

***STATEMENT OF COMMON GROUND**

APPEAL REFERENCE: APP/L1765/C/20/3261886 and 3261887

DATE OF INQUIRY: 29th and 30th June 2021 (Virtual)

SITE ADDRESS AND DESCRIPTION OF THE DEVELOPMENT:

The Greenhouse, Gravel Hill, Shirrell Heath, SO32 2JQ

APPELLANTS: Mr Graham Snape and Ms Heather Woods

LOCAL PLANNING AUTHORITY: Winchester City Council

This statement addresses the following areas of common ground:

1. Description of the site (including agreed dimensions)
2. Description of the area
3. Planning history of site
4. Development plan (including relevant policies) & any draft development plan (including stage reached and weight to be attached).
5. Relevance of any supplementary planning guidance published by LPA (and /or of supplementary planning guidance published under previous provisions and still in place.)
6. List of possible conditions and the reasons for them (including any that are not agreed, with reasons why)
7. Draft terms of any S 106 obligations - N/A
8. Highway issues
9. Issues relating to the Enforcement investigations and concerns re 'concealment'.

It clarifies those matters that are agreed and disagreed between the main parties.

1.0 SECTION 1 – INTRODUCTION

- 1.1 Section 2 of this document sets out in broad terms details of what is agreed between the Appellant and the LPA, with an indication of where agreement stops.
- 1.2 Section 3 brings together those items that are not agreed.
- 1.3 For the ease of reference, and avoidance of conflict, the accommodation that exists on site and as addressed in the EN is referred to throughout this document as the MH, but without any implication as to whether it is a caravan or a residential dwelling.

2.0 SECTION 2 – ITEMS AGREED

Description of the site (including agreed dimensions)

- 2.1 The appeal site comprises an area of about 0.173 ha which is made up of three identifiable areas. The western boundary is largely defined by a long (former agricultural) glasshouse. To the east of this, at the southern end is a residential garden whilst the northern end is laid out as an informal garden area.
- 2.2 Within the residential garden, and close to the southern boundary, is the dwelling referred to as the Greenhouse. This is a single story rectangular building that started life as a caravan (10.7m x 3.2m) and has since been extended and adapted such that it is now 13.7m x 3.43m. This has a ridged roof.
- 2.3 The garden area around the dwelling is planted with a mature laurel hedge dividing it from the former paddock to the north.
- 2.4 There are two accesses to the appeal site. Along the northern boundary is a track which leads out onto Gravel Hill, and the site has a gated access onto this track, that leads into the additional garden area and indirectly into the glasshouse. The boundary with the track is marked by a fence and hedge behind. The eastern side of the site has a common boundary with a driveway leading from this track to Sunnybank, and this leads to a small area of hardstanding (approximately 3 spaces) used by the appeal site but separated from the main garden area by a fence.
- 2.5 The track leading out to Gravel Hill is also used to access sunny bank, agricultural and equestrian businesses, a reservoir, a site for gypsies and travellers, and three other residential properties

Description of the area

- 2.6 The site itself is located in an area of countryside to the north of Shirrell Heath, and within a group of buildings in various uses, including various residential dwellings, agricultural and equestrian buildings and a commercial storage building. There is also a large semi-buried water reservoir. In addition, the site immediately to the east is a site for Gypsies and Travellers, with 3 mobile homes and various associate buildings. This uses the same access track.

Planning history of site

- 2.7 This has been set out in the various Statements, but it is agreed that the history set out in Section 4 of the Statement of Case for the LPA (provided by N March) is accurate.

Development Plan

- 2.8 The Development Plan comprises:-
- The Winchester Local Plan part 1 - Joint Core Strategy
 - The Winchester Local Plan part 2 – Development Management and site allocations.
- 2.9 The site is situated in the Countryside as described in the Plan, and the main policy of relevance is MTRA4.
- 2.10 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.”

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

2.12 The more specific approach to rural housing is set out in Chapter 6 of the WDLP Part 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

2.13 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.

2.14 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.

2.15 Policy CP16 (Bio-diversity) is relevant in terms of the nitrate issues (see below).

2.16 The Enf Notice includes reference to Policy CP17, although this is not directly relevant to the Nitrate issue so is not considered to be relevant to the appeals.

2.17 The site is situated within a Settlement Gap (policy CP18), although this is not mentioned in the reasons for issuing the Enforcement Notice and is not therefore a

matter being pursued by either party in these appeals.

- 2.18 The LPA have pointed out that the site is located within the Solent Disturbance and Mitigation Project area 5.6km buffer zone. This was not mentioned in the reasons for issuing the Enforcement Notice. But is a relevant consideration under the Habitats Regulations.

Relevance of any supplementary planning guidance

- 2.19 There is no specific guidance of direct relevance to the appeal.

Enforcement Action

- 2.20 The EN was served on the 24th September 2020, meaning that for any activity to be lawful on the site any use must have begun by 23rd September 2010 and any structure have been erected by 23rd September 2016.
- 2.21 The Notice was served on both Ms H Woods and on Mr Stone as the MH is situated on 2 separate titles of land, as referenced by the LR. However, it is recognised that the plans held by the LR do not show the true extent of the land acquired in 2015, and Mr Stone has indicated that this is an error and that he does not own any of the land on which the MH is situated.
- 2.22 The planning/enforcement history as set out in section 4 of the statement by the LPA is correct. Various documentation relating to the enforcement investigations undertaken by the LPA in 2010, 2017 and 2018 has been provided by both the appellants and the LPA – much of which overlaps.
- 2.23 The MH was in position on the site by the 19th May 2010, as shown in the photos taken by Mr Riding (WCC) in May 2020, and has remained in the same position as shown in those photos since that date.
- 2.24 In 2010, a PCN was served on the owner of the site, Mr Stone, and returned to the Council by Mr Cox his agent.
- 2.25 The enforcement section had no contact with the current appellants in 2010 and did not send or receive any communication to or from the Council.
- 2.26 The first contact between the appellants and officers of WCC planning/enforcement office was in November 2016, when a PCN was served on Ms Woods as the occupier of the site.
- 2.27 Works have been undertaken to the MH since 2010, both internal and external, such that it is now agreed that it is now a building/structure for planning purposes.

It is not agreed when this MH became a building. The appellant says this occurred in 2013. The LPA say this occurred in 2017 / 2018

- 2.28 The land on which the MH now sits was part of the curtilage of Sunnybank in 2010, which included a small strip of land alongside, as indicated on the EN served on Sunnybank in 2008.
- 2.29 A hedge was planted in 2010 approximately 12m from the MH, which can be identified on the photos taken by R Riding (WCC) on 19th May 2010.
- 2.30 That the policy objection (MTRA4) relates to an objection to the principle of development on the site, but that there is no objection in terms of the design of the building or its visual impact. Nor is it out of character with the area.
- 2.31 The site drains to the Solent SPA, where there is an issue with high levels of nitrate in the water. It is agreed that if the Inspector decides that pp is required, and to grant planning permission, mitigation will be required to avoid an increase in nitrate entering the Solent. WCC does not have its own preferred mitigation site, but accepts that mitigation can be delivered on various private sites from which water also drains to the Solent. In the event of mitigation being necessary (and in circumstances where the proposed mitigation can be delivered), WCC supports the grant of planning permission for residential development involving overnight stays if there is a Grampian style condition that requires details of mitigation to be submitted prior to occupation.

S 106

- 2.32 It is not anticipated that a S106 will be required.

Conditions

- 2.33 A potential condition has been provided by the LPA at the end of this document, with a further condition suggested by the appellant.

Highways

- 2.34 There is no highway objection by the Highway authority or by the Local Planning Authority. There is no highway reason for the Enforcement Notice.
- 2.35 When PP was granted for a gypsy site in 2016 (temporary) and 2017 (full), on the land immediately to the east, there was no highway objection (the site is shared by 3 mobile homes).

3.0 SECTION 3 – ITEMS Partially agreed or NOT AGREED

Whether the existing structure on site is a building, and if so, the date that that occurred?

3.1 Both sides agree that the accommodation on site is a building but disagree on when this change occurred:-

3.2 The LPA say that the existing structure is a building and that it became a building in 2017 / 2018 as a result of the works undertaken at that point.

3.3 The appellants say that the works undertaken internally to the MH in 2010-2012 and in particular the works in 2013 (which included the removal to part of the chassis, meant that the MH had become a building by this time. However, the Inspector will need to satisfy himself on these issues so the appellants have also invited the Inspector to consider whether a building exists on the site and, if not, the lawfulness of the use of the site for moveable residential accommodation.

3.4 The LPA does not consider that there is sufficient evidence before the inquiry to confirm whether the works to the chassis that the appellants say they carried out in 2013 renders the mobile home immobile.

3.5 The LPA has no direct evidence in relation to the works said to be undertaken in 2013, but gives weight to the evidence of Mr Stone that these works to the chassis were not carried out in 2013.

The date on which the land around the mobile home became used as a garden.

3.6 It is agreed:-

- that the appellants' occupation of the site in 2010 included the land up to the laurel hedge (as shown in Rob Ridings photos) which would have been used as residential land in connection with the residential occupation of the MH by the appellants.
- that the land to the north of the hedge was not used as garden land by the appellants before 2015 when the site was bought. The garden was extended into this area in 2015, prior to which it was used as a paddock.
- the appellants had the permission of Mr Stone to use the Greenhouse when they moved onto the site in 2010, although initially this was v overgrown.

3.7 It is disagreed:-

- whether there was a material change of use of the site as a whole in 2015, when the appellants acquired ownership of the land, including the former paddock to the north (as claimed by the LPA).

- The dates on which the glasshouse came into use for purposes ancillary to the residential use.

Concealment

3.7 It is agreed that the answers provided to the LPA in response to the enforcement investigation and PCN in 2010 included incorrect details about how the MH was used at that time and that the internal inspection of the MH by R Riding on 3rd August 2010 (as described in the enforcement papers) was potentially consistent with those details (ie that it was being used as ancillary accommodation in association to Sunnybank), but not agreed;-

- I. whether the appellants themselves had any involvement or knowledge of the actions of Mr Cox in 2010 or of the site visit on the 3rd August 2010;
- II. the effect that the details provided in 2010 should have on the outcome of the appeals.

3.8 It is agreed:-

- i) There was also an enforcement investigation in 2016, which is when the LPA first contacted the appellants.
- ii) The investigation centered on the siting of a touring caravan in the greenhouse, that was subsequently removed by the appellants.
- iii) A PCN was served on the appellants which alleged 'Following up a complaint a recent site inspection found a caravan on the site which appeared to be in residential use. The caravan was situated inside the greenhouse.' As the touring caravan was quickly removed the appellants were not required to complete the PCN.

3.9 It is disagreed:-

- i) whether the appellants should have assumed from the correspondence in 2016 that their occupation of the MH also needed planning permission.
- ii) whether Mr Cox ever discussed with the appellants that their residential occupation of the MH was a breach of planning control and that if the Council found out they would almost certainly be faced with enforcement action.

Suggested conditions

Condition suggested by LPA	Appellants comments / alternate wording
<p><u>Nitrates</u></p> <p>1. The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:</p> <p>i) Within 3 months of the date of this decision:</p> <p>a) a water efficiency calculation which demonstrates that no more than 110 litres of water per person per day shall be consumed within the development, and this calculation has been submitted to and approved in writing by the Local Planning Authority</p> <p>b) A mitigation package addressing the current nutrient input arising from the development has been submitted to the Local Planning Authority. Such mitigation package shall address the current nutrient load imposed on protected European sites by the development and be implemented in full prior to first occupation and shall allow the Local Planning Authority to ascertain on the basis of the best available scientific evidence that such additional nutrient loading will not have an adverse effect on the integrity of the protected European Sites, having regard to the conservation objectives for those sites</p> <p>The mitigation package shall include a timetable for its implementation.</p> <p>ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.</p> <p>iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.</p> <p>iv) The approved mitigation package shall have been carried out and completed in accordance with the approved</p>	

<p>timetable.</p> <p>Upon implementation of the approved mitigation package specified in this condition, the measures specified shall thereafter be maintained / retained / remain in use as set out in the approved mitigation package.</p>	
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Additional condition suggested by Appellants	LPA comments
<p>The following condition is suggested to address the potential disturbance to the Solent SPA due to potential recreational pressure.</p> <p>This planning permission shall lapse and the residential use of the site shall cease if within a period of 3 months of planning permission being granted the appellants shall not have paid to the LPA the appropriate Solent Mitigation and Disturbance payment to mitigate the potential increase in recreational pressures on the Solent SPA.</p>	<p>It is usual for this to be paid up front before the permission is granted. If used, it would need to be worded more robustly (like the first paragraph of the proposed nitrate condition).</p>

This Statement has been circulated between the Appellants and the Local Planning Authority and agreed between.



Chris Ward

Representing the Appellants and



Neil March

Representing Winchester City Council

23rd June 2021.