



Appeal Decision

Hearing Held on 10 March 2020

Site visits made on 10 March 2020 and 11 March 2020

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2020

Appeal Ref: APP/Y9507/C/18/3209964

Land at Iford Farm, The Street, Iford BN7 3EU

- 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 John Robinson of J and H Robinson (Iford Farms) Ltd against an enforcement notice issued by Lewes District Council on behalf of the South Downs National Park Authority.
- The enforcement notice was issued on 14 August 2018.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from agriculture to a mixed use of the land for agriculture and for the shooting of game birds (including partridge and pheasant) for sport in the shooting season (1 September – 1 February), with the shooting of game birds for sport in the shooting season taking place in excess of that permitted under Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. This order currently permits the temporary use of Land for no more than 28 days in total in any calendar year.
- The requirements of the notice are to cease the use of the Land or any part of the Land for the shooting of game birds for sporting purposes in excess of that permitted under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or by other express permission.
- The period for compliance with the requirements is two 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 is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appeal was originally made on grounds (a), (c), (d), (f) and (g). The arguments under the ground (f) appeal appear to better relate to ground (e). This was confirmed at the hearing, but subsequently withdrawn. The ground (g) appeal was also withdrawn at the hearing. The appeals under grounds (c) and (d) had been withdrawn prior to the hearing. Consequently, I shall deal solely with the appeal under ground (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.
2. During the course of the appeal, the South Downs Local Plan (LP) was adopted. That superseded the Lewes District Council Joint Core Strategy. That was discussed at the hearing. I have based my decision on that new LP.

3. Following the hearing, I visited the appeal site and was shown around in a farm vehicle by the Managing Director of Iford Farms with the Council's Specialist Advisor on Planning Enforcement present. There was low cloud that severely restricted visibility such that I was unable to see longer distance views, but I was able to see a number of locations on the farm used by the shoot.
4. I returned the following day when weather conditions were clearer and was able to see longer distance views and identify the approximate location of the guns on pegs and beating lines identified on the plans supplied by the appellant. I walked from Northease Farm following the footpath past Breaky Bottom Vineyard to join the bridleway. I followed that north to where it joins the South Downs Way at Swanborough Hill, where I followed the South Downs Way back to the path down to Northease Farm. I also followed the farm track a short distance toward the open access land above Whiteway Bottom that allowed a good view of the valleys between the South Downs Way and bridleway. I was able to see Castle Hill across the valley from the bridleway.
5. Planning permission is granted by Class B, Part 4, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) for the temporary use of land for not more than 28 days in total in any calendar year. This enables the shoot to operate for up to 28 days in any calendar year. If I were to dismiss the appeal, the shoot could continue to operate on that basis.
6. I understand that shooting occurred at the Iford Downs Shoot on either 52 or 57 days in the 2017-2018 season and has been operating commercially since 2010, supported by a shoot lodge. It generally consists of about 4 drives of up to around 30 minutes over a 6 hour day. The shooting season is from 1 September in one year to 1 February the next year. No shooting takes place on a Sunday, but I am aware that, were I to allow the appeal without conditions, it would be possible to shoot on every other day of the season.

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

Background and Main Issues

7. During the hearing there was a discussion regarding the effect of the shooting on ecology and biodiversity. Whilst that does not form a reason given by the Council for issuing the enforcement notice, I consider that it is of sufficient importance that it should be a main issue in this appeal.
8. Consequently, the main issues are:
 - Whether the mixed use for agriculture and for shooting of game birds conserves and enhances the conditions of users of the public rights of way around Iford Farm, with particular regard to noise and disturbance;
 - Whether the mixed use for agriculture and for shooting of game birds conserves the natural beauty of the South Downs National Park, with particular regard to the tranquillity of the area; and
 - Whether the development would protect and enhance ecology and biodiversity in the area.

Reasons

9. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that my decision must be made in accordance with the development plan, comprising the LP in this case, unless material considerations indicate otherwise. The National Planning Policy Framework (the Framework) sets out national planning policy, including a presumption in favour of sustainable development that states development proposals should be approved where they accord with an up-to-date development plan, such as the LP. The Framework is a material consideration of great weight. I will refer to a number of other documents that also carry weight in the consideration of this appeal, and a number of other considerations that need to be taken into account in the overall planning balance.
10. The Iford Downs Shoot is located within the South Downs National Park (SDNP). The purposes of the SDNP set out in Core Policy SD1 of the LP comprise i) conserving and enhancing the natural beauty, wildlife and cultural heritage of the area; and ii) promoting opportunities for the enjoyment of the special qualities of the SDNP by the public. However, where there is a conflict between those purposes, the policy states that greater weight is to be attached to the first of those purposes. It states that great weight should be given to the landscape, natural beauty, wildlife and natural heritage of the SDNP.

Conditions of users of public rights of way

11. The South Downs Way crosses the area of the Iford Downs Shoot on the ridge of the hill between the Shoot Lodge and Whiteway Bottom, a narrow and steep sided valley. A bridleway forms the boundary of the area used for shooting, comprising the locations of guns on pegs and beating lines, to the west and north of Whiteway Bottom. There is open access land on the slopes down to Whiteway Bottom and on the escarpment to the Ouse Valley around the Shoot Lodge. As a result, walkers, horse riders and other users of the South Downs Way, bridleway and open access land could be in close proximity to the shoot while it is operating. Reference has also been made to another nearby shoot at Swanborough.
12. The number of people involved in a shoot, including guns, beaters and shoot staff, can be substantial. According to the Noise Impact Assessment, the sound of guns raises the ambient noise at locations around the shooting areas while it is taking place.
13. The shoot could affect a substantial number of people on the paths through and around the shoot were it to operate on an unrestricted basis through the shooting season, albeit I understand that the open access land is rarely used by the public. Some representations suggest that members of the public have found operation of the shoot intimidating when using the public footpaths and bridleway around the area.
14. Nevertheless, shooting is a traditional pastime in the countryside such that the noise of guns would not be unusual in an area such as this. Shooting could continue for 28 days during the year in accordance with the GPDO. In addition, the Council has suggested some conditions that seek to mitigate these effects and these were discussed during the hearing.

15. The suggested conditions would limit the number of guns on the shoot to nine and hours of operation to 0830 to 1630 Monday to Saturday (excluding Public/Bank Holidays). A condition was suggested that would require a scheme for the management and mitigation of impacts of the game shooting activity on other users of the SDNP. The appellant suggested that it would be better to require temporary signs at appropriate locations and no shooting or beating over public rights of way. It was suggested an additional condition limiting the number of days for shooting would be necessary. Following the hearing, I shared a draft condition with the Council and appellant limiting the number of days to 60 and neither objected to that number. Other than in relation to the number of days, the suggested conditions would limit operation of the shoot beyond what is possible under the GPDO.
16. Strategic Policy SD7: Relative Tranquillity (SD7) of the LP requires development to both conserve and enhance relative tranquillity, including the experience of users of the public rights of way network and other publicly accessible locations. In addition, Policy 3 of the SDNP Partnership Management Plan (PMP) 2020-2025 seeks to protect and enhance tranquillity. In order to comply with those policies, therefore, development needs to positively enhance tranquillity. Planning Practice Guidance¹ states that noise has no adverse effect so long as the exposure does not cause any change in behaviour or attitude of those affected by it.
17. The restrictions set out in the suggested conditions would reduce the amount of noise and disturbance on days when the shoot operates. They would significantly limit the effect of the shoot on other users of public rights of way and this part of the SDNP, such that I consider the shoot would not have a material effect on the behaviour or attitude of users of public rights of way in the area. Nevertheless, they would not lead to the enhancement of the conditions of users of the public rights of way relating to noise and disturbance as required by Policy SD7 of the LP and Policy 3 of the PMP 2020-2025.
18. For these reasons, I conclude that the mixed use for agriculture and for shooting of game birds, even with the suggested conditions, does not both conserve and enhance the conditions of users of the public rights of way around Iford Farm, with particular regard to noise and disturbance. As such, it does not comply with Policy SD7 of the LP or Policy 3 of the PMP 2020-2025.
19. I have been referred to paragraphs 170(e) and 180(a) of the Framework that seek to prevent development from contributing to unacceptable levels of noise pollution and avoid noise giving rise to significant adverse impacts on health and the quality of life. For the reasons given above, the shoot does not conflict with paragraphs 170(e) or 180(a) of the Framework. However, with regard to the effect of the use on the conditions of users of the public rights of way, that does not outweigh the conflict with the development plan set out above.

Tranquillity

20. The Framework states that great weight should be given to conserving and enhancing landscape and scenic beauty of the SDNP and that tranquil areas that are prized for their recreational and amenity value should be protected. There is potential to affect the relative tranquillity of the area, which is identified in the LP and the PMP 2020-2025 as a special quality of the SDNP. It

¹ Planning Practice Guidance Reference ID: 30-005-20190722

was agreed at the hearing that this part of the SDNP is within an intermediate tranquillity area, where Policy SD7 of the LP states that development should conserve and enhance, and not cause harm to, relative tranquillity. The LP suggests that tranquillity is a state of calm quietude and is associated with a feeling of peace, influenced by what can be seen and heard in the landscape around.

21. The shoot requires the planting of cover crops that helps protect the natural, open landscape appearance of the area. The bridleway and South Downs Way are high on the ridges around the shoot with views toward the coastal settlements, smaller settlements and road within the Ouse Valley, with the footpath through the valley passing Breaky Bottom Vineyard, such that the paths through the shoot do not feel remote. The South Downs Way through the shoot area and some of the access routes through the farm are constructed in concrete that provides a harsh visual appearance compared to the adjacent green hillsides.
22. There are human sounds from the road and the South Downs Way is a relatively busy path; the proximity of the area to settlements also means that the bridleway is well used. Nevertheless, human sounds in this area are not generally loud and do not drown out natural sounds such as birdsong and the wind.
23. The shoot operates in this context. It results in intermittent bursts of noisy activity, albeit this would be limited by the conditions set out above. I note that shooting of game birds is a common activity within the countryside, including the SDNP, and my attention has been drawn to a number of other shoots within the SDNP and surrounding areas. I understand that there is also a clay pigeon shoot nearby, but the way that is used means that it has a different effect on the tranquillity of the area. The management of land within the SDNP for game was acknowledged within the PMP 2014-2019 as having positive and negative impacts on the character of landscapes, albeit is not specifically referred to in the PMP 2020-2025 that replaced it.
24. I note that the Tranquillity Study prepared by the South Downs National Park Authority (SDNPA) lists a number of positive and negative tranquillity factors, none of which directly relate to the shooting of game birds. It was suggested that those most comparable to the shoot were military training, lots of people, any signs of human impact and non-natural sounds. Whilst there are some similarities to military training in terms of the sound of gunfire and some vehicle movement, it is not on the same scale as likely to occur in areas used for military training such that I do not consider it a helpful comparison. The shoot introduces people into the landscape and that results in signs of human impact, with related vehicle movements and gunfire contributing non-natural sounds. Nevertheless, these are sporadic and on a limited number of days in the year.
25. Taking all of the above into account, the shoot contributes to the visual relative tranquillity of the area but, subject to the proposed conditions, has a minor negative impact on the aural tranquillity. Overall, I consider that the shoot would conserve the relative tranquillity of the area. Nevertheless, Policy SD7 of the LP requires that relative tranquillity should be both conserved and enhanced and the Framework seeks to conserve and enhance landscape and

scenic beauty. As the shoot does not enhance relative tranquillity and, therefore, landscape and scenic beauty, the use conflicts with those policies.

26. For these reasons, the mixed use for agriculture and for shooting of game birds does not conserve and enhance the natural beauty of the South Downs National Park, with particular regard to the tranquillity of the area. As such, it conflicts with Policy SD7 of the LP, Policy 3 of the PMP 2020-2025 or the Framework.

Ecology and biodiversity

27. Policy SD9 of the LP states that development proposals will be permitted where they conserve and enhance biodiversity, which reflects the Framework that requires biodiversity be protected and enhanced. It is clear from national and local policy, therefore, that development needs to positively enhance biodiversity rather than just do no harm.
28. I note that part of the site subject of the enforcement notice is located within Unit 2 of the Kingston Escarpment & Iford Hill Site of Special Scientific Interest (SSSI). The last assessment of this area dated 5 June 2014 concluded that its condition was favourable. Natural England has given consent for driving and shooting (reared) partridges over Unit 2 of the SSSI.
29. My attention has been particularly drawn to the wart-biter bush-cricket and Adonis Blue butterfly, that are protected species. Although I note these are found on other sites in the vicinity, such as Unit 1 of this SSSI and the Castle Hill SSSI and Special Area of Conservation (SAC), the assessment concludes that the wart-biter bush-cricket is not found within this part of the SSSI and there was an absence of the larval food plant of the Adonis Blue butterfly. This part of the SSSI may provide suitable habitat for these species, but I have no evidence before me as to the condition of these species prior to shooting starting on this scale in 2010. Unit 1 of the SSSI was given an unfavourable – recovering assessment in October 2019 and the wart-biter bush-cricket was re-found in the unit.
30. I note that red legged partridge, that are reared at Iford Farm and released for the shoot, predate on insects and small amphibians, including these species. About a third of the partridge are shot, around a third are eaten by predators and the remainder are lost, of which a proportion are likely to move onto surrounding land.
31. It clearly would not be appropriate to introduce the wart-biter bush-cricket and Adonis Blue butterfly into the area of the shoot, even if the habitat is otherwise suitable, so it would not be possible to enhance the biodiversity of the area in this way. The effect on other insects and small amphibians is unclear, including on surrounding land. Nevertheless, on balance and on the basis of the evidence presented I consider that the shoot does not affect these protected species and the condition of the SSSI. Consequently, the shoot conserves biodiversity in this regard.
32. The Ecological Appraisal submitted by the appellant concludes that the release of partridges into game cover crops on arable land actively increased the number of farmland birds. These are regularly surveyed by the head keeper, who is a qualified bird surveyor. I understand that around 70 species of bird are found on the shoot site, including breeding pairs of Stone Curlew, Grey

Partridge and Corn Bunting. This indicates that the shoot enhances biodiversity in terms of bird species.

33. I note that there may be negative impacts on the natural environment such as disturbance of flora and fauna, deposition of lead shot and displacement of native bird species and spread of disease. However, these were presented as assertions with limited evidence to back them up. I note that the RSPB Research Report on impacts of non-native gamebird release in the UK: a review considers this and suggests that negative environmental impacts are likely to occur. However, it acknowledges a lack of substantial knowledge regarding the larger scale impacts of gamebird release in the UK. That suggests a lack of certainty as to the nature and extent of these effects on biodiversity. Consequently, I consider their effect does not outweigh the enhancement to biodiversity arising from the number of bird species found at the shoot site.
34. I note that Defra have announced a review into the way the release of gamebirds on or near to protected sites is managed, although that appears to only relate to European protected sites, such as Castle Hill SAC, and not SSSIs. Although this could affect the release of game birds close to the SAC, this would be covered in other legislation and it is not for me to speculate what its conclusions may be.
35. For these reasons, I conclude that on balance the mixed use for agriculture and for shooting of game birds conserves and enhances ecology and biodiversity in the area as required by Policy SD9 of the LP and the Framework. It also complies with Core Policy SD1 of the LP, insofar as that seeks to conserve and enhance wildlife in the area

Other matters

36. The Iford Estate has prepared a Whole Estate Plan that provides details of the activities undertaken on the Estate, including farming, holiday accommodation and the Iford Downs shoot, and how they contribute to its vision. I understand that Plan has been endorsed by the SDNPA. That vision includes being a sustainable and resilient farming enterprise, securing the special landscapes of the Estate for future generations, improving biodiversity and enhancing the quality of life of the community. I note that the Estate has been stewarded by the same family for a long period and that longevity supports their assertion that they seek to run a sustainable enterprise. It is subject of a Countryside Stewardship Agreement with Natural England. The shoot contributes toward the income of the Estate and toward the vision for the estate set out in the Whole Estate Plan. As a result, the mixed use for agriculture and for shooting of game birds complies with Policy SD40 of the LP that supports farm diversification.
37. The shoot provides open-air recreation within the SDNP, that enables members of the public taking part to enjoy the special qualities of the SDNP in accordance with Core Policy SD1 of the LP. The shoot also provides employment and contributes toward fostering the economic and social well-being of the local community in accordance with the English National Parks and the Broads UK Government Vision and Circular.

38. Reference has been made to a previous appeal decision² relating to the use of the shoot lodge. In that case, the Inspector concluded that the use of the lodge for six days during the shooting season accorded with relevant development plan policies at the time. However, that did not relate to the use of the surrounding land for shooting and was determined on previous development plan policies. I have taken that decision into account insofar as it is relevant.
39. My attention has been drawn to other shoots, some of which also operate for more than 28 days a year, within or near to the SDNP and to the contribution of shoots toward farm diversification and the management of the landscape within the Exmoor National Park and North York Moors National Park. However, the special qualities of different National Parks vary and I need to consider the effect of the Iford Downs Shoot on the SDNP in accordance with the particular development plan policies now in operation in the SDNP and on its individual merits.
40. There is limited disturbance to surrounding occupiers. The only property within close proximity is Breaky Bottom Vineyard, which comprises the vineyard and a dwelling. As set out in the Noise Impact Assessment, whilst the shoot is audible when guns are on the closer pegs, this is limited and does not cause material harm to the living and working conditions of the occupiers of the dwelling and vineyard.

Conclusion

41. I have concluded that the mixed use for agriculture and for shooting of game birds, with particular regard to the tranquillity of the area, would not enhance the natural beauty of the South Downs National Park, and does not comply with Policy SD7 of the LP and Policy 3 of the PMP 2020-2025. It also conflicts with the Framework that requires development to conserve and enhance the landscape and scenic beauty of the SDNP. However, the mixed use does conserve and enhance ecology and biodiversity in the area in accordance with Policy SD9 of the LP. On balance I conclude that the mixed use results in conflict with the first of the purposes of the SDNP set out in Core Policy SD1 of the LP.
42. I have concluded that the mixed use for agriculture and for shooting of game birds would not enhance the experience of users of the public rights of way network, with particular regard to noise and disturbance, such that it does not comply with Policy SD7 of the LP and Policy 3 of the PMP 2020-2025. However, taking into account that participants in the shoot enjoy the special qualities of the SDNP, I conclude that the mixed use does not conflict with the second purpose of the SDNP as set out in Core Policy SD1 of the LP. Nevertheless, the greater weight attached to the first purpose of the SDNP in Core Policy SD1 of the LP means that, on balance, the mixed use does not satisfy the purposes of the SDNP so does not comply with the policy, and this carries great weight in the planning balance.
43. However, I have found that the mixed use for agriculture and for shooting of game birds supports the sustainability of the Iford Estate, in accordance with Policy SD40 of the LP, provides rural employment and supports the economic and social well-being of the local community. These factors carry moderate weight in favour of the mixed use.

² Appeal reference: APP/Y9507/W/15/3002162

44. For the reasons set out above, I conclude that on balance and having had regard to all other matters raised the mixed use for agriculture and for shooting of game birds would be contrary to the development plan and there are no material considerations of such weight as to warrant a decision other than in accordance with the development plan. Consequently, the appeal should be dismissed and the appeal on ground (a) fails.

Formal Decision

45. 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.

AJ Steen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Tim Comyn of Counsel, instructed by

Judith Norris	The Rural Planning Partnership
Ben Taylor	Managing Director of Iford Farms
Richard Fenton	RF Environmental
Jamie Horner	Shoot Manager

FOR THE LOCAL PLANNING AUTHORITY:

Jennifer Baxter MSC Assoc RTPI	Specialist Advisor, Planning Enforcement, Lewes District Council
Nathaniel Belderson	South Downs National Park Authority Planning Link Officer liaising with Lewes District Council

INTERESTED PARTIES:

Ned Westaway of Counsel, instructed by

Peter Hall	Breaky Bottom Vineyard
Christina Hall	
Christopher Baker	Iford Parish Council
John Gillies	Rodmell Parish Council
Brian Davies	Friends of the South Downs

Cllr Emily O'Brien

Cabinet Member for Planning, Lewes District Council

Michael Kennedy

Elizabeth Kennedy

Dame Kiri Te Kenawa

Crispin Holloway

Sue Carroll

Susan Thompson

DOCUMENTS SUBMITTED AT THE HEARING:

- Document 1: Suggested conditions
- Document 2: Appellants' response to the Hearing Statement on behalf of Peter and Christina Hall
- Document 3: Extract from Buglife Bug Directory regarding wart-biter bush-cricket
- Document 4: News story from gov.uk website titled Defra responds to Wild Justice challenge: releasing gamebirds on protected sites
News story from gov.uk website titled Defra sets out review into releasing gamebirds on protected sites
- Document 5: Condition of SSSI Units for Site Kingston Escarpment
- Document 6: Natural England Notice of Proposal to Carry Out and Operation at Kingston Escarpment & Iford Hill SSSI
- Document 7: Newspaper extract from Sussex Express dated Friday, August 18, 2017 titled "Welcome return of rare crickets"
- Document 8: Extract from The Species Recovery Trust document regarding the Wart-biter Bush Cricket
- Document 9: Email regarding Swanborough Shoot and notes of Incident 494 with Sussex Police
- Document 10: Core Policy 10 – Natural Environment and Landscape Character of the Lewes District Council Joint Core Strategy
- Document 11: South Downs National Park Partnership Management Plan 2020-2025
- Document 12: Pages 2 and 3 of the South Downs Local Plan