is of a scale and nature to be considered as a variation of planning condition no.2 (approved plans) of the original planning permission.

Concerns are raised regarding the impact of the proposals upon the amenity value of the definitive footpath in relation to the enjoyment of the special qualities of the National Park, which the Inspector gave weight in the decision to not confirm a diversion. Taking this decision into account and the extant planning permission, the relevant policy, and the merits of the proposals, on balance, the application is recommended for refusal.

The application is placed before Members due to the level of interest it has produced, Members' previous consideration of earlier schemes and the planning history of the site including an Inspector's recent decision.

### **I. Site description**

- I.1 The application site is located approximately 2km north east of Binsted and on the western side of Blacknest Road. Broadview Farm covers approximately 50 hectares and is tenanted by a sheep farmer. It comprises of a group of farm buildings and to the south of these are

new tourist lodges (which are not yet in use). A new access has been created onto Blacknest Road which leads down to the new tourist cabins and existing buildings and to a parking area.

- 1.2 Immediately east of the site is Blacknest Business Park. The closest dwellings are Broadview Farm and Broadview Cottage. Opposite the site and westwards along Blacknest Road there is a row of detached dwellings.
- 1.3 South west of the site is a dismantled railway cutting which has a designation as a Site of Importance for Nature Conservation. Further to the south west are fields which rise up to the Hangers.
- 1.4 A public footpath (Binsted 55) (FP55) runs through an original and existing access to Broadview Farm and the application site. This footpath also runs across fields to the south west.

## **2. Relevant Planning History**

- 2.1 12/01951/APNW – Agricultural Prior Notification application for re-levelling part of site to allow grazing for pregnant sheep. Further details not required, 4<sup>th</sup> October 2012.
- 2.2 SDNP/14/05926/FUL: Replacement barn to be used as cafe, farm shop and cycle hire and new access (amended plans and description). Refused 26.01.2016.
- 2.3 SDNP/14/02026/FUL: Erection of 5 semi-detached log cabins (10 units), and siting of Shepherd Huts as part of farm diversification and associated parking area, with new vehicular access onto Blacknest Road. (Amended Plans and Description). Refused 26.01.2016.
- 2.4 SDNP/16/03835/FUL: New barn to be used as café, farm shop and cycle storage, four timber cabins for tourist accommodation and new access and parking area. Approved 31.03.2017. (Site Plan at Appendix 2).
- 2.5 SDNP/17/03166/DCOND: Discharge of conditions 3,4,5,6,7,8,15,16 of planning permission SDNP/16/03835/FUL. Approved 07.12.2017.
- 2.6 SDNP/16/05343/FTP: Diversion of Footpath 55 (FP55). Order Made by SDNPA on 29.06.2017. Order not confirmed by the Planning Inspectorate on 13.08.2019 (Decision at Appendix 3).
- 2.7 The Diversion Order for FP55 was subject to a Public Inquiry which convened on 3 occasions between July 2018 and July 2019. The Inspector did not confirm the Order for the following reasons:

- There would be a disadvantage to the public in altering the amenity of FP55 in regard to boundaries and changes in direction and impact on views.

### Views

- The views south-west to Home Hanger and the wider landscape are of value and a draw for users of the PROW (Public Right of Way).
- Would be a reduction in the time at which views were available when travelling from Blacknest Road on the diverted route, due to PROW users passing buildings and boundary planting associated with the development and having existing oak trees alongside the former railway line obscuring views.
- Proposed diversion is not any more or less rural than the existing, however, in regard to public enjoyment the proposed changes would affect the enjoyment of the special qualities of the National Park.

### Distance and alignment

- Proposed diversion would be more difficult to navigate and would feel artificial to users.
- Uncertainty regarding the extent of limitations on the diverted PROW, with users having to pass through fields used for grazing and field boundaries, was a negative factor to confirming the Order.

### Private amenities

- Diverted route would have a negative impact upon the private amenity of Broadview Cottage.

## **3. Proposal**

- 3.1 The application proposes a minor material amendment to re-position and re-design the previously approved barn, away from FP55. It proposes to vary condition no.2 of planning permission SDNP/I6/03835/FUL which relates to the development being carried out in accordance with the approved plans and states:

*“The development hereby permitted shall be carried out strictly in accordance with the approved plans unless otherwise agreed in writing by the Local Planning Authority.*

*Reason: For the avoidance of doubt and in the interests of proper planning.”*

- 3.2 The barn is proposed to be sited on the southern edge of the approved car park and would face onto it with an entrance. It would be sited close to the boundary with the adjacent industrial estate and newly built tourist lodges on site. It would also be adjacent to an existing single storey farm building and, as depicted on the submitted plans, FP55 would run between the two buildings.
- 3.3 The barn would have a rectangular footprint, compared to a previous L shape, and internally it would have an open plan layout with a kitchen area in the southern corner. It would have a simple pitched roof with gables at either end. The proposed materials would be very similar to the existing lodges and comprise of black timber cladding and metal sheeting roof.
- 3.4 The application does not propose to amend the approved access, car park or tourist lodges as previously approved. In light of the revised siting and design a small existing building would be retained. The details pursuant to other conditions on the planning permission are also not proposed to be amended.

## **4. Consultations**

- 4.1 The following consultee responses have been received.

- 4.2 **Arboriculture:** No objection in principle, however:

- The Arboricultural Implications Assessment refers to the previous scheme.
- Does not appear that the condition requiring submission and approval of an Arboricultural Method Statement was complied with in relation to the previous scheme.
- Same previous condition to be re-applied and works not permitted until it is complied with.

- 4.3 **Archaeology:** No objection.

- 4.4 **Binsted Parish Council:** No objection.

- 4.5 **Drainage Engineer (EHDC):** No objection, subject to conditions.

- 4.6 **Ecology:** Response received, no comments.

- 4.7 **Environmental Health (contaminated land):** No objection.

- 4.8 **Environmental Health (Protection):** No objection.

- 4.9 **Environment Agency:** No response.

- 4.10 **Fire Service:** Comments. Development required to meet Building Regulations, which includes access and facilities for fire service appliances and fire fighters, and other legislation.

- 4.11 **Hampshire County Council Countryside Services (Public Rights of Way):** Objection, for the following reasons:

- Layout and designs of the development result in walkers being brought in contact with vehicle and cycle traffic.

- Layout does not appear to give adequate consideration to rights of way users with restricted mobility and walkers (including pushchairs) to access the footpath network.
- The SDNP Walking and Cycling Strategy aims to provide a 'welcoming environment for walkers and promote higher satisfaction levels and economic benefits.
- Proposals for FP55 fail to improve access to green space or pedestrian access to the proposed shop and café.
- The 3m high fencing and cycle hire provision in this position would unacceptably impact FP55 and the amenity and enjoyment of users.
- Layout fails to conserve and enhance FP55, its amenity value or protect views by virtue of the location of buildings and car park.
- Fencing and the position of the building unnecessarily restricts the width available to users to 1.9m and this has an urbanising effect of creating a narrow alleyway.
- Recommend minimum width for an enclosed path of 2.5m based on County Council guidance.
- Incongruous development in the landscape.
- Inspector for FP55 diversion concluded development within the National Park demands a greater level of sympathetic design in relation to PROW and proposals would not meet this requirement.
- Recommend the plans and landscaping proposals are amended to conserve landscape character, improve visual amenity, retain and protect FP55 and ensure a route of adequate width is provided.

4.12 **Highways Authority:** No objection.

4.13 **Landscape Officer:** No comments.

4.14 **Natural England:** Response received, no comments.

4.15 **Ramblers:** Objection.

- Large building would be built immediately adjacent to FP55.
- Width given to FP55 through the development (1.9m) does not meet with HCC's advice of a minimum of 2.5m.
- Walking in a SW direction, views of Home Hanger will be delayed by the development and create feeling of fenced in and urban.

4.16 **Recycling and refuse (EHDC):** No response.

4.17 **Water Authority:** No response.

## 5. Representations

5.1 44 objections have been received, many of which support a Community Statement of objection, and other individual comments. 22 representations in support have been received. A further 46 completed pro-formas (distributed and submitted by the Applicant) in support have also been received. A summary of the representations received is below.

### Objections

- Proposals are not a minor material amendment; barn is a different design and in a different location.
- Insufficient information has been provided – lacks quality and detail.
- Inspector's decision on the Footpath Diversion Order is a material consideration.
- Development ignores National Park purposes and Sandford Principle applies.
- Proposals which were previously considered without a diversion order were refused.
- A revised design to accommodate the footpath should have been previously sought.
- Proposals consistently undervalue the landscape and area's importance for walkers.
- Contrary to NPPF in relation to public rights of way;

- Footpaths are important assets in attracting visitors; FP55 is an important part of the public rights of way network.
- Contrary to HCC's published vision for high quality countryside access for all.
- Greater weight should be applied to National Park Purposes than the Duty in weighing up need for development and the National Park's special qualities.
- Do not accord with SDLP policies, namely - SD4 regarding negative impact on the amenity of the landscape; SD20 regarding safeguarding and enhancing public rights of way; and SD23 relating to the experience of visitors and impacts of the development.
- Not sufficiently addressed eco-systems services policy.
- Rights of Way Circular (1/09) is a material consideration.
- Would not increase visitor's awareness, understanding, and enjoyment of the National Park.
- No ecological benefits from the development have been realised.
- Does not accommodate FP55 and the definitive route shown on the plans is incorrect.
- Insufficient width provided for FP55 and would be 'sandwiched' between development.
- Definitive route has historically been obstructed.

#### Siting/design

- Poor quality design and incongruous.
- Barn does not accord with the local vernacular.
- Re-positioned barn 'shoe horned' into only space available.
- Not sympathetic to the special and experiential qualities of the landscape.
- Inspector concluded a greater level of sympathetic design in relation to features such as public rights of way is needed in a National Park context.
- Impact on adjacent trees bordering the industrial estate.
- Increase in the built form of the site and a significant impact on landscape character.
- Existing lodges are harmful to the landscape.
- Insufficient detail on defining the uses inside the barn, how the layout impacts on FP55, its accessibility, external lighting and impact of light pollution, and hard landscaping.

#### Views/enjoyment

- Significant impact on the experience and enjoyment of National Park's special qualities for walkers, which has not been considered.
- Impact on quality of the experience and amenity value of open views from FP55.
- Scale of the barn will impact on views and the duration for which they are enjoyed from FP55; and it is larger than the previously demolished barn.
- Urbanising impact on FP55 and effect upon footpath user's experience.
- New activity would significantly decrease remoteness and tranquillity of the countryside.
- Inspector's conclusions on the enjoyment of the special qualities of the National Park and loss of views not taken into account.

#### Other

- Inconsistent with details approved for discharging conditions and development in breach of conditions.
- Appraisal of the business case needed, rather than approved as farm diversification.
- Duplication of facilities/uses in the area and effects upon other businesses are unknown.
- Development disproportionately large compared to the holding and goes beyond supporting a small agricultural holding.
- Question the economic value to the local economy and value to local residents and visitors given other existing facilities.
- Remote from public transport and no credible Transport Assessment.

- Site is not well managed.
- Not a good location for this development and a precedent for other similar schemes.
- Impact on dark night skies.

#### Support comments

- Development would introduce a new farm shop to the area.
- Would be a lovely place for people to bring their children.
- Commend applicant for entrepreneurial efforts to support local economy.
- Beneficial development to the area for local community and visitors.
- Good facility for refreshments after a walk.
- Development an asset for the local community and be a positive benefit.
- The re-positioned and revised design is a great idea.
- Opportunity to bring an independent business to the area.
- Needed service in the local community.
- Will promote sense of community and provide a meeting point.
- A visit to the farm shop would be a good facility/experience for walkers and local community.
- Would be a good facility for workers in the adjacent industrial estate.
- Would like to see re-generation and opportunities for all.
- Development would be a welcome rest point for walkers.
- Could create local employment.
- Farm shop/café would help those staying in the cabins and bring in produce from local farms.
- No reason why the barn cannot be moved and built.
- Application only moves the barn a few meters.
- Proposals maintains FP55 and enables the Applicant to diversify.

#### 5.2 **HCC Councillor Mr Mark Kemp-Gee:** Objection.

- Support objection of HCC PROW team.
- Application would bring walkers into direct contact with vehicle and cycle traffic on FP55 which is not permitted.
- Support submitted community statement of objection.

#### 5.3 **Open Spaces Society:** Objection.

- Insufficient consideration has been given to public enjoyment of FP55.
- FP55 should be accommodated within the development, with its public enjoyment enhanced.
- The building and parking area needs to be further away, leaving more width for the footpath, plus screening of the car park.

#### 5.4 **Walk Alton (local organisation):** Objection.

- Support community statement of objection and footpath volunteer warden.
- Area accredited as a 'Walkers are Welcome' destination.
- Development will impact on views, tranquillity and landscape.
- Wrong development in this location.

### 6. **Planning Policy Context**

- 6.1 Applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The relevant statutory Development Plan comprises of the South Downs Local Plan 2014-2033. The relevant policies are set out in section 7 below.

### National Park Purposes

- 6.2 The two statutory purposes of the SDNP designation are:
- To conserve and enhance the natural beauty, wildlife and cultural heritage of their areas;
  - To promote opportunities for the public understanding and enjoyment of the special qualities of their areas.

If there is a conflict between these two purposes, conservation takes precedence. There is also a duty to foster the economic and social wellbeing of the local community in pursuit of these purposes.

### National Planning Policy Framework and Circular 2010

- 6.3 Government policy relating to National Parks is set out in English National Parks and the Broads: UK Government Vision and Circular 2010 and The National Planning Policy Framework (NPPF) which was issued and came into effect on 24 July 2018 and revised in February 2019. The Circular and NPPF confirm that National Parks have the highest status of protection and the NPPF states at paragraph 172 that great weight should be given to conserving landscape and scenic beauty in the national parks and that the conservation of wildlife and cultural heritage are important considerations and should also be given great weight in National Parks.

### National Planning Policy Framework (NPPF) 2019

- 6.4 The National Planning Policy Framework has been considered as a whole. The following NPPF sections in particular have been considered in the assessment of this application:
- Achieving sustainable development
  - Requiring good design
  - Conserving and enhancing the natural environment

### Relationship of the Development Plan to the NPPF and Circular 2010

- 6.5 The development plan policies listed below have been assessed for their compliance with the NPPF and are considered to be compliant with it.

### The South Downs National Park Partnership Management Plan 2014-2019

- 6.6 The Environment Act 1995 requires National Parks to produce a Management Plan setting out strategic management objectives to deliver the National Park Purposes and Duty. National Planning Policy Guidance (NPPG) states that Management Plans “contribute to setting the strategic context for development” and “are material considerations in making decisions on individual planning applications.” The South Downs Partnership Management Plan as amended for 2020-2025 on 19 December 2019, sets out a Vision, Outcomes, Policies and a Delivery Framework for the National Park over the next five years. The relevant policies include: 1, 13, 14, 28, and 41.

### Other relevant guidance

- 6.7 The South Downs National Park Authority Cycling and Walking Strategy 2017-2024.

## **7. Planning Policy**

- 7.1 The following policies of the South Downs Local Plan 2014-2033 are relevant:

- SD1: Sustainable Development
- SD2: Ecosystems Services
- SD4: Landscape Character
- SD5: Design
- SD6: Safeguarding views
- SD8: Dark Night Skies
- SD9: Biodiversity and Geodiversity
- SD11: Trees, Woodland and Hedgerows

- SD20: Walking, cycling and Equestrian routes
- SD25: Development Strategy
- SD48: Climate Change and Sustainable Use of Resources

## **8. Planning Assessment**

- 8.1 The unconfirmed Order to divert part of FP55 which runs through the site was originally made so as the barn in the approved development (SDNP/16/03835/FUL) could be built. This current application is in response to the Inspector's decision to not confirm the Order. A summary of the conclusions is at paragraph 2.7 and this decision is a material planning consideration.
- 8.2 By not confirming the Order, the definitive route of FP55 remains unchanged and it is not possible for the barn to be built in its entirety (in accordance with the approved plans) as it would obstruct it. Consequently, the Applicant is unable to implement the approved development in full.
- 8.3 The re-siting and re-design of the barn are proposed as amendments to the original planning permission. Taking into consideration the approved scheme as a whole and the scale and nature of the proposals, overall, the result would be a development which is not substantially different from the one which has been approved and therefore an application to vary condition no.2 is an acceptable approach. The merits of the proposals have been assessed in the context of the approved scheme as well as other planning considerations such as design and landscape impact.
- 8.4 In regard to the design of the barn, it would have a simple rectangular form and appearance which, in combination with a simple pallet of materials, would have a rural character and appearance that would be in keeping with the existing lodges. Its proposed siting and scale would create a satisfactory relationship with the lodges and adjacent farm buildings. It would also define the car parking area whilst enabling good accessibility for visitors who would arrive either by car or walking.
- 8.5 A barn of a similar scale and siting was previously approved on site. That decision was made when also considering an order to divert FP55 around the boundary of the development. The current proposals now aim to retain FP55 running through the new development. This consequently raises new issues in regard to the amenity of the FP55 as it passes through the site and, importantly, how the views of the Inspector are addressed. The decision is a material planning consideration which has been given weight.
- 8.6 Since the original scheme was approved, the SDLP has been adopted and the proposals have been assessed using its policies. Regarding SDLP policies, SD5 seeks to achieve a high quality landscape-led approach to design and, specifically, criterion (b) outlines that development should 'achieve effective and high quality routes for people.' More specifically, SD6 outlines that proposals 'will only be permitted where they preserve the visual integrity, identity and scenic quality of the National Park' and criterion (c) outlines that this includes views from public rights of way. Furthermore, SD20 outlines that proposals will be permitted where they incorporate attractive, accessible and suitable public links through sites and maintain existing public rights of way and conserve and enhance the amenity value, tranquillity and views from public rights of way.
- 8.7 The above adopted policies highlight the importance placed on public rights of way. Whereas before a diversion of FP55 was considered to be acceptable, concerns are now raised in the context of retaining the definitive route in the context of these policies, the Inspector's decision and National Park Purposes.
- 8.8 The Inspector's conclusions were in the context of determining whether to confirm a Diversion Order, having assessed the advantages and disadvantages of it in comparison to the definitive route and the benefits of the development. However, the main conclusion drawn was that the route is situated within a National Park and that the diversion would affect the enjoyment of the special qualities of the National Park by the public.



- 8.9 It has been contended by the Applicant's agent that the permitted barn should be a material consideration and a 'fall back' position in regard to determining this application. The planning permission is a material consideration, however, in the planning balance, limited weight is attributed to it as were the barn partially implemented to avoid FP55 it would not be built in accordance with the approved plans. The proposed barn is in a similar position and scale (notably height) compared to the approved building but that was approved with an anticipated diversion order being made and without the further material consideration of an Inspector's decision.
- 8.10 The HCC Countryside Services consultee response raises concerns relating to the amenity value of FP55 including the protection of views which have been given weight. Other aspects of their comments relating to the urbanisation of FP55 arguably have less weight, given the development which has been approved and could be built. – i.e. the car park and its boundary fencing for instance. FP55 would be enclosed for the length alongside the car park and adjacent existing buildings, however, this is not subject to change in this application. Therefore, it would not be particularly justified to refuse it on grounds that a feeling of urbanisation at that point would impact upon the amenity value. The Inspector also determined that the area is not particularly rural given the surrounding development.
- 8.11 The more significant concern relates to how the development would impact upon FP55 in relation its amenity and the effect upon the enjoyment of the special qualities of the National Park- namely its diverse and inspirational and breath-taking views. In paragraph 31 of the appeal decision, the Inspector outlines that the views south-west toward Home Hanger, and the wider landscape, are of value within the setting of being in a National Park.
- 8.12 The location of the revised barn would be seen in the foreground of views when travelling southwards through the site and alongside the car park and FP55 would be enclosed for part of its route between the proposed and adjacent existing building, which would further limit views. Whilst views would be restricted for a relatively short period of time (at a fair walking pace) wider views of the landscape are nevertheless impacted upon. The existing lodges can currently be seen in the foreground of wider views to the south west, however, the barn would restrict views and impact upon the enjoyment of the special qualities. When travelling past the proposed barn its flank wall would also restrict any wider view and it would only be until after having passed the barn would a wider view of the landscape be appreciated albeit from a lower ground level.
- 8.13 There is no right to a view but the assessment is based on public enjoyment and the impact of the development is such that the enjoyment of the special qualities of the National Park would be harmed by virtue of the siting and scale of the barn. The benefits of a café/farm shop use have already been considered in the previous determination. The physical impact of the barn upon the experiential qualities and enjoyment of the special qualities of the National Park are however the most significant issue. On balance, these concerns have underpinned the recommendation, taking into account the relevant material considerations.

#### Width of FP55

- 8.14 Concern has been raised in representations and by HCC regarding the width given to FP55. The proposals propose a 1.9m distance between the proposed barn and an existing adjacent outbuilding. A width is not specified in the definitive statement for FP55 at this site and HCC rely upon their guidance. This identifies that where a footpath is enclosed a 2.5m width should be adopted. FP55 would be enclosed between the proposed and an existing barn, albeit not for the whole length of the proposed barn.
- 8.15 Given this guidance, the submitted plans do not appear to achieve a sufficient width to accommodate the footpath as, in the absence of a definitive width (HCC are unable to provide this), HCC's guidance carries some weight. The Applicant sought to submit revised plans to reposition the barn, however, these have not been accepted on the basis that this would not overcome the principle concerns officers have in regard to the impact upon the amenity value of FP55.

### Representations

- 8.16 Objections have questioned the fundamental issues regarding the development. There is however a lawful planning permission which is extant. Concerns regarding the experiential qualities and amenity value of FP55 have been considered above. Representations in support of the application predominantly refer to the benefit the development would bring to the local community and visitors. The principle of the uses on site has been established by the previous permission, however, concerns are raised about the merits of the current application proposals.

### Trees

- 8.17 The new barn would be closer to the boundary trees alongside the adjacent industrial estate. The Arboricultural Officer has not raised an objection in principle subject to conditions.

## **9. Conclusion**

- 9.1 In light of the above considerations, and recognising the fine balance of what development could be implemented, the current policy context and the Inspector's decision it is considered that the proposed barn would have an unacceptable impact upon the amenity value of FP55 in relation to the impact on views and enjoyment of the special qualities of the National Park. For these reasons, the application is recommended for refusal.

## **10. Reason for Recommendation and Conditions**

- 10.1 It is recommended that planning permission be refused for the following reason:
1. The proposed barn would not conserve or enhance the amenity value of the public right of way, known as Binsted 55, in regard to its harmful impact upon views and the enjoyment of the special qualities of the South Downs National Park. The proposals are therefore contrary to adopted policies SD5, SD6 and SD20 of the South Downs Local Plan 2014-2033, National Park Purposes, and the National Planning Policy Framework 2019.

## **11. Crime and Disorder Implication**

- 11.1 It is considered that the proposal does not raise any crime and disorder implications.

## **12. Human Rights Implications**

- 12.1 This planning application has been considered in light of statute and case law and any interference with an individual's human rights is considered to be proportionate to the aims sought to be realised.

## **13. Equality Act 2010**

- 13.1 Due regard has been taken of the South Downs National Park Authority's equality duty as contained within the Equality Act 2010.

## **14. Proactive Working**

- 14.1 In reaching this decision the Local Planning Authority has worked with the applicant in a positive and proactive way, in line with the NPPF. This has included the provision of pre-application advice from a SDNPA Development Management Officer and meetings to discuss the proposals.

**TIM SLANEY**

**Director of Planning**

**South Downs National Park Authority**

Contact Officer: Richard Ferguson

Tel: 01730 819268

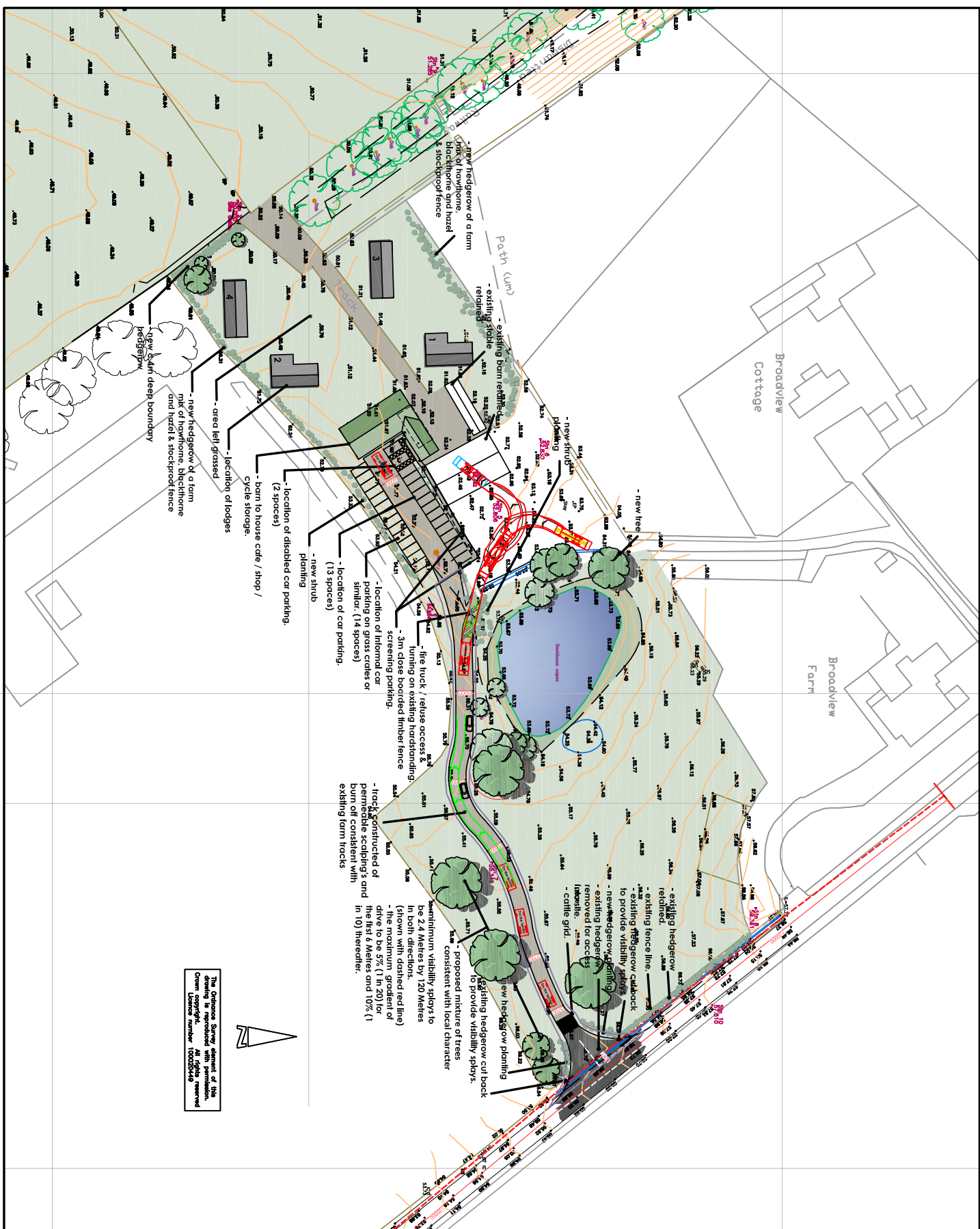
email: [richard.ferguson@southdowns.gov.uk](mailto:richard.ferguson@southdowns.gov.uk)

Appendices	<ol style="list-style-type: none"> <li>1. Site Location Map</li> <li>2. Site Plan (SDNP/16/03835/FUL)</li> <li>3. Appeal Decision</li> </ol>
SDNPA Consultees	Legal Services, Development Manager.
Background Documents	<p>All planning application plans, supporting documents, consultation and third party responses</p> <p><a href="https://planningpublicaccess.southdowns.gov.uk/online-applications/simpleSearchResults.do?action=firstPage">https://planningpublicaccess.southdowns.gov.uk/online-applications/simpleSearchResults.do?action=firstPage</a></p> <p>National Planning Policy Framework (2019)</p> <p><a href="https://www.gov.uk/government/publications/national-planning-policy-framework--2">https://www.gov.uk/government/publications/national-planning-policy-framework--2</a></p> <p>South Downs National Park Partnership Management Plan 2019</p> <p><a href="https://www.southdowns.gov.uk/meeting/authority-meeting-19-december-2019/">https://www.southdowns.gov.uk/meeting/authority-meeting-19-december-2019/</a></p> <p>South Downs Integrated Landscape Character Assessment 2005 and 2011</p> <p><a href="https://www.southdowns.gov.uk/planning/planning-advice/landscape/">https://www.southdowns.gov.uk/planning/planning-advice/landscape/</a></p>

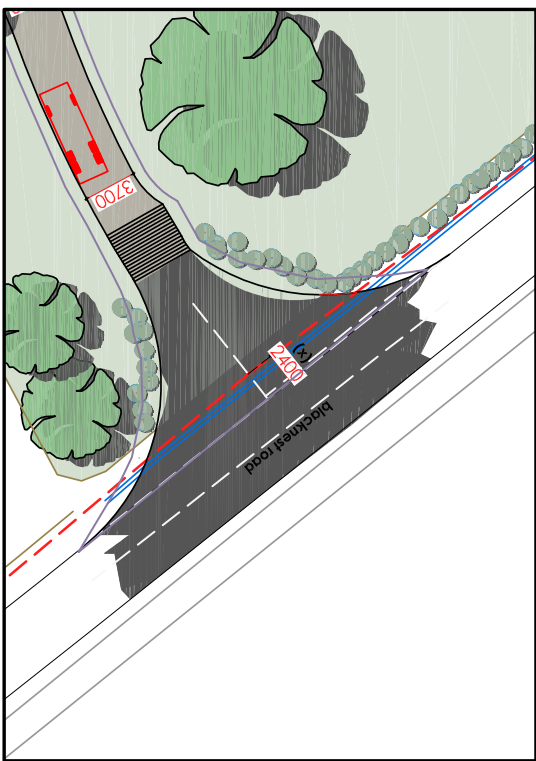
**Site Location Map**



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# SITE ENTRANCE LAYOUT SCALE 1:1250



**SITE ENTRANCE VISIBILITY SPLAYS**  
**SCALE 1:500**

[illegible]

**revision**  
a - 18.05.16 - 1st issue following relocation of lodges to planning comments.  
b - 08.11.16 - updated to LA landscaping & highways comments.  
c - 22.11.16 - fire truck and parking added to access track.  
d - 23.11.16 - further trees added as requested by LA comments.  
e - 09.03.17 - track amendments to reduce width added on track construction & tree added f - 14.03.17 - track width reduced to 3.7m.

client	mr. Cullen	address	Broad View Item Blackburn road dillon gals4.4px
stage	planning	drawing no.	1360/05/02
date	may 2016	drawing	proposed site
scale	1:100 @ A3		

**address**  
brook view farm  
blacknest road  
clifton  
gu34 4px

**drawing no.**  
136c/05/02

**drawing**  
proposed site  
entrance layout

**cmc**  
design architectural services

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## Order Decision

Inquiry opened on 17 July 2018

**by Heidi Cruickshank BSc (Hons), MSc, MIPROW**

**appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Decision date: 06 August 2019**

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### Order Ref: ROW/3181863

- This Order is made under section 257 of the Town and Country Planning Act 1990 and is known as South Downs National Park Authority (East Hampshire District) Public Path Diversion Order Reference Binsted Public Footpath 55 (Part) 2017.
- The Order is dated 29 June 2017 and proposes to divert part of public footpath 55 in the Parish of Binsted. Full details of the route are given in the Order plan and Schedule.
- There were 39 objections outstanding at the commencement of the Inquiry<sup>1</sup>.

**Summary of Decision: The Order is not confirmed.**

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### Procedural Matters

#### **Statutory Parties**

1. The South Downs National Park Authority ("the SDNPA"), who are the order-making authority ("the OMA"), advertised the Order in the period 29 June – 27 July 2017. Having received objections they submitted it to the Planning Inspectorate – acting on behalf of the Secretary of State – and the Inquiry into the Order was opened on 17 July 2018.
2. During the Inquiry it became clear that the Planning Inspectorate had not been notified of two statutory parties. As a result the Planning Inspectorate had not notified those parties of the date of the Inquiry. Although one was present, due to her position within Binsted Parish Council, another was not. Questions arose as to whether there were other statutory parties of which the Planning Inspectorate were unaware.
3. Time was taken for the OMA to provide further information and, having reviewed all the documentation and arguments put forward, I was not satisfied that this was simply a technical breach of procedure, as argued by the OMA. Paragraph 3(3)(b) of Schedule 14 to the Town and Country Planning Act 1990 ("the 1990 Act") applies where any representation or objection which has been duly made is not withdrawn and sets out that "*...the Secretary of State shall, before confirming the order... give any person by whom any representation or objection has been duly made and not withdrawn an opportunity of being heard by a person appointed by the Secretary of State for the purpose.*" Without all the objections and representations the Secretary of State is not able to provide that opportunity.
4. The case was submitted to the Planning Inspectorate on 4 August 2017 and letters were sent out to the statutory parties of whom the Planning Inspectorate were aware on 27 November 2017 inviting them to take part in the process. Those who were unknown were not so notified and so had not had the same

<sup>1</sup> 14 further statutory objections were made in the second notice period, see paragraphs 1 - 6



opportunity for involvement in the process. Taking account of the concerns raised that there may be other unknown parties I decided to adjourn the Inquiry to allow a full review by the OMA to identify any other statutory parties.

5. Following consideration of that review and responses, it appeared likely that all statutory parties had been identified. However, the OMA fairly indicated that an external supplier IT issue meant that the restored backup was dated 2 December 2017, with no earlier information available. To ensure no prejudice arose as a result of this, or any other matter, I asked the OMA to readvertise the Order. The existing statutory parties were not required to make an additional objection; unless an objection or representation already made was, or had been, withdrawn, it was treated as if it had been made to the additional notice.
6. That notice period ran from 11 January – 8 February 2019 and gave rise to a further 14 statutory objections. In addition, there were 14 interested parties who made objections or representations outside either of the formal statutory periods.
7. Unfortunately, the Planning Inspectorate did not ensure that the new statutory parties were notified of the resumed Inquiry date of 18 March 2019, which had been agreed upon at the earlier adjournment. As a result, a number of parties complained that they were unable to attend. Taking account not only of those who may have been prejudiced by not being made aware of that Inquiry date but also of the landowner, who as the applicant for the Order needed to have a decision on the matter within a reasonable timescale, I again adjourned the Inquiry, to 8 July 2019. In the event the only person to attend and give evidence at the July 2019 sitting was one of the two original 'unknown' statutory parties.

### ***The Inquiry***

8. Following complaints regarding the venue initially proposed by the OMA, it was altered to the Alton Maltings prior to the opening of the Inquiry. Unusually the resumption dates were set for Mondays; this was due to concerns about venue availability later in those weeks if there was a need to accommodate a number of witnesses wishing to speak. The dates and times for the Inquiry were discussed and agreed with those present at each adjournment.
9. Whilst there were problems with the process which led to two adjournments before being able to complete the Inquiry, we made best use of the time to hear from those who indicated they wished to speak, when they were available. The Inquiry sat on 17 July 2018 and in the morning of 18 July 2018; on the 18 and 19 March 2019; and for the morning of 8 July 2019. It would be fair to say that the afternoon of 17 July and morning of 18 July related to the issues regarding statutory parties, as discussed above.

### ***Prejudice***

10. Some parties suggested that the identified flaws in the process should lead to non-confirmation of the Order. I consider some of the unhappiness around statutory processes arose from a misunderstanding that an application for diversion of a right of way falls under different procedural requirements from those required in relation to a planning application.
11. I am satisfied that the actions taken in adjourning the Inquiry, twice, and readvertising the Order mean that there can be no doubt that all parties have had fair opportunity to be heard in relation to this Order. Therefore, I am satisfied

that it is appropriate for me to consider whether or not to confirm the Order on the basis of the evidence and submissions before me.

### **Costs**

12. Four costs applications were made, initially in writing, with three expanded upon orally at the end of the Inquiry on 8 July 2019. Those applications are dealt with in separate decisions and reports, as appropriate.

### **Site Visits**

13. I made an unaccompanied site inspection on 16 July 2018 taking in the sections of Footpath 55 ("FP55") proposed to be diverted by the Order; the proposed alternative route; and the continuation of FP55 to the south-west, which joins other public footpaths leading to the road to Binsted village.
14. I made a second unaccompanied site visit on 17 March 2019, which took in changes to the site in terms of the development at Broadview Farm. On 7 July 2019 I walked the section of FP55 north of Broadview Farm from Bentley railway station, using sections of the promoted route, the Shipwrights Way; connections to FP55 within Alice Holt; and FP55 as it passes alongside Bentley Hall, over the railway line and generally north-west to the River Wey, beyond which it continues as a separately numbered footpath to the village of Bentley.
15. There was no request for an accompanied site visit at the close of the Inquiry.

### **Main issues**

16. The Order was made because it appeared to the OMA that it was necessary to authorise the diversion of part of FP55 to enable development to be carried out in accordance with planning permission granted on 31 March 2017 under Part III of the Town and Country Planning Act 1990 ("the 1990 Act"); namely, a new barn to be used as café, farm shop and cycle storage, four timber cabins for tourist accommodation and new access and parking area, reference SDNP/16/03835/FUL.
17. Section 259 of the 1990 Act requires that I must be satisfied that the matters above, falling under s257 of the 1990 Act, make confirmation of the Order necessary. This is one of two tests to be considered and may be referred to as the necessity test: the Order must be required, in the circumstances of the case, to enable development to be carried out in accordance with the terms of its planning permission.
18. The second 'merits' test relates to consideration of whether the disadvantages, either to the public or to individuals, of diverting the route, balanced against the advantages to the public and individuals of the diversion, are significant enough to justify refusing the Order. The advantages include the planning benefits of the development.
19. Additionally, as FP55 is located within a National Park, I am required to have regard to the two purposes of National Parks, which are:
  - a. Conserving and enhancing the natural beauty, wildlife and cultural heritage of the park; and
  - b. Promoting opportunities for the understanding and enjoyment of the special qualities of the park by the public.



20. The SDNPA has a duty to foster the economic and social well-being of the local community in pursuit of these purposes.

## **Reasons**

### ***Background***

21. The definitive line<sup>2</sup> of the Order route passes through a farmyard area of Broadview Farm on alignment E – X – A<sup>3</sup>. As seen on the Order map<sup>4</sup> the line E – X passes through an existing building, used as a wood store; however, it is possible to follow the route of the footpath with a small diversion at this point. A former owner indicated that people had not used the definitive route in his time, however, this was not supported by the evidence heard at the Inquiry. It is the legal route that is under consideration in this process.
22. In addition to the definitive line there is a route to the north-west, which runs from point E and then can be seen on the Ordnance Survey ("OS") base map continuing as '*Path (um)*' to the dismantled railway. This has been referred to as a permissive route. Although it was indicated in evidence from the OMA that it was possible for such a route to be an unrecorded right of way no claim was made to me that this was the case in relation to this route.
23. The proposed diversion route follows the permissive route in part before diverting from it, in a generally south-westerly direction, to reconnect with the continuation of FP55 to the east from point A.

### ***Whether it is necessary to divert part of the footpath to enable development to be carried out – 'the necessity test'***

24. It had been argued that the planning permission could be altered to allow the development and the right of way to coexist. The issue of whether the barn could be sited to avoid the footpath is not before me; the appropriate place to raise such matters was in relation to the relevant planning application. Whether there could be subsequent alterations to the permission is also not a matter before me at this time. I must consider the Order in the light of the permission granted.
25. It was agreed in closing that the definitive route of FP55 is aligned on the proposed location of the barn and, therefore, it would not be possible to implement the planning permission with the footpath in the current location.
26. To allow confirmation of the Order the development cannot have been substantially completed, as this would mean that the Order was not necessary. At the time of my first site visit no works connected with the planning application appeared to have commenced. Due to the delays referred to above some of the works were underway by the time of the subsequent visits, relating to the construction of the lodges. The works undertaken did not directly affect the footpath and the remaining works, relating to the barn, were not commenced.
27. I am satisfied that the development was not substantially complete at the time of the decision. I also agree with the parties that it is necessary to divert that part of FP55 identified to enable development for which permission has been granted to be carried out.

<sup>2</sup> The legal alignment of the right of way as recorded on the Definitive Map and Statement

<sup>3</sup> Points A – E and X are as indicated on the Order map

<sup>4</sup> Attached to this decision

***The disadvantages or loss likely to arise as a result of the diversion – ‘the merits test’***

*Historical interest*

28. It was argued that FP55 was part of an historical route and so of local importance. Whilst the mapping evidence indicates that there has been a route in this vicinity for many years it also shows that the route on the ground – at least in the area around Broadview Farm – has altered over time, regardless of potential discrepancies in map dates. These changes were probably in response to developments at different times, much as the change sought by this Order.
29. I do not consider that the evidence shows the affected part of the route of FP55 to be of such historical significance that it should not be altered. The diversion would allow continued use of a route as a whole from end to end.

*Views*

30. FP55 is situated within an area which was included within the boundary of the South Downs National Park (“SDNP”) during the designation of the area as a National Park in 2011. Having originally been ‘passed over’ for inclusion, the Inspector and the then Secretary of State for the Environment, Hillary Benn, visited the area and decided that it was sufficiently valuable for inclusion.
31. The objection made on behalf of members of the local community indicated that the SDNP Special Qualities identified Quality No.1 as diverse, inspirational landscapes and breath-taking views. I agree that the views south-west to Home Hanger, and the wider hanger landscape, are of value in the setting and I understand from users that this was part of the reason for choosing to use FP55. There would be a reduction in the time at which views were available when travelling from Blacknest Road, as users would be travelling alongside buildings and planting associated with the development, as well as having the existing oak trees, which run alongside the old railway line cutting, in front of them.
32. I take into account that the existing route, passing through a former farmyard, also has buildings alongside and that there would be nothing to prevent the landowner from planting trees at the western end of the farmyard, which would similarly block views on that route. If the route were diverted the wider landscape view would still be available from at least point C, if not earlier.
33. The visualisations prepared in objection to show the potential changes arising from planting associated with the development were not produced under the appropriate technical guidance<sup>5</sup> and I agree with the OMA that little weight can be placed on them. Whilst I do not place reliance on the visualisations as they stand I have looked again at the planning permission, which requires a detailed scheme of soft and hard landscape works, intended to integrate the development into the landscape and mitigate any impact upon the amenities of neighbouring properties. Plan 136a/05/02<sup>6</sup> shows that there would be a “*new hedgerow of a farm mix of hawthorne (sic), blackthorne (sic), and hazel & stockproof fence*”. It is understood that the hedges are to be maintained at a minimum of 1m with the average to be 1 – 1.5m. This would affect views for walkers heading generally south-west, with the lodges themselves also interrupting the views.

<sup>5</sup> Guidelines for Landscape and Visual Impact Assessment (GLVIA)

<sup>6</sup> Version D was submitted with the Order but the approved plan is noted to be version F.

34. The owners of Broadview Cottage have undertaken some planting on their field boundary, to the north-west of the section of the proposed footpath running south-west of point E. If developed and maintained this may also affect views on the approach to the wider landscape. The plan indicates that the area to the south, alongside the proposed route of FP55 would be fire truck/refuse access & turning on existing hardstanding.
35. Objectors felt that the proximity of the proposed route to the lodges would add to the feeling of walking in an urbanised rather than truly rural environment. The definitive line previously ran alongside farm buildings and now passes in part between the already constructed lodges. It seems that the proposed route would be closer to the lodges than the definitive route, although passing to the rear of two rather than between the four with two on either side.
36. This development is within the ribbon development area along Blacknest Road. In walking from Bentley it is noticeable that the footpath alters from being within woodland to running to the rear of Bentley Hall and houses on Blacknest Road. I do not consider this ribbon development area to be particularly rural and do not find the proposed route to be any more or less rural than the existing.
37. I disagree with the OMA that I should only be considering the right to pass and repass on the highway, rather than these wider issues. Whilst there is no requirement for consideration of 'public enjoyment' under the 1990 Act, as there is in relation to diversion under the Highways Act 1980, I consider this to fall fairly under the disadvantages or loss to the public to which *Vasiliou v Secretary of State for Transport and another (1991)*,<sup>7</sup> refers.
38. Whilst the loss of views may appear a minor matter in terms of time I bear in mind that this route is situated within a National Park. I consider that the objections generally indicate that the proposed changes would affect the enjoyment of the special qualities of the Park by the public. This is a more significant matter than it might be in a different setting and I find it weighs against confirmation of the Order.

#### *Distance and alignment*

39. Whilst the proposed diversion is longer than the existing route I agree with the OMA that it is not significant, particularly when considering the length of the whole of FP55. The proposed alternative route of 176 metres is just 25 metres longer than the existing route at 151 metres.
40. The objectors refer to there being seven changes of direction in this short distance, indicating that there are only 15 changes in direction on the whole of the existing route of FP55.
41. I was given no explanation for the diversion into the field north-east of point D, rather than running in a direct line to point E from the railway cutting. This affects the effective land use of a second field and, if the fence was removed, walkers would be unlikely to follow such a convoluted alignment in an open area. The applicant has apparently indicated that he was content to allow the public to take their own line through the field between points C and E but this could fetter future land use, which I do not consider to be in the wider public interest.

<sup>7</sup> (CA)[1991] 2 All ER 77, [1991] JPL 858 and cited with approval in *R(Network Rail Infrastructure Ltd) v SSEFRA* [2017] PTSR 1662

42. I agree with the objectors that the diversion would be more difficult to navigate and would feel artificial to users. I find this to weigh against confirmation.

#### *Limitations*

43. The Order as made does not include limitations and the OMA argued that, as these would be applied for by a separate process<sup>8</sup> it was not open to me to consider the matter. Whilst the Order appears to offer a limitation-free experience, which could be of value in any landscape, the reality is that the OMA have indicated that the diversification would allow the continuation of sheep farming here. As such, it is obvious that there must be at least one limitation somewhere on the proposed route, or an unaltered section of FP55, to prevent livestock reaching Blacknest Road.
44. The objectors say that there would be 5 field boundaries, which on a working farm would almost certainly mean gates. Any limitation would affect use for those with limited mobility, such as more elderly people or people with a buggy or pushchair. The OMA statement of case refers to 5 gates at the identified boundaries: two gates are indicated where the proposed route crosses the fence to point C before continuing to D to the north-east of fence at top of cutting; one between points C and D; one between point D and E; and, finally a gate at point E. The diversion via the field north-east of point D makes it more likely that an application may be made for additional limitations here as otherwise there would be no need for the fence. The OMA indicate that their policies mean that only gates would be authorised, should applications be made for limitations.
45. Whilst only giving a little weight to this matter, as I cannot know what limitations may be applied for and/or authorized going forward, I consider this uncertainty is a negative factor in terms of confirmation of the Order before me.

#### *Site of Interest for Nature Conservation*

46. The dismantled railway cutting runs on a generally north-west to south-east alignment in this area, with points A and B on the south-western side and C and D on the north-eastern side of the alignment. The former railway is generally within a cutting and the section affected by proposed alignment B – C is on the south-eastern end of the Broadview Farm Dismantled Railway Site of Interest for Nature Conservation ("SINC").
47. A SINC is not a statutory designation but a local biodiversity designation, recognising a site of local importance. Ecological surveys undertaken in 1998 and 2018 found several notable species and it has a '2A' designation; '*Agriculturally unimproved grasslands – grassland that is composed of a mixed assemblage of indigenous species in essentially semi-natural communities which has been allowed to develop without the major use of herbicides or inorganic fertilisers.*'.
48. It appears that following comments on the application for the diversion infilling of the section of the SINC over which B – C would pass was carried out. Complaints were raised as to the nature of the material used and the appropriateness of infilling the SINC in the first instance, which was viewed as a means of overcoming potential objections to the unevenness of that section of the proposed route. The OMA, in their role as the relevant planning enforcement authority, decided not to enforce the removal of this material.

<sup>8</sup> For example under section 147 of the Highways Act 1980

49. I note the concerns raised in relation to this matter and agree that changes to a SINC, particularly in a National Park, should not be an action to be treated lightly. Nevertheless, the situation before me is that the material is already in place. It does not appear that use of the section B – C, as it now stands, as part of the proposed footpath would damage the SINC.

### *Broadview Cottage*

50. Broadview Cottage is situated to the north of the Order route. The access road is shared with the track which passes the residential area of Broadview Farm, continues on the current access to the proposed development site<sup>9</sup> and is shared with the section of FP55 running generally south-west from Blacknest Road. The field immediately to the west of point E is within the ownership of Broadview Cottage. The proposed route from E to the field corner would run directly adjacent to the southern field boundary, this being one of two fields grazed by horses and cattle.
51. The path to the north of point E, which would remain unaltered by the Order, runs closer to the residential area of Broadview Cottage than the proposed route. There is extensive planting around the garden to the south of the cottage which retains privacy there. It is also the case that when walking from Blacknest Road users have a direct view of Broadview Cottage for a short time.
52. The landowner/occupier of Broadview Cottage indicated that whilst the permissive route followed the same alignment alongside their field boundary from point E towards point D<sup>10</sup>, it had not particularly affected them previously; the route was not maintained and so few people used it.
53. I note there was evidence from some users that this route had been used over the years and the use sufficient for the route to be noted on the OS mapping used as the Order map base. However, the owners reported increased noise, visual intrusion and the need to pick up litter, including dog poo bags, from their field following increased use of this route over the previous 18 months due to changes on the definitive route E – X – C – A. It is unfortunate that the landowners, who made a statutory objection to the Order, were unable to attend the Inquiry due to personal circumstances.
54. The OMA argued that the planting which has been undertaken on the field boundary would provide mitigation to Broadview Cottage. However, even if this was the case, it places a burden on that landowner to provide and maintain mitigation in relation to actions on neighbouring land.
55. I consider that introducing a recorded public right of way alongside the field boundary of the neighbouring landowner introduces a negative impact for the amenity of the property in this case. Whilst I consider it less significant than it might have been had the permissive path not already been in place this nevertheless weighs against confirmation of the Order.

### *Summary*

56. Taking all the above matters into account I conclude that there would be a disadvantage to the public in altering the amenity of this part of FP55. This relates in part to the boundaries and changes in direction and in part to the

<sup>9</sup> The planning permission provides for a new entrance to the development site south of the current access

<sup>10</sup> The permissive route diverges from the proposed route north-east of point D

matter of views. I also consider that there would be a negative effect on the neighbouring landowner if the Order was confirmed.

***The advantages to be conferred by the proposed order***

57. The Order will allow the implementation of the planning permission, which has already been considered and approved by the OMA as the relevant planning authority. It is noted that this was a case where the OMA 'called in' the planning application as it met the 'Guidelines on Significance for South Downs National Planning Applications.' In other cases I understand that East Hampshire District Council acts on behalf of the SDNPA to undertake planning functions. If the Order is not confirmed then the permission cannot be fully implemented.
58. The OMA referred to the advantages which they believed would arise from the planning permission, whilst objectors felt that such advantages had not been demonstrated or were overstated.
59. In relation to beneficial diversification, allowing sheep farming at Broadview Farm to continue, no figures were presented to demonstrate that the diversification was necessary. However, I accept that in general terms there is planning support for farm diversification, particularly where there is enhanced land management.
60. Condition 15 of the permission referred to the development being undertaken in accordance with a farm management plan, including "...*management of the re-wilded area of the Hangars...*" the reason being "*To achieve the conservation and enhancement of the National Park landscape...*".
61. An email from the Senior Ecologist of Hampshire County Council, in response to the planning consultation, indicated that re-wilding of Home Hanger was '*essentially unnecessary*'. The email goes on to say that "...*any future management would need to be sensitive to the existing conditions and should be guided by recognised ancient woodland management techniques...*". Condition 15 requires details of the management to be submitted and approved in writing by the Local Planning Authority so it seems unlikely that unnecessary work would be carried out. Given that enjoyment of the hanger landscape is part of the reason for use of FP55 it is appropriate for me to weigh this matter in the balance in consideration of the Order; on the evidence presented it seems that the potential benefit of 're-wilding' has been overstated.
62. The requirement for 80% of goods sold in the farm shop to be regional, with half from the local area, is set out under planning condition 17. I note that there is a shop selling home grown or locally sourced produce situated within 2.5km of the development. However, the planning requirement would ensure that the shop relates to the farm enterprise and the local economy and that there would be some type of farming activity, with continuation of sheep farming being the most obvious, as part of the overall enterprise. This would provide continuation of the management of the land in a way which has led to the landscape that people indicated they enjoyed walking in.
63. In relation to the provision of refreshment services for visitors to the National Park the objectors referred me to ten other similar amenities situated within a 3km radius of the development, with another three on that radius boundary. Whether people choose to use a particular facility will depend on personal choice, as seen from the evidence of the users of the right of way.

64. In relation to walkers, whom the OMA felt would benefit from the provision of such a facility, views were split. The Ramblers representative indicated that they might like to drop in, although found it odd to move the footpath to the other side of the fence if wishing to encourage such use; there would be access to the café from at least the eastern end, point E, although it is unclear whether public access would be provided to and from the footpath to the south-west, point A. A representative organising shorter walks, for example Walking for Health walks, indicated that they would be very unlikely to want to stop on this type of walk. I consider that some people using FP55 would choose to use facilities available on their walk but others would not; this is neutral in terms of walkers and I do not consider that overall benefits have been demonstrated for them.
65. The lodges are under construction and the objectors indicated their understanding that these facilities, including the car park, would not require changes to the route of the footpath. The OMA agreed that the lodges were not dependent on the diversion. It may be possible to develop the car park taking account of the alignment of FP55 but that is not a matter for me.
66. The planning authority should have determined that advantages accrue from the development at the stage of granting planning permission. This is a relatively small-scale development in planning terms but the OMA believed it to conserve and enhance the National Park and be consistent with the Parks purposes. I accept that advantages to those parties directly and indirectly affected by the permission would arise from confirmation of the Order, allowing implementation of the permission as a whole.

### **Conclusions**

67. *Vasiliou* recognises that it is open to the Secretary of State to form a wholly different view on matters taken into account by the planning authority when considering the planning application and subsequent application for diversion, in relation to those matters relevant to the diversion. I accept that the OMA felt that the planning permission was appropriate and that the diversion of part of the footpath became necessary as a result.
68. I accept that there are advantages in confirmation of the Order so that the planning permission as granted can be implemented in full. However, having had the opportunity to hear the evidence I consider that the even recognising the potential alignment of the small-scale private development with the purposes of the National Park, the disadvantages flowing directly from the proposed diversion are of such significance that the Order should not be confirmed. In particular, I am not satisfied that the proposed convoluted alignment is appropriate and I am concerned at the effect upon the neighbouring property. I consider that the location within a National Park demands a greater level of sympathetic design in relation to features such as rights of way, which has not been met in this case.

### **Other matters**

69. There was unhappiness with regard to the granting of the planning permission in the first instance. There were also questions around the appropriateness of certain conditions attached to the planning permission; discussion of the recently adopted South Downs Local Plan<sup>11</sup>; and, the National Planning Policy Framework.

<sup>11</sup> Adopted 2 July 2019

I understand that there had been a judicial challenge to the permission but this was discontinued and so the planning permission is extant.

- 70. There was discontent with the process in deciding that the Order should be made. That decision was not judicially challenged and so the Order remains to be determined, taking account of the relevant matters, as set out above.
- 71. Concerns about obstructions or interference with existing alignment of FP55 in this location are not matters before the Inquiry.
- 72. Concerns that a precedent may be set if the Order was confirmed are not relevant.
- 73. The number of people making objections to the Order is not a relevant matter to the decision.

### **Conclusions**

- 74. Having regard to these and all other matters raised at the Inquiry, and in the written representations, I conclude that the Order should not be confirmed.

### **Formal Decision**

- 75. I have not confirmed the Order.

*Heidi Cruickshank*

**Inspector**



## **APPEARANCES**

### **For the Order Making Authority:**

Mr L Wilcox                      of Counsel, *instructed by* the South Downs National  
Park Authority

*who called:*

Mrs S Manchester      Consultant, *instructed by* the South Downs National  
Park Authority

### **In Support of the Order:**

Mr Cullen

### **In Objection to the Order:**

Mrs C Fargeot                      *on behalf of* herself and Binsted Parish Council

Mr S Alexander

Cllr M Kemp-Gee

Mr I Salisbury                      *on behalf of* himself and members of the local  
community

*who called:*

Mr I Fleming

Mr M Goble

Mr R Hannah

Mrs S Phillips

Mrs M Salisbury

Mr P Wonson

Mr G Woollen

## **INQUIRY DOCUMENTS**

- 1 The Order
- 2 National Park Authority's Opening Statement
- 3 Addendum to SDNPA Proof of Evidence
- 4 Information on non-statutory conservation designations
- 5 National Park Authority's Closing Statement, with attachment
- 6 Information on statutory parties (July 2018)
- 7 Information on review of statutory parties (September/October 2018)
- 8 Binsted Parish Council Proof of Evidence (updated)
- 9 Proof of evidence, Mr Ian Salisbury, with attachments
- 10 Proof of evidence, Mr Fleming
- 11 Proof of evidence, Mr Goble
- 12 Proof of evidence, Mr Hannah
- 13 Proof of evidence, Mrs Salisbury
- 14 Proof of evidence, Mr Wonson
- 15 Proof of evidence, Mr Woollen
- 16 Proofs of evidence taken as read, Mrs Butler, Mrs Freeman, Mrs Goble & Mr Tuttlebury
- 17 Alice Holt – A Brief History, relevant parts
- 18 Members of the Community Statement of case (updated), with attachments
- 19 Members of the Community closing submissions
- 20 Proof of evidence, Mr Alexander
- 21 Written costs application, Melissa Salisbury
- 22 Written costs application, Claire Fargeot
- 23 Written costs application, Ian Salisbury
- 24 Written costs application, Simon Alexander

