WRITTEN STATEMENT

OF

WINCHESTER CITY COUNCIL

APPEAL BY MR W. G. ATKINSON, MR GRANT ATKINSON

LAND TO REAR OF 5 & 6 HILLSIDE KITNOCKS HILL, CURDRIDGE, SOUTHAMPTON, SO32 2HJ AND LAND TO REAR OF 5 HILLSIDE, KITNOCKS HILL
PINS REFS: APP/L1765/C/20/3248934, LINKED APPEAL REF: APP/L1765/W/20/3247907

WCC REF: 18/00235/COU

PLANNING OFFICER'S STATEMENT (ENFORCEMENT)

JULY 2020

INTRODUCTION

This written statement relates to an enforcement notice issued on 3 March 2020 and the alleged material change use of the land from agricultural to residential amenity land. It should be noted that part of the land identified in the notice is subject of the corresponding s78 appeal and part is subject of a refused lawful development certificate application. The red line plans for the application and the LDC and enforcement notice are attached at **Appendix A**.

The notice requires the cessation of the residential use of the land and buildings including the removal of associated domestic items, hardstanding and patios. The Inspector if he so chooses can substantially amend a notice and its plan under s176 of the Town and Country Planning Act 1990 (as amended) without causing any injustice to either party.

The enforcement appeal relates to grounds (a), (c), (d) and (g). The Council's full statement of case in respect of the s78 appeal will be submitted under separate cover. It is considered that the ground (a) appeal is the same as the s78 appeal in respect of the deliberation of the planning merits. Should the appeal be allowed on ground (a) then this would in effect grant planning permission for the residential amenity use of the land identified in the notice.

GROUND (A) THAT PLANNING PERMISSION SHOULD BE GRANTED FOR WHAT IS ALLEGED IN THE NOTICE

SITE DESCRIPTION

The site is described as per the corresponding s78 appeal statement.

PLANNING HISTORY

19/01696/LDC Continued use of land as residential garden. Refused 15.10.19

19/02468/FUL Use of land as residential garden. Refused 19.2.20

CONSIDERATIONS

The planning merits of the case are as per the s78 appeal statement.

SUGGESTED CONDITIONS

Should the Inspector allow the appeal and quash the Notice it is respectfully requested that the conditions forming part of the s78 appeal statement are imposed.

GROUND (C) THAT THERE HAS NOT BEEN A BREACH OF PLANNING CONTROL

S171A (1) (a) states that the carrying out of development without the required planning permission constitutes a breach of planning control.

The definition of development under s55(1) of the Town and Country Planning Act 1990 (as amended) is the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

The change of use of the land must also constitute material development under s56 of the Act in respect of the time when the development began.

Any decision on whether what is alleged in the notice is a breach of planning control is a matter of fact and degree. For enforcement action to succeed there should be some physical evidence that land is actually being used for domestic garden purposes. What may need to be assessed is whether the land clearly has the appearance and function of serving and being incidental to the enjoyment of the adjacent dwelling house such as would bring it within the same planning unit, or whether the land may be viewed as being in a separate use with no evident physical/functional linkage to the adjacent dwelling save common ownership.

It is therefore relevant to refer to the history and the division of plots for Fieldfare (previously Riceen) and Hazel Mount (previously Holmcott) and the creation of the appeal site.

On 5 September 2002 planning permission was granted under ref 0201456/FUL for the demolition of Fieldfare and Hazel Mount and to erect 1 no. two bedroom detached dwelling and 1 no. four bedroom detached dwelling with a shared detached triple garage. The plan setting out the extent of the residential plot is attached at **Appendix B**. The application was never implemented. However, the extent of the residential plot remains the case when both properties were registered in 2003, 2005 and again in 2006 when the properties were sold and when the application was received on 10 March 2005 to extend Riceen under ref 05/00670/FUL. This created the planning units for Fieldfare and Hazel Mount. Land registry documents, the red line plan and a 2005 aerial photograph are attached at **Appendix C**. The land is clearly demarcated whereas previously both properties had uninterrupted plots as described by an owner for the lawful development certificate application ref 19/01696/LDC and indicated in the OS plan used for a 1988 application. The appeal site was cultivated and used by horses according to the third party representation letter. The letter and plan are attached at **Appendix D**.

It was not until 14 July 2010 that the appellant bought what was the “cultivated” land (registered 4 August 2010) and began to use it for a residential purpose. This is confirmed by third party evidence submitted to the enforcement officer in 2018 (**Appendix E**) as it indicates that the land was used by horses and then subsequently subdivided to extend the garden to the house. It is considered that this is a material change requiring planning permission which is a breach of planning control. The ground (c) appeal should therefore fail on this basis.

GROUND (D) THAT AT THE TIME THE ENFORCEMENT NOTICE WAS ISSUED, IT WAS TOO LATE TO TAKE ENFORCEMENT ACTION AGAINST THE MATTERS STATED IN THE NOTICE

S171B(3) of the 1990 Act states that in the case of any other breach of planning control, i.e. the change of use of the land, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

The onus is on the appellant to demonstrate that it is too late to take enforcement action. However, it appears that the appellant has concentrated on the construction of the patio and buildings etc. which would have the benefit of immunity after four years. Whereas the enforcement notice clearly states in section 4 that the Council considers it expedient to issue the notice because the breach of planning control has occurred within the last ten years; i.e. the residential use of the land together with those items to facilitate the use.

It was brought to the Council's attention in 2018 that the appellant had extended their garden area into the land that was "cultivated" and used by horses. Moreover the appellant refers to an earlier stable block which was later extended. In 2019 the appellant claimed that part of the appeal site was lawful as residential garden under ref 19/01696/LDC. This was refused on 15 October 2019 (**Appendix F**). The enforcement notice was issued 3 March 2020.

On researching Google Earth aerial photographs taken 2007, 2012, 2014, 2015 and 2019 and the Bing Image taken before 2012 (**Appendix G**) as it shows the building without its extension, it is apparent by 2014 that the land is subdivided and the patio area is in situ, and from then on it has been more intensively used so that by 12 February 2019 when the enforcement officer visited it was apparent that the land was being used as an extension to the garden (**Appendix H**). A retrospective planning application ref 19/02468/FUL for the use of the land as residential garden was received on 8 November 2019 and as such there is no dispute that the land beyond the more formal encroachment is now residential. Evidence indicates that this has occurred within the last ten years and the appeal should fail on ground (d).

GROUND (G) THE TIME GIVEN TO COMPLY WITH THE NOTICE IS TOO SHORT

The appellant claims that the three month compliance period is too short because it is likely that when the appeal is determined it would the wrong season to remove plants/crops from the greenhouse. The appellant has not provided a particular period within a season to remove their plants/crops or provided evidence of what is grown, and has suggested 6 months to comply with the notice. However, it could also be the wrong season then too when the appeal is determined if given 6 months to comply. Moreover plants/ crops can be transplanted out of season and without additional evidence it is considered that 3 months is ample enough time to comply. As such the appeal on ground (g) should fail.