

PROOF OF EVIDENCE of

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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**

**Appeal currently scheduled to be considered at an Inquiry (virtual)
starting on 29th June.**

Planning Inspectorate Reference:-

**APP/L1765/C/20/3261886 and
APP/L1765/C/20/3261887**

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 correspondence with enforcement officers. On this basis I believe the claims and details set out in this document to be correct. Expressions of opinion relating to planning matters are my own.

APPENDICES

Documents provided previously

Appendix HG 1 -	Copy of letter from WCC in June 2010
Appendix HG 2 -	List of Documents/Details relating to occupation of the Mobile Home prior to January 2011 (mainly prior to September 2010).
Appendix HG2a	Copy of documents 1-20 referred to.
Appendix HG3	Summary of key corrections to GS Statement
Appendix HG4	Internal view of similar Atlas Florida mobile home
Appendix HG5	Photos showing works undertaken in 2017-2018
Appendix HG6	E mail and photo Photos showing new concrete base
Appendix HG7	Recent photos showing underside of lounge floor.
Appendix LDC 1	LDC application, G Snape Statement and Appendices GS 1-12
Appendix LDC 2	LDC application, Decision Notice, Officer's Report and objection by Mr Stone.
Appendix HG1A	Photos by WCC 19.05.2010
Appendix HG1B	photos by WCC 03.08.2010
Appendix HG1C	photos by WCC 17.11.2016
Appendix HG1D	Email from WCC summarising site visit in August 2010

Additional Appendices

Appendix HG8	Aerial photos from Google Mapping dated 2005, 2012, 2014, 2015, and 2019-
Appendix HG8a	Aerial photo dated 2016
Appendix HG9	Additional photos showing the use of the Glasshouse and the use of the garden area immediately around the MH since 2010
Appendix HG10	Diagram of an Atlas Florida Mobile Home (and modifications), including photos
Appendix HG11	Index to the documents provided in 4 e mails from WCC (enforcement files)
Appendix 12	LPA summary of the 4 enforcement files
Appendix HG13	Copy of the appeal decision and E Notice Plan for Sunnybank in 2008.
Appendix 14	Extracts from Rightmove web site showing the price of caravans proximate to SO32 2JQ
Appendix 15	Copy of the planning permission and site plan for Ceejay
Appendix 16	Copy of the planning permission and site plan for the adjacent gypsy site
Appendix 17	Omit.
Appendix HG 18	Additional Evidence referred to by G Snape a) rent book b) rent receipts c) individual receipts
Appendix HG 19	letter from S Andrews
Appendix HG 20	Letter from B Nichols
HG 21	Email from Mr Cox dated May 2010
HG 22	Email from Mr Cox to WCC in September 2018

HG 23 **Response in relation to Nitrate Mitigation, including planning permissions granted with Grampian conditions (23a)**

HG 24 **Response to Highway issues – Mr Stone**

HG 25 **Extract from Planning Encyclopedia relating to ‘buildings’ and Skerrits.**

HG 26 **Letter seeking clarity and unredacted copies of details below.**

ENFORCEMENT DOCUMENTS FROM WCC

WCC Mail 1 **papers from enf investigation 10/00112 MIXED**
WCC Mail 2 **papers from enf investigation 16/00294 CARAVN**
WCC Mail 3 **papers from enf investigation 17/00186 CARAVN**
WCC Mail 4 **papers from enf investigation 19/00068 CARAVN**

(These 4 e mails will be forwarded separately to the Inspectorate).

1.0 INTRODUCTION

2.0

1.1 The appeal is against an enforcement Notice dated the 24th September 2020 and two appeals were submitted by Heather Woods and by Graham Snape on the 23rd October 2020.

1.2 This Proof of Evidence expands on issues already raised in the Appellants Statement of Case (February 2021) and should be read alongside that of Graham Snape, and in addition to the appellants written responses to the Rule 6 Statements from the City Council and Mr Stone.

1.3 Specifically this proof addresses: -

The use of the site, both as it is now and historically, and significance of any changes

The importance of works undertaken to the original caravan, resulting in the current 'accommodation'.

Ground b) in relation to the use of the site.

Ground d) in relation to the use of the site and the accommodation on it.

Ground f)

The (lack of) alternative accommodation relevant to ground g)

The enforcement history in so far as relevant to the above

The comments of WCC

The comments and accusations of Mr Stone

The allegation of concealment.

The ground a) appeal

1.4 This Statement has been prepared by me based on information given to me, most of which is supported by documentary evidence. This has been done as a professional chartered planner, and provides my professional interpretation of the details referred to, and the relevance of this to understanding 'development' and what is lawful on site. I do not have any personal knowledge of the appeal site prior to 2020, but base my views on evidence available.

- 1.5 Since submitting the original appeal Statement I have been provided with a large number of details held on the enforcement files of WCC, albeit that these are redacted such that some level of 'informed guesswork' is necessary to attribute some documents to their authors. The LPA has declined to identify the correspondence to individuals. However, some of these details are now referred to within this Proof in so far as they help to establish the sequence of events on site and communication in relation to this. They are especially useful in relation to the allegation of 'concealment'. As it is unknown which, if any, of these documents the LPA will provide to the Inspector, so for consistency all the documents referred to, that have now been provided to-date, are described in Appendix HG 11 and the 4 original e mails from WCC (referred to as WCC Mail 1, WCC Mail 2 etc) will be forwarded to the Inspectorate and to Mr Stone alongside other appendices.
- 1.6 I identified in the Statement submitted in February 2021 the relevance of deciding whether the accommodation on site is a use of land or a building. Hence this proof builds upon Section 4 of that original Statement, and sets out my evidence that this has been a building since at least 2016, but more likely since 2013. However, the evidence relevant to the alternative scenario that this is a use of land is also considered briefly
- 1.7 As previously, I will seek to use the term 'Mobile Home' (MH) to refer to the original mobile home as it was brought onto the site, and when it potentially met the definition of a caravan, prior to any significant modifications, but the term 'Accommodation' from the time that any significant external modifications were undertaken (commencing in 2013). It should be noted however, that there were significant internal works prior to 2013, commencing in 2010 (possibly late 2009), and that further changes have been made subsequent to 2013.

1.8 The chronology of events provided in section 2 of the Statement submitted in February 2021 is repeated here for ease of reference. This has been updated to include details referred to and provided by the LPA.

2.0 FORMAL PLANNING HISTORY

2.1 This section sets out the formal planning history, in so far as details are publicly available, or known to the appellants. This has been updated to include details provided since February 2021.

2.2 December 2008 - Appeal decision relating to Sunnybank allowing an enforcement appeal on ground c) that the occupation of a former gym at Sunnybank by Mr Stone's daughter was not a separate dwelling but ancillary to the occupation of Sunnybank. (Mr Cox acting as agent for Mr Stone). A copy of the plan attached to the Enforcement Notice and of the appeal decision is attached as Appendix HG 13.

2.3 Enforcement investigation 2010 ref 10/00112/MIXED relating to the use of buildings at Sunnybank (on land to the west of the dwelling), the use of the mobile home, and a summerhouse. A copy of correspondence provided by the LPA is set out in WCC Mail 1 docs 1-9.

2.4 2016 - Enforcement investigation ref 16/00294/CARAVN relating to a touring caravan on the appeal site. A copy of correspondence provided by the LPA is set out in WCC – Mail 2 - docs 1-7.

2.5 2017 - Enforcement investigation ref 17/00186/CARAVN relating to two caravans on the site, one a touring caravan and the other a mobile home. A copy of correspondence provided by the LPA is set out in attached as WCC – Mail 3 docs 1-12

- 2.6 29 January 2018 – Enforcement investigation relating to two caravans, (one touring, one mobile home) – ref 17/00186/CARAVN (see GS 8). A copy of the correspondence provided by the LPA is set out in WCC – Mail 3 – docs 1-29.
- 2.7 All the documents provided by the LPA and included in Appendices WCC - Mail 1-4 are listed in Appendix HG 11.
- 2.8 The LPA’s own summary of the enforcement files is provided at Appendix HG 12.
- 2.9 2018 The Statement of WCC confirms that an application was submitted for a mobile home on the site but not validated (due to legal issues re access) - ref 18/0094/FUL. Details are no longer available as the application was not validated. The Statement from WCC provides some details.
- 2.10 Enforcement investigation 14 March 2019 ref 19/00068/CARAVN relating to the mobile home on the appeal site (see GS 10). A copy of correspondence provided by the LPA is set out in WCC-Mail 4 docs 1-29.
- 2.11 15th March 2019 PCN served alleging unauthorised residential use of mobile home. A copy of the relevant correspondence provided by the LPA is set out in WCC Mail -4 docs 12 and 13.
- 2.12 29th March 2019 -Mr Cox suggested the accommodation was no longer a mobile home (WCC Mail 4).
- 2.13 5th April 2019 – revised PCN served relating to potential unauthorised dwelling (see GS12). The relevant correspondence provided by the LPA is set out in WCC Mail 4 docs 16-18.
- 2.14 July 2019 - S191 (LDC) application for appellants– refused 10.09.2019 ref 19/01683/LDC. Details of the application and decision have been provided previously in LDC 1 and LDC 2

2.15 24th September 2020 – Enforcement Notice served. This has been provided with the appeal papers, but a copy is included within WCC mail 4.

3.0 DOCUMENTS PROVIDED

3.1 Relevant documents have been appended and page 3 of this proof includes a list of those documents submitted with the original Statement in February 2021, and page 4 a list of additional documents that are now appended.

3.2 In addition, other documents have now been provided to the appellants by the LPA setting out what is described as a complete record of the Enforcement history. As this was provided to the appellant in 4 separate emails, these 4 emails will be uploaded to the Inspectorate and copied to Mr Stone. The appellants have no need to refer to all of these documents but those relevant are referred to according to the number of the email (Mail 1, Mail 2 etc) and the document number within. For ease of reference, an index of all the documents is attached as Appendix HG 11. It is hoped that if the LPA refer to these documents it will use the same reference system.

4.0 THE GROUNDS OF APPEAL

4.1 As previously these are discussed in alphabetical order, but with ground a) at the end.

Ground b)

4.2 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.

Land that was always described as ‘curtilage’

- 4.3 Appellant's Appendix HG 1 (provided with the grounds of appeal) 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. As such, this area of 'curtilage' was not horticultural land and there has not been a change from horticulture.
- 4.4 Appendix HG1A and HG1B are two sets of photos provided by WCC in response to a request in January 2020. These show the caravan on the land in May and August 2010. These also show the summerhouse in the old and new positions. The later set of photos have the same reference number as on the letter in June 2010 (see HG1).
- 4.5 Appendix HG 1D is a copy of a file note from WCC referenced 10/00112/MIXED which describes the officer's visit to the site and, in the final paragraph the observation that the summerhouse has been re-sited to within the curtilage of the dwelling and next to the mobile home. The paragraph above advises that the mobile home is also 'just within the curtilage of the dwelling to the northern boundary of the site.
- 4.6 HG1B Photo 5 shows the summerhouse in its new position and Photo 7 the view looking back towards the caravan. It is clear that if this summerhouse was within the curtilage (as described by officers), then this included a strip of land in front of the mobile home, notwithstanding that no boundary is evident on these photos.
- 4.7 Appendix HG 8 includes an aerial view from 2005 which appears to show a strip of land situated between Sunnybank and the larger area of paddock to the north.
- 4.8 Appendix HG13 is a copy of the E N Plan relating to Sunnybank in 2008, that outlines in red the planning unit occupied by Sunnybank as considered by the LPA at that time. This strip is similar to that shown in HG 8. This supports the view that the curtilage to Sunnybank included a strip of land that lay to the

north of a line drawn across the southern end of the glasshouse, and included the site of the mobile home referred to in 2010.

- 4.9 The summer house and caravan (since modified) are in the same location today, as accepted by WCC in 2010 to be within a (lawful) residential curtilage. As this was garden land then, and is garden land now, then there has not been a change of use, as described in allegation ii). Hence it is incorrect to describe the use of this part of the appeal site as horticultural land prior to 2010 and to do so is inconsistent with the view of the LPA in 2010

Ground d)

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

ii) The use of the site

- 4.11 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.
- 4.12 It is understood that the use described effectively relates to the appellant's use of the site as a 'garden'.

The garden in early 2010

- 4.13 I have set out above that the land on which the mobile home was placed in 2010 was regarded by the LPA as part of the curtilage, and that this included the site of the summerhouse, and a strip of land on the north side of the M H, as evidenced by the letter in Appendix HG 1 and the photos in Appendix HG 1A. Mr Snape describes this as including a strip approximately 10ft (3m) wide. Hence it is clear that this part of the site had been used as garden land for a period prior to 2010, for the LPA to regard this use as established curtilage in 2010.

The additional garden land in mid 2010.

- 4.14 The 'immediate garden area' to the accommodation is now defined on its northern side by a laurel hedge, situated approximately 11.8 m from the accommodation. This hedge was planted by the appellants in 2010, as shown in the photo in Appendix HG 1A (photo 1). This hedge represented the extent of their useable garden area at that time, and also the extent of the land leased to the appellants by Mr Stone (see evidence of G Snape). This land was excluded from the paddock area to the north, and in 2010 Mr Stone erected fencing around the paddock to enclose the land that he still occupied. As this boundary had been established by May 2010, this is over 10 years prior to the Enforcement Notice and is now lawful. Although the garden area has now become better established, there has been no subsequent change of use (see appendix HG9).
- 4.15 The aerial photos from 2012 – 2019 all show this hedge in position and the Photos now provided in Appendix HG 9 show the various stages of this garden over that period from 2010 to recently.
- 4.16 The LPA appear to rely on the lack of notes on the enforcement file from 2010 for suggesting that neither the glasshouse or any of the land (other than that which was originally connected with Sunnybank) was residential garden in 2010 and suggest that a change only took place in 2015. The evidence provided disproves this.

The garden in 2015- extended to include the paddock

- 4.17 The land to the north of this hedge was bought by the appellants at the same time that they bought the land to the south and the glasshouse in 2015. Hence, it is agreed that the use of the paddock land to the north of the hedge and the fence has not been used for 10 years, so is not lawful.

The Glasshouse

- 4.18 Mr Snape describes the condition and use of the glasshouse when he first occupied the mobile home, and that the glasshouse was part of the land that was offered to him by Mr Stone, and used by the appellants since that time. Photographs now included in HG9 show various views into the glasshouse, including items connected with his occupation of the mobile home. Photos 3-9 show the glasshouse being cleared of vegetation and garden plants being raised by Heather in the glasshouse in 2010. Nos 3 and 4 included a stack of building materials (including insulation) being use by Mr Snape. Although parts of the glasshouse were v overgrown initially, other parts were clearer and 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 in April 2010. The building has been used by them, and in association with their occupation of the site, since that time. Hence, this use of the glasshouse associated with the occupation of the accommodation has been established for over 10 years prior to the EN so was lawful at that time.
- 4.19 The evidence of Mr Snape describes that when clearing brambles from the glasshouse in 2010/11 the appellants found various boxes of papers and trinkets belonging to residents/former residents of a local care home (on Gravel Hill), which suggested that the building had been used for some time previously for storage (of domestic items) rather than horticulture, but this is not relied upon.
- 4.20 The various photos attached as Appendix HG 9 show views inside the glasshouse, and of the garden area, and of the various activities undertaken there between 2010 and 2015.
- 4.21 The appellants accept that they have not used all of the site in excess of 10 years, but both the area enclosed by the new hedge (in 2010), and the glasshouse, has been used by them as a garden and as a domestic store since early 2010. The purchase of the paddock area in 2015, and the subsequent use of this as an extension of the original garden has not altered the use of these original areas.

i) The residential use of the accommodation

- 4.22 It is acknowledged that the Inspector will need to consider what the existing accommodation is, in terms of whether this is a use of the land, or a building. This will include, but not depend on, whether the accommodation is still considered to be a caravan and when any significant changes to the original caravan were made. A summary of the changes made is set out below, with additional details provided by Mr Snape. This is followed by my assessment of how these changes impact on the planning status of what is there. However, in brief it is my view that the mobile home became a building rather than a use of land in 2013 (due to a combination of works), and certainly was a building by 2016.
- 4.23 If the Inspector concludes that what is on the site is not a building but is a use of the land for the siting of a caravan or other moveable accommodation, then the early history of the mobile home is relevant so is included below for that purpose.
- 4.24 Mr Snape has set out details of his occupation within his own evidence. The Appellants' Statement of Case, submitted in February 2021 included various documents relating to that occupation. Specifically, Appendix HG2 (provided with the grounds of appeal) refers to 20 items or documents that provide background details of the appellants lives in the caravan during 2010, and these were described in the Statement of Case (paras 4.19-4.24).
- 4.25 Neither the LPA or Mr Stone have, to date, provided any specific evidence to refute that these details, or that any of these documents are inaccurate.
- 4.26 Both refer only to contrary information as provided to the LPA in correspondence, and at one meeting on site in August 2010, and potentially in the completed PCN. These details are provided in Mail 1 and docs Nos 3 7 and 5. This is a series of communications between the LPA and Mr Cox. It is understood that it is these documents that both the LPA and Mr Stone refer

to as evidence of 'concealment'. This allegation is addressed separately in section 9 of this Proof, but the Inspector is asked to note, in relation to ground d) that:-

- none of the documents provided demonstrate that the MH was not on site in early 2010 or that it was not in use/occupied,
- none of the correspondence involved or suggested the inclusion of either of the appellants in that communication,
- none of the correspondence in 2010 considered the other evidence included in HG2 (see brief summary in Statement of Case, paras 4.19-4.23).

4.27 Mr Snape provides evidence in person to the Inquiry to confirm that it was their mobile home that was moved from Solent Breezes, and that was brought to the appeal site in February 2010, that is shown in the photos in HG1A in May 2010, and that remains in the same location. It is respectfully suggested that there is no evidence to refute this. However, it is necessary to clarify when the MH was first occupied.

4.28 Mr Snape describes that the mobile home was brought to the site on the 13th February 2010 (item 3 in HG2A), and this same email can be found in Mail 1 doc 25. However, he then describes that the caravan was left at the site, parked on the driveway in front of the site, and that there was then a short delay before the caravan could be moved into its present location. This was due to the need for the new site to be cleared of vegetation, whilst water and electric was connected, and a drainage connection (sewage) provided. The work is believed to have been done by Mr Stone but had been completed by early April 2010.

4.29 Items 6, 7, 10, 11, 16, and 20 provide details of cash withdrawals and for rent, with the first payment in May 2010. Mr Snape addresses this gap and explains that they lived elsewhere for approximately 2 months. Appendix HG 21 is an email confirming that he left that address on the 10th April. The photos

provided by WCC in HG1A confirm the caravan on site 5 weeks later (May 2010).

- 4.30 The photos taken by WCC and provided in HG1A show the caravan here in May 2010. Moreover, the letter at HG1 clarifies that a complaint had already been received, leading to the site visit on the 19th May. There can be no doubt that the caravan was in its current position before 19th May 2010.
- 4.31 The same basic shell of the original mobile home still exists on site, albeit that this has been substantially altered. This accommodation has been occupied continuously (residentially) by the appellants since at least April 2010. Whilst the accommodation that is there now no longer meets the definition of a caravan (and has not done so since at least 2013), and in my view is a building, if the Inspector disagrees and finds that the accommodation is a 'mobile structure' then this remains as a 'use of land' for the siting of that mobile structure and the 10 year rule applies.

Changes to the accommodation up to 2013 and why it has been a building since 2013.

- 4.32 The evidence of Mr Snape provides a summary of the changes he has made to the original mobile home, since it was first brought to the site (including those commencing prior to its arrival), which I have summarised (appeal statement February 2021) as i) re-arranging/removing internal walls, ii) adding insulation to the inside face of both walls and ceilings, ii) replacing windows, iii) adding 70mm of insulation to the outside and enclosing this with new external cladding and iv) adding a new roof over the exiting (and removing the latter internally). Graham Snape provides a timetable for these main areas of work in evidence. However, it is appropriate for me to comment on the other evidence available and the relevance of (some of) these works.

Internal changes prior to and early 2010

- 4.33 The removal of a twin bedroom and toilet at the western end of the caravan, together with the internal walls, and adding insulation to the internal walls and ceiling to become part of the lounge. This work was started at Solent Breezes and completed on the appeal site. Part of the new ceiling collapsed when moved, and needed to be re-fixed.
- 4.34 Photo HG4, provided with the original Statement, shows the internal arrangement of an Atlas Florida Caravan, the same model as that brought to the site, but without the internal works, and highlighted the changes between this and the photo taken by the Council of the inside of this Mobile Home in August 2010. Appendix HG 10 now provides additional details about an Atlas Florida caravan, and of the changes made by Mr Snape, including a set of floor plans to illustrate these. In brief, at least one internal wall had been removed together with a large amount of the internal fittings and fitted furniture.
- 4.35 Photo 4 of HG1B also shows the new studwork on the end (west wall) of the mobile home, part way through the process of adding new insulation and new plasterboard, and evidences the works being undertaken by Mr Snape in 2010.
- 4.36 The furniture shown in photo 4 of HG 1B shows the suite owned by the appellants, part of which is still in use. This was purchased in 2002 (A copy of the receipt is included in Appendix HG 18c). This was bought 8 years before HG1B was taken.
- 4.37 Photo 1 in Appendix HG 18 d shows the new kitchen.
- 4.38 Mr Snape provides further details of the works undertaken at this time to partially dismantle and rebuilt the walls of the mobile home (Internal works) including replacement window units. It is clear that the mobile home had been significantly altered internally by late 2010, with works continuing into 2011.

External changes in 2013

- 4.39 Mr Snape describes the works undertaken in 2013 to replace an old twin entrance door with double patio doors, that involved the removal of a significant section of the chassis and a (small) part of the wall of the MH. Details of the chassis that was removed are shown in Appendix LDC 1, with a plan and photo of the chassis pieces in GS2, and of the new doors in GS5. The photo in GS 3 is an error and should be ignored.
- 4.40 These works are important as it is believed that it is these works to remove part of the chassis that lead to the caravan transport company (the same company that brought the mobile home to the site in 2010) advising in 2015 that they could no longer move the Mobile home off the site (GS6). GS 7 is a letter from a firm specialising in vehicle body repairs, advising that they were unable to repair the structure so that it would be possible to remove it as a complete unit.
- 4.41 Attention is drawn to the letter from S Andrews which confirms the move to site in 2010 and that Mr Stone moved the home into position; that he (Andrews) was not aware of any planning issues, and the works done by Graham including patio doors in 2013.

5.0 ASSESSMENT OF THE EVIDENCE AND RELEVANCE OF THESE EARLY WORKS (UP TO 2013).

- 5.1 It is relevant that although the appellants wished to replace the MH in 2015, the works undertaken in 2013 (and before) effectively prevented this from being an option. The main factor in this, in my view, relates to the removal of a critical part of the chassis. However, Mr Snape provides further evidence of internal works that potentially 'de-stabilised' the internal fabric of the MH prior to 2015, which included the removal of various elements of the original design, which collectively gave it structural integrity. Hence, whilst the removal of the chassis effectively removed part of the 'means of support' to the body of the MH above, the internal works removed the rigidity of the 'box shape' above.

In combination this potentially resulted in a 'wobbly box', that was no longer adequately supported by the chassis, with this part of the resultant accommodation relying for support directly from the ground beneath. This stopped the MH from being moveable (by conventional means) and gave it a substantial degree of permanence to the site.

- 5.2 The decision of the LPA to refuse the CLU in 2019 (LDC 2) and Paragraph 10.8 of the LPA Statement suggests that the Mobile home did not become a building until 2018. I agree that it is no longer a caravan, but disagree that this transition occurred in 2018. The case of Skerritts provides guidance.
- 5.3 The appropriate case law is summarised on page 2-3163 of the Encyclopedia of Planning Law, and refers to the three primary factors established by Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions (No 2). ([2000] 2 PLR 102). These factors are size, permanence and physical attachment. The appropriate pages are attached as Appendix HG 25.
- 5.4 **Size** -In terms of size the accommodation in 2013 comprised the adapted shell of the mobile home 35 ft long and 10ft wide (approximately 10.7m x 3m). This is substantially larger than many buildings. Whilst the guidance refers to a building being something normally constructed on site, in terms of its size the accommodation that existed from 2010-2013 and beyond would in most circumstances be considered to be a building. In terms of its size alone, the structure on site was similar to a tandem double garage.
- 5.5 Based on size alone, although the accommodation was extended in 2017-2018, it is unlikely that this increase in size (adding 3m to a structure 10.7m in length) would be a dividing line between a building and not a building. Hence if it was a building because of its size after 2018 (as suggested by the LPA), it was, very likely, a building before 2018, and from the moment that it ceased to be a caravan or mobile home (in 2013). Equally, the addition of cladding that added 250mm to the width of a structure previously 3.15m wide was small

and not the dividing line (in terms of size) between a building and not a building.

- 5.6 The aerial photos in Appendix HG 8 show the accommodation before and after this was extended, but are also helpful in showing a comparison between the size of the accommodation in 2014 and 2015, in relation to the size of the summerhouse adjacent. It is relevant that the LPA identified the summerhouse as a building in 2010, that needed to be moved into the curtilage to benefit from PD. In terms of size the summerhouse is very small next to the accommodation. For information this measures 4.9 x 2.45 m (16' x 8')
- 5.7 **Permanence** – In 2013 the accommodation had been on the site since February 2010, and in this location since mid April 2010. Hence it had not moved for approaching 3 years, giving it a high degree of permanence. By 2020 the accommodation created in 2013 has been on site for approaching 7 years and the overall structure for 10 years, without it being taken down or moved. It has been far more 'permanent' than the marquee discussed in Skerritts, which was on site for 8 months of each year; or the crane discussed in *Barvis Ltd v Secretary of State for the Environment* (1971) 22 P & CR 710. Page 2-3164 of the Encyclopedia provides helpful guidance in expressing the judgment of Sullivan J , namely that ' If one asks how long must a structure or erection remain in situ for there to have been a sufficient degree of permanence, the answer is " **for a sufficient length of time to be of significance in the planning context**" '. I have no doubt that the accommodation became 'permanent' in this context by 2016.
- 5.8 **Physical attachment** – The advice provided in GS 6 and GS 7 suggests that when the accommodation was examined in 2015 it was considered very difficult/ impracticable to move what had existed on site since 2013. This is perhaps not surprising given that a substantial part of the chassis frame that once supported the western end of the caravan had been removed or made ineffective (by the removal of one side). Hence the western end of the (former)

caravan was no longer supported by the same framework that supported the rest of the (former) caravan, and relied instead for its support upon blocks resting on the ground. In simple terms, if the towing A frame had been reattached (damaged in 2010) and had been used to try and move the eastern end of the accommodation, the western end would very possibly have been torn off or left dragging across the ground.

- 5.9 The situation would have been made more difficult (but it is unclear if considered by Clarkes) by the removal of large parts of the internal fixtures and additional weight applied to the walls, which may or may not have been supported by the residual chassis.
- 5.10 The photos now provided at HG 9 show various parts of the land around the accommodation from 2010 to 2015, and Nos 14 and 21 include areas of decking (taken in 2011 and 2014). The first section provides a walkway from the parking area and summerhouse to the original entrance door, and is supported in the same way as the accommodation, ie by pads/blocks off the ground. The second, larger and newer section (photo 21) is constructed in front of the replacement doorway to the lounge. Although this is not actually attached to the accommodation, it would need to be removed to try to move the accommodation, so effectively adds to the degree of attachment, in a similar way to the areas of concrete and anchors around the (removeable) marquee in Skerritts. The decking has since been extended further, but away from the accommodation. It is potentially relevant that this decking is then referred to in the notes of the enforcement officers in April 2019 (see Appendix HG 12) who refer to this as being 'higher than the 30cm allowance'. This is presumably a reference to the exclusion of 'raised platforms with a height greater than 0.3m' from Classes A and C of Part 1 (schedule 2) to the GDPO, and hence that these decks required planning permission.
- 5.11 For a combination of these reasons, the accommodation on site by 2014, and likely by 2013, had been modified in such significant ways that it was effectively immovable without destruction.

5.12 Given that Skerritts sets out that any decision about whether something is or is not a building will be assessed on consideration of all three factors, with none individually essential, it appears to me that the details relevant to the accommodation by the end of in 2013 did mean that this was a building.

5.13 All of these works were completed long before October 2016, meaning that the four year rule applies and that the accommodation, as it existed in October 2015 is lawful.

Extensions since 2013

5.14 In making these comments I am aware that further works were undertaken up to 2015, none of which substantially changed the accommodation on site.

Works 2017/2018

5.15 More substantial works were undertaken in 2017/2018, as summarised in paras 4.32-4.38 of the Appeal Statement and now detailed in the evidence of Mr Snape. In brief these comprised of three areas of work, that overlapped and were undertaken in late 2017/early 2018. It appears to be a combination of these works that leads the Council to believe that this is now a building and that enforcement action is appropriate in relation to “the construction of a single dwellinghouse comprising a former mobile home(‘X’) with extension(‘Y’) and decking”. As the LPA has never inspected these works in detail, or made enquiries about how these were undertaken, the three activities are summarised below. Greater detail is provided by Mr Snape. The works were undertaken (with some) assistance by Mr Snape, who did not consider, or realise, the potential need for planning permission. To him these were simply works to improve the accommodation and its level of comfort and energy efficiency.

The bedroom extension

5.16 This is an extension at the east end of the accommodation, and involved the removal of the original end wall and an extension of about 3m. This is not

'attached' to the ground but the walls sit on a ring beam, with joists across to support the floor. The beam is supported on props resting on the ground (as per what remains of the original mobile home). The wording of the nNotice suggests that this is a building operation. I do not disagree, but it should be noted that this sits on the same ring beam as the rest of the accommodation, and which was installed contemporaneously with the extension being constructed. It has no greater or lesser attachment to the ground. Hence, if this extension is a building, then it has the same degree of attachment to the ground as the works undertaken in 2013.

- 5.17 If the works to the mobile home in 2013 resulted in a building (applying Skerritts), for the reasons set out above, then by 2017 (4 years later) the building was lawful and being used as a dwelling. Consequently, the extension was an extension to a lawful dwelling. Nonetheless, as the works did include a new roof, it is accepted that planning permission was required (part A.1 (k) (iv) of the GDPO).

The new roof

- 5.18 This has been added above the original roof and supported by the new walls (see below). As the pitched roof exceeds the height of the original shallow pitched roof then it is accepted that the new roof to the main accommodation was not 'permitted development' (precluded by B.1 (b)).

External cladding

- 5.19 The original MH has now been 'wrapped' in additional insulation and a new external cladding (part metal/part timber). The weight of this additional material (and potentially the new roof above) is supported on a new ring beam has been completed under the main walls of the accommodation, such that the new walls are now directly supported by the beam beneath, which in turn is supported by props resting on the ground. The original accommodation is linked to that ring beam, albeit that the original chassis has (in most parts) been left in place. In the case of the bedroom, a new floor was constructed.,

The original chassis still remains in place under the central section of the accommodation,

- 5.20 This cladding is an addition to the original form of the MH, and to the accommodation in 2013, and would potentially require planning permission. However, on its own this does not significantly affect the appearance of the original accommodation.
- 5.21 Given that the bedroom extension, the new roof, and the external cladding, all altered the accommodation (in my view a dwelling) that existed in October 2016, they are potentially enforceable. The LPA has been asked to clarify its views on these additions to the accommodation, and whether it would wish to enforce against these as individual items, if it was determined that the accommodation within the original shell of the caravan was lawful. No response has been received. Hence, I have addressed these elements briefly in response to ground a).

Other alterations

- 5.22 In early 2018, and contemporaneously with the new external walls/cladding, the lounge floor was lowered, to match the height of the section lowered in 2013 to accommodate the new doors. The work involved is described by Mr Snape, but involved cutting away the remaining chassis and floor, laying a new slab, constructing new floor timbers across the width of the accommodation. This is supported at the ends by the beam under the walls (resting on props off the ground) and in the middle by blocks resting on the slab) and then a new floor. Details of the concrete slab are shown in appendix HG6 and of the slab with floor over in appendix HG7. Whilst these works did change the structure supporting this part of The Accommodation these were effectively internal works and did not change the external appearance of the accommodation on site. In my view these internal works did not need planning permission, or substantially change the nature of the accommodation on site (already a building due to the works undertaken in or prior to 2013).

The alternative to this being a building

- 5.23 The alternative view to the accommodation being a building is that this remains a mobile structure. I do not share this view. However, if the accommodation is not a building but a mobile structure, then most of this accommodation has existed on site since 2010. The extension added in early 2018 is supported in the same way as the main accommodation, and does not affect the lawfulness of what was there previously, which still remains. In my opinion there is no material change of use between the use of land for the siting of mobile accommodation measuring (35 x 10ft 6"), to the use of the same site for the siting of mobile accommodation measuring 45 x 11'3" especially having regard to the characteristics of this site.

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

The Local Planning Authority

6.1 The response to ground d) as set out in the Statement of the LPA is brief and in 2 parts. In relation to the use of land it suggests that the evidence on its files in 2010 is different (due to what was said to the LPA) and whilst it appears to acknowledge that the evidence now provided might support a residential use for 10 years, this cannot be considered due to the Connor principle. The latter may be a matter for legal submissions, but it is noted that the LPA does not appear to question that the use might have existed for 10 years.

6.2 It is noted, however, that paragraph 10.5 suggests the creation of a new planning unit in 2015. This point is not accepted, as whilst the land occupied after 2015 became larger, this did not affect the use of the main site prior to that. The suggestion that the acquisition of additional land should wipe out the planning history of what existed before is rejected.

Mr Stone

6.3 Although Mr Stone casts doubts on the details provided by the appellants, including the dates when works were undertaken, he has not to date provided any contrary evidence so the appellant will respond when this occurs. Paragraphs 6.09 – 6.13 of the Appellants Statement respond to some of the inaccuracies in Mr Stone's evidence of dates for things happening on site, as set out in his response to the S 191 (LUC) application. However, the following details are pertinent, based on new details that are available.

- It is not understood why Mr Stone advised the Council that the caravan was brought to the site in December 2010, given his formal response to the PCN in July 2010 that it was brought here in March 2010 (Mail 1 item 5).
- Having regard to Mr Stone's certainty that there was no work to the new doors and floor of the lounge before 26th May 2018, the letter from Mr

Andrews confirms that he knew the doors had been fitted before leaving Sunnybank in 2013.

- It is also noted that Mr Stone's own correspondence with WCC suggests that he was concerned that the accommodation would become lawful if enforcement action was not taken by February 2020 (Mail 4 document 25). Which seems to acknowledge its arrival in February 2010.

7. OTHER GROUNDS OF APPEAL (f) and g))

Ground f)

- 7.1 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.
- 7.2 Notwithstanding this previous (lawful) use, the state of the glasshouse is testament to the fact that this structure has not been used productively for any horticultural business for many years and that any former horticultural use is no longer viable.
- 7.3 The Notice needs to be amended to reflect at least the previous lawful use of part of the site as garden land (when attached to Sunnybank).
- 7.4 In addition, the notice will need to be amended to reflect such activities as the Inspector determines have been carried out on site for a minimum of 10 years, whilst this does not include the use of the paddock, it should include the use of the extended garden area, up to the hedge and fenceline, planted and erected in 2010. In addition, it should acknowledge and exclude any

operational development that has existed on site for 4 years. Depending on the judgement made, this may include the original parts of the accommodation comprised in the footprint of the original Mobile home (following works in 2013 and up to October 2016).

Ground g)

7.5 The appellants have lived on the site since 2010. They first moved into a caravan at Solent Breezes when their previous home was compulsorily acquired by another LPA, and moved here from Solent breezes when the site owners made changes to that site. 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 very likely impossible to find and acquire another site within 6 months, and additionally to then remove all trace of their occupation from the appeal site.

7.6 The time this will take depends on a number of options, and how realistic each of these might be. These are:-

- i) to move the mobile home/accommodation to another site.
- ii) to demolish or remove and potentially scrap the existing accommodation and find an alternative site for a different caravan.
- iii) to demolish/scrap the existing accommodation and move into a (rented) home elsewhere.

Option i)

7.7 This would rely on the present accommodation being moveable, and it potentially being possible to lift this with a crane, transport it to another site, and then lift it into a new position. Whilst Mr Snape would like this to be possible, it may or may not be so. However, for this to succeed there would need to be another site to which the accommodation could be moved. In reality as the accommodation does not meet the definition of a caravan, then this could not be moved lawfully to another caravan site, even if such a site would accept the accommodation being located there. Most sites do not, and

require a new tenant to either purchase an existing caravan, or to buy a new caravan/mobile home from the site owners. The appellants do not have the financial means to do so.

Option ii)

7.8 Whilst there are other caravan sites in the Winchester District, Appendix HG 14 includes a sample of caravans available, with prices generally in excess of £200,000. Several of these are referred to as holiday homes and are potentially restricted in relation to full time occupation. There are relatively few examples of for less than £100,000 and these appear to be of considerable age. Heather is unable to work for medical reasons, and Graham is nearing retirement. They have minimal or no savings, which will be potentially eliminated by the costs of this appeal. The appeal site was intended to be their retirement home, and considerable moneys have been spent preparing it. Consequently, the appellants do not have the ability to purchase a caravan on another site. Given the age of both appellants and Heather's health, a mortgage would be unrealistic

Option iii)

7.9 If the Notice is upheld it is likely that the only option available would be to rent accommodation elsewhere, which would involve the need for Graham to continue working for many years or, once retired, relying on financial support to afford any accommodation.

7.10 The proof of Graham Snape gives details of Heather's health issues, and many of the changes made to the accommodation have been made to improve the comfort and economy of the accommodation on site. It would be desirable and potentially necessary for any alternative accommodation to respect these needs.

7.11 Whilst a period of 12 months is unlikely to produce a desirable solution, it would allow more time to explore and potentially locate an option.

7.12 Article 8 of the Human Rights Act grants a 'Right to Privacy' and provides that:-

1. **Everyone has the right to respect for his private and family life, his home and his correspondence.**
2. **There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.**

7.13 Whilst it is acknowledged that Planning Enforcement Notices may legitimately interfere with this right and take away someone's home (in accordance with planning law) the right requires full consideration of the impacts of that interference and how this interference can be minimised. Given that the appellants have now lived on site for over 11 years, and were planning to soon retire here, the Inspector is asked to consider the proportionality of the enforcement action which, if successful, will deprive the two appellants of their home. This will require consideration of the potential 'harm' if they remain, details of which are considered in relation to ground a) in section 8 below.

8. THE GROUND A) APPEAL AND PLANNING MERITS

8.1 The reasons for issuing the Notice refer to the breaches of planning control, to the refusal of the application for a Lawful Development Certificate, and to the belief that the structure on site became a dwelling in 2018 (prior to which it was a caravan).

8.2. In this context it is alleged that both the dwelling on the site and the residential use of the land are in conflict with policy MTRA 4 of the Winchester District Local Plan Pt 1 (WDLP 1). No additional details are provided, suggesting that this is an objection to the principle of the use. The Notice does not identify any specific objections based on factors such as character, landscape or amenity considerations. Neither the statement of case for the LPA or the Statement for Mr Stone allege any specific harm. However, as any of these issues might be raised, and be relevant to the Inspector, all these issues are considered below.

8.3 It is acknowledged that Mr Stone has raised a highway objection and this is dealt with separately.

The principle of development

The general provision for housing.

8.4 The Council's overall approach to housing delivery is set out in broad terms in chapter 7 of the WDLP part 1, and generally follows a hierarchical approach, with most development directed towards larger settlements, plus new allocations. This includes some housing in rural areas. Policy CP1 includes the allocation of 2,500 houses to the Market Towns and Rural area. The strategy is explained in part, in paragraph 7.15 of the Plan

"7.15-The Council's key housing priorities are:

- to maintain the supply of housing so that it meets a wide range of community needs and to sustain the vibrancy of the local economy;

- to maximise the provision of new affordable housing throughout the District, including rural areas;
- to increase the supply of family housing;
- to support the delivery of community aspirations for appropriate development.”

8.5 Hence the plan supports some housing in rural areas, including to meet a wide range of needs.

8.6 The more specific approach to rural housing is set out in chapter 6 of the WDLP 1, with the policies MTRA1-5 designed to deliver that strategy. This overall strategy allows for small scale housing in small rural communities, where sustainable, and balances this with protecting the countryside

8.7 It is noted that the housing policies in the plan do not contain any provision or guidance relating to sites for mobile homes. Consequently, if the appellants were to be required to find an alternative site, the development plan makes no provision for the supply of such sites.

8.8 Policy MTRA 2 applies to the ‘Market Towns and Larger Villages’ and has no relevance.

8.9 Policy MTRA 3 applies to ‘Other settlements in the Market Towns and Rural Area’ and provides guidance in relation to two groups of settlements, some with settlement boundaries, some without. Shirrell Heath is listed as one of the settlements without a boundary. In this group the policy allows for development in the form of infilling within existing developed road frontages. Whilst it is not suggested that the appeal site is an infill frontage, the policy is mentioned as it explains that Shirrell Heath is generally considered as a settlement where additional development is acceptable and sustainable. The Inspector will see examples of recent sites when travelling to the site visit, the nearest being at the junction of Gravel Hill and Solomans Lane, approximately ¼ mile to the south.

- 8.10 Policy MTRA4 refers to 'Development in the Countryside'. It is a restrictive policy, applied across the whole of the land identified as countryside which suggests that all development is unacceptable except for 4 types of development that are bulleted, namely i) development with an operational need, ii) the reuse of rural buildings specifically for employment, tourist accommodation, community use, or affordable housing, iii) the expansion or redevelopment of rural buildings (for business purposes), or iv) for low key tourist accommodation. None of these specifically apply to the current use of the site.
- 8.11 The final paragraph of the policy clarifies that all development that is permitted by the policy should not cause harm to the character and landscape of the area, or to neighbouring uses, or create inappropriate noise/light and traffic generation.
- 8.12 However, the list of 4 exceptions set out in MTRA 4 is not the full story, as other developments are also acceptable within the development plan, with clear examples being commercial and educational establishments (as permitted by MTRA5) and sites for gypsies, as permitted by CP5. Other forms of development might also be acceptable, even if not mentioned within a specific policy. Examples include residential extensions and garden buildings. Hence MTRA4 is not a closed list.
- 8.13 Although MTRA 4 is the only spatial/countryside policy referred to in the Enforcement Notice, it is necessary to mention briefly that the site is also in the gap between Shirrell Heath and Swanmore, so addressed by 'Policy CP 18 Settlement Gaps' The policy is referred to in some of the other planning decisions. In brief it seeks to retain the generally open nature of these gaps and to resist development that would not physically or visually diminish the gaps. The impact is considered in relation to character and landscape below.

- 8.14 It is noted at this stage that the LP does not make any provision for people needing accommodation for a mobile home (other than for the G and T community), and that the restrictive policy on the-use of rural buildings is far more restrictive than currently allowed for by changes to the GDPO.

Potential harm

- 8.15 I have referred above to the policy requirement that development should not cause harm to the character and landscape of the area, or to neighbouring uses, or create inappropriate noise/light and traffic generation. These are considered in turn.

harm to the character and landscape of the area

- 8.16 The application site is not an isolated development that sits in a prominent location, but is set back from the road, accessed by a track, and part of a larger group of buildings that include a commercial storage building, a group of equestrian facilities, various houses, and a small gypsy site that includes 3 mobile homes. The site itself is enclosed by a hedge and by Sunnybank to the south, by fencing and a gypsy site to the east, by the glasshouse building and substantial equestrian buildings beyond to the west, and by a substantial hedge and water reservoir beyond to the north.
- 8.17 Hence the character of the area is mixed, with the most frequent land use being residential. In landscape terms, whilst the area around is generally rural, the immediate environment does not include open land or fields, but a diverse collection of buildings and structures. The appeal site is not itself visible other than from its immediate neighbours, and has no impact at all on the wider landscape or, in the context of policy CP 18, on the gap between Shirrell Heath and Swanmore.

Guidance available from recent planning decisions

- 8.18 The two most recent planning applications affecting this general area, are that for the gypsy site, and one for a much larger site on the opposite side of Gravel Hill. The treatment of both of these is informative.
- 8.19 In 2019 planning permission 19/00001/FUL was granted to Ceejay Systems for the unrestricted B2 and B8 use of a former nursery building (4560m²), on the east side of Gravel Hill, with its access approx. 150m south of the track serving the appeal site. The LPA considered this an appropriate re-use of the former horticultural building, notwithstanding its being surrounded on elevated ground and surrounded by open fields. There was no highway objection. The permission followed a more restrictive planning permission granted in 2016. There was substantial objection from residents, including Mr Stone. The planning permission has led to an increase in commercial activity in the countryside including commercial traffic on roads. A copy of the planning permission and site plan is provided in Appendix HG 15
- 8.20 In June 2019 planning permission was granted to vary the conditions of a planning permission issued in 2016, the effect of which is to allow the siting of 3 mobile homes (for gypsies) on land immediately to the east of the appeal site. A copy of the approved site layout is attached as appendix HG16. there is no officer report available, but the previous application in 2016 was reported to committee in January 2017 and a copy of the report is attached as Appendix 16.
- 8.21 Whilst the report did consider various issues, including the need for gypsy and traveller sites, it is notable that there was no objection on landscape terms or in relation to highway safety. The landscape officer advised:-

Head of Landscape:

No objection – The comments are as follows:

'The proposed mobile homes are set back from the road behind a paddock and a mature hedge and trees. All existing hedges and trees are to be retained, as shown on the applicant's landscape plan (TDA Site Layout and Detailed landscape Proposals 2069.01). New native trees and hedges are to be planted to filter views of the proposals from adjacent residential and commercial properties, while improving biodiversity. Whilst the development would introduce built form into the countryside and gap there is likely to be little adverse impact on the character of the immediate area due the small number of dwellings being proposed. The WCC landscape Character Assessment identifies the site as being within the Shedfield Heathlands Landscape Character Area'. 'Key Issues' in this area are 'visually prominent suburban development' and the 'retention and management of hedgerows'. The proposals can not be considered to be visually prominent and will retain and plant new hedgerows.

A recent appeal decision has demonstrated that small scale developments of mobile homes for the gypsy or travelling show people community in the countryside can be acceptable in landscape terms, given the particular context, where they are discrete and unobtrusive. This is one such example and I have no objection. If the case officer is minded to permit this application then it is suggested a standard landscape condition is

requested that requires development to accord with the TDA plan 2069.01. And that any new landscaping which dies within a period of five years shall be replaced within the next planting system.' (Condition 7 refers).

- 8.22. Hence it was accepted that the siting of 3 mobile homes, together with touring caravans and other structures, would not be visually prominent, and would be discrete and unobtrusive. Consequently, they would not have an adverse impact on the landscape subject to an appropriate landscape condition.
- 8.23 The current appeal site is tucked away immediately to the rear of the site above, and has significantly less visual or landscape impact.

Impact on neighbouring uses

- 8.24 The nearest neighbours to the accommodation are the occupants of Sunnybank, and it is relevant that Mr Stone invited the applicants onto the site in 2010, and sold the land to them, including the accommodation, in 2015.

The next nearest neighbours are the gypsies on the land to the east, with whom the appellants have an amicable relationship. Other neighbours are more distant, but none have raised an objection due to impact on their amenity.

inappropriate noise/light and traffic generation.

8.25 The appellants have no reason to cause noise or light nuisance, and it will become apparent that Mr Snape is very conscious about conserving energy, so would not spill light unnecessarily. No allegation of such nuisance has been raised by the LPA.

8.26 The Notice does not allege any issue relating to traffic generation or highway safety although it is noted that the latter is raised by Mr Stone. A separate response is included in appendix HG24. However, it is appropriate to note here that there was no highway objection to the use of the larger site operated by Ceejay, to the east of Gravel Hill, for B2 and B8 purposes, suggesting that Gravel Hill itself was quite suitable for use by much larger vehicles. Equally, it is noted that the highway advice in relation to the adjacent gypsy site said that:

'This application seeks full permission for the development described above, details of which are shown on the submitted layout plan (drg. No.TDA.2069.01). I have commented on a previous similar application (14/02405/FUL) when no highway objections were raised. I confirm again my original observation that the visibility splays looking in each direction together with the forward visibility splay approaching the junction of the private track leading to this site with Gravel Hill is considered adequate to safely accommodate the modest increase in traffic which is likely to be generated by the proposed development. The latest accident statistics for this area confirm there have been no injury accidents recorded at this entrance during the past 5 years.'

8.27 It is of some relevant that the appellants had already been using the access to the appeal site for 7 years by the time that this advice was given, and clearly did not lead the highway authority to the belief that the access was dangerous.

8.28 A separate response to issues raised in the highway objection by Mr Stone is provided in Appendix HG 24.

- 8.29 On this basis there is no reason to believe that there is any objection to the proposal in relation to landscape, character, impact on neighbours or highway safety as referred to in MTRA4.

Generally

- 8.30 On balance, notwithstanding the issues raised in relation to the other grounds, the appellants have lived on this site for in excess of 10 years and made this local community their home. The broad approach of the housing policy is to allow for some housing in rural areas, where sustainable and where this will not cause harm to the environment. The site is situated close to Shirrell Heath/Shedfield and within 4 km of both Swanmore and Wickham, which provide a wide range of facilities. The appellants have adapted what was a mobile home to a low energy, well insulated home, which would be difficult to replace elsewhere. As a consequence, this accommodation has minimal or no impact on the local environment, and no harm to the landscape. The refusal of planning permission would require a replacement dwelling to be located or provided elsewhere. It is difficult to see what gain would be made in terms of planning policy, for planning permission to be refused. Indeed, if planning permission is refused and the notice upheld, it is difficult to see how the site would contribute usefully, as a 'horticultural shed and small ground. Bullet 2 of paragraph 7.15 to the WDLP Part 1 emphasises the aim of providing new affordable housing throughout the district to meet local needs. The accommodation provides just that for the appellants.

NPPF

- 8.31 There is no specific mention in the NPPF relating to caravans in the countryside, but various sections have some relevance to the principle of accommodation on such a site. These are considered in paragraph order below.
- 8.32 Section 5 of the document (para 71) refers to the supply of housing land including the need for some of this to be on small sites and to include

affordable housing; the latter may be permitted on exception sites. Whilst the site is not a traditional exception site for affordable housing, the definition of affordable housing is potentially broad, and includes “other affordable routes to home ownership” (description d) in the glossary). This site has met the needs of two people, displaced by the compulsory acquisition of their home, and unable to afford alternative accommodation other than (initially) a caravan. This has then been made into their home, in true DIY/self-build fashion. The site has met a very specific and individual local need (para 77).

- 8.33 Chapter 11 focuses on the need to make effective use of land (para 117), and the use of the site has made effective use of PDL to provide a site for the original caravan, and an effective use of a building that had been abandoned by horticulture, to now provide the growing area and hobby shed for a family. The result is to provide an effective purpose to a site which otherwise might have minimal or no purpose. In so doing, it provides a home for 2 people, who might otherwise form part of the need for affordable accommodation on a greenfield site.
- 8.34 Chapter 12 focuses on well-designed places, and whilst it is not suggested that this was written to include caravans in the countryside, it should be recognised that the original caravan has now been improved significantly to become the existing accommodation, resulting in a building that is more attractive externally and better insulated and energy efficient internally. Hence ‘design’ is not a negative aspect to retaining the accommodation, and potentially positive compared to the alternative of reverting (if feasible) to a new caravan on a traditional caravan site.
- 8.35 Finally chapter 15 provides guidance on enhancing the natural environment. Including the protection that should be afforded to the natural environment and nature conservation. It is pertinent that the site is not afforded any special protection due to any national designation, nor due to its environmental or importance to biodiversity. Hence there is no additional and specific reason for its protection (para 171).

8.36 Hence in terms of national guidance, the site does not attract any specific reasons for which development is discouraged, and can meet various criteria which might suggest that development was acceptable. Specifically, it has provided accommodation to one family (of 2) without infringing any site specific guidance against doing so.

Nitrates

8.37 The current situation is that currently any dwelling erected within the drainage catchment of the Solent will discharge nitrate to the Solent, and contribute to the cumulative adverse effect, and hence be unacceptable. This means that no new housing can be allowed unless mitigation can be provided, with the normal method being to offset nitrates produced by taking farmland out of production elsewhere. WCC does not yet have an approved site for such mitigation, so currently will only grant planning permission if this includes a Grampian style condition, preventing development until mitigation is provided. It is understood that the City Council is currently exploring options, and this may provide a solution prior to determination of the appeal. Meanwhile, the appellants have considered 'private' options, details of which are set out in Appendix HG 23..

8.38 Notwithstanding any measures to address nitrates, it remains a matter of fact that the appellants have occupied the appeal site since April 2010, which has included the discharge of sewage. This is several years before the levels of nitrate in the Solent were identified as a concern. Hence, the grant of planning permission would not result in the additional discharge of nitrate that has not occurred since 2010, prior to nitrate levels in the Solent becoming a (quantified) concern. A more detailed response to the issue of nitrates on this site is set out in Appendix HG 25 n

Highways

8.39 A response to the highway objection from Mr Stone is provided in Appendix HG 24.

9. CONCEALMENT

- 9.1 Both the LPA and Mr Stone allege that concealment has taken place, as a result of which the LPA has been denied the opportunity to take enforcement action, and consequently that the appellants should not benefit from this concealment. This is not accepted and is insulting to the appellants. The comments below are appropriate and are based on the details provided about the various enforcement investigations, as provided by the LPA in 4 e mails.
- 9.2 I have set out a detailed note about the documents provided in the 4 emails in appendix 11A but comment on those details below.

The Enforcement History

The first investigation

- 9.3 This took place in 2010 soon after the mobile home arrived on site and was occupied by the appellants. It is clear from the details on file that some of the information provided to WCC in 2010, was inaccurate, and potentially carried forward to errors later in the Council's understanding of what has occurred on site. Particular errors are listed below. However, it is also clear that some issues were not questioned or investigated.
- 9.4 The investigation is referenced as **10/00112/Mixed** and papers are included as WCC Mail 1
- 9.5 It is clear from the papers provided that following a complaint officers wrote to the owner of the site at Sunnybank and that a meeting was then arranged between the enforcement officer and the person representing the owner. The owner was Mr Stone and the agent Mr Cox. Details were provided by Mr Cox that referred to the mobile home and also to the use being made of another building behind Sunnybank. It is not clear if Mr Stone was present but the appellants were not.

- 9.6 The investigating officer was shown both parts of the site and took photos. Clarification was provided in an email from Mr Cox and also in the response to the PCN that had been served on Mr Stone and was completed and returned on his behalf by Mr Cox. These details advised that the mobile home was not being lived in, but was used as ancillary accommodation to Sunnybank. In my view this information was not just misleading but incorrect.
- 9.7 Although the details were incorrect it is clear that the appellants had no part to play in providing this information. The details provided did refer back to an appeal decision issued 2 years previously when Mr Cox, acting for Mr Stone, satisfied the Inspector that another building was being occupied as ancillary accommodation. Hence both Cox and Stone were familiar with these arguments. Importantly it is Mr Stone who agreed to these details in his response to the PCN and risked prosecution for any falsehood.
- 9.8 Notwithstanding that the information given was clearly incorrect, the investigating officer did not pursue various potential enquiries. He did not speak to anyone on site in May 2010 despite the clear evidence that there was a workbench on site and someone was hoovering a car. He did not ask the identity of whoever was hoovering a car on his first visit or to check the registration details of those vehicles, either through the DVLA (not necessarily possible) or by a direct question to the site owner.
- 9.9 It appears that the case file was then closed with no reference to any need to revisit the site at a future date. An annual inspection might have been appropriate. The existence on site of water, electric and sewage connections might have been sufficient grounds for a follow up visit.
- 9.10 The appellants were never contacted by the Council (or by Mr Cox or Stone) at this time, and had no knowledge that there was an investigation. In addition they were not present at the site visit in August and have no recollection of being advised that a meeting was being arranged. More concerning, they

were not aware that that anyone had entered their MH, and had not seen the photos of this until April 2018 (or later), when Mr Cox requested copies (see Mail 2 documents 2e). However, they had no part in this narrative at the time.

- 9.11 As Mr Stone is himself suggesting concealment, he is presumably owning up to misleading the Council at the time and to falsely completing the PCN.

The second Investigation

- 9.12 This relates to the complaint made by Shedfield Parish Council, and the investigation is referenced as **16/00294/CARAVN**. It is the first contact that the Appellants had with officers of WCC.
- 9.13 It is notable that although the PC had complained about the occupation of a mobile home and a touring caravan, the focus of attention by the officers is only on a touring caravan inside the glasshouse.
- 9.14 Whilst it is clear that this investigation focused on the caravan in the glasshouse, it is clear that this was an opportunity that was missed for the LPA to investigate and take action against the accommodation (the former MH) on site, despite the obvious potential breach. The LR indicated that there had been a change in ownership, with no continuing connection to Sunnybank. The PCN referred to the site as 'The caravan' and was served on Heather as the owner/occupier of the site. She met and spoke with the two officers whilst engaged in a very domestic activity of ironing. The accommodation (occupied by Heather) is evident in the photos taken on all three dates.
- 9.15 If the officers were on site to investigate the potential unlawful residential use of a caravan (in the glasshouse) it seems inconceivable that they did not observe that 'the accommodation' was being occupied, and knowing that this was in separate ownership, such occupation could not have been ancillary to Sunnybank. As the officers visited the accommodation to serve the Notice, they were standing in the established garden and almost certainly on the decking as seen in the appellants photos in HG9. It seems that the two

officers, and WCC for whom they acted, simply accepted that 'the accommodation' on site existed and was lawful.

9.16 This is even more likely given that the complaint by the PC alleging that 'A mobile home is being lived in and another caravan is inside what was the greenhouse'. Hence, despite the allegation being made by the PC that a mobile home was being occupied, this was not investigated, no questions were asked in the PCN.

9.17 As no questions appear to have been asked, no answers were provided about 'the accommodation', but 'concealment' would have been impossible for what was plain to see.

9.18 Given the previous details about the site on the enforcement file 10/00112/MIXED, it is clear that WCC officers had not checked the history and missed a clear opportunity to consider the residential use, which was plain to see. It appears that this use was simply accepted as lawful.

The third Investigation

9.19 The investigation relates to the mobile home and is referenced as **17/00186/CARAVN**. It appears to follow on from the previous complain by the PC, as investigated under 16/00294/CARAVN.

9.20 Given that the approach from WCC questioned their home, the appellants turned to the only (retired) planning consultant they were aware of, namely Mr Cox. The email from Mr Cox (document 2A) tells the officer (KL) of this. He seeks time to gather information, presumably because his last active involvement in the site had been in 2010, and that at that time he was acting for Mr Stone. As Mr Cox had retired and was living in Spain, he asked for details from the Council of his meeting in 2010 and of the photos taken in 2016.

- 9.21 The investigation led to two PCNs being served, the first relating to a mobile home, and the second, which followed on from correspondence, relating to a potential dwelling.
- 9.22 It is relevant that it appears to be KL that first raises the issue of timescales in her email dated 25th April (2018) advising that she has no specific time concerns as the 'use unbroken is not close to 10 years'. Mr Cox agreed that a 10 years continuous period is not an issue here.
- 9.23 It is unclear on what basis both writers passed comment on a 10 year use. For E Cox this was likely to be based on his meeting with R Riding in 2010 (approx. 8 years previously); for KL this may have been based on the same details, or on her belief that there had not been any caravan on the site when file 16/00294 was closed (see e mail dated 21st March, included as Document 2e in Mail 3).
- 9.24 If it was the belief of Ms Longley (on behalf of the Council) that there was no caravan on the site in 2016, then this was clearly mistaken, as the 'mobile home' is clearly evident in the photos taken in 2016, such that any comment (by Ms Longley) that it was not there is simply inaccurate (see para below). However, this may simply have compounded the omissions of her colleagues.
- 9.25 The only way to interpret the comments from Ms Longley as correct, in suggesting that there was no static caravan on the site, is if she appreciated that works had already been done that meant that this former mobile home was no longer moveable. However, as this evidence was only provided to the Council in 2019 (as part of the CLU application) then this is unlikely.
- 9.26 It is during this investigation that information provided to Mr Cox about work that had been done, raised the issue of building works on site and that the accommodation may have been a building. It is for this reason that the second PCN was served.

- 9.27 The fact is notable, because there is no suggestion here that the appellants 'concealed' any details from the Council but openly offered these detail to Mr Cox, and through Cox to the Council.

The S191 Application for a CLU in 2018

- 9.28 A copy of the papers submitted with the S191 application in 2018 have been provided in Appendix LUC 1, and the errors in that submission identified in Appendix HG3. Whilst Mr Snape may have shown insufficient care for not checking thoroughly all the details provided, he had no reason to question details suggested to him from Cox, based on his previous knowledge.

Overview

- 9.29 I have set out in 9.2 – 9.9 above errors in the information provided by the site owner to WCC in 2010. However, it is clear from the papers provided that these responses were provided by Mr Stone as the owner of Sunnybank (including the appeal site), and there is no information to suggest that the appellants were aware of the PCN having been served, or invited to respond to the Council. Indeed, Mr Snape will testify that neither he nor Heather were aware of the Council visiting the site or their home in 2010, and although the photo taken by the Council of the inside of their home includes their furniture, it also includes items of toys that did not belong to them and which they had not seen before being provided with this photo.
- 9.30 If this is 'concealment' then it was undertaken by Mr Cox acting on behalf of Mr Stone, and the appellants were unaware.
- 9.31 The appellants were first aware of an investigation by the LPA in 2016, which related to their touring caravan situated within the glasshouse. Two officers from WCC walked into the site through the glasshouse and were observed by Heather exiting the glasshouse through the gap in the side wall close to the accommodation. They approached her in her home during the process of

ironing, and having explained the reason for the visit, provided her with a copy of the PCN addressed to 'The owner/occupier'.

9.32 It is relevant that these officers observed Heather in the accommodation, engaged in a routine 'domestic activity', and served notice on her as the owner/occupier.

9.33 As this was the appellants' first contact with WC officers, and the two officers did not mention then, or prior to closing that particular investigation, that there was any question of the accommodation being lawful, the appellants had no reason to believe otherwise.