



## Appeal Decision

Site visit made on 4 March 2026

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 March 2026

**Appeal Ref: APP/B9506/C/23/3328653**

**Land adjacent to Swan Green Cottages, Northerwood Avenue, Lyndhurst SO43 7DU**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act).
- The appeal is made by Mrs Pamela Jones against an enforcement notice issued by New Forest National Park Authority.
- The notice was issued on 27 July 2023.
- The breach of planning control as alleged in the notice is “Without planning permission:
  - i) The material change of use of the land affected to use for residential purposes unconnected with the residential use of 1 Swan Green Cottages, and for the stationing of two caravans (used for intermittent residential and/or storage purposes respectively); and
  - ii) operational development comprising the erection of a fence in the approximate position shown coloured blue on the plan attached to this Notice.
- The requirements of the notice are:
  - 5.1 Permanently cease the residential use of the land affected.
  - 5.2 Permanently cease the use of the land affected for the stationing and/or storage of caravans.
  - 5.3 Permanently remove all caravans from the land affected.
  - 5.4 Demolish the fence in the approximate location shown coloured blue on the plan attached to Notice.
  - 5.5 Remove all debris and material resulting from compliance with requirements 5.1 – 5.4 from the land affected.
- The period for compliance with the requirements is 6 months after the Notice takes effect.
- The appeal is proceeding on the grounds set out in sections 174(2)(b), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

## Decision

1. It is directed that the enforcement notice is corrected and varied by:
  - *the deletion of the words “affected to use for residential purposes unconnected with the residential use of 1 Swan Green Cottages, and for the stationing of two caravans (used for intermittent residential and/or storage purposes respectively)” and the substitution of the words “to use as a caravan site” in paragraph 3. (i);*
  - *the deletion of the word “fence” and its substitution with the words “fence and gates” in paragraph 3. (ii);*
  - *the deletion of the words “Permanently cease the residential use of the land affected.” and their substitution with the words “Cease the use.” in paragraph 5.1;*
  - *the deletion of paragraph 5.2 in its entirety;*
  - *the deletion of the word “fence” and its substitution with the words “fence and gates” in paragraph 5.4; and*

- *the renumbering of paragraphs “5.3”, “5.4” and “5.5” as “5.2”, “5.3” and “5.4” respectively.*

Subject to the correction and variations, the appeal is dismissed and the enforcement notice is upheld.

### **Matters Concerning the Notice**

2. The matters alleged in the notice are two-fold; firstly that there has been a material change of use of the land and secondly that operational development has occurred. There is no reason why a notice cannot allege more than one type of breach of planning control. The matter alleged does however have to be clear and unambiguous, allowing the person(s) upon whom it is served to know what they have done wrong and what they must do to put it right.
3. The wording of the material change of use alleged is imprecise and contains superfluous words. While storage of caravans is included in the allegation, it is clear from the reasons contained in the notice that the Council is seeking to enforce against the stationing of caravans for residential purposes. This would amount to use as a caravan site in accordance with the definition in s1(4) of the Caravan Sites and Control of Development Act 1960. The appellant advocates for such a correction. I am therefore satisfied that my correction of 3. (i) to provide for use of land as a caravan site would not cause injustice to the appellant or Council.
4. Turning to the operational development. I saw that where the blue line is drawn on the plan attached to the notice there is a fence **and gates** [my emphasis]. It would be unusual to widen the scope of the allegation. However, the appellant's case includes lowering the fence and replacing the gates as a lesser step. My attention is also drawn to a planning permission and listed building consent granted for the *“Retention of rear boundary fence, gates, garden shed & new access onto Northerwood Avenue”*. A copy of the approved plan shows fencing and a gate in approximately the same position as the blue line shown on the plan attached to the notice. I am satisfied that my correction of 3. (ii) to include gates would cause no injustice to the appellant or Council.
5. I shall correct the allegation as set out above to provide clarity and precision to the notice. The requirements shall be varied to reflect the corrected allegation. It is sufficient for step 1 to require the use to cease. Step 2 is no longer necessary and shall be deleted. Steps 3, 4 and 5 shall be renumbered accordingly to be steps 2, 3 and 4. Step 3 needs to include the removal of the gates, and step 4 needs to refer to “5.1 – 5.3” as opposed to “5.1 - 5.4”. These variations are for consistency. I am satisfied no injustice would arise from these variations.

### **Preliminary Matters**

6. A considerable amount of time has lapsed since the appeal was submitted. The grounds of appeal do not however warrant the main appeal parties having an opportunity to provide updated position statements. The Council did however confirm that the notice has not been complied with.
7. The appellant's agent also advised they have been unable to contact the appellant and believes they have moved away. They did send written confirmation of my site visit arrangements to the appellant's last known postal address. The Council also posted a notice setting out the site visit details on the appeal site, which I saw. I

am satisfied that all reasonable efforts have been taken to notify the appellant, and any occupier of the land, that the site visit was scheduled to take place.

8. A representative for the appellant did not attend the site visit. I therefore carried out an unaccompanied site visit. I was able to view the site through the hedgerow located adjacent to the Bournemouth Road/Swan Green junction and over the fence and between the gates from Northerwood Avenue.

### **Appeal on Ground (e)**

9. An appeal on this ground is that copies of the notice were not served as required by section 172 of the 1990 Act. While the appellant claims they were served with the notice late, they were served a copy. Furthermore, on the information provided they were served before the notice was issued, which I find unlikely. Regardless of when they were served, they were able to bring this appeal and have not therefore been prejudiced. The appeal on ground (e) fails.

### **Appeal on Ground (b)**

10. In an appeal on this ground, it is for the appellant to show, on the balance of probabilities, that the corrected matters alleged had not occurred as a matter of fact when the notice was issued.
11. It is the appellant's contention that the use of land for independent residential purposes occurred in 2005 and the use of land for the stationing of at least one caravan (used for intermittent residential and/or storage purposes) began in 2012. While these assertions do not directly address the material change of use of the land to use as a caravan site, they do confirm that the land had been used for such purposes before the notice was issued.
12. The appellant also argues that the fence and gates benefit from planning permission and listed building consent. Therefore, they accept that the operational development alleged has occurred, but they claim it does not constitute a breach of planning control. While such an argument should be considered under ground (c), I will deal with it below.
13. Planning permission and listed building consent were granted for "*Retention of rear boundary fence, gates, garden shed & new access onto Northerwood Avenue*" on 24 November 2005. The use of the word 'retention' implies that the fence and gates had already been erected. The approved plans show the close boarded fence to be "1780" high and a lower, single five bar gate across the access. There is no reason for me to doubt that this development had occurred.
14. The earliest Google Streetview image is dated March 2009 (the March 2009 image) and shows solid timber gates that are nominally taller than the close boarded timber fence. The fence looks aged and, in the absence of evidence to the contrary, I find it to be the fence for which planning permission and listed building consent had been granted. The solid timber gates have a newer appearance and are higher than the timber gate posts. They are clearly not the lower, single 5 bar gate that was authorised by the planning permission and listed building consent.
15. Photographs provided by the Council dated 30 September 2019 show that the gates and most of the fence seen in the March 2009 image are laid on the ground.

Further photographs, dated 17 December 2019, show the gates and part of the fence have been re-erected.

16. The Google Streetview image dated May 2023 shows two pairs of high solid timber gates and a higher close boarded fence have been erected in the approximate position coloured blue on the plan attached to the notice. I know the fence shown is higher than the previous fence as it now overlaps the bottom of the 'danger' sign on the telegraph pole. This fence and gates are also of a different construction and quality to those that are shown in the March 2009 image. I am satisfied that the fence and gates to which the notice relates are not those for which planning permission and listed building consent were granted.
17. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) makes provision for some gates and fences to be permitted development. The fence and gates erected in the approximate position shown coloured blue on the plan attached to the notice do not comply with the height restriction imposed by condition A.1 of Class A, Part 2 of Schedule 2 of the GPDO. They do not therefore benefit from deemed planning permission granted by the GPDO.
18. The fence and gates constitute a breach of planning control, and the appellant does not dispute that the land has been used as a caravan site. The corrected matter alleged had therefore occurred when the notice was issued.
19. For the reasons given above, the appeal on ground (b) fails.

#### **The Appeal on Ground (d)**

20. An appeal on this ground is that, at the date the notice was issued, no enforcement action could be taken in respect of any breach of planning control that the corrected matter alleged constituted. It is for the appellant to show, on the balance of probabilities, that the material change of use to a caravan site (the MCU) and the erection of a fence and gates (the OD) occurred on or before the material dates. The MCU material date is 27 July 2013, and the use should be shown to have continued without significant interruption for 10 years or more. The OD material date is 27 July 2019.

#### **The Fence and Gates**

21. I have already concluded the fence and gates to which the notice relates are not those granted in November 2005 or those shown in the March 2009 image or the Council's photographs dated September and December 2019. Based on the photographic evidence, it would not be unreasonable to conclude the fence and gates were erected at some point between December 2019 and May 2023. Regardless of when exactly they were erected, it was clearly after 27 July 2019.
22. While the appellant's statutory declaration (the PJSD) sets out their recollection of when and why the fence and gates were erected, it is not supported by corroborating evidence. I therefore find, on the balance of probabilities, enforcement action against the OD could be taken on the date the notice was issued.

### Use of Land as a Caravan Site

23. Planning unit and curtilage are two separate planning concepts, neither of which are defined in legislation. The courts have held that, while these two concepts can apply to the same area of land, they do not have to. Furthermore, 'planning unit' relates to the use land is put to, whereas curtilage relates to land associated with buildings.
24. The courts have also held that whenever it is possible to recognize a single main purpose of the occupier's use of their land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered the planning unit. Even though an occupier carries on a variety of activities and it is not possible to say one is incidental or ancillary to another, the entire unit of occupation should still be considered a single planning unit. It is only where there are two or more physically separate and distinct uses occupying a single unit for substantially different and unrelated purposes, that each area used for a different purpose would be considered a separate planning unit.
25. The PJSD states they "*bought Swan Green Cottage in June 2004 along with the adjacent land*", the "*adjacent land*" being the appeal site (the Land) identified in the notice. The appellant makes no assertion that prior to their purchase of the Land it formed a separate planning unit to 1 Swan Green Cottage (No1). Furthermore, the land title documents provided by the Council show that the Land and No1 were in a single land title of ownership. While this is not definitive in determining the extent of the planning unit, it is a factor to be considered.
26. The PJSD refers to a fence being erected in 2005 between the house and the Land as well as their naming of the Land "*Blacksmith lawn*" [sic]. While the fence between the Land and No1 remains in situ, that of itself is also not sufficient to show that the Land and No1 were used for substantially different and unrelated purposes.
27. The appellant also refers to "*Blacksmith lawn*" being their main address since 2005; where their car, passport and licence are registered. No explanation is given as to why that address would be used as opposed to the address of the dwelling within which they lived. Furthermore, documentary evidence of the appellant's car registration, passport and licence being registered to "*Blacksmith lawn*" is not provided. Even if it had been, it would not conclusively show the Land and No1 were used for substantially different and unrelated purposes.
28. In terms of how the Land was used, the PJSD states, "*We used to use the land like a garden – for leisure and recreation, barbecues and things*". The March 2009 image pre-dates caravans being brought on to the Land. It shows the Land laid to grass with several mature trees and shrubbery, giving it the visual appearance of a garden.
29. Taking the above factors together, in the absence of evidence to the contrary, I find the Land was occupied by the appellant in connection with their occupation of No1 as a residential dwelling before any caravans were brought on to the Land.
30. The PJSD states "*the first caravan [was brought] onto the land in 2012, and it is still there today*". Reference is also made to bringing a second caravan, which "*belongs to Michael*", on to the Land in 2018. I saw that both caravans are still in

situ. No details are provided as to who 'Michael' is or what interest, if any, he has in the Land.

31. A touring caravan is visible in the Council's photographs dated 30 September 2019, 17 December 2019 and 10 March 2022. It is not until 20 May 2022 that the Council's photographs show the second caravan has appeared. There is therefore no evidence to corroborate the appellant's assertion that the first caravan was stationed on the Land in 2012 or that 'Michael's' caravan was stationed on the Land in 2018.
32. Even if I were to accept that the first caravan was stationed on the Land in 2012, the PJSD refers to the appellant staying in it *"sometimes during the summers when she owned the house, and often when there was work being done on the house"*. However, the appellant also states that *"most of the work was undertaken in 2004 -2006"*, before their caravan was stationed on the Land. Additionally, the PJSD states *"people would sometimes stay in it [the caravan]"*, while other friends *"would park their caravans on the land and stay there"*.
33. The appellant's occupation of the caravan during the time that they owned No1 would therefore constitute the Land being put to an ancillary use, not a primary use. Similarly, friends staying in the caravan or even stationing their own caravans, presumably while visiting the appellant, in the absence of evidence to the contrary, would be incidental to the residential use of No1.
34. The statutory declaration of Jonathon Howard states little more than he has known the appellant since she bought the Land, and *"there has been at least 1 caravan stationed on the land for more than 10 years"*. Mr Howard provides no details of what any caravan or the Land was being used for when he visited it from *"time to time"*. He does not even say why he visited the Land. Mr Howard's evidence therefore provides no supporting evidence that the Land was used for physically and functionally separate purposes to the residential occupation of No1 or as a caravan site.
35. Having regard to all the above factors, and notwithstanding the fence between the two areas, I find there is insufficient evidence to show, on the balance of probabilities, that the Land was used for purposes functionally and physically separate to No1. The Land and No1 formed a single planning unit used as a single dwellinghouse during the appellant's ownership of both areas.
36. The Land has been separated from No1 by reason of No1 being sold. The Land could have been used as a leisure plot thereafter, however the PJSD states the appellant lived permanently in her caravan after the sale of No1 until at least the date of the PJSD. Furthermore, it is claimed 'Michael' also lived on the land in his caravan from 2018 onwards.
37. The Land Registry Title document provided by the Council shows the title changing in December 2016. It is therefore reasonable to conclude that the Land stopped being used for incidental residential purposes by late 2016. At that time, the Land became a physically and functionally separate parcel of land, thereby a new planning unit. This marks a new chapter in the planning history of the Land.
38. Following the sale of No1, the appellant states in the PJSD that they lived on the land *"as my main home ever since"*, this document is dated 30 August 2023. The second caravan is claimed to have been occupied by 'Michael' intermittently from

2018 and permanently from 2019. More likely than not, at the earliest, use as a caravan site began in November 2016. This is after the material date. The appellant has therefore failed to show, on the balance of probabilities, that at the date the notice was issued no enforcement action could be taken against the MCU.

39. For the reasons given above, the appeal on ground (d) fails.

### **The Appeal on Ground (f)**

40. An appeal on this ground is that the steps to be taken go beyond what is reasonably required to remedy the breach of planning control, or injury to amenity as the case may be. As the corrected steps to be taken require the use to cease, the site to be cleared of caravans and the fence and gates to be removed, the notice is directed at remedying the breach of planning control.
41. The appellant argues that requiring the removal of the fence [and gates] goes beyond what is reasonably necessary. Instead, it would be sufficient for them to be reduced in height to correlate with the planning permission granted in 2005. In the absence of a ground (a) appeal, I am not in a position to grant planning permission for the development, or any part of it. Furthermore, I have not been provided with details showing how the fence and gates could be reduced in height in a satisfactory manner.
42. The fence and gates need to be demolished to remedy the breach of planning control. The varied steps required to be taken do not therefore go beyond what is reasonably necessary. The appeal on ground (f) therefore fails.

### **The Appeal on Ground (g)**

43. An appeal on this ground is that the period specified in the notice falls short of what should reasonably be allowed. The appellant has stated on the appeal form that six months is insufficient time for compliance as the land is *"the sole home of the occupant and the appellant"*.
44. No reasons or evidence has been provided as to what length of time would be reasonable for the use to cease, for the caravans to be removed, the fence and gates to be demolished, and all debris arising from compliance with the requirements to occur. It has not therefore been shown that the period falls short of what should reasonably be allowed.
45. I appreciate there may be need for an alternative boundary treatment to be provided to secure the Land. A period of six months is sufficient to secure any necessary planning or other permission(s) for an alternative boundary treatment.
46. For these reasons, the appeal on ground (g) fails.

### **Overall Conclusion**

47. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations.

*M Madge*

INSPECTOR