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## Appeal Decisions

Site visit made on 18 January 2022

**by Stephen Hawkins MA, MRTPI**

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

**Decision date: 08 February 2022**

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### **Appeal A Ref: APP/B9506/C/21/3271326**

#### **Eastwoods, Pitmore Lane, Sway, Lymington SO41 6BW**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Miss Megan Broadway against an enforcement notice issued by New Forest National Park Authority.
- The notice was issued on 10 February 2021.
- The breach of planning control as alleged in the notice is without planning permission operational development comprising the construction of: (i) a manège; (ii) a horse-walker; (iii) earthworks; (iv) sections of track, paths and parking areas.
- The requirements of the notice are: 5.1 Dismantle and permanently remove from the land the sand manège with its associated base, surrounds and associated paraphernalia. 5.2 Dismantle and permanently remove from the land the horse-walker structure and associated hard standing and base. 5.3 Dismantle and permanently remove the earth bund. 5.4 Remove the sections of track, paths and parking areas. 5.5 Permanently remove from the land all building materials, rubble, hardcore and other paraphernalia arising from compliance with the steps above. 5.6 Restore the land to its former condition and level prior to the unauthorised development and reinstate as part of the surrounding grass field, using topsoil and seeding with native field grass, including filling in any below ground-level excavations with the soil and other materials that were removed from them or with replacement topsoil.
- The period for compliance with the requirements is nine months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

**Summary of Decision: The appeal is dismissed and the enforcement notice upheld.**

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### **Appeal B Ref: APP/B9506/W/21/3271569**

#### **Eastwoods, Pitmore Lane, Sway, Lymington SO41 6BW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Miss Megan Broadway against the decision of New Forest National Park Authority.
- The application Ref 20/00646, dated 3 September 2020, was refused by notice dated 21 December 2020.
- The development proposed is a riding arena, horse-walker, landscaping, elevational alterations to stables and barn and rainwater storage tanks.

**Summary of Decision: The appeal is dismissed.**

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### **Appeal A, Ground (a) appeal and Appeal B**

#### **Main Issue**

1. The appeal site is located in the New Forest National Park (NP). Therefore, the main issue in these appeals is whether, either individually or cumulatively, the

manège, horse-walker, earthworks and hardsurfacing comprised in the unauthorised works (the works) conserve the landscape and scenic beauty of the NP, also having regard to the effect on the intensity of the use of the site.

## **Reasons**

### *Landscape and scenic beauty of the NP*

2. The site contains an established group of substantial equestrian buildings together with a large dwelling and its associated residential grounds, as well as paddocks, fields and maturing woods, amounting to about 16 hectares of land. The site is located towards the edge of a wide elevated plateau outside the built-up part of Sway village, in an area of countryside where scattered residential development is enveloped by paddocks and fields grazed by horses and livestock.
3. In the New Forest National Park Landscape Character Assessment, the site and its environs form part of the "Sway Pasture and Residential Settlements" Landscape Character Area (LCA), within the Landscape Type of "Heath Associated Smallholdings and Dwellings". Key landscape characteristics set out in the LCA include farmed plateaus and steep sided wooded valleys, also Forest smallholdings and dwellings with irregular ancient field patterns of small pastures and hedgerows of importance for grazing and recreational horse keeping. Key positive landscape attributes identified include ancient field patterns, semi-natural woodlands linked to thick hedgerows and frequent Oaks, winding leafy lanes, scattered farmsteads and roadside cottages, with traditional Forest smallholdings and dwellings linked to back-up pastures and paddocks. By and large, the site and its surroundings share the characteristics and attributes set out above and the resulting largely unspoilt, pastoral visual qualities. Horse-related development in the surrounding area is for the most part small-scale, recreational in character and reasonably well assimilated into its predominantly rural context.
4. The manège attacked by the enforcement notice is sited in a large paddock between the equestrian buildings and Pitmore Lane. The manège replaced a small-scale grass facility, adjacent to the equestrian buildings. Construction of the manège does not appear to have involved a significant change in ground levels. There is no enclosing fencing, nor lighting or sound amplifiers. Nonetheless, measuring about 50 m by 60 m the manège has an expansive area and it occupies a significant proportion of the paddock. The extent of the timber edging, slightly raised above the adjacent ground level, serves to emphasise the rectilinear shape and lengthy straight lines of the manège. It also provides a clear distinction visually from the grassy surface of the paddock. The manège surface material of light yellow coloured sand is noticeably dissimilar to the generally darker, more muted colours of local soils, further marking it out from undeveloped land in the surroundings.
5. The physical qualities described above all give the manège an assertive, man-made and formalised appearance. This is entirely at odds with the generally unassuming characteristics of horse-related and other rural development in the surrounding area and the more pastoral qualities of the environs. It has also resulted in the manège appearing as an obvious and alien feature in its surroundings, significantly and appreciably eroding the largely rural qualities of the landscape setting.

6. Although there were few horse jumps present when I visited, it is likely that there will be a good number of such structures on the manège at times, having regard to its overall size. Such structures generally have bold colouring and angular profiles. I am given to understand that horse jumps used by the appellant can be up to 1.6 m in height. An accumulation of large horse jumps will therefore have an obvious appearance, drawing further attention to the visual presence of the manège in its surroundings. Although horse jumps can often be associated with equestrian activity, other than perhaps at larger scale establishments they are generally modest in scale and few in number, therefore being more capable of better assimilation into a rural setting.
7. The manège is more than three times larger than the normal 'standard' dimensions of 20 m by 40 m set out in the Supplementary Planning Document (SPD)<sup>1</sup>. The SPD does not necessarily restrict larger facilities. However, the substantial difference in size between the manège and the smaller scale of a 'standard' facility in the SPD is in my view a reliable indicator as to why the adverse visual consequences identified above have occurred. Additionally, the surface materials are inconsistent with the SPD, as they do not blend in well with the landscape.
8. An established hedge forms the majority of the boundary between the site and the lane. During the winter months, car users' perceptions of the manège generally consist of relatively brief glimpses between vegetation. When the hedge is in leaf, opportunities to view the manège will be further reduced. However, in the vicinity of the field gate entrance to the site, the manège is open to a broader field of view at reasonably close quarters. Persons travelling along the lane are likely to have a high level of sensitivity to any change in their surroundings, having regard to their probable expectations of the New Forest as an unspoilt landscape of national importance. Moreover, the lane is also used at times by other modes of travel, including commercial vehicles, cyclists and horse riders as well as walkers. Persons using such transport are likely to experience the manège differently to car users, as they will often be travelling more slowly and therefore will have greater time to appreciate what they are viewing. Horse riders in particular will be afforded reasonably extensive views of the manège as their eye level will be above that of the hedge. As a result, the adverse visual consequences of the manège on its surroundings will be especially apparent to persons experiencing views of the site from the lane.
9. Whilst I understand that the manège was constructed almost two years ago, the colour of the surface material does not appear to have weathered appreciably in the meantime. Therefore, in my view the surface colour is unlikely to alter over time to such an extent that it would sufficiently assimilate the manège within its largely rural setting. Changing the surface material to a darker colour would not, of itself, sufficiently offset the adverse visual consequences set out above, even if an alternative, natural material which also met the appellant's horse training requirements and satisfied their welfare and environmental concerns could be sourced. Reducing the apparent height of the timber edging would also have a limited effect on the angular lines of the manège.

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<sup>1</sup> New Forest National Park Guidelines for Horse Related-Related Development SPD.

10. The appellant proposed extensive additional planting, including new mixed deciduous hedges incorporating specimen trees, along the lane and adjacent to the track leading from the field gate. Such planting might over time have a slight softening effect in terms of how the manège is viewed in its surroundings but would not sufficiently mitigate the adverse visual consequences identified above. Moreover, retention of any planting could not be assured in the longer term, as it could become diseased or damaged, or be removed. In any event, the ability to screen an otherwise unacceptable development is not a good reason for granting permission as it could be repeated, undermining the purposes of the NP designation.
11. The horse-walker attacked by the notice is a circular structure of reasonably substantial size and bulk. Although lower than other equestrian buildings at the site, the structure is markedly taller than hedges in the vicinity. The shallow angled roof does not reflect the generally much steeper roof pitches of the equestrian buildings and those often associated with other rural buildings in the wider area, contributing to the structure having a rather 'squat' appearance. Also, the light, shiny colours of the galvanised metal and polycarbonate external finishes give the structure a more 'industrial' visual quality, which does not sit well with the external materials of the equestrian buildings or the darker, more muted colours and non-reflective finishes prevalent in the locality.
12. Therefore, the structure has a considerable scale and an appearance which pays little regard to the recessive, unassuming characteristics and materials of other development in the vicinity and does not reflect the more pastoral qualities of its surroundings. In addition, the siting of the structure, offset and slightly away from the group of equestrian buildings, means that there is a significant sense of separation from other built forms in the vicinity, with the result that it is not well-related to other development. For all these reasons, the structure also appears as an alien feature which significantly and appreciably erodes the largely rural qualities of its landscape setting.
13. Painting the roof black would not sufficiently mitigate the adverse visual impact of the structure as the overall scale, materials and siting would not change. Neither would the proposed planting, largely for similar reasons to those set out above in relation to the manège. Whilst the galvanised finish might dull down over time, it is unlikely that this would alter the appearance of the structure to any great extent. Any benefits offered by the structure in terms of reducing pressure from equestrian activity on the NP do not outweigh its significant visual harm.
14. From the lane, people will appreciate the structure in a manner not dissimilar to the manège. Furthermore, to the north of the site there are some longer distance views available to residential occupiers and to a lesser extent, passers-by, the landform falling away steadily before rising slightly towards a row of residential properties with open heathland beyond. From this direction, the structure is seen as an obvious built feature in the countryside, on account of its overall scale and materials. The visual impact of the structure is emphasised on account of the siting on rising land away from other equestrian buildings. For similar reasons to those set out in paragraph 8, persons experiencing such views are also likely to be highly sensitive to changes in their surroundings. The visual consequences of the structure on its environs will therefore be especially apparent to persons experiencing the above views.

15. The earthworks attacked by the notice consist of a 'Hickstead' mound formed in part of a field north-east of the equestrian buildings. The mound is of substantial length and is reasonably tall, projecting well above adjacent ground levels. The steeply angled sides and levelled top give the mound an obviously man-made and 'engineered' appearance. This is entirely at odds with the smoother, more natural contours prevalent in the landform of this and the adjacent fields. As a result, the mound is also seen as an alien feature, significantly and appreciably eroding the largely rural qualities of its landscape setting. Seeding the mound with wild grass has not addressed its visual impact, as the profiles remain similar. Whilst views from beyond the site are likely to be limited, that does not equate to an absence of visual consequences.
16. The notice also attacks areas of hardsurfacing constructed in the vicinity of the manège and horse-walker. Its expansive area, together with the angular lines and the surface treatment of scalplings, has resulted in a harsh, 'engineered' finished appearance generally associated with an urban environment, being entirely at odds with the predominantly rural qualities of the surroundings. Additionally, vehicles-including larger ones such as horse transporters-are likely to be parked or stored on parts of the hardsurfacing at times. On account of most vehicles' angular profiles and shiny reflective materials, they are not easily assimilated into a rural setting of generally soft, naturalistic shapes, muted colours and buildings with simple, uncluttered lines. The hardsurfacing also therefore has an alien appearance which together with the visual impact of individual or groups of vehicles parked or stored on parts of it significantly and appreciably erodes the largely rural qualities of the landscape setting in a similar fashion to other aspects of the works.
17. Covering the hardsurfacing with hoggin or gravel would not alter its extent or angular qualities and so would not sufficiently mitigate its visual impact. Similarly, incorporating a planted strip would not significantly reduce the extent of the hardsurfacing or its visual impact. Moreover, such alterations would not adequately offset the visual consequences arising from parking or storing a number of vehicles on the hardsurfacing.
18. Reference was made to there being facilities similar to those attacked by the notice in existence at other locations. However, no specific examples of any similar facilities were drawn to my attention. No such facilities were immediately apparent in the surrounding area. In any event, for the most part such development is highly likely to be found in a larger scale, more commercialised equestrian setting, where different considerations might apply in relation to new development.
19. I understand that the works were undertaken in connection with the appellant's personal equestrian activities. The National Park Authority did not seek to argue that there had been a material change in the character of the use of the site and there is no firm evidence before me to support such a conclusion. Therefore, I am not clear how it is that the works are supposed to have materially affected the intensity of use of the site.
20. Even so, for the reasons set out above I find that the works have significantly and appreciably eroded the largely unspoilt, pastoral visual qualities of their surroundings, which reflect key landscape characteristics and attributes of the LCA, thereby individually and cumulatively failing to conserve the landscape and scenic beauty of the NP. As a result, the works do not accord with Policy

SP7 of the New Forest National Park Local Plan (LP) as they do not conserve the character of the landscape, being incompatible with the distinct features and type of the local landscape and of a design, layout and scale detracting from the NP's natural beauty. Furthermore, by being unsympathetic in terms of scale, appearance, form and siting, not respecting the natural environment or landscape character and utilising materials that are not appropriate to the site and its setting, the works do not accord with criteria in LP Policy DP2 or the design principles in LP Policy DP18. By not protecting locally important features of the natural environment, the works also do not accord with LP Policy SP6. Additionally, due to its adverse impact on the landscape, the manège does not accord with LP Policy DP53, whilst the works' environmental impact on the NP and its special qualities and erosion of the NP's local character does not accord with LP Policies SP15 and SP17 respectively.

21. In terms of the alterations to stables and other works in Appeal B, no conflict with LP Policy DP52 was drawn to my attention and in my view, there is none. As neither appeals concern a material change of use to recreational horse keeping, the relevance of LP Policy DP51 is unclear. However, by not conserving the landscape and scenic beauty of the NP nor conserving the natural environment or achieving a well-designed place, the works are inconsistent with the National Planning Policy Framework (the Framework).
22. The appellant suggested that removing the manège is excessive, as a smaller facility would be policy compliant. Although this formed part of their ground (f) submissions in Appeal A, I regard it as a proposition that permission should be granted for part of the development. This is a matter correctly considered under ground (a). However, no details were provided of a smaller manège. In itself, reducing the manège in size and changing the surface material is unlikely to overcome the visual harm identified above, particularly as the proposed siting of any smaller manège within the paddock is unclear. In any event, the appellant asserted that a smaller manège would not meet their requirements. Consequently, granting permission for a smaller manège is not an obvious alternative to removal. Similar considerations apply in respect of any reductions in scale or alterations to the other works.

#### *Other matters*

23. I am given to understand that the appellant competes at equestrian events, including at international level. They asserted that the manège and horse-walker in particular were the minimum size to meet their training requirements, whilst the mound also met a similar requirement. In my view, development which assists persons competing in a sport at national or international level is likely to provide some public benefit. For example, it could foster civic pride and inspire members of the public to participate in sporting activity, with associated improvements in health and well-being. Even so, there was no firm evidence before me which might suggest that any benefit provided in this instance was more than small scale. Accordingly, I afford any benefit provided in this respect limited weight.
24. I was made aware that a riding arena elsewhere in the NP was granted permission subject to a personal condition in 2009<sup>2</sup>. However, that pre-dates adoption of the LP and the Framework. In any event, planning permission usually runs with the land and it is rarely appropriate to provide otherwise. On

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<sup>2</sup> NPA Ref: 09/94188.

the basis of the evidence before me, granting a personal permission would not be justified.

### *Planning merits-conclusion*

25. The works fail to conserve the landscape and scenic beauty of the NP, they do not accord with the Development Plan and are inconsistent with the Framework. Therefore, I conclude that these appeals should not succeed.

## **Appeal A**

### **Ground (f) appeal**

26. The ground of appeal is that the requirements of the notice are excessive.
27. An enforcement notice can have two purposes. Firstly, it can remedy the breach of planning control, including by restoring the land to its condition before the breach took place. Secondly, it can remedy any injury to amenity caused by the breach. What the notice requires is nothing less than total removal of the manège together with the horse-walker, earthworks and hardsurfacing constructed without permission. No part of the works would remain at the site following compliance with the steps set out in the notice. The site would be restored to its pre-breach condition. Therefore, the purpose of the notice must be to remedy the breach.
28. Whether the works could be retained following their reduction in size or other alterations has been dealt with in the ground (a) appeal. In relation to ground (f), cutting down the notice requirements in such a fashion would mean that part of the development undertaken unlawfully would remain in situ. This would fail to restore the site to its pre-breach condition and so would not achieve the purpose of the notice. Therefore, the above does not represent an obvious alternative to the notice requirements. There is little firm evidence to suggest that the requirements are not the minimum necessary to restore the site to its condition prior to the works being undertaken and thereby remedy the breach.
29. Consequently, in my view the notice requirements are reasonable and proportionate; they are not excessive having regard to the purpose of the notice. The ground (f) appeal fails.

### **Ground (g) appeal**

30. The ground of appeal is that the time specified for complying with the notice requirements falls short of what should reasonably be allowed.
31. The appellant did not suggest what they might regard as a reasonable compliance period. To my mind, nine months affords ample time to search for and engage suitable contractors to undertake the remedial works, to arrange for and secure any necessary financing and to have the works undertaken. This timescale also takes sufficient account of the possibility of a delay encountered in undertaking the works, for example due to the continuing effects of the COVID-19 pandemic, including waiting for a contractor to become available, or due to poor ground conditions following a sustained period of adverse weather. It follows that extending the time for compliance would achieve little beyond perpetuating the breach and the planning harm caused.

32. As the time for compliance with the notice requirements is therefore reasonable, the ground (g) appeal also fails.

### **Conclusion**

33. For the reasons given above I conclude that Appeal A should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application. For similar reasons, I conclude that Appeal B should be dismissed.

### **Formal Decisions**

34. Appeal A is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

35. Appeal B is dismissed.

*Stephen Hawkins*

INSPECTOR