

SUMMARY TO**PROOF OF EVIDENCE of****Christopher Ward BA (hons) LLM, MRTPI****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****BJC Planning
The Gallery
3 South Street
Titchfield
Hampshire
PO14 4DL****Tel : 01329 842668****June 2021**

10. SUMMARY

10.1 My main Proof of Evidence includes lots of detail, not all of which needs to be summarised, so the details below pick out the key points that are relevant to the appellants' case and that the Inspector's attention is drawn to. Where key dates or information is referred to the references for that information are provided below in [brackets].

History

10.2 The mobile home was first moved to the site in February 2010 and into its current position by early April 2010. The appellants then occupied this by the 10th April 2010, and have used it as their home since that time.

[Docs in HG2, Cox e mail HG21, Andrews letter HG19]

10.3 At the time of occupation the appellants were invited by the owner to choose how much land they required, and this decision included the glasshouse and an area of land extending about 12m to the north of the MH. A new hedgerow was planted by the appellants and soon after a new fence erected by the landowner on the paddock side of the hedge. Over the next few years, a mature garden was established. The glasshouse was cleared of dead vegetation and used as a glasshouse (for plants) and as a general storage area.[Hg1A, HG9]

10.4 Prior to the MH coming to the site Mr Snape had started works to modify the interior (removing walls and insulating the internal walls), and these works continued after the move, with large parts of the internal walls stripped back, insulated and a new wooden frame and plaster face added. The internal layout was further modified (new kitchen etc). These works substantially changed the structure of the MH.[HG10]

10.5 In 2013 external works were undertaken involving the fitting of (larger) replacement doors to the lounge. This included the removal of part of the

original chassis, requiring the area where the chassis had been removed, and beyond, to be supported directly from the ground.[GS2 and GS4 in LDC1]

- 10.6 In 2015 the appellants purchased the site, including the area of the former paddock, and started to establish a garden on the additional land.
- 10.7 Following the purchase, the appellants (unable to move or replace the MH) undertook ongoing works to this, but most significantly in 2017-2018 replaced the floor to the lounge area (removing the remainder of the chassis under this part), constructed a new (3m) extension on the east side, added new insulation and cladding to the outer wall, and constructed a new pitched roof over the entire accommodation. [GS6 and GS7 in LDC1, HG5 and HG6]
- 10.8 Externally, various areas of decking have been provided within the initial garden area, starting in early 2011. [HG9 photo 14]

Implications of the occupation and works undertaken (relevant to ground d)).

- 10.9 It is clear that the appellants have occupied the site residentially since April 2010 and therefore for in excess of 10 years when the Notice was served in September 2020. Whilst the original MH has been substantially altered in that time, and is no longer a 'caravan' or moveable by conventional means, much of the original shell to the MH remains as part of the modified accommodation. The 'use' of this has not been altered by the subsequent works.
- 10.10 The works undertaken in (and before) 2013 substantially changed the nature of the accommodation, such that it was no longer a 'caravan'; no longer capable of being moved; and acquired a considerable degree of attachment to the land.

10.11 Applying the principles set out in Skerrits:

Size This was considerable and would normally be considered to be a 'building' unless classified as something different, (such as a caravan). Whilst this had been brought to the site as a MH, the fabric of this was changed internally on site (with new stud walls and plasterwork), and externally with one end of the MH being supported directly from the ground rather than via the original chassis (part removed). These works both involved construction work being done on site.

Permanence - by 2013 the accommodation had been on site for 3+ years without moving, giving it a significant degree of permanence. This permanence was emphasised in 2015 when the appellants were advised that it could not be moved. This is a substantially greater degree of permanence than the marquee considered in Skerrits, and a long way from the 'temporary nature' of the caravans considered in Measor. By comparison, The LPA asked for the summer house to be moved despite it being 1/3 of the size and only having been present on the site in May 2010 for a few weeks. Finally, the extract from Hall Hunter Partnership set out on page 2-3164 of the Encyclopedia is helpful, in advising that the answer to how long must a structure or erection be in place for there to be a sufficient degree of permanence, is "for sufficient length of time to be of significance in the planning context". In my view this had become 'significant' by 2013 and certainly by 2015.

Physical attachment – The Encyclopedia advises that this is inconclusive, but may tilt the balance when weighed against other features. In this case, the accommodation (in 2015) was connected to drainage so did have some 'connection' into the ground, it relied substantially on the ground for support and would only have been capable of being dismantled from this site if alternative support was provided to tie all the parts together, and to support these as one item (ie the parts still supported by the chassis and those parts where the chassis had been removed). This is likely to have required a

complex engineering solution. There was a high degree of attachment, with a large part of the original structure reliant on this.

10.12 If this is correct, then the accommodation on site in 2015 was a building and has existed for in excess of 4 years by September 2020.

10.13 It is accepted that works undertaken in 2017-2018 have not existed for in excess of 4 years, and clarification is awaited to see if the LPA would wish to enforce separately against the extension, cladding and roof.

Ground b)

10.14 this relates to the use of part of the site as part of a residential curtilage in 2010 (prior to the MH) and to the onerous requirement to restore this part of the site to horticulture, which was not its previous use. It does not relate to the majority of the site or to the accommodation. [HG1]

Ground f)

10.15 This relates largely to how the different parts of the site have been used and for how long, and therefore to whether all the site needs to be regarded in the same way. This will therefore need to be determined based on the Inspector's findings of fact and which parts or activities became lawful at what dates. There is a potential difference between the accommodation as it existed in mid 2016, and the extension and other work completed in 2018, and between the original garden area (as hedged in 2010) and the creation of an additional area of garden in the former paddock in 2015.

Ground g)

10.16 This simply acknowledges the difficulties that would be faced if the appellants were required to clear the site and to find an alternative place to live, which would be exceptionally onerous in a period of just 6 months, given that lack of suitable alternatives locally.

Ground a) Planning merits

- 10.17 It is agreed that the site is in the countryside and hence that policy most directly relevant to development on this site is Policy MTRA4. However, other policies are relevant and other developments other than set out in MTRA4 are permissible in the countryside.
- 10.18 Housing policy more broadly does allow for housing in the countryside, and especially for housing that is affordable. The appeal site fulfilled a need to provide the appellants with somewhere to live in 2010 and continues to do.
- 10.19 The appeal site is surrounded by other development and substantially by other buildings such that the accommodation is substantially hidden from anywhere beyond this collection of buildings. There is no identified issue in term of its visual impact.
- 10.20 Although Shirrell Heath does not have a formal settlement boundary, it is an acceptable location for additional infill style development. The appeal site is likely outside the notional boundary to Shirrel Heath and does not meet the criteria for such development, but it is reasonably located in relation to that settlement (and others) so is not an isolated location and not significantly unsustainable. The improvements made to the accommodation itself, mean that this is very energy efficient property. It would be somewhat unsustainable to destroy this accommodation only to create a need for new accommodation elsewhere.
- 10.21 The Local Plan does not include any local provision for affordable housing in the immediate locality, or new sites for mobile homes.

Ground a) for works in 2017-2018

- 10.22 It is acknowledged that whatever the decision taken in relation ground d) and to the 'core accommodation' , this original shell has been altered and

extended since 2016 with the addition of a 3m extension, a new roof, and new insulation/cladding externally. All these works are potentially development for which planning permission was required.

- 10.23 If the Inspector agrees that the accommodation on site in 2016 was lawful, then these works are effectively works to extend or improve an existing dwellings, and whilst these were probably not pd (for various reasons) they would be works that would normally be permitted, if applied to a lawful dwelling. I can see no reason these works would not have been permitted, and none has been raised by the LPA. The overall impact of the cladding and roof has been to improve the appearance of the dwelling, and the bedroom extension is a modest extension with limited or no visual impact.

Human Rights

- 10.24 If planning permission is refused the appellants will be compelled to vacate and potentially destroy their home, and to relocate to other accommodation. I have set out 3 options, all of which will be onerous. The loss of their home will infringe their rights under Article 8 and the key issue is then whether this interference is justified and proportionate.
- 10.25 Whilst it is accepted that the dwelling does not fully comply with planning policy, there would be minimal or no actual harm to the environment or surroundings of the site and possibly less impact that their occupation of a new/alternative property on a site elsewhere, especially if that generated the need for new development.

Highway issues

- 10.26 These have been raised by Mr Stone as a Rule 6 party and it is to be noted that there is no highway objection from the LPA or from the highway authority. The latter advised that there was no objection to the same access

track that serves the appeal site, becoming used as the access to 3 mobile homes on an adjacent site, the movements for which are likely to be similar per unit as the appeal site. [HG16]

- 10.27 Whilst the visibility available from the access track onto Gravel Hill is unable to provide the visibility desirable at such junctions, this is not uncommon for such accesses. Visibility is 'adequate' and the appellants are not aware of any issues associated with their use of it. My more detailed response is set out in HG24.

Nitrates

- 10.28 A nitrate calculation has been provided and details of where 'nitrate credits' could be purchased. Given that the adopted approach of the City Council is to grant planning permission for new dwellings provided that such credits can be secured, a Grampian condition is invited if the Inspector determines that planning permission is needed and should be granted. My more detailed response is set out in HG23.

Concealment, and the relationship between the appellants and WCC

- 10.29 Enforcement officers first visited the site in May 2010 and raised the issue of the MH with the landowner, together with the position of the summerhouse and other works to the rear of Sunnybank. A PCN was served and responded to by Mr Cox on behalf of Mr Stone. This advised WCC that the MH was used ancillary to the dwelling at Sunnybank. There was no contact between WCC and the appellants. Whilst it appears clear that information was provided that was not true, the appellants played no part in this dialogue and were not aware of any investigation at the time. [papers in WCC Mail 1].

- 10.30 It appears that the next visit to the site by officers was in 2016, in responding to a complaint about caravans, with both the 'mobile home' and a touring caravan alleged in the complaint. Officers walked through the glasshouse and across the (mature) garden area, and met the appellant (Heather) in the accommodation (or at the doorway). A PCN was served on the occupant. Notwithstanding the complaint received, the PCN only referred to the touring caravan, and no mention was made of the mobile home. There is no information if officers simply ignored the complaint or considered the MH to be lawful, but it is clear that the accommodation occupied by the appellants was evident at that time but no breach was identified. There was no concealment. [Papers in WCC Mail 2 and 3, 2.2, 2.3, 3.1]
- 10.31 The site was next investigated in 2017, when the WCC initially assessed there to be a caravan on the site and wrote to the appellants [3.1]. At this point the appellants became aware that their ability to live on site was being questioned, and sought advice. Following discussion with Mr Cox, and briefing him on what had occurred from 2010 to 2017, he submitted an application to retain the MH in 2018. This was not validated.
- 10.32 In March 2019 a PCN was served relating to the residential use of a MH [4.12] and following the return of this, and the details revealed by the answers, a second PCN was served in April 2019, alleging an unauthorised dwelling. [4.16].
- 10.33 In July 2019 a S191 application was submitted, and refused in September. It is clear from correspondence that the details provided for the S191 were based partly on details from the appellant (without being asked for comprehensive details) and partly on records Mr Cox had, or was provided with by WCC relating to the work he had done for Mr Stone in 2010. It is unclear why Cox advised the appellants that Mr Stone would not agree to a date 'prior to 2011', given that Mr Cox may have had original papers going back to 2010, but the application was submitted relating to occupation post

2011 (See LUC 1). It is possible that Mr Cox did not have available all the details of the work he had undertaken for Mr Stone in 2010, or was unable to use these without Mr Stone's agreement. [WCC Mail 3.11, 3.2a, LUC1]

10.34 I have seen no evidence that the appellants have ever mislead enforcement officers, other than for the details now shown to be inaccurate that were included in LUC 1).

10.35 Finally, it may also be relevant that whilst the allegation of concealment appears to relate to incorrect information being provided in 2010, there is a difference between that investigation and the current Notice. The investigation in 2010 focused on the use of the land for the siting of a mobile home (used residentially), whereas the current Notice refers to the construction of a single dwellinghouse and the use of the land for ancillary residential use and storage. The two breaches are not the same. It would not have been possible for the appellants to conceal from WCC officers the erection of a dwelling, when many of the works that led to this being a building did not occur until later.