



South Downs
National Park Authority

Agenda Item 13
Report PC22/23-21

Report to	Planning Committee
Date	8 December 2022
By	Director of Planning
Title of Report	Summary of appeal and judicial review decisions received from 24 August 2022 – 21 November 2022
Purpose of Report	To update SDNPA Members on appeal decisions received
Note	

The Committee is recommended to note the outcome of appeal decisions.

I. Overview

- 1.1 The attached table (**Appendix I**), ordered by date of decision, provides Members with a summary and brief commentary on the appeal decisions. This covers both those appeals dealt with by the host authorities and directly by the South Downs National Park Authority.
- 1.2 From the 24 August 2022 to 21 November 2022:
 - 13 appeal decisions (some dealt with concurrently) were received of which 12 were dismissed and 1 was allowed.
 - There were three costs decision in the period. A full award of the Authority's costs was made against the appellant in respect of the appeal at Land South of Kingsmead Close, Bramber. Conversely, an award of costs was made against the Authority in respect of an appeal at Hayden Barn Cottage following a decision taken by Winchester's Planning Committee. A further application for an award of costs against SDNPA was refused.
 - There were no judicial review judgements.
 - The Authority's Community Infrastructure Levy (CIL) team took legal action against one developer in the period for non-payment of CIL. The developer settled the debt in full the day before the case was due to be heard in court.
- 1.3 The Authority's appeal performance in the financial year to date is excellent with 90% of appeals being dismissed. The number of appeal decisions received by the Authority in the period is lower than previous years, presumably because of the current relatively long determination times by the Planning Inspectorate. This is the case across the country.

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Appendices I. Summary of Appeals Decisions
SDNPA Consultees Director of Planning, Legal Services
External Consultees None
Background Documents None

Key to Appeals Reporting

Method of decision	All are delegated decisions unless otherwise specified
Appeal method	All are determined via written representations unless otherwise specified
Allowed	A
Dismissed	D

Planning Appeals	
Planning Application and Appeal Reference Number:	SDNP/21/04110/LDE APP/L3815/X/21/3286009
Authority:	Chichester
Site:	Land at 1 Stone Pit Cottages, Marley Combe Road, Camelsdale, Linchmere, GU27 3SP
Description of Development:	The development for which a certificate of lawful use or development is sought is a rear garden cabin in the garden of a dwelling.
Decision and Date of Decision:	D 01 September 2022

Inspector's Reasoning:

- Chichester had determined that the rear garden cabin was not permitted development as it would be located outside the domestic curtilage of the dwellinghouse. Whether the cabin was located within (or not) the domestic curtilage was the only matter in dispute.
- The Inspector noted that there was a material difference in the character of the land where it was proposed to site the cabin compared to the well defined domestic garden nearer the dwellinghouse. In contrast the site of the proposed cabin is characterised by a woodland setting with the dwellinghouse not being visible due to the distance and sloping topography. The fact that the land was in the same ownership was not a determining factor.
- Taking all of the evidence into account the Inspector determined that the parcel of land on which it was proposed to erect the cabin does not, as a matter of fact and degree, have the kind of intimate association with the dwellinghouse that is required for it to be reasonably interpreted as within its curtilage. Therefore the proposal was not permitted development and the Inspector dismissed the appeal.

Enforcement Appeal Reference Number:	Appeal against Enforcement Notice issued on 5 August 2021 APP/Y9507/C/21/3282722
Authority:	Chichester
Site:	Land south of Harting Combe House, Sandy Lane, Rake, Rogate, West Sussex
Description of breach of Planning Control:	<p>Enforcement Notice: The breach of planning control as alleged is without planning permission the material change of use of the land, the stationing of a mobile shepherd's hut for the purposes of human habitation together with the use of a wooden building for the purposes of human habitation.</p> <p>The requirements of the notice are (i) discontinue the use of the land for the stationing of a mobile shepherd's hut for the purposes of human habitation, (ii) discontinue the use of the said wooden building for the purposes of human habitation, (iii) remove the shepherd's hut from the land, (iv) demolish the said wooden building and remove the resulting debris from the land and (v) remove tables, benches and chairs from the land.</p> <p>The period for compliance with the requirements is 3 months.</p>
Decision and Date of Decision:	D 01 September 2022

Inspector's Reasoning:

- The main issue was that at the date the notice was issued no enforcement action could be taken. Whilst the appellant referred to 10 years as the relevant period of immunity, Section 171B(2) of the 1990 Act sets out where a breach of planning control consists of change of use of any building to use as a dwellinghouse no enforcement action may be taken after the end of four years beginning with the date of the breach. In this case, the relevant period of four years before the issue of the notice was from 5 August 2017.
- The Appellant provided information stating the shepherd's hut had been on the land for in excess of 10 years and the wooden building in excess of 4 years. He says that they were repaired and refurbished in Summer 2017 and that their use as tourist accommodation began in 2018.
- The Authority's case was that regardless of when the hut and building were stationed on the land their previous use was extinguished when the hut was refurbished in 2018 to provide overnight accommodation and a larger wooden building fitted with shower and toilet facilities to be used in association with the hut. Therefore, a new chapter in the planning history of the site commenced when the structures became a single habitable residence. This was also supported with evidence in the form of a complaint in 2018 alleging the erection of a building and use of the land for Airbnb overnight accommodation, tourist accommodation adverts and marketing and the Appellant's response to a PCN (planning contravention notice).

- The Inspector concluded that there was no dispute between the parties that the hut and building had been used for tourist accommodation since 2018. Any previous occasional use as recreational accommodation was intensified when following refurbishment and marketing the hut and building began use as tourist accommodation. There was no evidence to counter the Authority's claim that the hut and building became a single habitable residence in the Summer 2018 when the land was marketed and subsequently used as overnight accommodation. Therefore, on balance the Inspector did not consider that the evidence produced by the Appellant satisfied the burden of proof, the appeal failed and the enforcement notice was upheld.

Planning Application and Appeal Reference Number:	SDNP/21/02892/OUT APP/Y9507/W/22/3296522
Authority:	SDNPA
Site:	Land South of Kingsmead Close, Bramber BN44 3QB
Description of Development:	The development proposed is the erection of 8 dwellings together with associated access, car parking and landscaping.
Decision and Date of Decision:	D Informal Hearing 05 September 2022

Inspector's Reasoning:

- The development is located outside of a settlement boundary and it was common ground that the development did not accord with Local Plan policy SD25 (Development Strategy) nor did it comply with Policy B1 of the Neighbourhood Plan which controls development outside the Built Up Area Boundary.
- The Inspector noted the wooded, rural nature of the site and that the trees on site are protected by a Tree Preservation Order (this protection affording clear evidence of the value of the woodland as a landscape feature). Whilst proposed new planting would more than compensate for the lost trees in terms of number the proposed development would fully occupy the site with only small pockets of wooded areas remaining, thus the development would irretrievably change the character of the site and its landscape value as a woodland would be lost.
- There would be noise and light spill from the development which would harm the tranquil rural quality of the road. The development would also be more intensive than existing development further along the road which is dispersed in nature. The Inspector considered the proposal would extend the urban area into an open landscape which is characteristic of the area and part of the National Park. Policy SD11 only allows for the removal of protected trees in exceptional circumstance and the Inspector found the proposal in conflict with this policy. Overall the Inspector considered that the proposal would not accord with the first statutory purpose of the National Park to conserve and enhance natural beauty.

- The setting of a nearby listed building would not, the Inspector considered, be harmed by the proposal.
- The woodland within the appeal site is designated by Natural England as a deciduous woodland priority habitat. The development would result in the loss of this priority habitat and, further, it had not been demonstrated that there would be any net gain in biodiversity (which in any case would not compensate for the loss of woodland habitat).
- It was found that it had not been demonstrated that suitable provision would be made for reptiles and therefore the proposal would conflict with Local Plan policies in this respect.
- The appellant, to address water neutrality issues, had proposed to provide measures at a nearby primary school to reduce water use there in order to compensate for the water that would be used by the development. However as the appellant's draft planning obligation had not been completed and signed the Inspector could not take it into account and therefore found the proposal unacceptable in this respect. In relation to affordable housing the Inspector noted that the proposal would fail to secure any affordable housing (as the draft planning obligation had not been completed and signed).
- The Inspector considered that the proposal did not accord with the development plan as a whole and dismissed the appeal. The Inspector noted that the appeal would have failed even if water neutrality and affordable housing had of been secured by an appropriate planning obligation.

Costs Decision – Full Costs Awarded to SDNPA

- SDNPA made an application for costs on the basis that the appeal had no reasonable prospect of succeeding.
- The Authority noted that the site had been assessed on multiple occasions since 1968 in terms of its suitability for housing and has consistently been found to be unsuitable for such development. This has included pre-application advice, four refused planning applications, two dismissed appeals, a Strategic Housing Land Availability Assessment and the Bramber Neighbourhood Plan Sites Assessment.
- The Inspector stated that the suitability of the site for residential development has been assessed on numerous occasions over the years with consistent results. The Inspector considered that the proposed development is in clear conflict with the development plan and that the appeal had no reasonable prospect of succeeding. Therefore the Inspector found unreasonable behaviour by the appellant resulting in unnecessary or wasted expense and that a full award of costs in favour of SDNPA was justified. The appellant has therefore had to pay SDNPA's costs for the appeal proceedings.

Planning Application and Appeal Reference Number:	SDNP/21/02821/FUL APP/Y9507/W/21/3282980
Authority:	Winchester – Winchester Planning Committee Decision (overturn - officers had recommended approval)
Site:	Land to the rear of Hayden Barn Cottage, Hayden Lane, Warnford SO32 3LF
Description of Development:	The development proposed is described as “Part retrospective planning permission for the change of use of land from agricultural to equestrian, and the erection of a private recreational 3-door stable, to be used in association with the dwellinghouse of ‘Hayden Barn Cottage’”
Decision and Date of Decision:	A 16 September 2022

Inspector's Reasoning:

- Preliminary Matters – the effects of relocating a private recreational stable on the site have already been considered as part of an appeal in 2021. The Inspector then took the view that the relocation of the stable block would cause no harm to the character and appearance of the area and found no conflict with Policy SD24 subject to a number of criteria being fulfilled. Notwithstanding this, the previous (2021) appeal was dismissed on a technicality as the proposal had not been ‘described in such a way so as to encapsulate the intended change of use’.
- The main issue in this appeal was the effect of the proposal on water quality, having particular regard to the risk of pollution to groundwater, surface water run-off and watercourse corridor features.
- The site comprises a paddock situated to the rear of a detached property known as Hayden Barn Cottage, which sits within spacious grounds, with a woodland area giving the site a verdant character.
- The Authority raised concerns of the effects that the proposed change of use could have on water quality, as a result of the changes in level which have previously occurred across the appeal site, notably to create a flat area for the siting of the stable block in its current position. The Authority considered that these could lead to contamination associated with water run-off from the grazing land and nitrates, which could enter the aquifer feeding the river Meon. Furthermore, that the water damage which has affected the boundary wall of the Hayloft has occurred following land level changes on the appeal site.
- The Inspector stated as part of the previous appeal, the Inspector for that appeal noted that ‘minor alterations to the land levels would be required to provide the level base and access track, but to a lesser extent than was necessary to accommodate the building and tract as presently sited’. In this case, the land changes which took place in the area where the stable block is currently located would remain unaltered as part of the implementation of the appeal scheme.

- The Inspector noted that the proposed equestrian use would be restricted to the occupiers of the appeal property, for recreational purposes, and would therefore remain limited in scale. In all likelihood and in the absence of substantive evidence to the contrary, the equestrian use of the site would be far less harmful to the water quality of the local area than the agricultural activities which could be lawfully carried out. In addition, it was noted that agriculture is widely recognised as a large contributor to nitrate concentration in groundwater, something which was not disputed by the Authority. In that context, the proposed equestrian use would represent a better alternative, particularly as suitably worded conditions could be imposed to ensure that horse manure and stable waste are carefully managed and disposed of.
- The Appellant's Hydrogeological Appraisal, also confirmed that the groundwater table is likely to be circa 30 metres below ground, thus providing a high potential for attenuation of any contaminants in the unsaturated zone and that the development was unlikely to cause significant water runoff. Therefore, subject to the imposition of conditions (including details of the storage and disposal of effluent from the horses and manure and details for the disposal of foul and surface water), the Inspector found there would be no unacceptable harm to the water quality of the local area and no conflict with Policy SD17.
- The Inspector also noted a number of comments had been made by interested parties, particularly in respect of the effect of the development on the character and appearance of the surrounding area and living conditions of neighbouring occupiers. However, these considerations were subject to a detailed assessment as part of the previous appeal, the Inspector finding that 'the proposal would not have a harmful effect on the character or appearance of the area and would preserve the natural beauty of the wider National Park'. The Inspector for this appeal concluded that there were no reasons to disagree with that view, therefore the development would conserve the landscape and scenic beauty of the National Park and subject to the imposition of conditions, the scheme would have no harmful impact on the living conditions of neighbouring residents.
- The Inspector also acknowledged concerns raised regarding the effect of the development on the owl enclosure sited on the adjacent property. However, they concluded that the noise caused by up to three horses would remain modest in scale, particularly when compared with the greater disturbance which could be associated with the use of the site for agricultural purposes.
- Therefore, the appeal was allowed and planning permission granted subject to conditions.

Costs Decision – full award of costs awarded to the Appellant

- The Appellant claimed unreasonable behaviour by the Authority on the following grounds (1) Comments from Head of Drainage regarding the reason for refusal constitutes fresh evidence, directly causing the appellant to incur additional costs in the appeal process (including producing a hydrogeology report) and claimed the Authority failed to substantiate its reasons as part of the appeal process, (2) the Authority made vague, generalised or inaccurate assertions about the impact of the development, which were not supported by any objective analysis, and (3) the Authority persisted in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
- Whilst the Inspector noted that Members of a Planning Committee are entitled to reach a different decision to the Case Officer's recommendation, they do have to do so relying on substantive planning grounds. In this instance, the Authority largely relied on comments made by the Head of Drainage to substantiate its concerns, though it remains unclear at which stage these particular comments were provided. The PPG clearly states that persisting in objections to a scheme or elements of a scheme which the Secretary of State has previously indicated to be acceptable may give rise to a substantive

award of costs against a Local Planning Authority. The Inspector concluded that was exactly what happened in this case, as the Authority refused to grant permission for a development which an Inspector had found acceptable (although the appeal had to be dismissed on a technicality). The Authority's decision to refuse the application caused additional delay for the development and put the appellant at additional expense in the appeal process. Therefore, a full award of costs was justified.

Planning Application and Appeal Reference Number:	SDNP/21/03067/HOUS Appeal A Ref: APP/Y9507/W/22/3290369
Authority:	Chichester
Site:	Old Well Cottage, Lower Street, Fittleworth RH20 1EJ
Description of Development:	The development proposed is a first floor extension and internal alterations.
Decision and Date of Decision:	D 23 September 2022
Planning Application and Appeal Reference Number:	SDNP/21/03068/LIS Appeal B Ref: APP/Y9507/Y/22/3290371
Authority:	Chichester
Site:	Old Well Cottage, Lower Street, Fittleworth RH20 1EJ
Description of Development:	The works proposed to the Listed Building are a first floor extension and internal alterations.
Decision and Date of Decision:	D 23 September 2022

Inspector's Reasoning:

- The proposal was to create 10.7sqm of additional floorspace at first floor to the Grade II listed 'Clematis Cottage, Old Well Cottage and Wayside Cottage' within the Fittleworth Conservation Area (FCA). The Listed Building had been successively altered overtime.

- The extension would project beyond the existing gable wall, extending above the 1978 element of the property. It would appear visually as an extension to the form of the rear gable. Plain clay hanging and roof tiles were proposed, as were casement windows.
- The main issues were (i) whether or not the proposal would preserve or enhance the listed building, any features of special architectural interest which it possesses, and the character or appearance of the FCA and, (ii) the effect of the proposal on the living conditions of the occupants of neighbouring Clematis Cottage, with particular regard to outlook.
- The Inspector reasoned that the listed building retains an understated and intimate character. It was originally created from materials readily at hand, and for function rather than aesthetics. The history to the listed building is also attested to in the relatively modest scale of the dwellings (both in absolute terms and compared to many others nearby). Therefore, the special interest of the listed building lies primarily in the authenticity of its materials, understated design and modest scale, along with the importance of those characteristics in reflecting the history of the FCA in the present.
- The Inspector concluded that whilst the proposal itself was relatively small and takes its design cues from the form and materials of the listed building, it would result in some, albeit limited, loss of existing fabric. In addition, the extension would project significantly (3.3m) beyond the existing rear gable. Therefore, the proposed extension would appear discordant in its context, and the modest, intimate nature of the property, which is integral to significance, would be diluted.
- The Inspector also concluded that the extension would not give rise to additional shading or lose of natural light to Clematis Cottage. However, the extension would extend beyond the rear plot boundary, which was atypical of prevailing conditions and the scale and bulk would be discordant. In that context, the proposal would result in an undue sense of being hemmed in. Therefore the bulk and proximity of the proposal would represent an unduly overbearing form and would adversely affect the living conditions of neighbouring occupants, contrary to Policy SD31.
- The proposal offered modest public benefit, as the revised layout would better reflect the need of the older individuals living in the property and retains a ‘small’ two-bedroom property so there was no conflict with Policies SD27 and SD31 and was neutral against policy FITT6 of the Neighbourhood Plan. However, these modest benefits did not outweigh the harm caused. Therefore, both appeals were dismissed.

Planning Application and Appeal Reference Number:	SDNP/22/00553/HOUS APP/Y9507/D/22/3302087
Authority:	SDNPA
Site:	Street Farm Cottage, Green Lane, Jevington, Polegate, BN26 5QD
Description of Development:	The development proposed is a single storey rear extension, infill extension to side and insertion of windows at first floor to rear elevation.
Decision and Date of Decision:	D 29 September 2022

Inspector's Reasoning:

- The main issues were the effect of the proposal on the character and appearance of the locality and on housing mix within the National Park.
- The Inspector considered that the extension would appear as excessively sized and was bereft of necessary design subtlety. Notwithstanding matching materials, the structure would lack subservience and look ungainly. Its design would not accord with good design principles and additionally, it would be seen from vantage points open to the public. The scheme would impinge on the rural character of the area, its landscape qualities and public views, in conflict with SD5, SD6 and SD31.
- On the second main issue, the Inspector had regard to the criteria of SD31 and the accompanying TAN. The proposed extension would amount to slightly above 50% increase over the existing floor area. The needs of the small holding and that some of the floor area proposed would be in part embodied within existing mass did not persuade the Inspector that the enlargement was acceptable. They also identified that the extended dwelling would no longer be considered as a small/medium dwelling, a category of home that the policy seeks to protect.
- The Inspector found adverse and unacceptable impacts would be caused under both main issues and consequently dismissed the appeal.

Planning Application and Appeal Reference Number:	SDNP/19/05619/FUL Appeal A Ref: APP/Y9507/W/21/3269823
Authority:	Lewes
Site:	Astley House, Spital Road, Lewes, BN7 1PW
Description of Development:	The development proposed is demolition of the vacant building and the construction of 28 residential units with associated landscaping and on-site car parking.
Decision and Date of Decision:	D Public Inquiry (non-determination appeal) 03 October 2022
Planning Application and Appeal Reference Number:	SDNP/21/04044/FUL Appeal B Ref: APP/Y9507/W/22/3295783
Authority:	SDNPA
Site:	Astley House, Spital Road, Lewes, BN7 1PW
Description of Development:	The development proposed is demolition of the vacant building and the construction of 28 residential units with associated landscaping and on-site car parking.
Decision and Date of Decision:	D Public Inquiry (appeal against refusal of planning permission) 03 October 2022

Inspector's Reasoning:

- Both Appeal A and B were for the same number of dwellings and with a similar design approach but with some differences to the design, including vehicular access into the site. Both appeals proposed an apartment building on the western end of the site with terraced properties fronting both De Montfort and Spital Roads. Appeal A was against the non-determination of the planning application by Lewes District Council whilst Appeal B was against the refusal of planning permission by SDNPA. The SDNPA team dealt with both appeals at the public inquiry.

- It was noted that the existing building on site (an old police garage and offices) does not reflect the character or appearance of the adjacent Conservation Area given the existing building's form, design and use. However the proposed apartment building in both appeals would result in an imposing, overbearing feature in the street scene, with an uncharacteristic expanse of gable frontage. It would be much higher than the scale of nearby domestic properties and result in a prominent, dominant feature in the street scene at this gateway site.
- The Inspector stated that the terraced form of the new houses would reflect the character of the area however the differing designs of these terraced homes across the site and use of large windows throughout would not respect or reflect the architectural cohesiveness of the locality. The mansard style dwellings with limited recess at second floor level would appear alien in the street scene and the terraced dwellings would appear as top-heavy, in stark contrast to the largely recessed, modestly sized dormer windows that characterise the area. Furthermore, the gable fronted dwellings would be overly vertical in appearance which would be in stark contrast to the otherwise horizontal emphasis that nearby properties display.
- The loss of street trees, particularly two mature trees to the west of the site, would harm the appearance of the area and the transition of this gateway site from town to country.
- The appeals would be visible from within the Conservation Area and the incongruous design and scale of the apartment building would be stark and apparent. Both schemes would significantly detract from the domestic scale of development within the CA and the architectural cohesiveness that characterises it. The Inspector also noted that the Appeal A would obscure (by virtue of adjoining it) the tile hung wall of an adjacent heritage asset and therefore harm its setting.
- From nearby open space the proposals would be visible in views and obscure some of the views of Lewes but, particularly from higher ground, far reaching views would remain and the proposals would have a negligible effect on views of the town.
- The roof terraces proposed as part of both appeal schemes were considered to be harmful to the amenity of nearby residents as a result of direct overlooking and the potential for noise and disturbance.
- The gardens to the new terraced homes (approx. 4.5m to 5.5m deep) would be cramped and unpleasant places to spend time in compounded by the fact they would be heavily overlooked. The Inspector noted that there would also be a loss of privacy between the rear windows of the new terraced housing on account of the limited separation distance (9-11m between opposing windows).
- In Appeal B the Inspector considered that the new dwellings complied with the Government's Nationally Described Space Standards (minimum size requirements) whilst Appeal A conflicted with this standard and would provide a poor standard of living conditions for intended future occupiers.
- Appeal A conflicted with the dwelling mix set out in Local Plan Policy SD27, notably the high number of 4 bedroom homes proposed. This was found to conflict with both Local Plan and Neighbourhood Plan policies. In respect of appeal B it was explained that although the dwelling mix conflicted with policy SD27 the mix proposed would be acceptable and help address an undersupply in three bed units in 2020/21.
- The Authority had considered that the three-bed dwellings in Appeal B should be classed as four-bed dwellings because the first floor lounge/study shown on the drawings could accommodate a bedroom, in line with paragraph 7.38 of the Local Plan which states that any room in a proposed dwelling that is not a main reception room, kitchen, bathroom or WC (and has dimensions that allow for single bed) will be counted as a bedroom - including

studies and additional reception rooms. However the Inspector considered there would be a low probability that the first floor lounge/study area would be used as a bedroom because the room is open to the stairs and accordingly there would be no privacy for its occupier. The Inspector acknowledged that a wall could be constructed by the intended future occupiers of the units where the lounge/study is shown (without the need for planning permission) however the Inspector stated that they were assessing the proposal on the basis of the drawings before them rather than what may happen in the future.

- It was agreed between the parties that the application of Vacant Building Credit would reduce the amount of affordable housing required on site (to 6 dwellings). After considering the evidence in respect of affordable housing the Inspector determined that both appeal schemes would be unviable if affordable housing was provided. The Inspector also gave weight to the fact that a review mechanism would be provided as part of a S106 legal agreement if planning permission was granted. The Inspector noted that this would ensure that, if financially viable in the future, much-needed affordable housing would be provided as part of the schemes.
- Both appeal schemes were found to be acceptable in highways safety terms. 23 on site car parking spaces were provided in Appeal A with 24 spaces in Appeal B. The Authority had argued that 31 spaces should be provided (the Parking SPD set a guide of 40 spaces). The Inspector found that the level of parking proposed was acceptable given the sustainable location of the site, the fact that future occupiers would be aware of high parking stress in surrounding streets and given the car club membership, travel plan and cycle parking provided by the appellant.
- In terms of sustainable construction and sustainable drainage the Inspector considered both appeal schemes to be acceptable.
- The benefits of the scheme were not sufficient to outweigh the harm identified and the conflict with the development plan as a whole and the statutory purposes of the National Park. Accordingly the appeals were both dismissed.

Planning Application and Appeal Reference Number:	SDNP/21/00910/FUL APP/Y9507/W/21/3283385
Authority:	Chichester
Site:	Land north west of London Road, Hill Brow, Liss, West Sussex GU33 7PE
Description of Development:	The development proposed is the construction of a dwelling and extension of existing private road.
Decision and Date of Decision:	D 07 October 2022

Inspector's Reasoning:

- The Inspector considered that the new dwelling proposed would not be an isolated new home in the countryside (therefore not engaging paragraph 80 e) of the NPPF requiring such isolated homes to be of exceptional design quality) but it would be new development in the countryside contrary to Local Plan Policy SD25. A single dwelling on the site would undesirably consolidate a more dispersed pattern of residential development, at odds with aims of the Authority's spatial strategy and settlement hierarchy. Therefore the Inspector considered that the site is not an appropriate location for a dwelling.
- Infilling most of the centre of the site with the dwelling would unduly erode openness and result in a notable intensification of residential development that would alter fundamentally the innate essence of the site, reduce tranquillity and result in an undesirable consolidation of development along this road. The mainly flat roof design and combined palate of more 'natural' external materials (even if used at farmsteads or in parts of some other dwellings) would be unexpected and incongruous given the more conventional design of gabled and hipped roof, mainly brick and tiled dwellings nearby. The Inspector considered that the proposal would, therefore, be out of keeping with the prevailing pattern, sequence and appearance of open spaces and dwellings in this part of Hill Brow and along this part of London Road.
- The existing site integrates seamlessly into its surrounding context whereas the significant contrast between the open undeveloped nature of the site and as developed by a dwelling would be plain to see in short distance views.
- In conclusion the Inspector considered that the proposal would cause significant harm to the character and appearance of the area and the SDNP, contrary to development plan policy and the NPPF.

Planning Application and Appeal Reference Number:	SDNP/20/01792/FUL APP/Y9507/W/21/3283214
Authority:	SDNPA
Site:	Riverside Cottage, Steyning Road, Shoreham-By-Sea BN43 5FH
Description of Development:	The development proposed is described as 'the erection of three bedroom detached home'.
Decision and Date of Decision:	D 11 October 2022

Inspector's Reasoning:

- The main issues were i) whether the proposed development would be consistent with local and national policies relating to the location of new housing development; and ii) the effect of the proposed development on the character and appearance of the area.
- With regard to policy SD25, the Inspector recognised that the site comprised a domestic garden outside any defined settlement boundary and was therefore in conflict with the development strategy.
- The appeal site was identified to make a positive contribution to the open rural character of both the contiguous area and the wider landscape setting, which stemmed from its undeveloped nature. The proposal would encroach into the undeveloped countryside, result in the loss of the open area, and significantly erode the openness and harm the character and appearance of the area.
- While the proposed dwelling would be similar to the existing, the Inspector found no substantial evidence to demonstrate that the proposal had been informed by an assessment of the landscape context, a key requirement of SD4. Nor had it been shown to be a high quality design that would integrate with and make a positive contribution to the character and appearance of the area. Conflict was also identified with the National Planning Policy Framework which expects development to be sympathetic to local character and maintain a strong sense of place.
- The development would fail to conserve and enhance the landscape and scenic beauty of the National Park. The appeal was therefore dismissed.

Enforcement Appeal Reference Number:	Appeal against Enforcement Notice issued on 28 June 2021 APP/Y9507/C/21/3280341
Authority:	Chichester
Site:	Land and buildings at Douglaslake Farm, Little Bognor Road, Fittleworth, Pulborough, West Sussex
Description of breach of Planning Control:	Enforcement Notice: The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land and buildings to a use as storage and distribution centre (Use Class B8). The requirements of the notice are to (i) Cease the use of the land and buildings as a storage and distribution centre, and (ii) Remove all portable toilets and vehicles from the Land. The period for compliance with the requirements is 3 months.
Decision and Date of Decision:	D Subject to variation of the enforcement notice by adding the words " <i>that are associated with the use of the land and buildings as a storage and distribution centre</i> " to the end of the sentence in Section 5(ii) 01 November 2022

Inspector's Reasoning:

- The main issues were the effect of the development upon the living conditions of adjacent residential occupiers and upon the character, appearance and relative tranquillity of the area.
- The site (which includes two agricultural buildings, yard area and access) is bordered by open countryside as well as by residential properties to the north and south. The site was historically part of Douglaslake Farm, with the residential land directly to the north containing two Grade II listed buildings which had been part of that farm.
- There was concern at the levels of noise generated by the washing out of the toilet units and washing down of vehicles with a high-pressure jet wash, frequent manoeuvring, and loading and unloading of vehicles in the yard area in front of the buildings. The appellant submitted a noise survey report, which indicated a likely 'adverse impact'. The Inspector concluded that the noise report was likely to have under-estimated the impact and therefore the development causes unacceptable adverse noise impacts which significantly harms the living conditions of neighbours and the tranquillity of the National Park. Furthermore, the impacts could not be mitigated through conditions (such as sound insulation measures).
- The Inspector acknowledged that the development constitutes a form of farm diversification providing a long-term benefit to the appellant by delivering a regular, long term income stream and ensuring the continued viability of the farming partnership principally as a farming business. The development also seeks to optimise the use of former agricultural buildings. Also, permission for the development would allow the portable toilet companies to

continue operating from the site who are providing employment opportunities and contributing to the local rural economy. However, the Inspector concluded that all of these benefits did not outweigh the significant harm identified above.

- Since the issue of the notice, Natural England has published a statement regarding water supply issues in the Sussex North Water Resource Zone which are likely to impact the Arun Valley Special Area of Conservation, Special Protection Area and Ramsar site. As a result, development within the Zone (in which the appeal site is located) needs to be subject to Appropriate Assessment and can only proceed if water neutrality can be achieved. However, the Inspector concluded there was no need to consider these implications because it was unacceptable for other reasons. Therefore, the appeal fails and planning permission is not granted.
- With regards to appeal ground (f), that the requirements of the notice are excessive, the Inspector concluded that the requirement to cease the unauthorised use and restore the land to its condition before the breach took place was proper and not excessive. However, technically the requirement of the notice to “Remove all portable toilets and vehicles from the Land” would prohibit vehicles on the land associated with its lawful agricultural use. It was therefore excessive and ground (f) succeeds to this extent only. Accordingly, the notice is varied so that this requirement relates only to the removal of all portable toilets and vehicles associated with the unauthorised material change of use.
- With regards to appeal ground (g), that the time period for compliance with the notice is not reasonable, the Inspector concluded that three months seemed reasonable and no substantive evidence had been presented to say why six months (as requested by the appellant) was necessary. Therefore, the appeal did not succeed.

Costs Decision - Refused

- The Appellant considered the Authority demonstrated unreasonable behaviour by prematurely determining the application in March 2021 (the refusal of planning permission) because initially no Noise Impact Assessment (NIA) had been requested to accompany the application and then it had been agreed with a local Environmental Health Officer (EHO) in April 2020 that a NIA could not reasonably take place during the pandemic ‘lockdown’ because of traffic levels and the effect on background noise.
- The Inspector noted that the determination of the planning application was almost a year after the agreement with the EHO, and that ‘lockdown’ restrictions had been eased in the intervening period. In addition, the Appellant did not seek to appeal the refusal of planning permission.
- The appeal against the enforcement notice, included noise-related issues and the Appellant submitted a NIA as part of their appeal to obtain retrospective planning permission. The Inspector concluded there was no unnecessary or wasted expense incurred in respect of the appeal before them, therefore unreasonable behaviour has not been demonstrated.

Planning Application and Appeal Reference Number:	SDNP/22/00975/CND APP/Y9507/D/22/3300153
Authority:	Horsham
Site:	South Downs Lodge, Truleigh Hill, Shoreham BN43 5FB
Description of Development:	<p>The application sought planning permission for a loft extension and erection of a single storey rear extension without complying with condition No.5 on planning permission (ref. SDNP/19/01796/HOUS) dated 28 June 2019.</p> <ul style="list-style-type: none"> • Condition 5 states 'The materials and finishes of all new brick external walls, windows and roofs of the development hereby permitted shall match in type, colour and texture those of the existing building'. • The appellant sought deletion of condition 5.
Decision and Date of Decision:	D 01 November 2022

Inspector's Reasoning:

- The main issue was the effect of the materials and finishes used in the development on the surrounding buildings and the extent to which those materials and finishes conserve or enhance the natural landscape beauty of the National Park.
- Condition 5 was imposed in order to ensure that the proposed development respected the character of the surrounding area including the character and appearance of any attached or surrounding buildings, and also to ensure that it related sympathetically to the local landscape. Putting aside the approved timber cladding, materials and/or finishes that have been used on new brick external walls, new windows and new roofs of the development permitted by the planning permission jar with the attached building and with the other nearby buildings in proximity to the appeal site. They also are visually incongruous with the strongly agricultural and rural landscape which surrounds South Downs Lodge.
- The Inspector concluded that the materials and finishes used would unacceptably harm the National Park and correspondingly dismissed the appeal.