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**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 24<sup>th</sup> 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**

**STATEMENT OF CASE OF THE LPA**

**Prepared by Neil March BSC (Hons) DIP TP MRTPI  
of Southern Planning Practice**

**Planning Inspectorate Ref's: APP/L1765/C/20/3261886 & 3261887**

**LPA Ref: 19/00068/CARAVN**

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**SOUTHERN PLANNING PRACTICE LTD**

Registered Office: Youngs Yard, Churchfields, Twyford, Winchester, SO21 1NN  
Tel: 01962 715770 Email: [info@southernplanning.co.uk](mailto:info@southernplanning.co.uk) Website: [www.southernplanning.co.uk](http://www.southernplanning.co.uk)  
Registered in England and Wales No. 3862030

## 1.0 INTRODUCTION

- 1.1 Southern Planning Practice Ltd has been instructed by Winchester City Council (“WCC”) to act for them in these appeals, which are against an Enforcement Notice (“EN”) issued by WCC on 24<sup>th</sup> September 2020. The breach of planning control alleged in the notice is:

Without planning permission:

- (i) the construction of a single dwellinghouse comprising a former mobile home ('X') with extension ('Y') and decking in the positions marked 'X' and 'Y' on the attached plan.
- (ii) the material change of use of the Land from horticultural use to ancillary residential use and storage (including the storage of domestic items in the glasshouse).

- 1.2 The reasons for issuing the notice are:

It appears to the Council that the breaches of planning control have occurred within the last four and ten years respectively.

On the 13 September 2019 under ref no: 19/01683/LDC the Council refused an application for a Certificate of Lawful Use on the basis that the dwellinghouse was not immune from enforcement action. The Council considered, that, based on the evidence, prior to 2018, the structure was a caravan.

The unauthorised construction of a dwellinghouse and change of the use of the Land to residential use is contrary to policy MTRA4 in the Winchester District Local Plan Part 1 (2013) and paragraph 79 of the National Planning Policy Framework.

On 2<sup>nd</sup> June 2019 Natural England produced standing advice to Local Planning Authorities on achieving nutrient neutrality for new development in the Solent region. The property lies within the catchment of the Solent and provides for overnight accommodation which is not served by mains drainage. As such there is wastewater generated by the occupants of the property that may give rise to nitrogen loading and it has not been demonstrated that the use of the land is either nitrogen neutral or generates a net loss. This would be contrary to policies CP16 and CP17 of the Winchester District Local Plan Part 1, paragraph 170 of the National Planning policy Framework and the standing advice.

The Council consider that planning permission should not be granted because planning conditions could not overcome these objections.

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1.3 The requirements of the notice are:

1. Cease the residential use of the dwellinghouse;
2. Demolish the dwellinghouse, extension and decking, and remove all resultant materials from the Land;
3. Cease the use of the Land for ancillary residential purposes and storage of items not related to the lawful use of the Land for horticulture;
4. Reinststate the Land to its former condition.

1.4 The period for compliance is:

Six calendar months after this notice takes effect.

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## 2.0 THE APPEALS

- 2.1 The appeals have been lodged by Ms Heather Woods and Mr Graham Snape, who own the land and occupy the alleged single dwelling (former mobile home).
- 2.2 The appeals against the EN have been lodged under the following grounds:
- (a) That planning permission should be granted for what is alleged in the notice.
  - (b) That the breach of control alleged in the enforcement notice has not occurred as a matter of fact
  - (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.
  - (f) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.
  - (g) The time given to comply with the notice is too short.
- 2.3 The appeal under ground (b) is in relation to point (ii) of the alleged breach, i.e. the material change of use of the Land from horticultural use to ancillary residential use and storage.
- 2.4 The appeals are scheduled to be dealt with by way of an Inquiry (date TBC).
- 2.5 Rule 6 status has been granted to Mr R Stone of Sunnybank, Gravel Hill, Shirrell Heath), who lives immediately adjacent to the application site. Part of the appeal site previously formed part of the curtilage of Sunnybank. Mr Stone had allowed the appellants to site their mobile home in his curtilage and live there. They ended up purchasing the appeal site from him in 2015.

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### **3.0 DESCRIPTION OF THE SITE AND SURROUNDINGS**

- 3.1 The site lies in an area known locally as Gravel Hill, which is situated to the north of the village of Shirrell Heath.
- 3.2 The larger settlements of Swanmore and Wickham lie several miles to the north and south respectively.
- 3.3 It forms part of a small cluster of buildings that include private dwellings, as well as an equestrian premise, a large commercial food distribution building (currently empty) and a small traveller site.
- 3.4 Part of the site includes a large glasshouse that runs the almost the entire eastern boundary. Its presence indicates that the land was previously used for horticulture (market gardening was a common feature in this area).
- 3.5 The site is rectangular shaped, generally level and extends to approx. 0.16ha (0.4 acre).
- 3.6 The accommodation unit / former mobile home subject of these appeals is located along the southern boundary of the land, next to a detached property called Sunnybank.
- 3.7 There is access into the site via double metal gates at the northern end. There is also a recessed parking area and pedestrian gate leading to the accommodation unit along the eastern side.
- 3.8 The site is accessed via an unmade track off Gravel Hill, which serves as the access to a number of other properties and premises.
- 3.9 For the purpose of planning policy the site lies in the countryside.

#### 4.0 PLANNING / ENFORCEMENT HISTORY

4.1 There have been a number of enforcement investigations involving the site: -

<b>Enf Case Ref:</b>	<b>Alleged Breach</b>	<b>Status / Date:</b>
10/00112/MIXED	Alleged unauthorised extension to outbuilding, residential mobile home and summerhouse at Sunnybank, Gravel Hill, Shirrell Heath	Closed 10.6.2010
16/00294/CARAVN	Alleged caravans being placed in field adjoining gypsy site, Land lying to the west of Gravel Hill (later revised to - Following up a complaint, a recent site inspection found a caravan which appeared to be in residential use. The caravan was situated inside the greenhouse	Closed 9.12.2016
17/00186/CARAVN	Alleged that two caravans (one mobile home_one touring) located on land for residential purposes – no planning permission at Land behind Sunnybank, Gravel Hill, Shirrell Heath	Superseded by 19/00068/CARAVN
19/00068/CARAVN	New case opened to replace 17/00186/CARAVN after further site inspection in April 2019 determined that the mobile home was now a dwelling	Subject of these appeals

4.2 The relevant planning history is as follows:

<b>Application ref:</b>	<b>Description</b>	<b>Decision / date</b>
19/01683/LDC	Residential occupation	Lawful Development Certificate – Refused 13 Sept 2019

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4.3 Prior to the submission of the LDC application, in April 2018 Mr Cox had submitted a planning application for the 'Retention of mobile home for residential occupation solely by the applicant and dependants' (application ref: 18/00994/FUL), although there was a problem with the red line and the ownership of the access track resulting in the wrong ownership certificate being signed. The application therefore ended up being returned on 7<sup>th</sup> March 2019, and no longer appears on the planning register.

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## **5.0 DISCREPANCY WITH THE DATE THAT THE MOBILE HOME WAS FIRST BROUGHT TO THE SITE AND FIRST OCCUPIED BY THE APPELLANTS (POSSIBLE CONCEALMENT)**

- 5.1 There is agreement between the parties that the alleged dwelling / accommodation unit now on site and subject to these appeals was formerly the mobile home that the appellants first brought onto the site and occupied. However, there is major discrepancy in the evidence as to when this occurred.
- 5.2 It is evident that the mobile home was the subject of the enforcement investigation carried out in 2010 (Enf Case ref: 10/00112/MIXED). The investigating officer, Rob Riding, was satisfied that the mobile home was sited within the curtilage of Sunnybank and was being used as ancillary/overflow accommodation to Sunnybank and therefore closed the case. As part of the investigation, he undertook an initial visit on 19<sup>th</sup> May 2010 and then went back to inspect the interior of the caravan on 3<sup>rd</sup> August 2010. In between these visits, he sought written confirmation of how it was being used from Mr Eric Cox, who was the agent at the time. Mr Riding confirmed his findings in a letter dated 10 June 2010, in which he made it very clear that consent would be required if the mobile home was being occupied independently of the dwelling (i.e. by non-family members). Mr Cox was, in any event, very familiar with the rules regarding the ancillary use of caravans / outbuildings (within residential curtilages) as he had been involved in a similar case on the Sunnybank site which had involved the issuing of an Enforcement Notice by WCC and a subsequent appeal in 2008. Part of Mr Riding's visit in 2010 was to also view an extension to the outbuilding on the Sunnybank site.
- 5.3 The enforcement investigation in 2010 therefore sets out a clear marker as to how the mobile home was being used at that time. Mr Riding's photos and site note of 3 August 2010 and the written confirmation provided by Mr Cox that the unit was being used as ancillary/overflow accommodation and categorically not as independent accommodation is crucial evidence in this appeal.



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- 5.4 In the appellants grounds of appeal it is now being suggested that the appellants first moved the mobile home onto site and occupied it in Feb / March 2010. However, this entirely contradicts the findings of the enforcement investigation undertaken by Mr Riding in 2010, which included an internal inspection of the caravan on 3<sup>rd</sup> August 2010. It also contradicts the evidence that was presented in the 2019 LDC application, which states that the appellants did not move on the site until 1<sup>st</sup> January 2011, which was also the date specified by Mr G Snape in his Statutory Declaration.
- 5.5 The appellants seem very sure of the date that they moved the mobile home onto the site and first occupied it and have included a list of supporting evidence in their Appendix HG2, which includes cash withdrawals to pay rent between May – October 2010, i.e. the time of Mr Riding’s visits.
- 5.6 It would therefore appear that the true use of the mobile home by the appellants in 2010 was concealed from the Council, denying them the opportunity to take enforcement action. As such, the Connor Principle is engaged, which prevents a person(s) later benefitting from their actions if they deliberately mislead the Council in an investigation.
- 5.7 This therefore undermines any lawfulness arguments advanced by the appellants in support of any residential use of the land that may have occurred under the 4 and 10 year rules. It also has a bearing on the other grounds of appeal, e.g. ground (g).

## 6.0 RELEVANT DATES / EVENTS LEADING UP TO THE ISSUING OF THE ENFORCEMENT NOTICE

May / August 2010	<p>Council's investigation of the mobile home.</p> <ul style="list-style-type: none"> <li>- First visit by Rob Riding (May 2010)</li> <li>- Correspondence between Rob Riding and Eric Cox (June 2010) - Mr Cox confirmed mobile home was being used as ancillary accommodation and not as independent accommodation. Position confirmed by Rob Riding in letter dated 10 June 2010.</li> <li>- Second visit by Rob Riding – mobile home inspected (3 August 2010). Confirmed that it was being used for ancillary purposes.</li> </ul> <p>Case therefore closed.</p>
Feb 2015	Land purchased by appellants
Nov / Dec 2016	Enf Case 16/00294/CARAVN - Touring caravan spotted inside greenhouse with gas bottle and water, suggesting residential use. Following correspondence with the appellants the caravan is removed.
2017 / 2018	<p>Enf Case 17/00186/CARAVN - Further allegation received about residential mobile home and touring caravan on the site.</p> <ul style="list-style-type: none"> <li>- Letter sent to owners (January 2018)</li> <li>- Reply received from Eric Cox (March 2018). Proposes to submit a planning application to deal solely with the residential mobile home</li> <li>- Confirmation from Mr Cox that a planning application has been submitted for retention of mobile home (April 2018). Agreement between Mr Cox and Enforcement Officer that the 10 year rule applies</li> </ul>
April 2018	Planning application submitted for 'Retention of mobile home for residential occupation solely by the applicant and dependants' (application ref: 18/00994/FUL)

May 2018	Planning case officer, Liz Marsden, visits and takes photos
7 March 2019	Planning application 18/00994/FUL returned due to issues with the red line / ownership certificate. Case passed back to enforcement
15 March 2019	PCN issued alleging Unauthorised residential use of mobile home
5 April 2019	Further PCN issued alleging unauthorised dwelling
24 April 2019	Further site inspection by Gill Cooper and Sarah Castle (WCC Enforcement). Mobile home judged to be a dwelling due to level of alterations and additions made to it. Agreement with Mr Cox that an LDC could be submitted in order to confirm that dwelling is now lawful.
July 2019	LDC submitted by Mr Cox (ref: 19/01683/LDC)
Sept 2019	LDC refused – WCC not persuaded that the works undertaken to the mobile home in 2013 were sufficient to constitute a dwelling. More recent works in 2017 / 2018, which involved the construction of an extension to the bedroom, etc did result in the unit becoming a dwelling, but is less than 4 years ago.
Oct 2019	Instructions to legal recommending enforcement action be taken
24 Sept 2020	Enforcement Notice served (note: issuing of the notice was largely delayed due to the Coronavirus pandemic / lockdowns, etc)

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## 7.0 LDC APPLICATION (2019)

- 7.1 The LDC application submitted by Mr Eric Cox on behalf of the appellants in July 2019 was refused by WCC on 24<sup>th</sup> September 2020.
- 7.2 The supporting evidence submitted by Mr Cox advised that the mobile home had been much changed since it was first brought to the site in 2011 (sic) rendering the structure incapable of being moved. Works were said to have been carried out in 2013, 2015 and 2018. Various photographs and documents were submitted to demonstrate this, including letters from a local Boat and Caravan Haulage company and a Body Works business. A stat dec was also included from Mr Snape.
- 7.3 The evidence states that Mr Snape undertook work to the mobile home in 2013, which involved removing part of the chassis in order to fit patio doors. As a result, the structural integrity of the mobile home has been compromised and can longer be moved or transported off the site. By default, it therefore constitutes a dwelling, which occurred more than 4 years before the date of the application. Additional works to improve the thermal efficiency of the unit were undertaken in 2015. In 2018 an extension was built at one end of the unit. Timber cladding and a tiled roof (with a slightly higher pitch) was also added.
- 7.4 Representations were received from Mr Stone and Jane Foster of Sunnybank, challenging the dates of the works and the claim that a dwelling had been established more than 4 years before the date of the application.
- 7.5 The application was refused by WCC under Section 191(4) of the Town and Country Planning Act 1990 (as amended) as ‘the local planning authority, was not provided with information which satisfactorily demonstrated the lawfulness of the use or operations described in the application.’ The reasons for refusing the application, as detailed in the officer report, include:
- The photographs provided in support of the application were considered to offer little support to the application as they are undated and out of context.

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- In the case of *Measor v Secretary of State for the Environment, Transport and the Regions* [1998] 4 P.L.R. 93; [1999] J.P.L. 182, it was held that the approach to the definition of a "building" should be considered, as a matter of fact and degree, in the light of factors such as size, permanence, physical attachment and composition by components. Generally a mobile caravan would not satisfy that definition, taking into account factors such as permanence and attachment.
  - The works to the entrance of the mobile home alone probably did not alter the nature of the structure from being one of a mobile home to that of a building as understood in law. The fact that the mobile home could not be moved in the opinion of specialist removers does not relate to the degree of permanence of the structure, but instead reinforces the probability that the "DIY" works that the applicant undertook when installing the larger patio doors in fact jeopardised the structural integrity of the mobile home. The Council is not satisfied on a balance of probabilities that the works that the applicant carried out were of the degree required to transform the mobile home into a building.
  - None of the works described by the applicant in the Planning Statement that took place in 2015 constitute material operations and are works to the internal features of the mobile home.
  - It would appear that in May 2018 some material works were carried out. The lounge floor was "dropped" to match the lowered entrance way which was done in 2013 and addressed in this report above. An extension was also allegedly added on to the mobile home in early 2018. These works are of a greater material degree and would ordinarily tilt the balance of probability in favour of the mobile home having become a building. These material operations, however, are relatively recent and have not attained immunity from enforcement action.

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## 8.0 EVIDENCE OF MR R STONE (RULE 6 STATUS)

8.1 Mr Stone of Sunnybank has obtained Rule 6 status and has advised of his intention to provide further evidence in support of the Council's case.

8.2 Mr Stone submitted 3<sup>rd</sup> party rep's on the LDC application, challenging the evidence that had been submitted. His comments on the LDC application included the following points:

### Concealment

- There has been an act concealment as Mr Cox acting as the agent for Ms Woods told Mr Riding the caravan was ancillary to the adjacent dwelling Sunnybank and shared the facilities within. That simply was not true. Ms Woods paid rent and paid for electricity monthly, which was used, and recorded by a meter in the house. Each reading is written on the meter cupboard door and may be inspected. Receipts were issued for each monthly payment. Mr Cox deceived the officer as there was a clear breach of planning taking place, which was the unlawful siting of a caravan occupied independently to Sunnybank. Had Mr Cox not concealed the truth, enforcement action would have been taken to cease the use and remove the caravan from the land, and the applicant would not have been in the position she is claiming today. A couple of years on, a PCN was issued relating to a further caravan sited within the greenhouse, which was subsequently removed. The Council is best positioned to decide if any further concealment took place regarding land ownership and the non-return of the notice. Mr Snape who jointly instructed Mr Cox with Ms Woods claims he carried out works in 2013 that made the caravan immobile, yet he was party to Mr Cox submitting a retrospective application for the retention of a mobile home in April 2018. This was subsequently withdrawn as it was found to be invalid, but still misleading the Council that a caravan existed.

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### Disputed evidence

- I totally refute the majority of the evidence submitted and do not believe four years immunity has been achieved. The evidence provided also fails to confirm the necessary degree of permanence that operational development has been achieved.
- Mr Snape in his declaration states he fitted patio doors to replace an aluminium door, which necessitated the removal of part of the chassis. This work was not carried out in 2013 as stated. At that time there was a good relationship between all of us and I would say I visited the caravan at least once a week, and at no time was there a step in the doorway or the floor lowered. This work was started on the 26th May 2018, and continued for the following two weekends. I am certain of this as I was attending a barbeque at my daughter's property celebrating my 68<sup>th</sup> birthday. The noise was so great I went into my house and looked down into the caravan window from my bathroom velux window. I saw Mr Snape on his knees grinding metal as sparks were flying and hitting metal with a hammer in the area of the doorway. In 2013, I still owned the land the caravan was sited on, and there was no intention of selling the land. Ms Woods knew the arrangement was only temporary while they sorted themselves out, after their eviction from Solent Breezes. Mr Snape is a practical man and no way would he have altered the structure of the caravan to prevent it being mobile during that temporary arrangement.
- He was involved in a discussion with Mr Cox and Mr Snape in 2016 about the possibility of moving the mobile home back into the garden of Sunnybank. There was no mention that the mobile home was immobile.
- He disputes the reliability of the evidence provided by Clarks. Martyn Clark is not a structural engineer and only gave this opinion to safeguard himself if there were problems moving it. He and Mr Snape make no reference that the structure was permanently fixed to the ground, this evidence is not submitted as a declaration and I challenge its accuracy in relation to the date of the inspection.
- The South Coast Body letter is ambiguous. Are they saying they inspected the caravan in 2015? or are they saying that the supposed adaptations were

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explained and if carried out, would then render it not mobile. I contest the opinion that new metal could not be welded in to make it sound enough to be moved. Crucially again no reference is made to the van being attached to the ground. Both of these authors evidence needs to be tested under oath to have any merit, as my evidence contradicts their recollections.

- A photograph of pieces of metal and timber are produced, but there is no evidence this formed part of the caravan structure. If a photograph was to be taken one would expect it to image the section which alterations had taken place, to have any merit.
- I recall going into the caravan on the morning of the 30<sup>th</sup> August 2016 as Ms Woods had problems with her electric supply coming from my house. The trip switch kept tripping so I went into the caravan and isolated each power point and light switch to find the fault. This meant I went into every room to carry out the test and can confirm there was only one floor level running through the unit. There were no steps in the door area. I am certain of the date this happened as I was admitted to hospital that afternoon with a heart attack, and stayed in for several weeks.
- On another occasion, Mr Cox invited me to accompany him on a visit to meet Ms Woods and Mr Snape to see if I could assist him in resolving their planning problems. I believe this was an evening in the week 5<sup>th</sup> to 9<sup>th</sup> March 2018. I said very little at the meeting and Mr Cox was preparing to submit a retrospective application to retain the mobile home. Again, at this time, the floor was one level and I sat facing the door and could see no step lowering the floor level to the threshold of the door. During this visit Mr Cox asked Mr Snape "if the caravan could be moved". Mr Snape replied "yes but if you want by the weekend I will make sure it can't" Work was going on at that time pitching a new roof, cladding the sides, and putting on a bedroom extension. All of this work started in November 2017, and continued until June 2018. During this period, I say is when the caravan was not capable of being moved. In light of the above I believe the application should be refused taking account of "Gabbitas" as quoted by Mr Cox as part of the application, followed by urgent enforcement action.



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## 9.0 LPA'S RESPONSE TO GROUND B (NO BREACH)

- 9.1 The appeals under ground (b) relate to the alleged material change of use of the Land from horticultural use to ancillary residential use and storage. The appellants argue that they have used the land for residential purposes, in association with their occupation of the mobile home, since Feb / March 2010, which is more than 10 years since the EN was issued. Therefore, they say the use of the land for such purposes is lawful, so no breach has occurred in that respect.
- 9.2 At the time of Rob Riding's visits in May and August 2010, the mobile home was situated within, what was considered to be, the curtilage of Sunnybank. There was no indication that the wider part of the appeal site was being used for residential use – indeed, a summerhouse that was under construction was deemed by Mr Riding to be outside of the residential curtilage and so was required to be moved back inside the curtilage. The photos taken by Mr Riding in May and August 2010 also show the inside of the glasshouse nearest the mobile home overgrown with brambles.
- 9.3 Aerial photos show that the character and appearance of the land has changed over the relevant 10 year period, i.e. between 2010 to 2020. Up until 2015 (when the appellants purchased the land) there appears to be clear distinction between the smaller area of occupation where the mobile home was located at the southern end of the site and the (larger) northern part of the site, which remained largely untouched. The two parcels of land appear to be separated by a hedge and a fence. It was only in 2015, when the appellants purchased the land that the appearance of the northern part of the land starts to change. Parts of the northern land were cleared and a new close boarded fence erected around the eastern and northern boundaries. This resulted in the creation of a new (larger) planning unit and is when a change of use would have taken place, from horticulture to extended garden land associated with the residential occupation of the mobile home. This therefore represents a material change in the use of the land, which is within 10 years of the enforcement notice being issued.

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- 9.4 This material change in the use of the land in 2015 therefore created a new chapter in the sites history.
- 9.5 A material change of use of the land – from horticultural use to ancillary residential use and storage (or possibly from a *mixed* use for horticultural use and ancillary residential use and storage to ancillary residential use and storage) – has therefore occurred as a matter of fact.
- 9.6 The concealment issue discussed elsewhere in this statement (and particularly in the next section) also applies, so is further reason why the Ground B appeal should fail.

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## 10.0 LPA'S RESPONSE TO GROUND D (TIME IMMUNE)

10.1 The onus is on the appellant to prove their case. The relevant test is the balance of probabilities.

### Use of land

10.2 The Council's own evidence confirms that in August 2010 (at the time of Mr Riding's 2<sup>nd</sup> visits) the mobile home was being used as ancillary / overflow accommodation connected with Sunnybank. It was also accepted that the mobile home was within the residential curtilage of Sunnybank. Hence the file was closed.

10.3 The area around the mobile home at that time, in 2010, only comprised a very small part of the appeal site. The remaining part of the land, including the glasshouse, would have been in horticultural use, albeit in a dormant state. Photographs taken by Mr Riding during his visits in May and August 2010 show the end part of the greenhouse nearest to the mobile home full of brambles and therefore unlikely to have been able to be used for anything specific. Anything stored there would have been at a de minimis level.

10.4 The Council's own evidence therefore suggests that in August 2010 (approx. 6 weeks before the relevant 10 year date) the only use occurring on the site was the siting of an ancillary mobile home which was within the residential curtilage of Sunnybank and being used in association with that property. The rest of the land, including the glasshouse, was in (dormant) horticultural use.

10.5 In 2015, the position changed when the appellants purchased the land and a new planning unit was created. At this time, a further material change of use of the land occurred, with the entire parcel of land being used for ancillary residential use and storage in connection with the unauthorised occupation of mobile home as a separate unit of residential accommodation. On this basis alone the appeal under ground (d) should fail (in respect of the use of land) as immunity cannot be achieved.

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10.6 However, the claims now being advanced by the appellants as to when they first occupied the site contradict the information that was given to the Council at the time and what Mr Riding saw during his inspection of the mobile home in August 2010, which led him to conclude that the mobile home was being used for ancillary /overflow use to the dwelling and therefore closing the case. As such this raises the act of concealment in that that the Council was deliberately misled and therefore denied the opportunity to take enforcement notice at that juncture had it know the true purpose / use of the mobile home and land at that time. The Connor principle is therefore engaged which prevents the appellants ability to put forward any lawfulness arguments in these appeals.

#### The creation of a single dwellinghouse

10.7 The same concealment argument applies to the alleged breach of planning control relating to the creation of a single dwellinghouse, as had the Council known that the appellants were occupying the mobile home in 2010 as a separate unit of accommodation, they would have had the opportunity to take enforcement action and therefore secured the cessation of the residential occupation of the mobile home at that point. The appellants would have not therefore been able to go on to undertake works to the mobile home that they now say resulted in the creation of a dwellinghouse more than 4 years ago and are therefore immune. This remains a key part of the Council's case.

10.8 Notwithstanding the concealment argument, the Council's reasons for refusing the 2019 LDC application apply to the Ground D appeal. The works that were carried out to the mobile home in 2018 are deemed to be when it became a dwelling and not in 2013. Thus, the 4 year period for immunity has not been met.

10.9 Determining whether or not a caravan is a building (or a dwelling) is matter of fact and degree. Relevant cases, other than *Measor*, include:

- *Pugsley v SSE and N Devon DC* [1996] JPL 124

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Note: other cases may be referred to

- 10.10 Consideration of size, degree of attachment and fixation to the ground (Section 55 of T&CPA) as well as the definition of caravan as set out in section 29(1) of the Caravan Sites and Control of Development Act 1960 are also relevant.
- 10.11 The extent of the work carried out and the dates that they were undertaken will also be key considerations.

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## 11.0 LPA'S RESPONSE TO GROUND A (DEEMED APPLICATION)

### Planning policy

11.1 The development plan comprises:

- Winchester District Local Plan Part 1 – Joint Core Strategy (adopted 2013)
- Winchester District Local Plan Part 2 – Development Management and Site Allocations (adopted April 2017)

11.2 Relevant policies are:

MTRA4 – Development in the Countryside

DM1 – Location of Development

11.3 The LPA will argue that the development is situated outside of a designated settlement boundary (Policy DM1) where countryside policies apply.

11.4 Policy MTRA4 sets out the development types that are acceptable within the countryside, which are: development that has an essential need for the countryside such as agriculture and forestry; the reuse of existing buildings for employment, tourist accommodation, community use or affordable housing to meet a demonstrated local need; expansion or redevelopment of existing buildings to meet an operational need; small scale sites for low key tourist accommodation.

11.5 The proposal is for a new dwelling. No evidence has been submitted to demonstrate an operational need, nor is the proposal for affordable housing, community or business use or tourist accommodation. The proposal does not therefore meet the criteria under MTRA4 or the policy itself.

11.6 As such, the proposal is unwarranted and unjustified and would constitute unacceptable development in the countryside.

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- 11.7 In terms of design and visual impact, the dwelling is a single storey structure with a low-profile roof, with cladding. It is not therefore in itself unattractive or out of character with the area.

National Planning Policy Framework

- 11.8 Paragraph 73 of the framework advises that planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:

- a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;
- b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;
- c) the development would re-use redundant or disused buildings and enhance its immediate setting;
- d) the development would involve the subdivision of an existing residential dwelling; or
- e) the design is of exceptional quality, in that it: - is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and – would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.

- 11.9 None of these criteria apply and therefore the proposal is also contrary to paragraph 73.

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11.10 The site is also in a relatively inaccessible location where the occupants would be mainly reliant on the private car to get about and to access services. It does not therefore comprise a sustainable form of development, and as a such, derives very little support from the overarching aims and principles of the framework.

#### Planning balance

11.11 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications to be determined in accordance with the development plan, unless material considerations indicate otherwise. Similar provisions also apply under section 70(2) of the Town and Country Planning Act 1990 (TCPA 1990).

11.12 No other material considerations (or personal circumstances) have been raised by the appellants in their grounds of appeal that would override the development plan policies stated.

11.13 The fact that they have been living on the site – without planning permission – for 10 years or more is irrelevant, especially as there is a concealment issue in play.

11.14 Planning permission should therefore be refused.

#### Nitrates

11.15 The Solent water environment is internationally important for its wildlife and is protected under the Water Environment Regulations and the Conservation of Habits and Species Regulations as well as national protection for many parts of the coastline and their sea. Natural England's advice has outlined serious concerns about high levels of nitrogen and phosphorous input in this water environment with evidence that these nutrients are causing eutrophication (a process which causes excessive growth of green algae) which is having a detrimental impact upon protected habits and bird species.



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- 11.16 The whole of the Winchester District is within the Solent catchment and Natural England has therefore advised that any development proposed through planning applications providing overnight accommodation which would discharge into the Solent would be likely to cause a significant effect.
- 11.17 An Appropriate Assessment under the Habitats regulations is therefore required in order to demonstrate that the development would be nitrate neutral. The options for providing appropriate mitigation in cases where developments are not able to demonstrate nitrate neutrality are currently limited.
- 11.18 The appellants are therefore required to demonstrate that the dwelling would be nitrate neutral, which can include appropriate mitigation if necessary. As it stands, appropriate information required to demonstrate nitrate neutrality (in the form of a nitrate budget calculation and details of an agreed and deliverable method of mitigation, if necessary) has not been provided and therefore the proposal is contrary to Policies CP16 and CP17, Para 170 of the NPPF and standing advice.
- 11.19 The advice of Natural England may need to be sought as and when these details are provided.

Further details can be found at:

<https://www.winchester.gov.uk/planning/wcc-position-statement-on-nitrate-neutral-development>

Solent Recreation Mitigation Partnership 5.6km Zone

- 11.20 Whilst preparing this statement, it was established that the site is also situated just within the Solent Recreation Mitigation Partnership 5.6km Zone –

<https://www.winchester.gov.uk/planning/solent-recreation-mitigation-partnership>

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11.17 All residential development within 5.6km of the SPAs' resulting in a net increase in dwellings are required to make a contribution towards mitigation projects in the Solent Recreation Mitigation Strategy. This can be an upfront payment. This is an agreed approach with Natural England that constitutes appropriate mitigation under the Habitats Regulation.

11.18 Failure to make the payment, or provide an alternative method of mitigation, would be a further reason to refuse planning permission.

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## 12.0 LPA'S RESPONSE TO GROUND F (LESSER STEPS)

- 12.1 The appellants ground (f) appeal relates in part to the argument put forward under ground (b) that part of the land has a lawful use for residential use and therefore the requirement for the residential use on this part of the land to cease should be removed from the requirements of the notice.
- 12.2 To get to ground (f), the inspector would have already dismissed the appeals under grounds (b), (d) and (a). If there was any merit in the lawfulness argument then it would have already been dealt with under these earlier grounds.
- 12.3 In order to remedy the alleged breach it is reasonable to require the unauthorised use of the land as ancillary residential use and storage to cease.
- 12.4 Whether or not the land (or the glasshouse) remains a viable proposition for horticulture is irrelevant. The notice does not require the land to be *used* for horticulture, so can be dormant, as indeed a large part of the site was before the breach occurred.
- 12.5 The suggestion that a caravan could remain on the land in association with the lawful garden use is a pretence. The notice alleges the creation of a *dwellinghouse*. In order to remedy the breach the *dwellinghouse* should be removed. There is no scope to allow any part of the dwelling or the original mobile home to remain on the land in the event that the notice is upheld.

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### **13.0 LPA'S RESPONSE TO GROUND G (COMPLIANCE PERIOD)**

- 13.1 Six months remains an appropriate and reasonable time frame for compliance.
- 13.2 The appellants have not advanced any meaningful reasons in their grounds of appeal why the compliance period should be extended.
- 13.3 Details of caravans (or small dwellings) available for sale or rent in the area will be investigated and supplied if necessary.

### **14.0 APPEAL PROCEDURE**

- 14.1 The appellants had requested that the appeal be dealt with by way of a hearing, although accept that an Inquiry may be necessary.
- 14.2 The facts of the case as set out in this statement, particularly the previous enforcement history and concealment issue, confirms that a Public Inquiry is required so that evidence can be given and tested under oath.