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## Appeal Decision

Site visit made on 2 June 2020

**by AJ Steen BA(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14 July 2020**

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**Appeal Ref: APP/Y9507/C/19/3236821**

**Land at Jays Farm, Jays Lane, Lurgashall, Haslemere, West Sussex  
GU27 3BL**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Harald Collet against an enforcement notice issued by South Downs National Park Authority.
- The enforcement notice, numbered LG/16, was issued on 30 July 2019.
- The breach of planning control as alleged in the notice is without planning permission, the construction of an access track and hardstanding in the approximate positions shown on the Plan.
- The requirements of the notice are:
  - (i) Break up the compacted rubble access track;
  - (ii) Break up the compacted rubble hardstanding avoiding mechanical excavation within 1m of the tree trunks in each case;
  - (iii) Following compliance with steps (i) and (ii) above, remove the resulting debris from the land, and
  - (iv) Following compliance with steps (i), (ii) and (iii) above, back fill the area of the removed track and hardstanding with top soil to natural ground level.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.

**Summary Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld in the terms set out below in the Formal Decision.**

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### Preliminary Matters

1. Since the enforcement notice subject of this appeal was issued permission has been granted under the prior notification procedure for a wood barn (reference SDNP/20/01216/APBN) and resurfacing of some of the rides through the woodland (reference SDNP/20/01162/APBN) at Jays Farm. One of these rides is that leading from the hardstanding subject of the enforcement notice.

### The Appeal on Ground (a) and the Deemed Planning Application

#### *Main issues*

2. The main issues are:
  - whether the hardstanding and track conserve and enhance the landscape and scenic beauty of the South Downs National Park; and

- whether the hardstanding and track affect ecology and biodiversity in the area.

### *Reasons*

3. The appellant suggests that the hardstanding and track are required for forestry operations at the property. I note that a Felling Licence has been granted by the Forestry Commission for regeneration felling within the woodland. The extensive ancient woodland requires management, including coppicing and removal of diseased Ash trees. I understand that the hardstanding has been constructed to provide a working area at the edge of the woodland for the processing of timber before it is moved to the wood barn. The track that has been surfaced provides access between the woodland, wood barn and other tracks on the farm and onto the surrounding road network.

### *Landscape and scenic beauty*

4. Jays Farm is located within the South Downs National Park (SDNP) where the National Planning Policy Framework (the Framework) states that great weight should be given to conserving and enhancing landscape and scenic beauty. Jays Farm comprises open fields and extensive areas of ancient woodland that connect to other ancient woodland in the surrounding area.
5. The hardstanding is on the edge of the ancient woodland and the boundary of the property. The neighbouring property comprises a dwelling with views over its grounds through mature trees to the area of hardstanding. The hardstanding and track are not visible other than from within the farm and that neighbouring property.
6. The hardstanding and track have largely grassed over such that they are disguised in views from the surrounding area. They are relatively modest in the context of the substantial area of ancient woodland. The ground has been raised slightly and the materials used do have a small adverse effect on the appearance of the immediate area. Use of the track for access and the more intensive timber working on the hardstanding bring activity onto these areas that exacerbate that effect.
7. Nevertheless, the provision of compacted rubble on the surface of the track enables movement without the surface becoming waterlogged and restricting movement along the track. Therefore, the surface protects the appearance of the track. It is necessary to link the woodland to the buildings serving the property such that, on balance, the surfacing on the track enhances the landscape and scenic beauty of the SDNP.
8. In relation to the hardstanding, I conclude that it does not conserve or enhance the landscape and scenic beauty of the SDNP. As such, it is contrary to Policies SD1, SD4, SD5 and SD11 of the South Downs Local Plan (LP) and the Framework that seek to conserve and enhance landscape character, including by conserving and enhancing woodland that contributes to that character. However, I conclude that, as it enhances the landscape and scenic beauty of the SDNP, the track complies with those policies.

### *Ecology and biodiversity*

9. The hardstanding is located within ancient woodland that provides potential habitat for protected species, such as dormice, bats and various bird species.

No ecological survey has been provided that would ascertain which species are present and the effect of the development on them. However, the Woodland Management Plan does suggest what protected species are likely to be present within the area.

10. The hardstanding has disturbed the ground on the edge of the woodland and raised the ground level. It has reduced the amount of natural habitat potentially available for protected species, albeit by only a small amount.
11. The access track links the woodland with other tracks on the farm, around the field. The surfacing of the track does not materially affect ecology or biodiversity, such that it would be conserved. Nevertheless, the surfacing does not enhance ecology or biodiversity.
12. For these reasons, on balance I conclude that the hardstanding does not conserve or enhance the ecology and biodiversity in the area, although the track would conserve ecology and biodiversity. As a result, the track and hardstanding are contrary to Policies SD1, SD4, SD9 and SD11 of the South Downs Local Plan (LP) and the Framework that require development to both conserve and enhance biodiversity and geodiversity, including incorporating opportunities for net gains in biodiversity, and seek to conserve and enhance woodland that contribute to ecology and biodiversity.

#### Other matters

13. My attention has been drawn to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) that grants planning permission for certain forms of development. The appellant suggests that the works would have been granted permission under Schedule 2, Part 6, Class E relating to the formation, alteration or maintenance of private ways for forestry purposes. In order to comply with that part of the GPDO a notification procedure would have needed to be followed prior to the works taking place. As no such procedure was followed in this case, the works do not benefit from that planning permission. In addition, it is unclear whether the whole of the track and hardstanding would constitute a private way and would be reasonably necessary for this purpose. For these reasons, I have attached little weight to these factors.
14. Policy SD39 of the LP states that structures for the purposes of agriculture or forestry that are commensurate with their need will be permitted where they occupy the site best suited to conserving and enhancing the natural beauty and wildlife of the SDNP.
15. I accept that some processing of timber will be required prior to removal from Jays Farm and that it would need to be moved around the farm. Provision of compacted rubble on the surface of the track enables movement without the surface becoming waterlogged and restricting movement along the track. As a result, I accept that the track is needed for forestry operations and that this is the best route to link the rides permitted through the woodland to other tracks on the farm and the wood barn. Consequently, that need outweighs the limited harm arising from the conflict with policies requiring development to enhance the ecology and biodiversity of the area. As such, it complies with the balance set out in Policy SD39 of the LP.

16. However, it is not clear that this is the location best suited for the hardstanding in order to conserve or enhance the natural beauty and wildlife of the SDNP. As a result, the need for the development would not outweigh the harms that I have found to the landscape and scenic beauty of the SDNP and the ecology and biodiversity of the area. As such, I conclude that the hardstanding does not comply with Policy SD39 of the LP.

#### Conclusion

17. For the reasons set out above, I conclude that on balance the hardstanding does not accord with the development plan. However, taking account of Policy SD39 of the LP, I conclude that the need for the track outweighs the lack of compliance with other policies of the development plan. The appeal on ground (a) therefore fails insofar as it relates to the hardstanding but succeeds insofar as it relates to the track.
18. The Council have suggested a number of conditions. Conditions restricting the use of the track to forestry operations are not necessary as separate permission would be required for the change of use of the land from its existing use in any event. Similarly, installation of external lighting is likely to require planning permission even without a condition. The track surfacing is on the route of an existing track, so compensatory planting is not necessary. No condition limiting bonfires or burning of waste is necessary in relation to the provision of the track. As this is a narrow track, a condition limiting vehicle storage is not necessary. There are no other conditions that I think necessary in this case.
19. This will result in the grant of planning permission in respect of part of the development enforced against. However, I will uphold the notice without varying any requirements relating to that, since this could give rise to two separate planning permissions, namely the one that will be granted in this appeal decision and the one that would be deemed to be granted by Section 173(11) of the Town and Country Planning Act 1990 (the Act) due to under-enforcement. Attention is drawn to the provisions of Section 180 of the Act as to the effect on the notice of the permission that will be granted.

#### Formal Decision

20. The appeal is allowed insofar as it relates to land edged red and coloured blue on the plan where planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the track at Land at Jays Farm, Jays Lane, Lurgashall, Haslemere, West Sussex GU27 3BL.
21. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to land edged red on the plan and planning permission is refused in respect of the hardstanding at Land at Jays Farm, Jays Lane, Lurgashall, Haslemere, West Sussex GU27 3BL on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*AJ Steen*

INSPECTOR