



# Appeal Decisions

Inquiry opened on 28 April 2009

Site visit made on 1 May 2009

by **Brian Cook BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State  
for Communities and Local Government**

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**Decision date:  
1 June 2009**

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## **Notice A: Appeals A – J: Appeal Refs: APP/J9497/C/08/2083419-28 Land at Steward Wood, Moretonhampstead, Devon TQ13 8SD**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by the persons named in Appendix 1 against an enforcement notice issued by Dartmoor National Park Authority.
- The Council's reference is ENF/0374/07 (A).
- The notice was issued on 21 July 2008.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the Land to use for:
  - (a) Residential purposes and human habitation;
  - (b) "forest school" and other courses, retreats and activities available to the public to attend, with or without payment;
  - (c) The provision of temporary residential accommodation to people attending activities listed in (b);
  - (d) Permitting camping on the Land by people attending activities listed in (b);
  - (e) Activities not connected with agriculture or forestry.
- The requirements of the notice are cease using or permitting the use of any part of the Land for:
  - (a) Residential purposes and human habitation;
  - (b) "forest school" and other courses, retreats and activities available to the public to attend, with or without payment;
  - (c) The provision of temporary residential accommodation to people attending activities listed in (b);
  - (d) Camping in excess of 28 days in aggregate in any period of 12 months;
  - (e) Activities not connected with agriculture or forestry.
- The period for compliance with the requirements is 180 days.
- Appeals A - J are proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

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## **Notice B: Appeals K – T: Appeal Refs: APP/J9497/C/08/2083429-38 Land at Steward Wood, Moretonhampstead, Devon TQ13 8SD**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeals are made by the persons named in Appendix 1 against an enforcement notice issued by Dartmoor National Park Authority.
  - The Council's reference is ENF/0374/07 (b).
  - The notice was issued on 21 July 2008.
  - The breach of planning control as alleged in the notice is without planning permission, operational development comprising the erection of 9 residential units with supporting platforms, a communal longhouse & kitchen, a bathhouse, a workshop (former kitchen),
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three compost toilets, a female urinal, a cycle shelter, a "forest school" shelter and the laying out of sitting out areas, firepit area, washing up area and children's play area on the Land in the approximate locations shown on the plan attached to the notice and as more particularly described in the Schedule appended to the notice.

- The requirements of the notice are
    - (a) Permanently remove the unauthorised structures from the Land, in particular the 9 residential units together with all supporting platforms, the communal longhouse & kitchen, the bathhouse, the workshop (former kitchen), the three compost toilets, the female urinal, the cycle shelter, the " power tower", the "forest school" shelter, the covered firepit area, the covered washing up area, the sitting out areas and children's play area; **and**
    - (b) Permanently remove from the Land all materials from which the structures are constructed and formed (excepting only any timber that was sourced from the Land); **and**
    - (c) Restore the Land to its former condition.
  - The period for compliance with the requirements is 180 days.
  - Appeal K is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended. Appeals L – T are proceeding on the grounds set out in section 174(2)(c) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period in respect of Appeal K, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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**Appeal Ref: APP/J9497/A/08/2072884**

**Steward Community Woodland, Moretonhampstead, Newton Abbot, Devon TQ13 8SD**

- 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 Affinity Woodland Workers Co-operative Limited against the decision of Dartmoor National Park Authority.
  - The application Ref 0671/07, dated 9 August 2007, was refused by notice dated 5 November 2007.
  - The development proposed is low impact living development incorporating sustainable agriculture and forestry, permaculture and education.
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**Decisions**

**Notice A: Appeals A – J: Appeal Refs: APP/J9497/C/08/2083419-28**

1. I direct that the enforcement notice be corrected by:
  - (a) the deletion of the words "use for" and the substitution therefor of the words "a mixed use for" in the first line of Section 3 of the notice; and
  - (b) the deletion without substitution therefor of the words "activities not connected with agriculture or" in clause (e) in section 3 of the notice.
2. Subject to these corrections I allow the appeals, and direct that the enforcement notice be quashed. I grant planning permission, on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely a mixed use for (a) residential purposes and human habitation; (b) "forest school" and other courses, retreats and activities available to the public to attend, with or without

payment; (c) the provision of temporary residential accommodation to people attending activities listed in (b); (d) permitting camping on the Land by people attending activities listed in (b) on the land at Steward Wood; (e) forestry on the land at Steward Wood, Moretonhampstead, Devon shown edged red on the plan attached to the notice subject to the following conditions:

- 1) The use hereby permitted shall be discontinued on or before 30 June 2014 and the land restored to its former condition in accordance with a scheme of work submitted to and approved in writing by the local planning authority.
- 2) No more than 15 adults and their dependent children shall be permanently resident on the land at any one time.
- 3) All foul drainage and contaminated surface water drainage shall be disposed of at all times so as to prevent any discharge into any well, borehole, spring or watercourse including any dry ditch forming a connection to a watercourse.
- 4) No petrol or diesel powered generator shall be operated on the land at any time.
- 5) Details of any external lighting shall be submitted to and approved in writing by the local planning authority before being installed or erected. Development shall be carried out in accordance with the approved details.
- 6) Within two months of the date of this decision a scheme, which shall include a timetable for its implementation, showing details of the layout of not more than 20 vehicle parking spaces shall be submitted to the local planning authority for approval in writing. The area(s) for the approved number of vehicle parking spaces shall be laid out in accordance with the approved scheme details and the area(s) shall not thereafter be used for any purpose other than the parking of vehicles.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no caravan, mobile home, vehicle, building or structure (other than those expressly authorised by this permission) or tent (other than those erected in accordance with condition 8 of this permission) shall be brought onto, positioned or erected on the land without the prior written approval of the local planning authority.
- 8) Within two months of the date of this decision a scheme showing details of the area(s) where not more than 20 hiking tents may be erected at any one time shall be submitted to the local planning authority for approval in writing. The area(s) approved shall not thereafter be used for the erection of hiking tents for more than 20 nights in any one calendar year.
- 9) A record shall be maintained at all times, and made available to the local planning authority on request, of all activities provided for the public at the land. The details recorded shall include the duration, subject and content of each activity, the numbers attending, the place from which

they have travelled to take part in the activity and the means of transport used to attend. The record shall be maintained for inspection by the local planning authority for a period of ten years from the date of this permission.

**Notice B: Appeals K – T: Appeal Refs: APP/J9497/C/08/2083429-38**

3. I direct that the enforcement notice be corrected by the deletion of the words "forest school shelter, the covered firepit, the children's play area and the covered wash-up area" and the substitution therefor of the words "power tower" in section 3 of the notice; the deletion without replacement therefor of A forest school shelter, E covered firepit, F children's play area and G covered wash-up area and the respective photographs in the Schedule of Operational Development attached to the notice and the deletion without replacement therefor of the letters A, E, F and G from the plan attached to the notice.
4. Subject to these corrections I allow the appeals, and direct that the enforcement notice be quashed. I grant planning permission, on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the erection of 8 residential units with supporting platforms (structures J, M, N, P, Q, S, T and V) a communal longhouse & kitchen, a bathhouse, three compost toilets, a female urinal, a cycle shelter and the laying out of sitting out areas on the land at Steward Wood, Moretonhampstead, Devon shown edged red on the plan attached to the notice, subject to the following conditions:
  - 1) The buildings hereby permitted shall be removed on or before 30 June 2014 and the land restored to its former condition in accordance with a scheme of work submitted to and approved in writing by the local planning authority.
  - 2) No more than 15 adults and their dependent children shall be permanently resident on the land at any one time.
  - 3) All foul drainage and contaminated surface water drainage shall be disposed of at all times so as to prevent any discharge into any well, borehole, spring or watercourse including any dry ditch forming a connection to a watercourse.
  - 4) No petrol or diesel powered generator shall be operated on the land at any time.
  - 5) Details of any external lighting shall be submitted to and approved in writing by the local planning authority before being installed or erected. Development shall be carried out in accordance with the approved details.
  - 6) Within two months of the date of this decision a scheme, which shall include a timetable for its implementation, showing details of the layout of not more than 20 vehicle parking spaces shall be submitted to the local planning authority for approval in writing. The area(s) for the approved number of vehicle parking spaces shall be laid out in accordance with the approved scheme details and the area(s) shall not thereafter be used for any purpose other than the parking of vehicles.

- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no caravan, mobile home, vehicle, building or structure (other than those expressly authorised by this permission) or tent (other than those erected in accordance with condition 9 of this permission) shall be brought onto, positioned or erected on the land without the prior written approval of the local planning authority.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), there shall be no development that would be within the terms of Schedule 2, Part 1 of that Order.
- 9) Within two months of the date of this decision a scheme showing details of the area(s) where not more than 20 hiking tents may be erected at any one time shall be submitted to the local planning authority for approval in writing. The area(s) approved shall not thereafter be used for the erection of hiking tents for more than 20 nights in any one calendar year.
- 10) A record shall be maintained at all times, and made available to the local planning authority on request, of all activities provided for the public at the land. The details recorded shall include the duration, subject and content of each activity, the numbers attending, the place from which they have travelled to take part in the activity and the means of transport used to attend. The record shall be maintained for inspection by the local planning authority for a period of ten years from the date of this permission.

**Appeal Ref: APP/J9497/A/08/2072884**

5. I allow the appeal, and grant planning permission for low impact living development incorporating sustainable agriculture and forestry, permaculture and education at Steward Community Woodland, Moretonhampstead, Newton Abbot, Devon in accordance with the terms of the application, Ref 0671/07, dated 9 August 2007, and the location plan submitted with it, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The use hereby permitted shall be discontinued on or before 30 June 2014 and the land restored to its former condition in accordance with a scheme of work submitted to and approved in writing by the local planning authority.
  - 3) No more than 15 adults and their dependent children shall be permanently resident on the land at any one time.
  - 4) All foul drainage and contaminated surface water drainage shall be disposed of at all times so as to prevent any discharge into any well, borehole, spring or watercourse including any dry ditch forming a connection to a watercourse.

- 5) No petrol or diesel powered generator shall be operated on the land at any time.
- 6) Details of any external lighting shall be submitted to and approved in writing by the local planning authority before being installed or erected. Development shall be carried out in accordance with the approved details.
- 7) Within two months of the date of this decision a scheme, which shall include a timetable for its implementation, showing details of the layout of not more than 20 vehicle parking spaces shall be submitted to the local planning authority for approval in writing. The area(s) for the approved number of vehicle parking spaces shall be laid out in accordance with the approved scheme details and the area(s) shall not thereafter be used for any purpose other than the parking of vehicles.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no caravan, mobile home, vehicle, building or structure (other than those expressly authorised by this permission) or tent (other than those erected in accordance with condition 9 of this permission) shall be brought onto, positioned or erected on the land without the prior written approval of the local planning authority.
- 9) Within two months of the date of this decision a scheme showing details of the area(s) where not more than 20 hiking tents may be erected at any one time shall be submitted to the local planning authority for approval in writing. The area(s) approved shall not thereafter be used for the erection of hiking tents for more than 20 nights in any one calendar year.
- 10) A record shall be maintained at all times, and made available to the local planning authority on request, of all activities provided for the public at the land. The details recorded shall include the duration, subject and content of each activity, the numbers attending, the place from which they have travelled to take part in the activity and the means of transport used to attend. The record shall be maintained for inspection by the local planning authority for a period of ten years from the date of this permission.

### **Procedural matter**

6. The Inquiry sat for three days from 28 April to 30 April inclusive. It was agreed by both parties that closing submissions would be tendered in writing not later than 15 May and the Inquiry was adjourned until this date. Upon their receipt the Inquiry was closed in writing on 18 May 2009.

### **Background**

7. On 6 July 2000 a retrospective planning application for a change of use of the land to 'low impact, sustainable development associated with agricultural/forestry enterprise, incorporating educational and residential elements' was refused planning permission by the Authority and the

subsequent appeal<sup>1</sup> was dismissed on 3 September 2001. The Inspector, Mr Fussey, recorded at paragraph 37 of his decision the debate at the Inquiry concerning the description of the application as a change of use rather than an operational development. He did not need to resolve the matter but I note that most of the structures then were tents placed on substantial platforms.

8. The Authority then issued an enforcement notice alleging a material change in the use of the land to a mixed use of agricultural and forestry purposes and residential use, including the siting of tents and benders for human habitation. In paragraphs 8 to 15 of his decision<sup>2</sup> dated 12 August 2002, the Inspector (Mr Tamplin) considered the development that was alleged and concluded that the notice misdescribed the breach of planning control. Mr Tamplin therefore corrected the allegation to include both operational development (the erection of six residential and one visitors' benders, communal longhouse and kitchen, and compost toilet all with supporting platforms) and the use of land prior to allowing the appeal and granting planning permission subject to six conditions. The first of these specified that the permission was for a period of five years (that is until 12 August 2007) after which all the structures permitted were to be removed and the uses permitted were to cease.
9. Three days before the permission granted was due to expire, the application that is the subject of the S78 appeal was submitted to the Authority although it was not accepted as complete until 16 August 2007. The proposal was again described as an application for a change of use, surprisingly so in the light of the two appeal decisions and the clear statement in the document supporting the application that permission was sought for nine dwellings and 14 other structures including a polytunnel. In my view, the description is not materially different in substance from that considered by Mr Fussey although the emphasis on the different elements may have shifted. It is very surprising, in the circumstances, that the Authority accepted and again dealt with the application as a change of use, a matter which Mr Jarvis accepted.
10. In July 2008 the Authority then issued the notices that are the subject of the S174 appeals.

### **The Notices**

11. My understanding of the evidence before me is that, at the date when the notices were issued, the appeal site was in a variety of uses and that various structures had been erected in association with and to facilitate those uses. Broadly, these structures and uses fell into two categories. The first category was those associated with the residential use of the land. This category includes the residential units themselves, the use of land around them for purposes such as the siting of children's play equipment, and the use of land for the erection of communal facilities such as the compost toilets, the bathhouse, the cycle shelter and the longhouse. The second category includes those other uses and structures not directly associated with forestry or agriculture which fall under the broad description of 'education'. This includes the forest school and the provision of temporary accommodation and camping areas for those visiting the site.

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<sup>1</sup> APP/J9497/A/01/1063114

<sup>2</sup> APP/J9497/C/01/1067412

12. The Authority has issued two notices, which are not in the alternative, requiring the uses alleged to cease (notice A) and the operational development to be removed (notice B).

**Notice A**

13. Although no appeals have been made on the legal grounds I have considered whether it would have been more appropriate for this notice to allege a breach of condition given that Mr Tamplin permitted both operational development and a material change of use for the five year period referred to above. However, it appears to me that the scope of the use alleged is much wider than that which Mr Tamplin permitted and I am therefore satisfied that the notice is correctly framed in that respect.
14. During my site inspection I saw the growing area. It is relatively modest in size and, at the time, part was being used as the tree nursery. I understand that at the date when the notices were issued very little, if any, produce was sold and the primary purpose was to provide some of the food needs of the Steward Woodland Community (the Community). As a matter of fact and degree, it is my judgement this is a use incidental to the residential occupation of the site rather than an agricultural use even though its location is outside the settlement area. However, I consider that the allegation should refer to a mixed use that includes forestry as this activity was being carried out when this notice was issued.
15. The allegation does include reference at (e) to activities not connected with agriculture or forestry. Since unspecified activities are also included at (b) I do not believe that (e) is sufficiently clear as to its meaning and it was agreed at the Inquiry that it could be deleted without injustice to either party. In Section 5 there is what I take to be a typographic error in requirement (c). This includes a reference to the activities listed in (d) when it appears to me from the context that it should be to (b). I have reflected this in the summary above but, in the light of my decisions, no variation of the notice in this regard is necessary.

**Notice B**

16. The list of operational development alleged does not include the power tower although this is listed in the Schedule as item K and is also referred to in the requirements at Section 5. For clarity the term should be added to the allegation.

**Conclusions on this matter**

17. I shall correct the notices as indicated above, as I am empowered to do under S176(1) of the Town and Country Planning Act 1990 as amended, since I am satisfied that no injustice would be caused by so doing.

**Notice B: Appeals K – T: the appeals on ground (c)**

18. The gist of the appellants' case on this ground is that the structures at the appeal site are temporary, are not permanently affixed to the ground, are quickly constructed and removed and are of modest size. As such, they do not amount to development that requires planning permission. My understanding



is that the evidence, given primarily by Mr Gower, that many of the structures amount to development permitted under Schedule 2, Part 4 of the Town and Country Planning (General Permitted Development) Order 1995, as amended, (GPDO) is an argument that is relevant to the fall back position under the deemed applications and the S78 appeal rather than to this ground of appeal.

19. Case law in this area is well established. The courts have held that where what has been done has resulted in the erection of a building, the court would need a great deal of persuading that the activity had not amounted to a building or other operation and thus development under S55 of the Act. The courts have also held that the three primary factors relevant to what is a building are its size, its permanence and its physical attachment to the ground although this last factor is not conclusive in itself. During my site inspection I considered each of the structures alleged in the notice, insofar as they remained in the same condition as when the notice was issued, in the light of these factors.
20. I turn first to the kitchen/longhouse and the dwellings which are structures D, J, M, N, P, Q, S, T and V respectively in the Schedule. The frames are primarily constructed of timber taken from the wood itself or recovered from pallets. The external surfaces are generally canvass/tarpaulin or, in the later structures, timber panels; other reclaimed materials, such as window frames and doors, are also used. The evidence, which I confirmed during my site visit, is that the structures are joined together by ropes, nails and screws. In most cases the structures are on timber platforms which have been set into the hillside to provide a level development base. The platforms themselves are significant structures using timber poles that have been driven into the ground and, in a few cases, the trunks of trees which have otherwise been largely taken down.
21. It seems clear to me that all of these structures have been built on-site rather than brought to it ready made. They are of substantial size with some having several rooms and being on more than one level. I saw that they were typically fully furnished with, among other things, floor coverings and well stocked bookshelves. I accept that they can be taken down quite quickly and, by the very nature of the materials used, the action of the elements will result in a relatively short life. Nevertheless, they are intended to provide a communal meeting/food preparation area and family shelters and I conclude that, as a matter of fact and degree, each of these structures has resulted in a physical change of some permanence. Having regard also to their size and the degree of attachment to the ground (either directly or by being attached to the platform which itself is firmly anchored in the ground) I conclude that each of these structures is a building which amounts to operational development requiring planning permission under S55 of the Act.
22. The cycle shelter (B in the Schedule), the compost WCs (C and W), the female urinal (H) and the bath house (L) are all of very similar construction to the kitchen/longhouse and the dwellings although they are generally smaller in size. However, in my view, they are also substantial structures that have been built on-site and which have a degree of permanence that has given rise to a physical change in the land. Accordingly I conclude that these too amount to buildings requiring planning permission under S55 of the Act.

23. The power tower (K in the Schedule) provides electric power to the Community. It comprises a timber framed cabinet mounted on a timber platform which itself rests mainly on a boulder although it is also supported by a timber pole driven into the ground. The batteries stand on top of the cabinet. Although the structure is not large it is, in my view, intended to have the same degree of permanence as the dwellings and the other buildings which it supplies and therefore, as a matter of fact and degree, I believe that it amounts to operational development that requires planning permission under S55 of the Act.
24. Structures O and R in the Schedule (the workshop and a residential unit respectively) had been removed by the time of my site inspection. Since the onus is on the appellants to establish their case under this ground of appeal I have no evidence before me which would cause me to disagree with the Authority's conclusion in regard to these two buildings.
25. The forest school shelter (A in the Schedule), the covered firepit (E), the children's play area (F) and the covered wash-up area (G) are all similar in their concept. In essence, they provide an area where an activity takes place over which a simple shelter has been erected. In the case of the forest school this was a tarpaulin lashed to a number of poles which themselves were attached to three trees and a single supporting timber pole. There were no sides to this structure. In the case of the other three, none of the covers were in place at the time of my site inspection. I understand from the evidence and the photographs in the Schedule to the notice that the covers took the form of a tarpaulin sheet over a simple bender frame. I further understand that those over the fire pit and the children's play area collapsed under the weight of the winter snow.
26. In my opinion each of these structures is of a wholly different scale to the others on site being both smaller in size and essentially structures which may be either open to the air or covered but only partially enclosed. In my view they do not exhibit the degree of permanence required, as a matter of fact and degree, to be considered as buildings.

### ***Conclusions on the appeals on ground (c)***

27. I therefore judge that structures A, E, F and G do not amount to operational development and I shall correct the allegation in the notice accordingly. To that extent, the appeals on ground (c) succeed.

### **Notice A: Appeals A – J: the appeals on ground (a) and the deemed applications; Notice B: Appeal K: the appeal on ground (a) and the deemed application and the S78 Appeal**

#### ***Preliminary matters***

##### *The scope of the deemed applications and the S78 appeal proposal*

28. S177 of the Act confirms that any planning permission granted as a result of an appeal under S174 is for the matters stated in the enforcement notice as constituting the breach of planning control. In this case, Appeals A - J and

Appeal K therefore relate to the allegations, as corrected, set out in notices A and B respectively.

29. With regard to the S78 appeal scheme, the Community operates as a limited company. In the seventh annual report and accounts the principal activity of the company is described as having been 'to continue to provide examples of sustainable living and working by managing the land at Steward Wood in a sustainable manner using the principles of permaculture and forest gardening'. This contrasts with the description in the same section of the first annual report<sup>3</sup> which states that the principal activity 'has been to manage certain land in a sustainable manner using the principles of permaculture and forest gardening for the benefit of the occupants of the site'. In particular, I consider that the educational elements of the project, both in terms of the courses and the demonstration of a working example offered, to be more important now than at the outset of the enterprise.
30. My understanding is that the membership of the Community is subject to change and that each family or individual pays a rent to the co-operative. Over time, some Community members have had paid employment elsewhere while others have worked from home on projects (for example website design) that are unrelated to the woodland location of the settlement. Although there are many detailed practical differences, in principle, the Community seems to me to be much like any other small settlement where the residents come and go over time, the homes are altered according to requirements and taste and the employment sought and undertaken is influenced by the skills and experience available at any particular time.
31. Therefore, having regard to the aims expressed in the Community's Mission Statement in the document supporting the planning application<sup>4</sup>, the evidence, what I saw during my site inspection and my conclusions on the ground (c) appeals above, I believe that the primary purpose of the development that has been carried out is the establishment of a residential community living according to a particular interpretation of the permaculture concept and that residential occupation of the land in some form is integral to the project.
32. Although the document supporting the planning application states that the Community seeks to renew the permission granted in 2002, the evidence is that the residential units now on site are materially different to those permitted which are described as 'six residential and one visitor's benders.....all with supporting platforms'. I have already referred to the nine dwellings and 14 other structures for which permission is sought but no detail has been provided of their design, their siting in relation to the surrounding ground levels or their location within the ill-defined settlement area. I therefore have very little information on which to assess the effect of the intended development. In these circumstances, I have dealt with the S78 appeal on the basis that it was submitted to and assessed by the Authority, namely as an application for a change of use and, in closing, Mr Stephens accepted that this was the correct approach. In doing so however, I have taken the fact that the Community will wish to live on the land into account in dealing with both the deemed

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<sup>3</sup> Document 6

<sup>4</sup> A co-operative of people living and working together with the aim of fostering environmental awareness and solutions by providing practical examples of sustainable land use.

application under the notice A appeal and the S78 appeal. In addition, I am clear that the Community intends to seek a permanent planning permission in due course. However, I have dealt with the S78 appeal on the basis that the development would persist only for the five year period sought.

*The fall back position*

33. The appellants' evidence included argument that, in the event of the appeals being dismissed, many of the structures could nevertheless be erected in accordance with the permitted development rights available under the provisions of the GPDO.
34. There are two limbs to the general definition of development set out in S55 of the Act; operational development and the making of a material change in the use of land or buildings. It seems to me that if the appeals were dismissed the Community would still own a woodland which could then be used and managed as such; S55(2)(e) makes clear that forestry is a use of land.
35. Schedule 2, Part 7, Class A of the GPDO sets out the development that is permitted on land used for the purposes of forestry, including afforestation. The precondition is that the development should be reasonably necessary for those purposes. Clause A.1(a) specifically states that development is not permitted by the Class if it would consist of or include the provision or alteration of a dwelling and clause A.2 sets out the prior approval procedures to be followed before any building is erected or altered. In my view therefore, the Community would not be able to use the permitted development rights available under this Part to erect any residential unit and, in respect of any other building, would need to establish, first, that it was reasonably necessary for the purposes of forestry and, second, that the design, siting and external appearance were acceptable to the Authority.
36. Mr Gower sought to argue that, since the buildings were all of a temporary nature, they could be developed without express permission under Schedule 2, Part 4, Class A of the GPDO. However, this Class specifically states that the buildings and moveable structures must be required temporarily in connection with and for the duration of operations. Furthermore, development is not permitted under Class A A.1(b) of the Part if planning permission is required for those operations but it is not granted or deemed to be granted. In the fall back position envisaged there would be no express or deemed planning permission for operational development.
37. My conclusion on this part of the appellants' case therefore is that there is very little realistic prospect of built development similar to that now present at the site, either in number or type, being erected under the GPDO rights available.
38. However, I turn now to woodland management. Mr Beasley confirmed that the Authority's control over this was limited to consultation responses to the Forestry Commission on any felling licence applications that might be submitted. He also explained that certain volumes of timber could be felled for personal use without a licence and estimated that, in this wood, this might amount to some 40 trees a year. I further understand that timber arising from coppicing is not included within this volume. Mr Beasley accepted that, through its future management of the wood, the Community could alter its

composition (either by intention or default) and therefore affect the habitat available and biodiversity. I consider that there is a reasonable prospect of this fall back position occurring.

### ***Planning policy***

39. At national level *Planning Policy Statement 1, Delivering Sustainable Development* (PPS1) states that sustainable development is the core principle underpinning planning and refers to the widely used definition of sustainable development as being "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (paragraph 3). The more recently published supplement to PPS1<sup>5</sup> confirms that tackling climate change is a key Government priority for the planning system which has a pivotal and significant role in helping to deliver the Government's ambition of zero carbon development.

40. Section 61 of the Environment Act 1995 sets out the purposes of National Parks. These are:

- (a) To conserve and enhance the natural beauty, wildlife and cultural heritage of the National Parks; and
- (b) To promote opportunities for the understanding and enjoyment of the special qualities (of the Parks) by the public.

Section 62 of the Environment Act 1995 enshrines the principle that, where there is a conflict between the two purposes, the first should prevail when decision makers discharge their duties. No evidence was put to me that the statute had been superseded in this regard and it is given specific expression in the relevant development plan through policy CO2 of the Devon Structure Plan 2001 to 2016 (SP) which was adopted in October 2004. This policy was saved by a Direction issued by the Secretary of State in September 2007 and continues to have effect.

41. The Authority submitted within its evidence a policy, number 52, included within the Joint Unitary Development Plan for Pembrokeshire 2000 – 2016 Supplementary Planning Guidance adopted by Pembrokeshire County Council on 26 June 2006 and by the Pembrokeshire Coast National Park Authority on 24 May 2006. This policy sets out the particular circumstances in which low impact development, such as that proposed here, will be permitted. Mr Jarvis explained that there had been a similar policy in the Dartmoor National Park Local Plan First Review 1995 – 2011 but that this had not been saved following the adoption in June 2008 of the Dartmoor National Park Authority Local Development Framework Core Strategy Development Plan Document 2006 – 2026 (CS). Although Mr Jarvis indicated that a similar policy was likely to be put forward in a future Development Plan Document (DPD) he acknowledged that, at present, there was a policy hiatus with respect to the development before me as I have characterised it above.

42. Of the CS policies cited by the Authority in the reasons for issuing the notices (and which supersede those quoted in the decision on the planning application that is the subject of the S78 appeal) I consider CS policies COR1 and COR2 to

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<sup>5</sup> Planning and Climate Change: Supplement to Planning Policy Statement 1 December 2007

be the most relevant. Respectively, these set out the overriding principles of sustainable development which will be taken into account when assessing all development proposals and the spatial development strategy to be followed within the National Park. Where, as in this case, the development is proposed for a site that lies outside any local centre or rural settlement, the principle of development will only be acceptable where not less than one of the six criteria set out is met.

43. As I understand it, CS policy COR15 is principally concerned to ensure that all the National Park's residents have access to good quality affordable housing with the term 'affordable' having the meaning ascribed to it in Annex B of *Planning Policy Statement 3, Housing*. It is no part of the appellants' case that the project provides such 'affordable' housing. However, the policy also complements CS policy COR2 with specific regard to housing development. Where, as in this case, the site is outside a local centre and rural settlement, and the proposal does not involve the conversion of a rural building, development will be restricted to that serving the proven needs of agriculture and forestry or other essential rural businesses.
44. While I accept that the interpretation of the permaculture concept that the Community wishes to follow involves residence within the wood, as set out above I do not consider that the primary purpose of the development proposals before me can be fairly described as either forestry or agriculture. Again, as I understand the appellants' case they do not seek to argue that there is either a financial or a functional need (other than in the sense that living on the site is integral to the concept) for the residential development in the terms set out in Annex A of *Planning Policy Statement 7, Sustainable Development in Rural Areas* (PPS7). Accordingly, although a considerable amount of evidence was presented on this matter, I judge that such an analysis is inappropriate to the circumstances of this development and, therefore, do not consider it further. This conclusion is not inconsistent with those of colleagues whose decisions<sup>6</sup> in appeals dealing with similar types of development were put to me. It seems to me that in each of those cases regard was had to the holistic character of the development in concluding that the tests in PPS7 should not be rigidly applied.

### **Main issues**

45. In the light of the foregoing, I consider the main issues to be:
- (a) The effect that the development carried out and proposed has had and would have on the purposes of National Park designation;
  - (b) The effect that the development carried out and proposed has had and would have on the character and appearance of the National Park with regard to the various uses that have been and are proposed to be undertaken and the various structures that have been and are proposed to be erected;
  - (c) The effect that the development carried out and proposed has had and would have on the tranquillity and wildlife of the National Park with regard to the various uses that have been and are proposed to be

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<sup>6</sup> APP/C1435/C/03/111412 etc Land at Quicken Wood included as Appendix 4 to the document supporting the planning application; APP/C1435/C/08/2076232 land at Quicken Wood included as Document 10; and APP/K1128/C/06/2032148 Land at Allaleigh Lane (Landmatters) referred to in the evidence of Mr Thompson-Mills.

undertaken and the various structures that have been and are proposed to be erected; and

- (d) The effect on the living conditions of the nearby residents with regard to noise and disturbance from vehicle parking and manoeuvring arising from the development carried out and proposed.

46. I have set out above my understanding of the nature of the development that is the subject of the various appeals before me. The evidence presented did not distinguish between them in any significant way and, in considering the issues that I have identified, I have dealt with all three sets of appeals together in the following paragraphs. I have taken account of the fall back position under each issue as appropriate.

*The effect on the purposes of National Park designation*

47. The objective of national and strategic policy is to give great weight to the statutory National Park purposes. This objective underpins CS policy COR2 which aims to prevent development outside local centres and rural settlements other than in the specific circumstances set out in part (iii) (a) to (f) of the policy. I understand the policy to apply with equal force to both operational development and to material changes in the use of land. Mr Gower did not seek to argue that the development met criteria (c), (d) or (e) of this policy.

48. As the development is not primarily for the purposes of either forestry or agriculture it follows that there can be no proven need for the development to serve these uses and the appellants did not seek to argue this as a main plank of their case. The evidence is that only a small proportion of the Community's income has been and is projected to be earned directly from the use of the land. I can appreciate that the appeal site is a desirable location at which to pursue the aims set out in the Community's mission statement. However, I have no evidence that this location is essential for their achievement and do not believe that the development can be characterised as an essential rural business.

49. While I accept that the Community has developed power and other infrastructure systems that make no demand on any of the public grids, I believe that CS policy COR2 (b) relates to the provision of specific utility and infrastructure projects themselves. It is not therefore appropriate to assess the Community's development against this criterion. Furthermore, it seems to me that the proliferation of any development in the open countryside of the National Park undermines both the first purpose set out in S61 of the Environment Act 1995 and the fundamental objective of CS policy COR2. I therefore consider that, in introducing a primarily residential development into the open countryside of the National Park, conflict with DP policy CO2 and CS policies COR2 (a) and (f) and COR15 has been and would be caused by the proposal that is the subject of these appeals.

*The effect on the character and appearance of the National Park*

50. The appeal site is located to the north and east of the A382. The site includes what I understand to be the line of a former railway track which marks one boundary and which I also understand to be the subject of a planning

permission granted by Devon County Council to create a cycleway along it. From this track a path rises through the woodland to the quite extensive settlement area which is on the hillside.

51. The Authority's evidence is that at the date when the Community purchased Steward Wood it was mainly a mixed conifer plantation with scattered broadleaves although the eastern corner of the site is scheduled as ancient semi-natural woodland. Woodland makes an important contribution to the character and appearance of the National Park and Steward Wood is designated as woodland of particular conservation importance under Section 3 of the Wildlife and Countryside (Amendment) Act 1985.
52. At the time of my site inspection, when the trees were in near-to-full leaf, the appearance of the valley side was that of a virtually continuous canopy. There are no public footpaths through the appeal site although the Community has created a permissive path which runs below the settlement area. Apart from the cycle shelter, none of the structures that I have concluded to be operational development were then visible from the public domain.
53. However, the photographic evidence of the Authority shows that during the winter months some of the dwellings are visible from across the valley and Mr Thompson-Mills acknowledged that the settlement is also visible from a few places along the road throughout the year. In my opinion, the urbanising effect of these dwellings, which is emphasised by the smoke rising from them and the cleared ground surrounding them, and the other operational development that has been carried out and is planned reduces the area covered by woodland. The character and appearance of the wood itself and therefore the National Park has been and would be harmed as a result. In this regard the development that is the subject of the appeals is and would be in conflict with CS policies COR1 (h) and COR3.

*The effect on the tranquillity and wildlife of the National Park*

54. Turning first to the effect on the tranquillity of the National Park, I visited (unaccompanied) the vicinity of the site on two occasions during my stay in the area, once on an afternoon and once on an early evening. My formal site inspection took place during the morning. On each occasion, this generally quiet and tranquil area was disturbed only by the noise from the virtually continuous flow of traffic on the main road.
55. I recognise that the introduction of a residential use into the woodland has the potential to disturb the tranquillity of the area. However, I saw no evidence that any vehicles go beyond the track at the boundary and I saw no evidence either of any of the cleared areas around the dwellings where this had occurred being maintained by power driven machinery. Indeed, it seems to me that the use of such power tools would be completely contrary to the ethos of the Community.
56. Similarly, the Community is opposed to the use of power tools in its management of the woodland and continues to fell any trees with axe and saw, using power tools only to further process the timber. In my view this method is unlikely to create any more disturbance than a more commercial forestry



operation and I am, in any event, mindful of the fall back position discussed above.

57. I am therefore of the opinion that the development that is the subject of the appeals before me would not be inherently harmful to the tranquil nature of the immediate area and consider that, in this regard, no conflict with CS policy COR11 has been or would be caused. I recognise that in this respect I come to a different view to Mr Tamplin. However, I believe that the Community has evolved and the way in which they have developed the site has changed in the seven years that have elapsed since he visited the site and I have dealt with these appeals on the evidence before me. In addition, it seems to me likely that the proposed cycle path (which Mr Jarvis confirmed did not, ultimately, attract an objection from the Authority) will introduce an element of noise and disturbance from human beings along the edge of the woodland area and that this is change in the circumstances pertaining when Mr Tamplin came to his view.
58. I turn now to the effect on the wildlife of the area. While the Authority considers that the very presence of substantial numbers of people in the wood will be disturbing to wildlife, the evidence of Mr Wood is that wildlife very quickly adapts to what is the new norm. I have no objective evidence either way but, given my understanding of the ethos of the Community, I see no reason to conclude that planning permission should be withheld for this reason alone.
59. The Authority has criticised the lack of progress towards the Community's stated objective to increase the broadleaf species in the woodland and thereby enhance its biodiversity interest. Mr Thompson-Mills explained the way the woodland management plans had evolved with experience and changes in the Community membership and expertise and Mr Wood expressed confidence that the Continuous Cover Forestry (CCF) regime now being pursued would be successful in ultimately changing the woodland structure if implemented as planned.
60. I have some sympathy with the Authority's view that progress on biodiversity enhancement has been slow but I have no evidence that habitats and nature conservation interests have not been maintained or protected. Having regard also to the fall back position discussed above I therefore conclude that no conflict with CS policy COR7 has been or would be caused.

*The effect on the living conditions of the nearby residents with regard to noise and disturbance from vehicle parking and manoeuvring*

61. Although not raised as an objection by the Authority this is a matter of concern to the residents of Steward Cottages. I understand that the residents of these properties have a right of access over the track that is owned by the appellants and Mr Thompson-Mills pointed out during my site inspection the location of the parking spaces that the Cottages residents have a right to use. The application that is the subject of the S78 appeal proposes that up to 20 vehicle parking spaces should be provided on the former railway track for the Community's vehicles and those of visitors.

62. Although no parking spaces are marked out, there is a sign indicating that vehicles associated with the Community should be parked along the track well beyond the parking spaces for the Cottages. However, no plan has been submitted to show how many spaces could be accommodated and I am aware too that this land is subject of the permission for a cycleway that I have referred to above although I have no information about its precise route or the programme for implementation. In order to protect the living conditions of the Cottages residents I consider that the vehicle parking area should be located beyond the sign, which is itself beyond the path into the settlement area, and believe that, subject to the imposition of a condition to this effect, planning permission should not be withheld on this ground alone.

*Other matters*

63. The design of the settlement is largely a matter of subjective opinion. However, I consider that the scale and layout of the operational development, the materials used and, in the totality of the concept including the use of on-site energy sources, a sustainable use of the site has been achieved. Furthermore, although there is no footway along much of the road, the site is within reasonable walking distance of Moretonhampstead and the evidence is that members of the Community attempt to use means, including cycles, other than the private vehicle for travel wherever possible. I do acknowledge that there is uncertainty over the means of travel to the site of those attending courses and other events but, having regard to the relatively low numbers planned, I consider that no conflict with CS policies COR4 and COR13 has been or would be caused in this regard.

64. While I accept that the development is not linked to any mains services no evidence was produced to show that any harm has been caused as a result. I therefore consider that no conflict with CS policy COR14 has been or would be caused in this regard.

*Summary of assessment against policy*

65. As set out above I have found that there is and would be no conflict with development plan policy in regard to my third and, subject to appropriate conditions, fourth issues. However, this finding is outweighed by my conclusions with regard to my first two issues. In particular, I consider that the first purpose of National Parks has been and would be undermined by the development carried out and proposed. This conflict with development plan policy is sufficient to require that the appeals should be dismissed unless there are material considerations to indicate otherwise.

*Other considerations*

66. Mr Tamplin dealt with the previous appeal on the basis of that development being of an experimental nature and not intended to become permanent. However, at other points in his decision the prospect of a further application is anticipated (paragraphs 31 and 39) and he sets out two matters which could be considered if a renewal of permission were to be sought. I now deal with those in turn.

67. The first concerns the experimental nature of the development and the extent to which the success over the five year period of the previous permission can be assessed. The Compact Oxford English Dictionary gives two definitions for 'experiment', namely 'a scientific procedure undertaken to make a discovery, test a hypothesis, or demonstrate a known fact' and 'a course of action tentatively adopted without being sure of the outcome'.
68. Condition 6 of the permission required the submission of an annual report to the Authority giving details of the activities carried out and compliance with three documents. The annual reports submitted include a commentary setting out progress against 15 criteria for developments associated with sustainable land-based rural activities (the 15 criteria), the management plan and biodiversity action plan for the woodland (woodland management plan) and the business and enterprise plan (BEP) and accounts. While the Community's project can be characterised as both the test of a hypothesis and a course of action adopted without any certainty about the outcome, it seems to me that no mechanism is in place to allow an objective assessment of the experiment as a whole.
69. I understand that the 15 criteria have been developed by the Rural Planning Group but I have no evidence regarding that Group's status or the manner in which these criteria have been incorporated into national or development plan policy, if indeed they have. It is common ground that the woodland management plan has evolved in the light of experience and as the Community has gained additional skills with an emphasis now on the CCF management regime. Although the Authority argue that there has been a lack of progress against the woodland management objectives, it seems to me that a narrow view of 'activity' as being primarily area felling and replanting has been taken in coming to this conclusion. The evidence suggests that CCF in particular is a regime in which the management work that has been undertaken may not be so apparent on occasional inspection.
70. With regard to the BEP and the accounts, I note that in its financial statement for the period ended 31 March 2001<sup>7</sup> the Community resolved to remove the statutory requirement to carry out an (independent) audit of the accounts for future years. Subsequent accounts have not therefore been subject to independent scrutiny. However, the BEP is no more than an indication of how the Community expects to generate its income and the accounts reflect the extent to which the BEP has been achieved for the previous year. In my view these two document sets show that, over time, a greater emphasis has been and will be given to education in the widest sense based on the Community concept as a whole. While the Community is not self-sufficient, I do not understand this to be an aim of the project. However, the evidence is that the Community is increasingly self-reliant as a result of its evolving BEP in that more of its needs and requirements, such as energy production, are met from the land.
71. The experiment has self evidently run its course insofar as the five year planning permission granted has expired. Some of the activities planned by the Community have not been achieved because they were too ambitious for

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<sup>7</sup> Document 6

the number of members in the early years, because bad weather interrupted progress or because of other factors and plans have been modified accordingly. Nonetheless, particularly in the absence of an overall assessment framework, I do not consider that there is sufficient objective evidence to show that the experiment, as a whole, has failed.

72. It does not appear that any of the individual elements of the project are innovative in themselves. The renewable energy systems are well known and the building techniques, both used and proposed, have been demonstrated elsewhere. While CCF is relatively untried in this country there are other locations where it is in operation. Mr Goldring accepted that there were also a number of other groups applying an interpretation of the permaculture concept to their situation and that some of these projects were also in a woodland setting. Mr Goldring also conceded that it was not necessary to live on the appeal site to undertake any of the Community's activities in isolation.
73. Nevertheless, it is my view that the value of the project is its holistic nature. Mr Goldring explained that the Community was one of the best developed and most cohesive and that a number of lessons were being learned about how it might be possible to live in and from a wood. I have noted the many representations from those who have visited the Community and gained from the experience and heard the evidence of interested parties about the contribution that the Community members make to the local area and the flexible skills resource that they can offer to those involved with environmental projects. Mr Goldring emphasised the value to be gained from what is in effect a working example of a permaculture system and, in my view, the increased educational role planned represents a further stage in the project.
74. The second matter concerns compliance with conditions on the previous permission. The use of the land did not cease after the five years permitted and the structures that were approved were not retained as approved and others have been erected. In addition, as the composition of the Community has changed and the demand for travel has altered the number of vehicles parked has exceeded that permitted. The evidence is therefore that not more than two of the six conditions have been adhered to or complied with.
75. My view of the evidence of Mr Thompson-Mills in particular is that the Community may not have understood the precise scope of the permission granted as a result of the earlier appeal. I accept therefore that conditions 2 and 3 (retention of structures and removal of GPDO rights to, in part, erect any further structures) may have been breached in ignorance. Furthermore, the Community has been open in the annual reports about the development that had taken place and would do so in future and Mr Aven explained that no enforcement action had been taken in view of the limited life of the permission. Moreover, although an application for a renewal of planning permission was left until very late in the day, it was nevertheless made before the permission actually expired.

*Overall summary*

76. I consider that the venture has evolved into one where the education resource provided by what is, in effect, a demonstration project of permaculture

principles being applied in practice is of significant wider benefit. I believe that this role distinguishes the project now from that granted planning permission in 2002 and justifies setting aside the usual presumption against a second temporary planning permission being granted set out in paragraph 112 of Circular 11/95, *The Use of Conditions in Planning Permissions*.

77. Furthermore, the appellants' evidence is that an independent assessment of the carbon footprint of the Community residents shows it to be about a third of the UK average. I accept that this would not take into account any emissions associated with travel by visitors to the project but understand that these would be included in the visitors' own carbon footprints. In addition, two areas where dwellings had previously been sited were pointed out to me during my site inspection. The site of the first structure to be removed was regenerating well and, apart from the relatively bare earth, there was no sign that the second structure had been present. I consider that within a relatively short period of the structures being removed and the site being vacated there would be little if any evidence that the settlement had ever been there. Having regard to the almost total reliance on renewable energy sources and reclaimed/reused materials I believe that the development meets many of the national policy objectives concerning sustainable development.
78. I have considered the various other appeal and local planning authority decisions that were put to me. While there are some similarities with the appeals before me there are also differences in their locations, the size of the groups involved and the objectives of the development. I have dealt with the appeals therefore on the evidence before me.
79. Having regard to all these considerations I believe that the harm that I have identified to both the purposes and (with due regard also to the fall back position) the character and appearance of the National Park would not be permanent and would persist for a short period only following the cessation of the use and the removal of the operational development. In the circumstances I consider that the benefits of this sustainable development project continuing for a further period outweigh the harm identified such that a time limited planning permission should be granted for the development carried out and proposed.

#### *Conditions*

80. I have considered the conditions suggested by the Authority<sup>8</sup> in the light of the advice set out in Circular 11/95. I have combined some and adjusted the wording, where necessary, of others in the interests of clarity. Where appropriate, I also indicate below where a condition should apply to a specific planning permission only of the three that I am granting.
81. I shall grant planning permission for the five year period sought in the S78 appeal with the requirement, as appropriate, that the use cease or the operational development be removed at the end of the period. The Authority suggested a two year permission and I have considered whether the five year period sought should run from August 2007. However, the Community has indicated that an application for a permanent planning permission will be

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<sup>8</sup> Document 12

- submitted in due course. I believe that it is important that such an application be judged against the planning policy that Mr Jarvis indicated was likely to be put in place and, although I have no evidence as to the timetable for its preparation, I consider that five years should allow the appropriate DPD to be prepared and adopted.
82. Neither the deemed planning permission in respect of notice A nor the planning permission granted under the S78 appeal permit any operational development; that is permitted only by virtue of the deemed planning permission granted in respect of notice B. Planning permission is not granted for structures O and R in the notice B Schedule since these have been removed and, in this respect, the requirements of the notice have been complied with. Both notices include a plan showing the location of each structure and use and the Authority has also included in the notice B Schedule photographs of each structure. From the evidence, it appears to me that the Authority has a detailed understanding of the nature of each at the time when the notice was issued. As noted above, some of the structures do not now appear as they did then for various reasons such as the effect of the weather. In all these circumstances, I do not consider that the suggested conditions requiring a detailed record, photographic or otherwise, to be made now (condition 5) and specifying the locations of the structures and uses (condition 3) to be necessary.
83. It is important that the harm to the National Park purposes and character is minimised during the period of the permissions. I shall therefore impose the suggested conditions 4, 6, 7 and 8 which limit the number of residents and their dependent children, control the pollution of any water source or course, prevent the installation of external lighting and prohibit the use of petrol or diesel powered generators respectively.
84. Similarly, I consider that the removal of the permitted development rights conferred by the GPDO in relation to the erection of temporary structures and mobile homes in association with the use of the land to be justified in this case although I shall, by condition, allow the use of areas to be agreed for the erection of not more than 20 hiking tents for not more than 20 nights during any one year.
85. In the light of my conclusion with regard to suggested condition 5, proposed condition 12 (b) needs to be amended to refer the rights available under Schedule 2, Part 1 of the GPDO. This condition is applicable only to the notice B permission. It seems to me that none of the other operational development permitted falls within a Part of the GPDO. The material alteration of the external appearance of any of these structures would therefore be defined in S55 of the Act as development requiring planning permission.
86. It is important that parking is controlled to protect the living conditions of the nearby residents but, in my opinion, subject still to a limit on the overall number sought, this can be achieved more effectively by identifying the area(s) within which vehicle parking may take place than by specifying the numbers of vehicles that may be parked by residents and visitors within that overall limit. I have set out above my concern that the space available for parking may be constrained and I therefore believe that a condition requiring the submission

and approval of a plan showing how not more than the 20 spaces sought can be arranged to be the most appropriate way forward in the circumstances.

87. I shall impose suggested condition 13 which requires full details of the courses that are to be held during the life of the permissions but will add a requirement that the means of travel is also recorded and expand its scope to include all activities provided for the public on the land so that a clearer picture can be gained of the sustainability of the development activities as a whole.
88. I note that suggested condition 14 is very similar to condition 6 of the previous permission and I am aware that the Community is particularly keen that it should be imposed. However, as noted above, I do not consider that the information provided assists with an objective assessment of the success of the project. As this seems to have been the main reason for its previous imposition, I do not consider that it meets the test of necessity set out in the Circular. However, this is not to say that the Community should not continue to provide an annual report if it wishes to do so.

### ***Conclusions***

89. For the reasons set out above I conclude that appeals A - J on ground (a) in respect of notice A, appeal K on ground (a) in respect of notice B and the S78 Appeal should all succeed.

### **Overall conclusions**

#### ***Notice A: appeals A – J and the S78 appeal***

90. It is clear from the evidence that the description of the development in the enforcement notice is incorrect in that not all the uses occurring at the date of issue are included and the inclusion of clause (e) in section 3 of the notice lacks clarity and requires correction. The appellants and the Authority agreed at the inquiry that it was open to me to correct the allegation in the notice. I am satisfied that no injustice will be caused by this and I will therefore correct the enforcement notice in these respects, in order to clarify the terms of the deemed application under section 177(5) of the 1990 Act as amended.
91. For the reasons given above I conclude that the appeals should succeed on ground (a) and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation. The appeals on ground (g) do not therefore need to be considered. Similarly, for the reasons given above I conclude that the S78 appeal should be allowed.

#### ***Notice B: appeals K – T***

92. From the evidence at the inquiry I conclude that the allegation in notice B is incorrect, in that the forest school shelter (A in the Schedule), the covered firepit (E), the children's play area (F) and the covered wash-up area (G) are not operational development. Accordingly appeals K - T should succeed on ground (c) to this extent. I shall correct the allegation in the notice to reflect this.

93. It is also clear that the description of the development in the enforcement notice is incorrect in that it omits a reference to the power tower in Section 3 of the notice. The appellant and the Authority agreed at the inquiry that it was open to me to correct the allegation in the notice. I am satisfied that no injustice will be caused by this and I will therefore correct the enforcement notice in this respect, in order to clarify the terms of the deemed application under section 177(5) of the 1990 Act as amended.
94. For the reasons given above I conclude that appeal K should succeed on ground (a) and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation. I have however further amended the description of the development permitted to reflect the extent to which the requirements of the notice were complied with. The appeals on ground (g) do not therefore need to be considered.

*Brian Cook*

Inspector



## APPEARANCES

### FOR THE APPELLANTS:

Mr David Stephens	Planning-Managing Director, Battens Solicitors Mansion House, Princes Street, Yeovil, Somerset BA20 1EP
He called	
Mr Dan Thompson-Mills BA (Hons)	Appellant, Steward Community Woodland, Moretonhampstead, Devon TQ13 8SD
Mr John Willis	Resident, 28 Cross Street, Moretonhampstead, Devon TQ13 8NL
Mr John Gower	Quiet Waters, High Moor, Atherington EX37 9HZ
Mr David Wood	Professional forester, Middle Ruckham Farm, Pennymoor, Tiverton, Devon EX16 8LS
Mr Andrew Goldring	Chief Executive Officer of the Permaculture Association (Britain), 29 Sholebroke Mount, Leeds, West Yorkshire LS7 3HG

### FOR THE DARTMOOR NATIONAL PARK AUTHORITY:

Mr Peter Wadsley of Counsel	Instructed by Mr Christopher Walledge, Head of Legal Services with the Dartmoor National Park Authority
He called	
Mr Brian Beasley BA (TP) DipRFS FAA	Trees and Woodlands Officer with the Dartmoor National Park Authority
Mr James Aven BSc MRICS Chartered Environmentalist	Senior Monitoring and Enforcement Officer with the Dartmoor National Park Authority
Mr Colin Jarvis BA MRTPI	Head of the Development Management Service with the Dartmoor National Park Authority

### INTERESTED PERSONS:

Mr Aaron Custance	c/o Homelands, Crockernwell EX6 6NH
Ms Linda Lemieux	Local businesswomen, Homefield, Stone Lane, Chagford TQ13 8JU
Ms Ann Dickman	Tenacity Cottage, Tonque End Cross, Okehampton, Devon EX20 1QL
Mr J Thres	Horsham Corner, Manaton TQ13 9UB

#### DOCUMENTS SUBMITTED BY THE APPELLANTS

- 1 Ecology comments on felling licence application at Steward Wood
- 2 Page 7 of Appendix C to the evidence of Mr Thompson-Mills
- 3 Letter dated 18 September 2003
- 4 Sections 10 and 11 of Strategy Document September 2005
- 5 Report and decision of South Somerset District Council relating to Tinkers Bubble
- 6 Financial Statements period ended 31 March 2001
- 7 Closing submissions

#### DOCUMENTS SUBMITTED BY THE DARTMOOR NATIONAL PARK AUTHORITY

- 8 Opening statement
- 9 Letter of notification of the Inquiry dated 20 January 2009
- 10 Appeal decision letter dated 6 April 2009 relating to land at Quicken Wood
- 11 Appeal decision dated 12 January 2005 relating to Brook Farm, Butleigh
- 12 Set of draft planning conditions
- 13 Extract from Journal of Planning Law 1023 [2007] relating to *R (on the application of Hall Hunter Partnership) v First Secretary of State and others*
- 14 Closing submissions

#### DOCUMENTS SUBMITTED BY INTERESTED PERSONS

- 15 Statement by Aaron Custance
- 16 Bundle of letters of objection to the development
- 17 Bundle of letters of support for the development

## **Appendix 1**

### **List of those who have appealed**

Appeal A	Mr D Thompson-Mills (Affinity Woodland Workers)
Appeal B	Ms R Cruse
Appeal C	Ms M Davis
Appeal D	Mr J Elsworthy
Appeal E	Mr M Howse
Appeal F	Mr O Kebbell
Appeal G	Mr S Kirton
Appeal H	Ms S Parsons
Appeal I	Ms C Tugwell
Appeal J	Ms R Turner
Appeal K	Mr D Thompson-Mills (Affinity Woodland Workers)
Appeal L	Ms R Cruse
Appeal M	Ms M Davis
Appeal N	Mr J Elsworthy
Appeal O	Mr M Howse
Appeal P	Mr O Kebbell
Appeal Q	Mr S Kirton
Appeal R	Ms S Parsons
Appeal S	Ms C Tugwell
Appeal T	Ms R Turner