
From: Robert Tutton <roberttutton@msn.com>
Sent: 24 August 2020 12:39
To: TeamE1
Cc: Joe Keet
Subject: Appeals by Mr J Keet, Firgrove Lane, North Boarhunt (APP/L1765/C/19/3242323 & APP/L1765/W/19/3242146)
Attachments: Statement of Case (composite) - Firgrove Lane - Bungalow.pdf

Dear Opirim Agala

In accordance with the timetable set down in your letter dated 21st July 2020, we are pleased to present our Statement of the Case that will be put forward at the forthcoming inquiry on behalf of our client Joe Keet.

Kind regards,

Robert Tutton
Director

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APPEALS by Mr J Keet

against

- (1) The refusal of planning application 19/01841/FUL on 1st November 2019;
and (2) the issue an Enforcement Notice (also on 1st November 2019) by
Winchester City Council, both matters relating to the erection of a Site
Manager's Bungalow on land at The Old Piggeries, Firgrove Lane, North
Boarhunt, Fareham in Hampshire PO17 6JF.**

**Composite Statement of the Cases to be
presented at the forthcoming inquiry.**

1.0 THE APPEAL SITE

1.1 The Old Piggeries are situated in the southeast sector of Winchester City Council's administrative area, 2.5 kilometres to the east of Wickham and 85 metres to the north of the junction of Firgrove Lane with Southwick Road (B2177). Approaching Firgrove Lane from the east on Southwick Road, one first passes 'Rowndale' (a detached chalet-bungalow of red brick with a gabled roof of brown peg-tiles and a pair of gabled dormers in its front roof-plane) and then 'Danube', which is a detached two-storey house of red brick with a hipped slate roof and a detached double garage in its extensive grounds. From the west, one first passes 'Swansfield Cottage' (a two-storey detached house with two-storey garage/annexe, finished in red brick with a brown peg-tiled roof) and then 'Veronica', which is a two-storey detached house of red brick with a gabled slate roof and a catslide rear element. The outbuildings of Mount Folly Farm stand opposite the junction with Firgrove Lane - the detached farm-house is two storeys in height with flint walls, brick corner features and a gabled roof of red peg-tiles.

1.2 As one approaches the appeal site from the south on Firgrove Lane, one first passes 'The Old Nursery' site (on the left) and then 'Firgrove Lane Caravan Park' (on the right), where eighteen mobile homes are stationed. To the north of the Caravan Park, eleven mobile homes stand on 'The Old Piggeries' site and seventeen more on the 'Withy Beds' land ie 28 in all. A substantial woodland stands to the north of 'Danube' and separates the frontage residential development of Southwick Road from the Firgrove Lane Caravan Park and other mobile homes that stand beyond. The building the subject of the Enforcement Notice stands to the east of Firgrove Lane, at the west end of the 'The Old Piggeries' mobile homes - it is 12 metres long, 10 metres wide, 2.3 metres in height to eaves and is 6.2 metres in height to the ridge of its low-pitched slate roof (Appendix 1). Beyond Firgrove Lane, to the west of 'the subject building', is a substantial area of cleared land. The appeal subject stands between the established settlements of Wickham and Southwick but it is evident that the area about it is substantially developed and that planning policies devised to guide decisions in *open* countryside are of little relevance to the circumstances of this locality.

2.0 PREVIOUS RELEVANT DECISIONS

2.1 With regard to the accessibility of this site to services and facilities, one calls to mind the decision of Inspector Tamplin in January 2003 to grant permission for the stationing of mobile homes and outbuildings on the 'Clearwater' site at Ratham Lane, West Ashling in Chichester district (Appendix 2) - he recorded that there was "*...no dispute that the appeal site lies in the countryside outside any defined settlement area or SPA of the adopted Local Plan*" but he did not consider such a situation to be of great consequence, as "*...a good range of services and facilities including primary schools and a surgery is available within 2-3km*", so concluded that 'Clearwater' was a sustainable location for Gypsies and Travellers. The Old Piggeries site lies just 2.5 kilometres away from the services and facilities that are offered in Wickham village centre so they are, by Inspector Tamplin's definition, accessible for Gypsy/Traveller residents of this location.

2.2 In August 1984, Hampshire County Council deemed itself consent (under the Town and Country Planning General Regulations 1976 and 1981) for "*A 20-pitch permanent site, including a warden's bungalow, for gypsies and travelling families on approximately 3.74 acres of land off Whiteley Lane, Wickham*" (W1129/3), in the south of Winchester district, close to the Fareham Borough boundary (Appendix 3). There is no documentation on Winchester City Council's web-site to explain why its Officers and Members did not raise objection to the proposal when it was considered in May 1986, so the only conclusion that can be drawn is that a warden's bungalow was accepted as being necessary and appropriate on a site of 20 gypsy/traveller pitches. There are already 28 pitches in place to the north of the 'Firgrove Lane Caravan Park', so it surely follows that a warden's (or 'Site Managers') bungalow is necessary and appropriate here, too.

2.3 In November 2011, Winchester City Council granted planning permission 11/01875/FUL for the 'Siting of 4 no. residential gypsy caravans' on land to the north of this appeal site (Appendix 4). These extracts from the Officers' 'Delegated Decision' report which led to that decision are relevant to the consideration of this appeal:- *"Immediately adjacent to the site to the south is a small plot which currently accommodates a travelling showperson or gypsy/traveller... Further south, adjacent to the woodland copse is another site occupied by gypsies, travellers or travelling showmen... Apparently this site was historically a scrap yard and then used for its current use... It has gained immunity and is now an established part of the landscape... It is acknowledged that this is a rural location and the site is surrounded by open land at the north... The site is not in the South Downs National Park nor is it a Strategic or Local Gap or of ecological, historic or archaeological importance."* Permission 11/01875/FUL was limited (by its Condition 3) to a period of five years but relief from that restriction was given in November 2018 (Appendix 4) - the Officers' committee report re application 18/01691/FUL stated that *"Whilst development plan policies generally restrict new residential development in the countryside, relevant national and local planning policies indicate that there may be justification to use rural sites for the special needs of travellers... The four units that (are) located on the application site have, in themselves, very little impact on the character and appearance of the surrounding area."* The four permitted units stand near the north boundary of The Old Piggeries site, immediately to the east of Firgrove Lane, so they are open to view to members of the public passing by on Boarhunt Footpath no.10, which follows the Lane.

2.4 As a prerequisite to the service of an Enforcement Notice, it is customary and desirable for a Local Planning Authority to ascertain the nature and purpose of the prospective subject. In February 2016, Winchester City Council served a Planning Contravention Notice (PCN) on Joe Keet re *'Unauthorised operational development, namely the erection of a building resembling a dwellinghouse'*. The plan attached to the PCN showed the 'Unauthorised Building Operation(s)' some 60 metres away from the intended subject (Appendix 5), so many of its questions were irrelevant. Notwithstanding, Joe Keet completed the PCN on 8th February 2016 and these are samples of his responses:

- Question 1(4): 'State your interest in the land outlined red'. Answer: 'N/A'.
- Question 2: 'Other persons having an interest in the land'. Answer: Mrs Jane Keet, The Old Piggery, North Boarhunt, Fareham PO17 6JU'
- Question 3(1): 'What do you believe/understand to be the primary and lawful use of the land outlined red?'. Answer: 'Agricultural use'.
- Question 3(2): 'What are you building on the land?' Answer: 'N/A'.
- Question 3(3): 'Planning permission has not been granted for structures on the site... Why are you erecting the building?'. Answer: 'N/A'
- Question 3(5): Who is the intended user the building?'. Answer: 'N/A'

2.5 As the PCN issued by the City Council did not relate to the building that was under construction 60 metres away to the south, it was unable to glean the information it required. It *should* have served a corrected PCN, in order for the nature and purpose of the works to be ascertained but no further enquiries were undertaken; the Officers proceeded instead to serve a Temporary Stop Notice (on 3rd March) and an Enforcement Notice (on 22nd March 2016). It soon became evident that the City Council had erred, as an Enforcement Notice should be a *prerequisite* to the service of a Stop Notice, not the reverse. The Temporary Stop Notice related to 'Land at The Old Piggeries' and the 'Reasons' for its service were *"Without planning permission, the erection of buildings comprising one open market dwelling in open countryside outside the development boundary and a second building which is believed to be a dwelling... The dwelling(s) are being constructed to house the landowner and his immediate family, all of whom are members of the gypsy community... No justification has been produced to show that the dwellings are being erected for the purpose of accommodating essential rural workers... Consequently, the development is contrary to paragraph 55 NPPF and Policies CP4, CP5, MTRA3 and MTRA4 of Winchester District Local Plan Part 1 Core Strategy and Policies DP4 and DP2, DP4 CE20 and CE22 of the Winchester District Local Plan Review (Saved*

Policies) 2006.” The building was acknowledged “...to house the landowner and his immediate family, all of whom are members of the gypsy community.”

2.6 In September 2016, Joe Keet made application 16/02075/FUL to Winchester City Council for an “*Agricultural farm building re-built as bungalow for management occupation*” at The Withy Beds, Firgrove Lane. Four months passed and, as it became evident that the application was not being progressed, a non-determination appeal was lodged on 12th January 2017; it would later come to be withdrawn but these extracts from the ‘Statement by Winchester City Council’ (which sought to justify its Enforcement Notice) have enabled an appreciation to be gained of the City Council’s approach:

“6.1 On 24 July 2014, Mr J Keet submitted a Building Regulations application to convert the former stables at The Old Piggery, Firgrove Lane, to dwellings. The Building Control Surveyor spoke with Neil March (Enforcement Manager) who in turn spoke on the telephone with Brian Martin (an agent acting for Mr Keet) advising Mr Martin of the requirement for prior notification before such works were undertaken on any agricultural building. Mr Martin was also advised that the building in question could not be converted under permitted development or the prior notification procedure because it was last used as stables and not for agricultural purposes. Neil March summarised the telephone conversation in an email to Mr Martin (A copy of the email is attached to this statement).”

“6.2 On 4 November 2014, Anne Brown (Building Control Officer) notified Neil March (Enforcement Manager) that Mr Keet had been in the office to see her, to advise that he intended to carry out the building of the dwellings.”

“6.3 On 3 February 2016, a complaint was received from a member of the Parish Council stating that: “*Several houses being built approx 300 metres up Firgrove Lane...Scaffold is up and buildings are brick, can be seen from Southwick Road.*”

“6.4 On 4 February 2016, a Planning Enforcement Officer visited the site and saw a single-storey building resembling a dwelling. Although the walls were up and the roof was on, it was not (Sage v SSTR 2003) substantially complete, in that not all fenestration had been inserted nor was it ‘fitted out’ inside for use as a dwelling. When Mr Keet was interviewed and advised that consent for new dwellings was contrary to the development plan and that work should therefore cease, he told the officer that he believed the building was permitted development. No amount of persuasion by the enforcement officer that the works were not permitted development would convince him otherwise.”

“6.6 On 3 March 2016, a copy of the Temporary Stop Notice was served on Mr Keet...Men working on the building(s) were advised by me to stop work and told that they would commit a criminal offence by continuing. Mr Keet was advised that he would be held vicariously liable for any further works to complete the first dwelling or construct the second dwelling.”

2.7 It was evident from the City Council’s Statement that, although Joe Keet had made known his general intentions to the Officers of Winchester City Council as early as July 2014 and (four months later) confirmed his intention to proceed, it needed a complaint by a member of the public for a Planning Enforcement Officer to visit the site in February 2016, to witness the erection of a building that displayed all the characteristics of a dwellinghouse that had not yet been occupied. It is also evident that although “...*the walls were up and the roof was on*”, the City Council sought to rely on the Sage judgement (handed down by the House of Lords in April 2003) (Appendix 6) for its contention that, as the ‘fenestration’ (*‘the arrangement of windows in a building’*) had not been inserted and it had not been ‘fitted out’ inside, the dwellinghouse had not been so ‘substantially completed’ as to enjoy immunity from enforcement action. Issue is taken with the Officers’

interpretation of the *Sage* judgement - in favour of Joe Keet's appeal, it is submitted that the appropriate test in this case is whether "*The building operations are complete when those activities which require planning permission are complete*". In this case, the activities which required planning permission (walls and roof) were finished by 12th September 2015 and the fenestration is complete. No works to the building have been undertaken since the Stop Notice was served but it can be seen that internal walls have been erected and partially plastered, the 'first-fix' electric system is in place but no skirting-boards or door-frames have been fitted. The Enforcement Notice and the Stop Notice were both withdrawn on 1st February 2017.

2.8 In September 2019, Certificates of Lawful Use or Development were granted by Winchester City Council for nos. 6A and 7 The Old Piggeries (Appendix 7); both units stand to the northeast of this appeal subject. The mobile home at no.6A had been delivered to the site in October 2011, its wheels and A-frame were removed at that time and several building operations took place between 2012 and 2014. The mobile home at no.7 had been in place since August/September 2012, a kitchen and bedrooms were added during 2012-13 and the mobile home was fixed to the ground by December of that year.

2.9 In September 2019, Joe Keet also submitted planning application 19/01841/FUL to Winchester City Council for the '*Retention and completion of site manager's bungalow at The Withy Beds, Firgrove Lane*'. Attention is drawn to these extracts from Robert Tutton's letter of 11th September 2019, which was the Design and Access Statement in support of the application:

"The Bungalow stands to the east of Firgrove Lane, at the west end of 'The Withy Beds' mobile homes - it is 12 metres long, 10 metres wide, 2.3 metres in height to eaves and 6.2 metres in height to the ridge of its low-pitched (35 degrees) barn-hipped slate roof...While the Bungalow stands beyond the established settlement boundaries of Wickham and Southwick, it is evident that the area about it is substantially developed with mobile homes and that planning policies intended to guide decisions in *open* countryside are of limited relevance to the consideration of this application."

"Attention is drawn to planning permission 11/01875/FUL that was granted in November 2011 for the '*Siting of 4 no.residential gypsy caravans*'- '*Apparently this site was historically a scrap yard and then used for its current use...It has gained immunity and is now an established part of the landscape...It is acknowledged that this is a rural location and the site is surrounded by open land at the north...The site is not in the South Downs National Park nor is it a Strategic or Local Gap or of ecological, historic or archaeological importance*'...While permission 11/01875/FUL had been limited (by its Condition 3) to a period of five years, relief from that restriction was given in November 2018 - amongst other things, the Officers' committee report re application 18/01691/FUL stated that "*Whilst development plan policies generally restrict new residential development in the countryside, relevant national and local planning policies indicate that there may be justification to use rural sites for the special needs of travellers...The four units that (are) located on the application site have, in themselves, very little impact on the character and appearance of the surrounding area.*"

"Attention is also drawn to the deemed consent that Hampshire County Council granted itself in August 1984 (under the Town and Country Planning General Regulations 1976 and 1981) for "*A 20 pitch permanent site, including a warden's bungalow, for gypsies and travelling families on approximately 3.74 acres of land off Whiteley Lane, Wickham*" (W1129/3). There is no documentation on Winchester City Council's web-site to explain why its Officers and Members raised no objection to the proposal when it was considered in May 1986 but the conclusion can be drawn that a warden's bungalow was accepted as being necessary and appropriate on a site of twenty gypsy/traveller pitches. As there are already more than twenty units in place to the north of the 'Firgrove Lane Caravan Park', it surely follows that a warden's (or 'Site Manager's')

bungalow is necessary and appropriate here, too.”

“The main Policies Map of LPP2 shows this site in the ‘Countryside’ between the Settlement Boundaries of Southwick and Wickham, where Policy MTRA4 re ‘Development in the Countryside’ applies:- *“In the countryside...the Local Planning Authority will only permit the following types of development...development which has an operational need for a countryside location, such as for agriculture, horticulture or forestry...Development proposed in accordance with this policy should not cause harm to the character and landscape of the area or neighbouring uses or create inappropriate noise/light and traffic generation.”* Inclusion of the words ‘*such as*’ indicate that agriculture, horticulture and forestry are but *examples* of developments which have an operational need for a countryside location and there may be others. In our submission, a Bungalow to accommodate the Site Manager of gypsy pitches at Firgrove Lane is development with such an operational need for a countryside location - that principle was established by Winchester City and Hampshire County Councils’ decision in 1984...and continues to be relevant.”

“One calls to mind the recognition by the Officers of Winchester City Council in 2011...that this area *“...does not have a special designation...the fields here are interspersed with similar types of development or other built forms...the occasional incidence of development here is not unexpected...The site is not in the South Downs National Park nor is it a Strategic or Local Gap or of ecological, historic or archaeological importance’*. It is submitted that the retention/completion of this Bungalow would not harm the character/landscape of this locality or the amenity of neighbouring uses or create inappropriate noise/light/traffic generation - on the contrary, it would serve the needs of the substantial gypsy/traveller community at Firgrove Lane in such manner that it would satisfy the requirements of Core Strategy MTRA4.”

“Paragraph 79 of the National Planning Policy Framework states that *‘Planning policies and decisions should avoid the development of isolated homes in the countryside unless one of more of the following circumstances apply’* and sets down five examples of such circumstances - rural worker, heritage asset, redundant building, sub-division, exceptional quality. Paragraph 79 does not pretend to constitute an exhaustive list of the special circumstances that may justify a new dwelling, indeed, it would be impossible for the NPPF or any other planning policy document to anticipate every conceivable circumstance that may arise during its relevant period. It is submitted that the provision of a Gypsy/Traveller Site Manager’s Bungalow is such an exceptional circumstance and the absence of an explicit reference to such a development would not justify its rejection. As the subject building is intended to serve the needs of the substantial Gypsy/Traveller community at Firgrove Lane, it would be neither *‘lonely’* nor *‘cut off from society or contact’* (the dictionary definitions of *‘isolated’*). Winchester City Council granted permission for residential gypsy caravan pitches at Firgrove Lane in 2011 and 2018 because, notwithstanding its rural location, the area does not have a special designation, the fields are interspersed with similar types of development or other built forms and the site is not in the South Downs National Park, a Strategic/Local Gap or of ecological, historic or archaeological importance. With a gross floor area of 120 square metres, the Bungalow is an appropriate size for the management of the Gypsy/Traveller pitches at Firgrove Lane and it has been designed to reflect key local characteristics.”

2.10 Planning application 19/01841/FUL came to be determined by the Officers under their delegated powers, so no prior opportunity was afforded for Joe Keet or his agent Robert Tutton to appreciate the matters that would be accorded weight in the prospective decision or to present a deputation in support of the proposal to the Winchester Planning Committee of Members. The decision notice issued on 1st November 2019 recorded that planning permission had been withheld for these reasons:

“The site is within the open countryside outside a defined settlement, where new housing is limited to replacement dwellings, affordable housing on exception sites and housing for essential rural workers and does not include accommodation for a Gypsy/Traveller site manager. Notwithstanding this in principle objection to the development, there are currently only four authorised permanent Gypsy/Traveller pitches on the adjacent land and as such no requirement for a manager to live on the site. Moreover, the application is for the retention of a permanent structure to be used as a dwelling and permanent structures on Gypsy/Traveller sites in rural locations are restricted to essential facilities such as a small amenity block. The proposal is therefore for an isolated house in the countryside for which there is no justification and as such it is contrary to policies DS1, MTRA4 and CP5 (and as such Policy TR7 of the Traveller DPD adopted February 2017) of the Winchester District Local Plan Part 1 and policies DM1, DM4, DM11 and DM23 of the Winchester District Local Plan Part 2.”

“In the absence of a suitable agreement to secure appropriate mitigation measures for the increased recreational pressure on the Solent, the development would be likely to have a significant effect on the Solent Special Protection Areas and is therefore contrary to paragraph 175 of the NPPF, policy CP16 of the Winchester District Local Plan Part 1 and the Conservation of Habitats and Species Regulations 2017 (as amended).”

2.11 It is evident that the Officers misdirected themselves by failing to recognise the similarity in circumstances that prevailed at Whiteley Lane in 1984 (see 2.2 above) and Firgrove Lane today and that the Site Manager’s Bungalow would not be ‘isolated’, as it would stand at the heart of the community it has been built to serve.

3.0 EVENTS LEADING TO SERVICE OF THE ENFORCEMENT NOTICE.

3.1 Joe Keet completed a Declaration on 3rd December 2019 that included a brief description of the circumstances which led to his erection of the building the subject of these appeals (Appendix 8). He confirmed that he is the full-time Manager of the dwellings that stand on the Old Piggeries and Wither Beds and has no other occupation; he works six hours a day, six days a week attending to the needs of his residents - water leaks, leaky roofs, burst pipes, blocked drains, changing gas bottles etc - and is available to respond to their needs around-the-clock. He has produced photographs which show the building that previously stood on the land and reiterated his belief that he enjoyed the right to convert it to a dwelling under Class MB of the General Permitted Development Order (GPDO) 2014; on that premise, he had instructed his (then) agent Brian Martin to give Winchester City Council ‘prior notification’ of that intention. While Mr Martin erred (by giving notification under Schedule 2 of the GPDO 1995 re. ‘agricultural or forestry development’ rather than the residential conversion of an agricultural building, under Class MB), Mr Keet’s intentions were clearly made known to the Officers of Winchester City Council; indeed, he recalled that he explicitly invited the Building Control Officers of the City Council to the site, to consider his proposal to convert the building. Mr Keet recalls that several Building Control and Planning Officers visited Firgrove Lane during June/July 2015 and proffered the advice which led to demolition of the original building. Following its demolition, Mr Keet recalls that he commissioned Topspec Brickwork Ltd to commence the erection of new brick walls in July 2015, his nephew David Keet undertook the requisite timber work and Arthur Easen (the Director of ‘A Easen & Sons, Roofing Specialists’) and three casual labourers employed by him - Harry Keet, John Richards and Jasper Smith - were engaged to fit slates on the roof; all four have declared that, in August/September 2015, they were engaged by Joe Keet to fit the roof-slates and their work was substantially completed on Saturday 12th September 2015 (Appendix 8).

3.2 Section 171B of the Town and Country Planning Act states that “Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on or over land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.” It is evident from the robust and consistent declarations of four reliable witnesses that, with walls built and slates covering its timber roof, the subject building was substantially completed by 12th September 2015. Furthermore, as the Enforcement Notice and Stop Notice issued on 22nd March 2016 had been withdrawn on 1st February 2017 and were not ‘in effect’, this substantially-completed building is immune from enforcement action.

4.0 THE ENFORCEMENT NOTICE

4.1 The Enforcement Notice issued by Winchester City Council on 1st November 2019 alleged “Without planning permission, the erection of a dwellinghouse shown in the approximate location marked ‘X’ on the attached plan”. The “Reasons for issuing this Notice” are stated as being:- “It appears to the Council that the above breach of planning control has occurred within the last four years...Although the building is unoccupied, it has the characteristics of a dwellinghouse...It is a red brick single storey building with a pitched roof, front door, porch, glazed windows, patio doors and is served by electricity and plumbing...The unauthorised development is located in the open countryside outside of the settlement boundary where new isolated homes should be avoided unless there are special circumstances...(rural worker, subdivision, redundant, innovative)...As such the development is contrary to policy MTRA4 in the Winchester District Local Plan Part 1 Core Strategy, Policies DM11 and DM23 in the Winchester District Local Plan Part 2 and paragraph 79 of the National Planning Policy Framework...The site is within 5.8 kilometres of the Solent SPAs...Additional accommodation within this area has the potential to increase recreational pressure on the SPAs, resulting in disturbance to the sites and their species...As such, the unauthorised development has a negative impact on biodiversity, contrary to paragraph 175 of the NPPF, Policy CP16 of the Winchester District Local Plan Part 1 and the Conservation of Habitats and Species Regulations 2017 (as amended).” The Enforcement Notice consequently contends that “The Council consider that planning permission should not be granted because planning conditions could not overcome these objections.” Section 5 of the Notice calls for demolition of the dwellinghouse, removal of all resultant materials (including its foundations) and reinstatement of the Land to its former condition. Section 6 gives a period of three calendar months for compliance with Steps 1-3 and the Notice was due to take effect on 5th December 2019 unless an appeal was made against it beforehand.

4.2 On 27th November 2019, Joe Keet completed the ‘Solent Recreation Mitigation Partnership Payment Form’ and made the requisite payment (£653). Two days later, the Principal Planning Officer (Enforcement) of Winchester City Council, Sarah Castle, confirmed that the allegation in the Enforcement Notice relating to the ‘negative impact on biodiversity’ should be treated as withdrawn (Appendix 9). No evidence need therefore be presented in respect of NPPF paragraph 175 or Core Strategy Policy CP16.

THE APPEAL on GROUND D.

5.1 Section 171B of the Town and Country Planning Act states that “Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on or over land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.” It is evident from the robust and consistent declarations of five reliable witnesses (Joe Keet, Arthur Easen, Harry Keet, John Richards and Jasper Smith) that the subject building was substantially completed by 12th September 2015 and, in accordance with the principle settled by the Sage judgement - “The building operations are complete when those activities which require planning permission are complete”- it is submitted that, as the activities which required planning permission (ie the walls and the roof) were completed on 12th September 2015, more than four years had passed since that date before the Enforcement

Notice was issued, so no enforcement action could be taken. **This appeal should succeed on Ground D.**

6.0 THE s78 and GROUND A appeals.

6.1 Section 38 of the Planning and Compensation Act 2004 requires an application or appeal to be determined in accordance with the relevant policies of the development plan unless material considerations indicate otherwise; an element of flexibility is provided which enables decisions to be made which may disagree with the development plan. The development plan for Winchester district presently comprises the **Winchester District Local Plan Part 1 Joint Core Strategy** that was adopted in March 2013 (for brevity, 'the Core Strategy') together with the '**Winchester District Local Plan Part 2: Development Management and Site Allocations**' (for brevity, the Local Plan Part 2) that was adopted in 2017.

6.2 Amongst other things, the "Winchester City Council Policies Map - Nature Conservation Areas" (of Local Plan Part 2) shows the location and extent of the South Downs National Park, Special Protection Areas and other lands that warrant particular protection; the subject building is neither within nor close by any of those. It is agreed that the 'red' building stands between the Settlement Boundaries of Southwick (Map 15) and Wickham (Map 23), where Policy MTRA4 re 'Development in the Countryside' generally applies:- "*In the countryside...the Local Planning Authority will only permit the following types of development...development which has an operational need for a countryside location, such as for agriculture, horticulture or forestry...Development proposed in accordance with this policy should not cause harm to the character and landscape of the area or neighbouring uses or create inappropriate noise/light and traffic generation*" (Appendix 10). Use of the terms 'may include' and 'such as' make clear that agriculture, horticulture and forestry are but *examples* of developments which may be shown to have an operational need for a countryside location and other roles may come to light during the eighteen-year plan period (2013-2031) of the Core Strategy. Further, Officers of Winchester City Council recognised in 2011 (see 2.3 above) that '*...the area does not have a special designation and the fields here are interspersed with similar types of development or other built forms*'. It is submitted that, as the subject building is intended to be used as a Site Manager's Bungalow to serve the Gypsy/Traveller pitches of The Withy Beds and The Old Piggeries, it is a development with an operational need for this countryside location and, contrary to the charge laid down in the Enforcement Notice, the requirements of Policy MTRA4 are satisfied.

6.3 On the subject of 'Housing for Essential Rural Workers', paragraph 6.3.32 of Local Plan Part 2 states that "*Uses other than those of agriculture or forestry will not normally justify on-site accommodation, as they will not normally have an essential need to locate on-site...Operators of other enterprises in rural locations, such as equestrian businesses, should have regard to the adequacy of accommodation when setting up or developing the business...Where applications for new dwellings are made, applicants will need to demonstrate why the accommodation is necessary and show that suitable accommodation cannot be secured within a reasonable distance of the site, in accordance with Policy DM11*" (Appendix 11). It is submitted that, in similar vein to the warden's bungalow at Whiteley Lane, Wickham (see 2.2 above), there is an essential need for permanent on-site residential accommodation at Firgrove Lane (to house the full-time Site Manager) as an abnormal exception to the general presumption established by Policy DM11:

"New permanent dwellings will generally only be permitted in the countryside to support existing agricultural/forestry activities on well-established agricultural or forestry enterprises. Proposals should demonstrate that:

- i) there is a clearly established existing functional need;
- ii) the need relates to a full-time worker or one who is primarily employed in the agriculture/forestry enterprise and does not relate to a part-time requirement;
- iii) the unit and the agriculture/forestry activity concerned have been established for at least three years, have been profitable for at least one of them, are currently financially sound and have a clear prospect of remaining so:

- iv) the functional need could not be fulfilled by another existing dwelling on the unit or any other existing accommodation in the area which is suitable and available for occupation by the worker concerned;
- v) the dwelling is sited so as to meet the identified functional need and is well related to existing farm buildings or other dwellings..”

“The design of the dwelling should reflect local distinctiveness and the rural character of the surroundings.”

“All dwellings permitted under this policy will be subject to occupancy conditions restricting the occupancy of the dwelling to a person solely or mainly employed or last employed in agriculture or forestry and any resident dependents.”

“Before permitting new permanent agricultural dwellings, a temporary building should first be established for at least three years to fulfil criterion (iii) above...”

“New housing in the countryside other than for agricultural or forestry workers (or replacement dwellings) will generally not be permitted. Where other rural workers claim to have essential accommodation needs (eg in equestrian enterprises) these should normally be met within the existing housing stock. When applications for such dwellings are made, they will be subject to the tests and requirements of this policy, where references to agriculture and forestry should be taken to apply to the particular enterprise concerned, as appropriate.”

6.4 On the subject of ‘Landscape’, paragraph 6.4.57 of Local Plan Part 2 states that *“Developments in or adjoining rural areas need to take account of their location...If the principle of the development is acceptable, the main consideration is the impact on the rural character...There may be impacts from visual intrusion, physical effects on the landscape and effects on the tranquillity of the area.”* Policy DM23 re ‘Rural Character’ consequently generates a presumption in favour of development which accords with the development plan and satisfies six requirements:

“Outside defined settlement boundaries, development proposals which accord with the Development Plan will be permitted where they do not have an unacceptable effect on the rural character of the area, by means of visual intrusion, the introduction of incongruous features, the destruction of locally characteristic rural assets or by impacts on the tranquillity of the environment. The following factors will be taken into account when considering the effect on the rural character and sense of place:

Visual - intrusion should be minimised, including the effect on the setting of settlements, key features in the landscape or heritage assets. The cumulative impact of developments will be considered, including any ancillary or minor development that may occur as a result of the main proposal.

Physical – developments will be encouraged to protect and enhance the key characteristics of the landscape and should avoid the loss of key features or the introduction of elements that detract from the special qualities of the place. Any re-modelling of the landscape will also be taken into account.

Tranquillity - developments should not have an unacceptable effect on the rural tranquillity of the area, including the introduction of lighting or noise occurring as a result of the development, taking account of the relative remoteness and tranquillity of the location. New lighting will generally not be permitted in unlit areas and the type, size, design and operation of any lighting may be controlled where necessary by the use of conditions.

Development should not detract from the enjoyment of the countryside from the public realm or public rights of way.

The volume and type of traffic generated by the development will be assessed along with the ability of rural roads to accept increased levels of traffic without alterations that would harm their rural character...”

6.5 As Policies DM11 and DM23 each have six requirements and it was unclear from the Enforcement Notice precisely which of those are allegedly breached by the subject building, Robert Tutton sought clarification of the charges from David Townsend, Winchester City Council's 'Team Leader Enforcement'; his reply on 21st November 2019 included this:

"I am not aware that there is a well-established agricultural or forestry enterprise at the appeal site...If your appeal is to succeed, you will need to justify why the permanent new dwelling is necessary on the appeal site and show that there is no suitable and available accommodation nearby. If you can convince the Planning Inspector that the principle of the development is acceptable, you will have to show that the permanent new dwelling will not have an adverse impact on the rural character (Policy DM23) and only the last consideration (which relates to domestic extensions) is not relevant."

6.6 Contrary to the charges laid down in the Enforcement Notice, it is submitted that: (a) in similar vein to the warden's bungalow at Whiteley Lane, there is a clearly-established functional need for a permanent bungalow on this land, to accommodate a full-time Site Manager; (b) the need relates to a full-time worker; (c) the viability of agricultural/forestry activity is irrelevant in this case; (d) the functional need is for a resident warden to serve the established residential community at Firgrove Lane; (e) the bungalow is so sited as to relate well to the community it would serve; (f) a detached dwelling of red brick with flint features and a slate roof would accord with the palette of materials that is distinctive in this locality; (g) no objection would be raised to the imposition of a planning condition which would restrict the occupation of the subject bungalow to the Site Manager of pitches at Firgrove Lane; (h) the retention of this dwellinghouse would not harm the setting of a settlement, key landscape feature or heritage asset; (i) the key characteristics of the local landscape have been enhanced by the erection of this building; (j) the quiet enjoyment of this dwellinghouse would not have an unacceptable effect on this locality, where lorry movements to and from a green-waste recycling centre already disturb its rural tranquillity; (k) in similar vein to the four residential caravans that were permitted in November 2018 (2.3 above), the subject bungalow does '*...not have a significant impact on the landscape character of the area*', when viewed from the public realm or Boarhunt Footpath no.10; and (l) the Highway Authority raised no objection to planning application 19/01841/FUL (2.10 above). In light of the above, it is submitted that the Site Manager's Bungalow that has been erected on the appeal site *satisfies* the requirements of development plan Policies MTRA4, DM11 and DM23. **This appeal should succeed on Ground A.**

6.7 Paragraph 79 of the **National Planning Policy Framework (NPPF)** 2019 states that '*Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances*' and then sets five down *examples* of such circumstances - essential rural worker, heritage asset, redundant/disused building, subdivision of an existing dwelling, design of exceptional quality. Paragraph 79 does not purport to comprise an exhaustive list of the special circumstances that may come to be recognised as justification for a new dwelling; indeed, it would be impossible for the NPPF or a local plan policy document to anticipate every conceivable circumstance that may arise during its relevant period. The Oxford Compact English Dictionary defines 'isolated' as '*lonely...cut off from society or contact...remote*'; none of those descriptions is pertinent to the circumstances of this subject building, as it is not remote from facilities (see 2.1 above); on the contrary, it stands at the very heart of the community it has been built to serve. Hampshire County Council recognised in 1984 that a Gypsy/Traveller site of 1.51 hectares with 20 pitches in Whiteley Lane needed to be managed by a full-time warden who would live in a permanent bungalow on the site (see 2.2 above) and this appeal subject would fulfil a comparable role - it would house the full-time manager of a composite site of 28 pitches. Contrary to the charge laid down in the Enforcement Notice, it is submitted that the Site Manager's Bungalow at Firgrove Lane would *not* be isolated and the absence of an explicit reference to such a development form in paragraph 79 of the NPPF does *not* justify its demolition.

7.0 CONCLUSION and SUBMISSION

7.1 The appeal site is situated in a sustainable location, 2.5 kilometres to the east of Wickham and 85 metres to the north of Southwick Road (B2177). In 2003, Inspector Tamplin concluded that, as the Clearwater site at West Ashling, Chichester was within two and three kilometres of a range of local services, it was a sustainable location *for travellers*. Winchester City Council granted permission for residential gypsy caravans at Firgrove Lane in 2011 and 2018 because, notwithstanding its rural location, the area does not have a special designation, the fields are interspersed with similar types of development or other built forms and the site is not in the South Downs National Park, a Strategic/Local Gap or of ecological, historic or archaeological importance. In accordance with the principles handed down by the *Sage* judgement in 2003, the subject building was ‘substantially completed’ more than four years before the Enforcement Notice was served, so **this appeal should succeed on Ground D**. Contrary to the charges set down in the Enforcement Notice, the subject building and its prospective use satisfy the requirements of development plan policies MTRA4, DM11 and DM23, so **this appeal should succeed on Ground A**. The subject building stands within the residential community it is intended to serve, so it would not be ‘isolated’ and, as special circumstances prevail to justify its retention, the requirements of NPPF para.79 are also satisfied. The Secretary of State for Housing, Communities and Local Government is therefore respectfully requested to allow the s78 appeal and the s174 appeal on Grounds A and D, quash the Enforcement Notice and grant planning permission.

6.0 DOCUMENTS

Reference may be made to these documents at the forthcoming inquiry:

1. Photographs.
2. Inspector Tamplin’s decisions, January 2003 (extract).
3. Deemed consent W1129/3 re Whiteley Lane
4. Permissions 11/01875/FUL and 18/01691/FUL re four pitches.
5. Planning Contravention Notice, Enforcement Notice, Stop Notice 2016-2017.
6. House of Lords ‘Sage’ judgement 2003.
7. Certificates of Lawful Use or Development 2019.
8. Declarations of five witnesses.
9. Confirmation of SRMP payment.
10. Winchester District Local Plan Part 1: Joint Core Strategy 2013 (extracts).
11. Winchester District Local Plan Part 2: Development Management and Site Allocations’ (extracts).