
Section 174

Town and Country Planning Act 1990 (as amended)

APPEALS BY

Ms Heather Woods and Mr Graham Snape

Against an Enforcement Notice issued by Winchester City Council on 24th September 2020 in respect of the construction of a single dwellinghouse (former mobile home)

at

The Green House, Gravel Hill, Shirrell Heath, Hampshire, SO32 2JQ

LPA comments on Rule 6 Statements and 3rd party reps

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1. The LPA are in receipt of the Appellants Statement, Mr Stone's Rule 6 Statement and 3rd party comments and would make the following comments:

Comments on Appellants Statement

2. At Paragraph 3.3, it states that there were errors and incorrect information in their S191 application and that they have searched through all of their available records to provide a more comprehensive history.
3. Given what was at stake, one would have expected the information submitted in support of their S191 application to have been accurate.
4. It is of particular note, and indeed some concern, that they say the start date for the arrival of the caravan on the site has changed from what was stated in their S191 application and in the statutory declaration provided by Mr Snape.
5. The reasons why they came to arrive at the site from their previous site at Solent Breezes in Fareham seems very clear. The LPA will therefore want to know why the appellants forgot, or omitted, to mention this in their S191 application, whereas they are very sure about the dates now and have been able to provide multiple forms of evidence to support this.

Ground B

6. Paragraph 4.3 states 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 that of the appellants' home, 'The Greenhouse'. If this land was the curtilage of a dwelling in 2010 (effectively used as garden land), 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.
7. The LPA does not contest that the land upon which the mobile home was sited in 2010 was, at that point, considered to be part of the residential curtilage of Sunnybank as it was included in the red line of a previous enforcement notice issued on 8 February 2008, which denoted the residential planning unit associated with Sunnybank.
8. However, the LPA's case is that the remainder of the red line site (in this appeal) was at that time in horticultural use (or last used for horticulture) and therefore when the appellants purchased the land in 2015 and sought to incorporate the whole of the land within their ownership and control, as part of their residential usage, a new planning unit was formed which resulted in a material change of use of the entire red line site and not just a part of it.

Ground D

Use of land

9. At Paragraph 4.12 it states that when the appellants occupied the site in 2010 the former glasshouse showed no signs of having been used recently for horticulture and was largely open, but included various boxes of papers and other possible personal

effects, which they were advised had been stored there, and which they were advised were connected with a rest home elsewhere on Gravel Hill. Most of the building was still covered with glass but with parts (at the northern end) damaged and overgrown.

10. Paragraph 4.13 states that the glasshouse has been used by the appellants as a residential greenhouse, hobby shed and general domestic/garden store since they moved to the site, more than 10 years prior to the Notice.
11. Paragraph 4.15 states that the appellants accept that they have not used all of the site in excess of 10 years, but both the area enclosed by the hedge, and the glasshouse, has been used by them as a garden and domestic store since early 2010.
12. The photographs taken by Rob Riding during his visits on 19.5.10 and 3.8.10 show the southern end of the greenhouse as being largely overgrown. There are a few items visible within an opening in the greenhouse, possibly a wheel barrow and some bags of fertilizer. Clearly there was nothing of interest occurring within the greenhouse at this time that attracted the interest of Mr Riding during his visit. Had he any reason to suspect that there was anything happening that needed further examination or investigation then he would have mentioned it. This is before the site was enclosed with fencing in 2015, so there would have been clear views into the greenhouse at this time.

The residential use

13. In terms of Paragraphs 4.16 and 4.17, the LPA's position is that what is now on site constitutes a dwellinghouse, not a caravan. The relevant consideration therefore is the date that the substantive works took place to the mobile that resulted in it becoming a dwellinghouse. The LPA say that this was in 2018, which is less than 4 years from when the notice was issued.
14. If the appellants wish to pursue an argument that the unit is still capable of being moved then the onus is on them to prove that is the case. However, the LPA will argue that, notwithstanding whether it might be possible to move the unit, its size and degree of permanence – following the totality of the works in 2018 – points to the fact that it is a building (and therefore a dwellinghouse) as matter of fact and degree.
15. It is of note that the appellants are now able to provide detailed evidence of the dates that they first brought their mobile home to the site and first occupied it. However, this directly contradicts the information and evidence that the LPA was given during their enforcement investigation in 2010. Evidence of rental payments from May – Oct 2010 conflicts with the 2010 investigation, and particularly the visit in August 2010, when the mobile home was inspected and it was confirmed that the mobile was being used for ancillary use / accommodation. None of the appellants personal effects were in the mobile home at that time. If the appellants were living in the mobile home at this time, as now claimed, then the LPA cannot accept that they were not party to this or least aware of the visit of the LPA so that their effects could be removed from the mobile home. There must have been some form of collusion on the part of the appellants in concealing the true use of the mobile home from the Council at this time.

Changes to the accommodation

16. The LPA is not persuaded that the alterations carried out prior to and early 2010, between 2010 - 2013 or in 2013 resulted in the mobile home losing its status as a mobile home.
17. If any weight is to be attached to the two letters supplied by the caravan transport company and body work specialist then the authors of those letters will need to give evidence in person and be cross examined under oath. It is noted that the letter from Mr Clark of Clarks Caravan and Boat Haulage Ltd states that they moved the mobile home from the Solent Breezes site to its present site in late 2010. However, we know this is incorrect as the appellants own evidence is that the mobile home was moved onto the site in February 2010.
18. It is the work that was undertaken in December 2017 and into 2018 that lead the LPA to conclude that the mobile home became a dwelling at this point. This includes the extension to the eastern end of the unit which included the laying of a concrete slab underneath and also the lowering of the floor in the lounge area, which also involved the laying of a concrete slab beneath.
19. Around this time, the ring beam was extended around the unit and the wall plate extended in order to install external cladding. A new roof was also added, which involved the addition of a new roof trusses.
20. The appellants confirm that these works were all completed by April 2018.
21. It should be noted that most of this work was undertaken by Mr Snape, who it understood to be a very competent DIY person, but not an expert.

ASSESSMENT OF THESE WORKS, AND IMPLICATIONS FOR THE STATUS OF THE ACCOMMODATION AS A USE OR A BUILDING

22. Whilst it is noted that the appellants are seeking to persuade the inspector that there are 3 possible alternatives as to how the unit might be considered, which could affect the alleged breach of planning control, the LPA maintains that what is on site is a dwelling and that the works that resulted in the mobile home becoming a dwelling occurred less than 4 years ago.
23. The onus is on the appellants to provide otherwise.
24. If a caravan no longer complies with the definition of a caravan, then by default it must be operational development. However, it has to be proven that the works carried out are so sufficient to in order to render the unit immobile and therefore fail the portability requirements under the definition set out in section 29(1) of the Caravan Sites and Control of Development Act 1960. This is relevant to the works undertaken in 2013.
25. Even if it is not longer a caravan, but still capable of being moved (if it had to) as claimed, due to it being on an 'elaborate ring beam', the extent of works undertaken to the unit, which include cladding and a new roof, as well as the laying of concrete slabs under the floors on which both ends of the caravan rest on and the lowering of the

lounge floor, which were all completed in 2018, resulted in a degree of permanence that constitutes operational development.

26. The courts have consistently held that such matters are a matter of fact and degree.
27. Even if it could be shown that the unit is still mobile and therefore a use of land, it would have to be shown that it has been continuously sited on the land for independent residential use for more than 10 years (i.e. before 24 September 2010). However, this raises the issue of concealment, given that the outcome of the Councils enforcement investigation in 2010 determined that the mobile home was being used as ancillary accommodation at that point in relation to Sunnybank.

CONTRARY EVIDENCE RE GROUND D) - AS SUGGESTED BY THE LPA AND MR STONE

28. The S191 application was determined based on the information submitted at that time. Substantial more evidence has been submitted for consideration in this appeal. Whilst the determination of the S191 application and the officers report is relevant, the case has moved on.
29. The legal officers report acknowledged that the DIY works to the chassis in 2013 may well have jeopardised the structural integrity of the mobile home, which, based on the letters provided, meant that the caravan could not be moved, although this did not in itself result in a degree of permanence or that as a matter of law that the caravan was now a building (applying the judgement in Measor).
30. The extent to which the works in 2013 jeopardised the structural integrity of the mobile home was based on the applicant's own admission and the two supporting letters. However, these are yet to be properly tested.
31. The key conclusion of the report was that the work undertaken in May 2018 were of a greater material degree and would ordinarily tilt the balance of probability in favour of the mobile home having become a building at that point (and not as a result of the earlier work in 2013). As this was less than 4 years before the date of the application, the certificate was refused.
32. Mr Stone has been granted Rule 6 status and the LPA is therefore content to allow him to make his own case, albeit in support of the Council's case.
33. Mr Stone lives immediately adjacent to the site and should therefore be well placed to give evidence on what happened and when.
34. He has a potential pivotal role in this appeal, having consented to the appellants living on the site initially and receiving rent from them and then selling them the land in 2015.
35. He also has had close associations with Mr Eric Cox in the past, who is also a person of particular interest in this appeal in terms of his role, initially in 2010 during the LPA's enforcement investigation and also latterly when he represented the appellants in the S191 application. It is unclear what the extent of his relationship is with the appellants and how far back this goes. This will be a potential point of cross examination.

Ground F

36. In order to remedy the breaches, the unauthorised development specified in the notice must cease and / or be removed from the land as specified.
37. The appellants maintain that a small part of the land previously formed part of the residential curtilage of Sunnybank and that the requirement to cease the use of the land for ancillary residential use and storage should not apply to that part of the land.
38. The LPA does not necessarily disagree with this and will look into this in more detail. The 2008 enforcement notice plan / red line will be relevant to this issue.
39. However, the suggestion that an ancillary mobile home (caravan) could be retained as ancillary accommodation to that use is not agreed. The land would no longer form part of the curtilage of Sunnybank and therefore there would be no justifiable reason to allow a mobile home to be retained as part of the requirements of the notice.

Ground G

40. There LPA would insist that a compliance period of 6 months is reasonable and would not wish for that to be extended.
41. The potential to allow the appellants to remain on the site for a longer period would be open to the inspector to consider under ground A, although the LPA is not advocating this.
42. A quick search of Rightmove.co.uk indicates that there are static caravans for sale or rent in the wider area, e.g. Colden Common, Fair Oak, West End (Southampton). There are also numerous flats for sale and rent as well.
43. Whilst the appellants may be used to living in a mobile home and this may be their preferred type of accommodation, there is no requirement for this to be their only accommodation type. It is clear that the mobile home that they were living in was cold and damp, especially during the winter, and therefore insufficient for their requirements, which is why they have gone to great lengths to alter and extend it to make it more 'dwelling' like.

Ground A

44. The planning policy position for new residential development in this location, within the countryside, is clearly set out in the Council's adopted local plan.
45. The appellants statement does not offer any justifiable reasons why these policies should not apply or set aside.
46. Reference has been made to the nearby gypsy site, however, this is subject to special consideration under its own policy and DPD.
47. As stated above, the appellants choice to live in a mobile home is just that – a choice. There is nothing to stop them living in a flat or an apartment. It is not a realistic argument to say that there are no other sites available for them to move to. As shown, there are static caravans available to buy or rent on other established caravan sites in

the wider area, or numerous flats available as well. There are therefore plenty of accommodation options for the appellants.

Nitrates

48. The position on nitrates remains unresolved. The appellants will therefore need to demonstrate how their development will be nitrate neutral by the time of the inquiry. As the decision maker, the Inspector will be responsible for undertaking an appropriate assessment under the Habitats Regulations, specifically with regards to potential harm for nitrates to enter the Solent.
49. All new development proposals in Winchester District which involve overnight stays are subject to an appropriate assessment, which would include unauthorised residential development already in situ.

Comments on Rule 6 Statement by Mr Stone

50. The comments of Mr Stone are noted.
51. As part of his comments under Ground A, he has introduced a potential objection on highway grounds on the basis that the access track off Gravel Hill that leads to the site cannot meet the required site lines when leaving the track and entering the main carriageway with a 40mph speed limit. This has not been cited as a reason for issuing the notice, although that is not to say that the LPA has specifically considered and discounted this issue.
52. On Ground B, he agrees with the LPA that the change of use appeal relating to the land has to fail, as the land to the north of the (previously) fenced area, which was agricultural, has been used domestically. Evidence will be provided on the use of the land.
53. Evidence will also be provided challenging the nature and dates of the work carried out to the mobile home, as advanced by the appellants in their Ground D appeal.
54. Under Ground F, Mr Stone states that there is no need for the structure to remain as there is insufficient agricultural intensification to warrant a store or shelter. He also confirms that the structure is not required for ancillary accommodation to serve Sunnybank, which is in different ownership.
55. For the appeal under Ground G, sites will also be identified with vacancies for caravans in the local vicinity. There are also numerous public and private sector properties for sale and rent including sheltered accommodation available locally.
56. Like the LPA, Mr Stone insists that there is clear evidence that the previous consultant representing the appellants prior to the submission of this appeal (Mr Cox) misled the LPA on a number of occasions and withheld information, which delayed formal action after the true assessment of what was happening. In planning terms this has to be regarded as concealment. Substantial evidence will support this claim.

Comments on 3rd party comments

57. The letter from Mr Heasell confirms that he and his wife had received correspondence from the WCC Enforcement Team in 2010, following their investigation, when it was concluded that there was no breach as the mobile home was for family members. Even as lay people, they make the statement that someone must have clearly been misled.
58. They go on to say that they got to know the appellants over the years who told them that they had bought the land from Mr Stone but were not related to them. This suggests that the appellants may well have known, by that stage, the relevance of them living in the mobile home on the land but not being related to Mr Stone.
59. Mr Heasell clearly welcomes the improvements that the appellants have made to the land and glasshouse building.
60. Mrs Hampshire proffers that the premises is still a mobile home and that it meets the legislation, although concedes that she is not a structural engineer. It is not clear how intimately she knows the property or whether she has seen it up close.
61. The comments of Miss T Daniels is not of any use (as the mobile home is visible on the 2012 aerial photography on Google Earth, although is a bit blurry).