



Appeal Decision

Site visit made on 23 September 2025

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 31 OCTOBER 2025

Appeal Ref: APP/Y9507/C/23/3329558

Land at Erickers, The Street, Lodsworth, PETWORTH, GU28 9BZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Richard Fenech against an enforcement notice issued by South Downs National Park Authority.
 - The notice was issued on 8 August 2023.
 - The breach of planning control as alleged in the notice is Without planning permission, the erection of an outbuilding in the approximate position shown on the Plan.
 - The requirements of the notice are : (i) Demolish the said outbuilding and; (ii) Remove the resulting debris from the Land.
 - The period for compliance with the requirements is: Three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of 'Three months' as the period for compliance and its substitution with 'Six months'.
2. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for costs

3. An application for costs was made by the appellant against the National Park Authority (NPA). This application is the subject of a separate Decision.

Preliminary Matters

4. The revised National Planning Policy Framework 2024 ('Revised Framework') came into force during the course of the appeal. The main parties were afforded an opportunity to make representations but none were received.
5. Late evidence was submitted by the appellant which was accepted and the NPA was given an opportunity for comment on this, with a final comment given to the appellant. Comments made have been taken into consideration.
6. Development plan policies cross-referenced by the Council but which were not provided with the Questionnaire were requested and the appellant was given an opportunity for comment on these. Again, comments made have been considered.

The appeal on ground (a) and the deemed planning application (DPA)

Main Issues

7. The main issues are the effect on: the landscape and scenic beauty of the South Downs National Park (SDNP); the setting of the Grade II listed building known as 'Erickers' (LB); and the living conditions of neighbouring occupants.

Reasons

Site surroundings

8. The appeal site is the plot of the residential dwelling at Erickers which is a Grade II listed building and sits alongside a more recent annexe. The listing describes the LB as: *'c17 or earlier timber-framed building with painted brick infilling. First floor of south wall tile-hung. Tiled roof. Casement windows. Brick chimney breast on east wall. Two storeys. Two windows'*. The appeal building is sited at the end of the property's large rear garden bounded by hedging to the east and south.
9. The LB and its plot are located within the SDNP sitting alongside residential development to the north and south with rolling well treed countryside beyond to the east. To the south-east of the host property is the dwelling at Hazelnut Cottage. A recent appeal decision¹ related to this property granted a lawful development certificate in respect of the use of a former paddock adjacent to Erickers' eastern boundary as residential garden land. The appellant cites planning permission² recently granted for structures within this former paddock, including an outbuilding immediately to the east of the appeal building.

Appeal development

10. The outbuilding is finished primarily in timber with use of reclaimed red clay tiles in the roof covering. The outbuilding appears in an unfinished state with some sections of cladding seemingly incomplete and plastic coverings to window openings. The structure is fairly modest in scale relative to the LB and the nearest dwelling at Hazelnut Cottage albeit that ground levels in the appeal property's garden are notably higher than parts of the plot of Hazelnut Cottage.

The DPA

11. The appellant made a retrospective planning application³ for an outbuilding at the appeal property in a similar form to the appeal outbuilding. This was refused and an appeal against that refusal was turned away as out of time.
12. The notice does not indicate that it is attacking a partially completed building. However, it is a matter of judgment as to whether or not a building is partially completed. On the available evidence, this was not a case where the outbuilding was very obviously incomplete e.g. it lacked a roof/only two walls had been constructed. In my view, it was therefore appropriate for the Council not to allege a partially completed building, particularly since indications in the Officer Report on the 2021 Application were that the building was nearing completion and, as the appellant advises, the Council did not undertake a site visit immediately before issuing the notice.

¹ APP/Y9507/X/23/3321900 (LDC Appeal)

² SDNP/24/04971/HOUS (Hazelnut Cottage PP)

³ SDNP/21/05261/HOUS (2021 Application)

13. The appellant submits that I should assess the DPA on the basis of the 2021 Application plans as it would be unfair to penalise the appellant for complying with the NPA's request to cease works. The appellant thus effectively requests that I consider the 2021 Application proposal as an alternative scheme.
14. Pursuant to s177(1)(a) of the 1990 Act⁴ I am permitted to grant planning permission for the matters stated in the notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters. Whether or not the alternative scheme amounts to part of the matters is a matter of judgement but it is recognised that virtually any alternative scheme is likely to involve some element of new works.
15. As to the matters alleged, while there is no photograph attached to the notice, the appellant attached a 'recent' photograph in their Grounds of Appeal (GOA). From this photograph, the outbuilding appears to lack timber cladding on at least two elevations, there is a door frame without a door on the northern elevation, timber supports shown on the north elevations in the 2021 Application plans were not in place and the roofing appears unfinished. The building also does not include the same open area with a roof overhang on the north elevation as shown on the 2021 Application plans.
16. At my site visit, I saw that additional timber cladding has been added since the date of the GOA photograph such that this is incomplete only near the roof apex on the east and west elevations, a door has been added to the northern elevation and the roofing appears more finished than in the GOA photograph. An additional door has been added to the west elevation not shown on the 2021 Application plans.
17. In appeal submissions, the appellant indicated that works ceased per the Council's request in 2021. On the available evidence, it is therefore likely that as at the date of the notice, the outbuilding was no more complete than is shown in the GOA photograph.
18. As the NPA comments, the DPA can only relate to the whole or part of the matters attacked by the notice; the notice does not attack the development detailed in the 2021 Application. In my view, the extent of the works to bring the development in line with the 2021 Application scheme would entail granting planning permission for development beyond the whole or part of the matters alleged. It is not therefore appropriate for me to consider the alternative scheme in this appeal⁵.

Landscape

19. As outlined above, the appeal site is located within the SDNP which is designated for the statutory purposes of a) conserving and enhancing natural beauty, wildlife and cultural heritage, and b) promoting opportunities for the understanding and enjoyment of the special qualities of the National Park by the public. Pursuant to section 85 of the Countryside and Rights of Way Act 2000 (as amended), I have a duty to seek to further these purposes in this decision, Paragraph 189 of the Revised Framework requires that great weight should be given to conserving and enhancing the landscape and scenic beauty in National Parks.

⁴ Town and Country Planning Act 1990

⁵ On the basis that the NPA appears to consider that the alternative scheme does not constitute the whole or part of the matters specified in the enforcement notice an application for this scheme would not be precluded by operation of s.70C of the 1990 Act.

20. The surrounding SDNP represents an unspoilt and tranquil landscape with well-preserved historic features and ample opportunity for recreation and education. In the context of the SDNP, the appeal building can be glimpsed in public footpath views eastwards of the appeal site but is seen in the context of the surrounding built development described above. In view of the LDC granted for residential garden use of the former paddock at Hazelnut Cottage, the appeal site no longer represents the residential edge of Lodsworth and given its scale, which is fairly typical of a garden outbuilding, no sense of tandem development has resulted. Accordingly, in public footpath views and in more immediate private views, the appeal building does not result in any loss of tranquillity or undermine the purposes of the SDNP.
21. I conclude then on the first main issue that the appeal development conserves the landscape and scenic beauty of the SDNP. It accords in this way with Policies SD1, SD4, SD5, SD6 and SD7 of the South Downs Local Plan 2019 (LP) which together indicate that development will only be permitted where it conserves the landscape, natural beauty and cultural heritage of the SDNP, including by conserving and enhancing landscape character through sensitive design and preserves the visual integrity and scenic quality of the SDNP including from key views, and conservation of visual and aural tranquillity. While the development might potentially impact upon the intrinsic quality of dark night skies, any such harm could be overcome by a condition related to lighting; no conflict arises then with Policy SD8 of the LP.

Setting of the LB

22. The outbuilding sits at the end of the host property's garden, forming part of the surroundings in which the LB is experienced. While I appreciate that red tiles are a characterising feature of the LB, the use of thick-profiled red roof tiles in the outbuilding have a heavy appearance which jars with the lightweight timber cladding and thin timber posts in the outbuilding's log store design. This lends the outbuilding an awkward and top-heavy appearance.
23. While the scale of the outbuilding is sufficiently modest to read as a subsidiary structure, in combination with the red colour of the roof tiles, it does draw the eye to the inelegant design and unfinished appearance of the outbuilding, particularly in the context of the surrounding greenery. While I appreciate that the red tiles are reclaimed from a demolished garage structure, I do not consider that the red tone can be softened such as to integrate successfully in this location. The overall effect is of a low quality finish which is in stark contrast to the well-preserved detailing and high quality external finish of the LB.
24. While I note that the LB is set within the context of a modern annexe and that materials were selected to attempt to replicate those in the listing description, this has not been successful for the reasons outlined. I acknowledge that similar roof tiles are used in the surrounding area but there is no indication of commonplace use of thick-profiled red roof tiles on a lightweight logstore/outbuilding in the setting of a listed building. I consider then that the appeal development results in harm to the setting of the LB for the reasons outlined. I am not persuaded that a condition related to planting would properly overcome the harm to the LB's setting.

25. The appellant references other planning permissions granted for residential outbuildings in the local area⁶. However, planning applications are assessed on their own individual merits including as regards impacts on heritage assets. As regards the buildings permitted in the Old Bakery PP, Arms Cottage PP and Hazelnut Cottage PP, these do not share the same design features that I have identified as harmful in the setting of a listed building. While the appellant indicates that the appeal building replaced another structure of no architectural merit, I have no detailed information on this.
26. As to the magnitude of the harm, I find this to be less than substantial in the terms of paragraph 212 of the Revised Framework and at the lower end of the scale. Great weight must though be given to the heritage asset's conservation. The only notable public benefits put forward for weighing against this harm are the re-use of roof tiles in the appeal building and providing storage for wood fuel. These are minor public benefits to which I attach very limited weight. They do not overcome the harm identified to the LB's setting.
27. I conclude then on the second main issue that the appeal development fails to conserve the setting of the LB and conflicts in this way with Policies SD12 and SD13 of the LP which state that development proposals will only be permitted where they conserve the historic environment, including through the safeguarding of heritage assets and their setting and where they preserve the significance of the listed building and its setting, unless public benefits outweigh any harm⁷. The appeal development also then does not accord with the aims of Section 16 of the Revised Framework related to conserving and enhancing the historic environment. In reaching this conclusion, I have undertaken my statutory duty pursuant to s66(1) of the Planning (Listed Buildings and Conservation Areas Act) 1990 to have special regard to the desirability of preserving the LB or its setting or any features of special architectural or historic interest which it possesses.

Living conditions

28. As regards the living conditions of Hazelnut Cottage occupants, given the height of the hedging on the boundaries with this property, there would be no significant overshadowing over and above that arising from the hedging. Any overlooking from the eastern elevation window opening would be no different to someone standing in the same position in the appellant's garden. However, it is possible that if the outbuilding were used for a different incidental residential use rather than storage, this could result in an increase in the likely level of overlooking since a person might be in the building for longer periods than would be expected of someone standing in the garden. A condition related to planting to this boundary or restricting the use of the building would though overcome this harm.
29. With respect to outlook/perception of overlooking, following the LDC Appeal, Hazelnut Cottage now effectively has a very substantial garden and, even taking account of the lower ground levels, I do not consider that any harmful loss of outlook results as regards the garden of Hazelnut Cottage. That said, the

⁶ SDNP/21/02701/Hous (Arms Cottage PP); SDNP/22/04326/Hous (Old Bakery PP); and Hazelnut Cottage PP

⁷⁷ I note the appellant's comment that the NPA made only brief reference to these policies in the 2021 Application Officer Report, with the appellant's assumption being that the NPA was relying on the Revised Framework's heritage policies. However, the appellant does not suggest any substantive difference between Policies SD12 and SD13 and the relevant Revised Framework policies and in my view the NPA's heritage analysis was equally applicable to the Policies SD12 and SD13 as to the Revised Framework's heritage policies

outbuilding sits opposite and at fairly close distance to windows on the northern elevation of this dwelling. In my view though, any loss of outlook here could be overcome by a condition related to boundary planting.

30. With respect to the living conditions of the occupants of Weavers Cottage, the significant distance and angle of view from this dwelling to the outbuilding mean that there is no loss of outlook nor any harmful overlooking.
31. As such on the third main issue, I find that if appropriately conditioned, no living conditions harm would result to neighbouring occupants. There would be compliance with Policy SD31 of the LP which indicates that residential outbuildings should only be permitted where they are not detrimental to the amenity of neighbours.

Other Matters

32. The NPA did not reference any harm to the Lodsworth Conservation Area (CA) in the enforcement notice but interested parties have raised concerns in this regard. However, since neither of the main parties have made any detailed representations in relation to this matter, and as I will be dismissing the appeal for other reasons, it is not appropriate that I consider this further. Interested parties have raised other concerns related to the appeal development including as regards flooding but in view of my findings above these have not led me to any different overall conclusion.

Conclusion on the ground (a) appeal and DPA

33. The appeal development does not have a harmful effect as regards the SDNP or with respect to the living conditions of neighbouring occupants, if appropriately conditioned. It does though result in harm to the setting of the LB for the reasons outlined. While the appeal building is no doubt of private benefit to the appellant and small public benefits arise, these do not outweigh the heritage harm detailed above. Accordingly, the appeal development conflicts with the development plan, read as a whole. No material considerations indicate a decision other than in accordance with the plan and indeed, conflict arising with national heritage policy in the Revised Framework would also of itself warrant dismissal. The ground (a) appeal fails and planning permission is refused in respect of the DPA.

The appeal on ground (f)

34. This ground of appeal is that the requirements of the notice exceed what is necessary.
35. S.173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred; the second is to remedy an injury to amenity which has been caused by the breach. The fact that the notice in this case requires demolition of the outbuilding and removal of resulting debris suggests that its purpose is to remedy the breach of planning control. The Council also advises that the notice is intended to address an injury to amenity.
36. The appellant's submissions under this ground are essentially planning merits submissions i.e. that the notice is excessive as the outbuilding should be granted planning permission or that any harm arising is not sufficient to warrant enforcement action. I have dealt with these submissions under ground (a) above.

and have not found that harm as regards the effect on the setting of the LB would be overcome. Enforcement action was therefore justified.

37. I appreciate that the appellant would have liked to have been able to engage with the Council to seek an alternative solution prior to enforcement action, nevertheless, the appeal on ground (f) fails for the reasons explained.

Time for compliance

38. While no appeal is made on ground (g) to extend the period for compliance with the notice, I am permitted to correct or vary the terms of the notice if I am satisfied that this would not cause injustice to either of the main parties. Since the enforcement system is intended to be remedial and not punitive and as it is possible that the appellant will want to explore an alternative scheme with the NPA, it is appropriate to extend the period for compliance to afford this opportunity. A modest extension of three months would facilitate this without any injustice.

Overall Conclusion

39. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

V Bond

INSPECTOR