

NEW FOREST NATIONAL PARK AUTHORITY

PLANNING COMMITTEE – 17 DECEMBER 2024

NON-COMPLIANCE WITH

24/0139/EC Riverside Yard, Land West of former Riverside Nursery, Romsey Road, Ower, SO51 6AF

Report by: Lucie Cooper, Planning Enforcement Manager

1. Summary

- 1.1. This report concerns a breach of planning control at Riverside Yard, Land West of former Riverside Nursery, Romsey Road, Ower, SO51 6AF. This site is subject to an extant Enforcement Notice, issued in August 2012, for the storage of caravans and other items unrelated to agriculture (EN/11/0010 refers.) The Notice was not appealed and was recorded as being complied with in October 2012.
- 1.2. In November 2023 the Authority received an application for a Certificate of Existing Lawful Development for the continued use of land and buildings for storage (use class B8) (23/01472). The application for the Certificate of Lawful Development sought to establish that the unauthorised use, which also amounted to non-compliance with the extant Notice, was immune from Enforcement action due to the passage of time and was therefore lawful.
- 1.3. The application was refused on the basis that the use constituted a contravention of the requirements of the Enforcement Notice currently in force in relation to the application site. Furthermore the application demonstrated that the material change of use of the land and buildings was continuing in contravention of that Notice. The decision notice refusing the application was issued in August 2024.
- 1.4. Following the refusal of the Certificate of Lawfulness, a site visit took place in October 2024 with the owner. It was evident from this visit that the majority of the land was being used for B8 storage, namely caravans, domestic and commercial vehicles, storage containers and domestic / household waste, in clear contravention of the Enforcement Notice.
- 1.5. To date no steps have been taken to comply with the requirements of the Notice. The owner has lodged an appeal against the Certificate of Lawfulness refusal, but notwithstanding this, it is the view of the Authority that an offence has been committed and is continuing in respect of the breach of the requirements of the Enforcement Notice.
- 1.6. This report therefore seeks Members' approval to consider the evidence currently available, and any further evidence that comes to light, with a view to prosecuting those who continue to breach the Notice - to the detriment of the landscape and neighbouring owners.

2. Background

- 2.1. By way of background in this matter, following complaints received by the Enforcement team, an initial site visit in January 2011 found that the land was being used for the open storage of caravans and motorhomes. Officers subsequently entered into correspondence with the owners in an attempt to secure that remedial steps be taken voluntarily. However, no positive steps were taken by the owners and an Enforcement Notice was issued on 03 August 2012 which identified the breach of planning control as being the storage of caravans and other items unrelated to agriculture.
- 2.2. The Notice required the owners to:
 - 5.1) Cease the use of the land affected for the storage of caravans and other items unrelated to agriculture.
 - 5.2) Remove all caravans and other items unrelated to agriculture from the land affected.
- 2.3. The Notice was not appealed so the Notice therefore took effect on 03 September 2012 and provided a significant compliance period of six months to allow sufficient time for the Notice to be complied with. The Notice was recorded as being complied with in October 2012.
- 2.4. In June 2020 concerns were received to say that the site was being used for open storage of caravans, and this was confirmed as a breach in July 2020. The owner was reminded of the extant Enforcement Notice and took steps to voluntarily cease the breach of planning control by removing the caravans from the land. Whilst the Authority could have taken action to prosecute the owner at this stage, it was considered that the steps taken were sufficient to close the file. It was made clear at the closure of this investigation in February 2021 that the Enforcement Notice remained extant and a further breach could lead to a prosecution. It is noted that since this investigation not only has the breach recommenced, but it appears to have intensified.
- 2.5. Following the refusal of the Lawful Development Certificate of Existing use (23/01472), the Authority's Enforcement Officers have provided the owner with clear and comprehensive advice and have taken all reasonable steps to encourage the owners to comply with the Enforcement Notice. Should members feel it necessary to discuss the particulars of the enforcement investigation in more detail it is likely to require the matter to be taken to Part II of the meeting due to the sensitive nature of such investigations.

3. Next Steps

- 3.1. The Authority may now choose to prosecute the owners for noncompliance with the Notice which is an offence under section 187A of the Town and Country Planning Act 1990, as amended (the 'Act'). All owners are responsible for ensuring compliance with the Notice.
- 3.2. Prior to commencing a prosecution, the Authority needs to be satisfied firstly that there is a realistic prospect of success and secondly that commencing prosecution proceedings would be in the wider public interest. The Authority is satisfied that there is an adequate prospect of success given the evidence available. As to the public interest

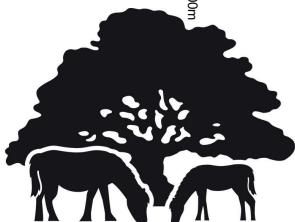
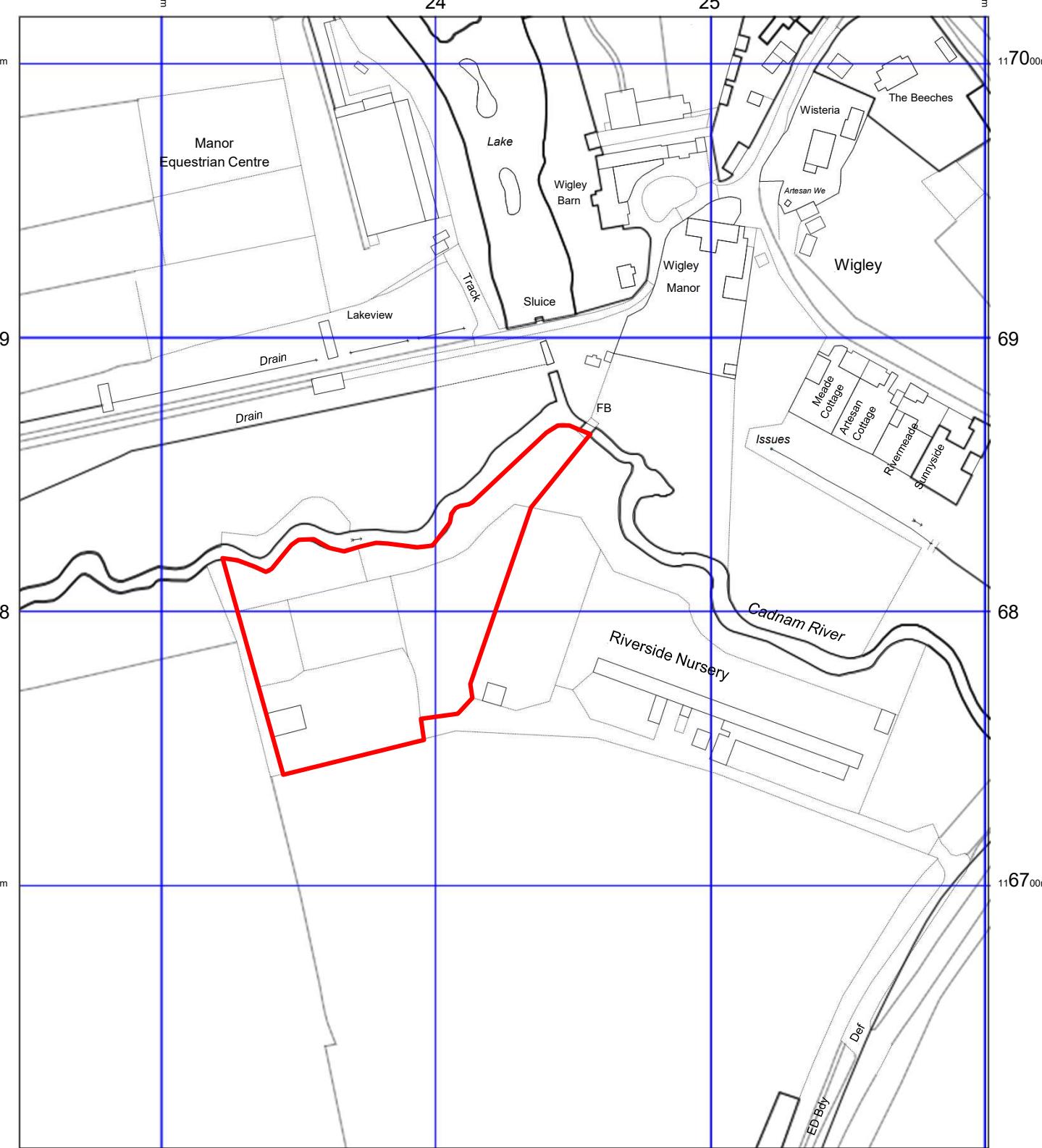
in taking action, the enforcement of planning control is in the wider public interest of the community by preventing inappropriate and harmful development within a special environment of national significance, the New Forest National Park. The Authority's prosecution of the respective landowners would be in accordance with the powers conferred upon it by the Act, and also appears to be both proportionate and supported by the wider public interest, especially in view of the harm caused by this breach. Allowing the noncompliance with the Enforcement Notice would undermine the Authority's strong stance to issue an Enforcement Notice in order to mitigate the harm used by the use of the land and prevent the breach from escalating, particularly as this appears to have incrementally increased.

- 3.3. Noncompliance with an Enforcement Notice leaves the owner liable, on summary conviction, to an unlimited fine.
- 3.4. It is therefore considered expedient, necessary, and proportionate to commence proceedings as outlined above.

RECOMMENDATION:

Members authorise the Authority's Executive Director Strategy and Planning, in consultation with the Solicitor and the Enforcement Manager, to:

- i. **consider the further evidence, if any, submitted in respect of the purported impediment to compliance and form a view as to the appropriate course of action to achieve compliance with the Enforcement Notice; and**
- i. **if officers are in agreement that it is appropriate to do so, in light of any further information referred to in paragraph (i) above, take all action as necessary to commence and conduct the prosecution of the owners of Riverside Yard, Land West of former Riverside Nursery, Romsey Road, Ower, SO51 6AF in respect of their non-compliance with the Enforcement issued ; or**
- ii. **if it is not considered appropriate to commence a prosecution, to consider and take such other action as necessary to achieve compliance with the Enforcement Notice including taking direct action and any other steps as necessary to recover the costs of so doing from the owners, including arranging for a charge to be placed on the land.**



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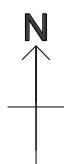
New Forest National Park Authority
Lymington Town Hall, Avenue Road,
Lymington, SO41 9ZG

Te: 01590 646600 Fax: 01590 646666

Date: 12/11/2024

Ref: 24/0139/EC

Scale: 1:2000



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