

GROUND OF APPEAL

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ON BEHALF OF

HEATHER WOODS AND GRAHAM SNAPE

Relating to an Enforcement Notice Dated 24th September

**Affecting Land at The Greenhouse, Gravel Hill,
Shirrell Heath, Hampshire SO32 2JQ**

Planning Inspectorate Reference:-

APP/ to be advised

Winchester City Council Reference:-

19/00068/CARAVN

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This Statement has been prepared by Christopher Ward BA (hons), LL.M, MRTPI of BJC Planning on behalf of Graham Snape and Heather Woods (the appellants). It is based on materials passed to me by the appellants, viewable on the LPA website, or provided in initial correspondence with enforcement officers. On this basis I believe the claims and details set out in this document to be correct.

1.0 INTRODUCTION

- 1.1 This brief Statement is submitted with the appeal to provide the background to the Enforcement Notice and to set out a brief summary of each of the grounds of appeal.
- 1.2 As Heather Woods and Graham Snape have both been served with a copy of the Enforcement Notice, there are two appeals, one in each name. However, Heather and Graham are a couple who have occupied the accommodation on this site since its arrival in 2010, so this Statement will set out the details relevant to both appellants.
- 1.3 The Enforcement Notice effectively follows on from the refusal of a S 191 application in 2019, which sought to show that the accommodation on site was lawful. The application was refused but no appeal made. However, much of the information submitted with that application will be relevant to this enforcement appeal, with additional details to be provided to address new issues raised by the refusal, and as additional evidence that is relevant. It should be noted that some of the information that will be submitted in relation to this enforcement appeal differs from that submitted with the S191 application, based on additional details provided by the appellants. This may contradict, in part, the information available in 2019.
- 1.4 In addition, this appeal includes ground a) which was not relevant to the S191 application, and additional details relevant to grounds b), f) and g).
- 1.5 Additional materials and evidence will be provided during the course of the appeal and these details will be set out and explained in one or more detailed Statements to follow.

2.0 THE GROUNDS OF APPEAL

2.1 These are set out below in alphabetical order, although it is likely that an Inspector will consider first the 'legal grounds' of appeal before considering issues of merit.

Ground a)

2.2 The reasons for issuing the Notice raise two issues that are relevant to Ground a), namely i) that the appeal site is situated within land designated as Countryside where policy generally resists new dwellings, and ii) that the residential use of the site will lead to an increase in nitrates which will discharge to the Solent, and where this will contribute to an excess of nitrates within waters that are protected for their ecological importance.

2.3 In relation to issue i) (countryside) the appellant will examine the purpose of countryside policy and what this seeks to protect, and assess the degree to which the continued occupation of the accommodation on site, will have any negative impact, having regard to other developments in the vicinity. It will be suggested that after living on the site for 10 years, the continued occupation of the accommodation would have negligible impact on the countryside, and relocation would serve no useful planning purpose. The appellants circumstances effectively outweigh any residual harm.

2.4 In relation to issue ii) - Notwithstanding that any discharge of nitrate from the site has occurred for many years, the appellants will provide a nitrate assessment for the site, both as it exists now and as required to change by the Enforcement Notice, and explain how any increase in nitrate might be addressed. As the issue of nitrates is an 'evolving situation', the appellants response may need to vary as the appeal progresses.

Ground b)

2.5 This is relevant only to alleged breach ii) namely the change of use of the land from horticulture, and potentially only to part of the appeal site.

2.6 Attached at Appendix HG 1 is a copy letter from officers at WCC confirming that the mobile home that was on the land in June 2010 was sited within the curtilage of a dwelling. This is the same mobile home that has since been converted to a dwelling, sited in the same location. Hence it appears that in 2010 the Local Planning Authority agreed that part of the land surrounding and including the mobile home had a lawful use as the 'curtilage of a dwelling', and not horticulture. This land remains part of a residential curtilage, namely the Greenhouse. If this land was the curtilage of a dwelling in 2010, then there has been no change subsequently, and planning permission is not required for garden land to pass from one dwelling to another. The land has not been horticultural for many years

Ground d)

2.7 As the Enforcement Notice addresses 2 breaches of planning control it is necessary to consider these separately.

ii) The use of the site

2.8 The second breach alleged is a change of use of the site to ancillary residential use and storage. As this relates to a 'use' of land then the appropriate time limit for ground d) is 10 years.

2.9 It is understood that the use described effectively relates to the appellant's use of the site as a 'garden'.

2.10 The appellants will provide evidence that they moved a mobile home onto the land in February/March 2010, and have occupied this as their main home from that time onwards. It was occupied initially as land leased from the owners of Sunnybank and the lease included the adjacent remains of a glasshouse and other land around the mobile home. Hence much of the land shown in the Enforcement Notice has been used by the appellants for residential purposes (effectively garden land), since 2010.

- 2.11 Notwithstanding the Appellants' own use of the land, the letter from WCC in June 2010 indicates that there were no breaches of planning control, and specifically i) that the (same) Mobile Home was being used as ancillary/overflow accommodation to the main dwelling, ii) that the land on which the mobile home was sited, together with land around it, was part of a residential curtilage, and not horticultural land as now alleged. Hence this letter suggests that use as garden land was lawful even in 2010.
- 2.12 It is accepted that this does not apply to all of the land subject to the Enforcement Notice and the appellant will seek to identify a boundary between historic and more recent garden land as the appeal progresses.
- 2.13 Notwithstanding the views of WCC in June 2010, the appellant will provide evidence that it was their MH and that they were living in this independently of Sunnybank, prior to June 2010, which is more than 10 years prior to the Enforcement Notice.
- 2.14 For clarity, it is noted that the S191 application submitted in September 2019 (ref 19/01683/LDC) referred to the appellants as occupying the site from January 2011. Whilst many of the details provided with that application were correct, this particular detail appears to be incorrect. Appendix HG2 is a short summary of some 20 items that are now available, supporting occupation prior to January 2011. More details may be available and will be referred to in the Appellants' Statements of Evidence in due course.
- 2.15 The appellants will explain the change in the start date for their occupation in the evidence to follow but in brief the date of January 2011 (referred to in application 19/01683/LDC was suggested to them by the previous agent based on information that he had available at that time. This was potentially supported by details provided to him by Mr Stone, for whom he had acted previously. The new details listed in Appendix HG 2 have been located by the appellants following a request from myself for more precision.

2.16 Given the belief that some of these details provided with application 19/01683/LDC are incorrect, a revised statutory declaration and new timeline will be provided in the main Statement(s) for the appeal.

i) The construction of a dwellinghouse.

2.17 The dwelling as alleged in the Notice comprises the remaining parts of a mobile home (MH) plus various significant alterations and extensions to that MH which mean that this is no longer a 'caravan' as defined for planning purposes but is now a building. In order to avoid any confusion when referring to a mobile home, as to whether this is or is not a caravan, the text below will use the term 'accommodation' as a general term to describe the unit that is being lived in, to mean the original (remaining) fabric of the MH plus the subsequent alterations and additions. It is the appellants view that at some point (in 2013) 'the accommodation' ceased to be a caravan and became a building. The EN indicates that the City Council accept that this is now a building (a dwellinghouse), but suggest that this change did not occur until 2018.

2.18 The appellant has submitted in 2019 an application under S191 of The Act, providing details of the works done to the accommodation. These are various (independent) activities carried out over approximately 6-7 years. The application was refused by WCC. The key issue is to determine when the works undertaken were sufficient in their magnitude or their nature for the appellant's home to no longer be a caravan but effectively to become a building. WCC accept that this had occurred by 2018. It is the appellants belief that this occurred in 2013 when a large part of the chassis was removed. The effect of this was to create a structure that was of a substantial size, was attached to the ground beneath it, and that had, in September 2020, been present on the site for over 7 years, giving it a high degree of permanence¹. The appellant will challenge the decision of the City Council to disagree with

¹ See Encyclopedia of Planning Law para P55.14

the evidence submitted with the S191 application and will produce additional evidence to clarify the works done in 2013, and potentially other relevant works prior to September 2016.

- 2.19 It is the appellants belief that the dwelling house was created by the works undertaken in 2013, and that as this is over 4 years prior to the Enforcement Notice, then this structure is now lawful. As this new structure has been the Appellants' home since (before) 2013 the lawful use of this building is as a dwelling.
- 2.20 In making these claims, the appellant is aware that there have been some changes since 2016 which may need planning permission. However, these subsequent additions and alterations do not undermine the lawfulness of the structure as it existed in 2013 (or prior to September 2016).

Ground f)

- 2.21 Section 5 of the Notice sets out 4 steps that are required for compliance. These may be varied depending on what the Inspector determines as facts. However, on the basis that the WCC concluded in June 2010 that the lawful use of the site was as garden land, on which there was a mobile home which could be used for purposes ancillary to a dwelling, the requirements to remove all trace of a mobile home, and other items unrelated to horticulture, is incompatible with reinstating it to its former (June 2010) condition. Such requirements would effectively extinguish the use previously considered by the City Council to be lawful.
- 2.22 Notwithstanding this previous (lawful) use, the dilapidated state of the glasshouse is testament to the fact that this structure has not been used productively for many years and that any former horticultural use is no longer viable.
- 2.23 The Notice needs to be amended to reflect at least the previous lawful use of part of the site as garden land, including the ability to retain a mobile home

(caravan) as ancillary accommodation to that use. Further enquiries are being made about the former uses of the glasshouse (pre 2010).

Ground g)

- 2.24 The appellants have lived on the site since 2010 and moved here due to their previous home being compulsorily acquired by another LPA. Both are approaching retirement. Consequently, the only option of alternative accommodation is likely to be another mobile home on another site. Heather has health issues. In such circumstances it would be difficult and possibly impossible to find and acquire another site within 6 months, and additionally to then remove all trace of their occupation from the appeal site.

3. OTHER ISSUES

Appeal procedure – Hearing or Inquiry

- 3.1 The appeal form has been completed with a request that the appeal be determined as an Informal Hearing. This is selected on the grounds that i) there are issues and matters on which the Inspector is likely to want to raise questions and to ask for clarification potentially from both the appellant and the LPA. Some of these questions may require discussion on the site itself.
- 3.2 Most of the evidence likely to be presented will be in the form of documents and other papers, which the Inspector will be able to assess. However, it is recognised that the people with the most detailed knowledge of the site are the appellants and hence that the Inspector may wish to hear evidence directly from the appellants. Whilst this could potentially occur at a Hearing, it is unknown whether the LPA will wish to challenge the details of such evidence (rather than simply the interpretation). If it is likely that evidence will be necessary 'under oath' and/or that cross examination is required, then it is accepted that an Inquiry may be necessary.

Potential need for a S 106 Obligation

- 3.3 It is not currently anticipated that there will be a need for a S106 Obligation to be completed. However, as The Notice includes a reason relating to nitrates, it is possible that such an obligation will become necessary to secure mitigation if i) the Inspector needs to determine ground a) and ii) if an assessment shows that there would be a surplus of nitrates. If this is the case then it is understood that WCC has a standard approach to this issue, which may require a S106 Obligation. However, it has not been possible, in the time available, to explore the nitrate generated by the site, or that which would arise from a horticultural use, so the assessment will need to be undertaken as the appeal progresses. It is hoped that this may be able to be clarified in a Statement of Common Ground. If a Section 106 becomes necessary then this will be submitted.