The Planning Inspectorate

Appeal Decisions

Inquiry Held on 29 June, 11, 12, 18, 19 October and 4 November 2021

Site visit made on 13 October 2021

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2021

Appeal A: APP/L1765/C/20/3261886
Appeal B: APP/L1765/C/20/3261887
The Greenhouse, Gravel Lane, Shirrell Heath, Hampshire

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Ms Heather Woods (Appeal A) and Mr Graham Snape (Appeal B) against an enforcement notice issued by Winchester City Council.
- The enforcement notice was issued on 24 September 2020.
- The breach of planning control as alleged in the notice is: Without planning permission: (i) the construction of a single dwellinghouse comprising a former mobile home ('X') with extension ('Y') and decking in the positions marked 'X' and 'Y' on the attached plan. (ii) the material change of use of the Land from horticultural use to ancillary residential use and storage (including the storage of domestic items in the glasshouse).
- The requirements of the notice are: 1. Cease the residential use of the dwellinghouse; 2. Demolish the dwellinghouse, extension and decking, and remove all resultant materials from the Land; 3. Cease the use of the Land for ancillary residential purposes and storage of items not related to the lawful use of the Land for horticulture; 4. Reinstate the Land to its former condition.
- The period for compliance with the requirements is six calendar months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f) and (g) and Appeal B is proceeding on the grounds set out in section 174(2)(b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decisions

1. The appeals are dismissed and the enforcement notice is upheld with corrections and a variation.

The Enforcement Notice

2. At the opening of the Inquiry, I queried the second alleged breach of planning control and requirements of the notice given reference was made to ancillary uses rather than primary uses and the broad requirement to reinstatement the land to its former condition. Upon resumption during the second day, the Council proposed corrections to the notice, to which no objections were raised by the other parties. These relate to that second alleged breach being framed as the material change of use of the land to a residential use, that being the primary use taking place, and that use being required to cease and a requirement to remove from the land all structures and items brought onto the land in connection with that use, to further clarify how the land should be

reinstated to its previous condition. I will therefore adopt these corrections as injustice to the parties does not arise from them.

Applications for Costs

3. Applications for costs were made on behalf of the appellants against Winchester City Council and Mr Stone a Rule 6 party (R6P). Applications for costs were also made on behalf of the Council and R6P against the appellants. These applications are the subject of a separate Decision.

The ground (b) appeal

4. This ground of appeal is limited to an area of the site immediately around and upon which the dwelling is situated. It is an 'L' shaped area of land which was, originally, carefully chosen as being within the curtilage of the now neighbouring property, Sunnybank. It was clear to me throughout the Inquiry that there was little disagreement between the parties concerning this matter.

5. For an appeal on ground (b) to succeed the onus is on the appellants to demonstrate, on the balance of probabilities, that the alleged breach of planning control has not occurred as a matter of fact.

6. However, having considered the evidence presented during the Inquiry, that is not the appellant's case as it is accepted the land was in residential use when the notice was issued. The appeal made on ground (b) could not therefore succeed.

7. Rather, it is the appellant's case that there has not been a breach of planning control because the land was previously in ancillary residential use, pursuant to Sunnybank, and has been in a residential use since such that no breach of planning control has occurred. This is an argument more appropriately made under a ground (c) appeal on the basis that the residential use of the land when the notice was issued did not constitute development because no material change of use occurred. I can however consider a ground (c) appeal as prejudice to the other parties does not arise as they have responded to the appellant's case.

8. The appeal on ground (b) therefore fails.

The ground (c) appeal

9. The appellants must therefore demonstrate that no breach of planning control has occurred on the balance of probabilities.

10. In support of the appellants case, it is put forward that planning permission would not be required where part of a garden (or curtilage) was sold or exchanged from one neighbouring dwelling to another, as no material change of use, or development, would have occurred.

11. However, it was not simply a case of passing part of a garden between two existing residential planning units and its continued use for purposes in association with the existing properties. The Council's case is that the garden of an existing property was subdivided, and a new planning unit had been created which was physically and functionally separate for the purpose of stationing a caravan on the land and its occupation for residential purposes unrelated to any existing dwelling.

12. The residential use of the land enforced against requires careful consideration of the planning unit. It is accepted by the parties that the entirety of the land enforced against represents the current planning unit. It is therefore the materiality of any change in relation to this planning unit that I must consider.

13. It is evident that a new planning unit was created in 2010 when the caravan was first stationed and residentially occupied on an independent basis in an area both functionally and physically separated from Sunnybank. That planning unit then encompassed the area where the caravan was stationed along with a further small area of land and part of the adjoining glasshouse; those being rented to the appellants by the R6P.

14. Given the residential occupation of the mobile home and the land were both physically, owing to new boundary treatments, and functionally, owing to the new independent use, separate from Sunnybank, there was no continuing relationship and so the ancillary use had ceased. This also marked a significant change in the character of the land owing to the physical alterations and functional use. These changes include separate and independent comings and goings from a separate access point, as well as the independent occupation of the caravan and associated domestic paraphernalia.

15. The evidence demonstrates on the balance of probabilities that there had been a material change of use for the stationing of a mobile home for independent residential occupation in 2010.

16. In 2015, the appellants purchased the land they had been renting from the R6P as well as the adjoining paddock and remainder of the glasshouse. It was contended by the Council and R6P that a new planning unit was again then created. Whilst the use of the previously rented land did not materially change, the extension of the residential area to incorporate additional surrounding land not previously in residential use, resulted in a further material change and another new chapter in the planning history.

17. Building works were also undertaken such that there was no longer a caravan stationed at the site, and with-it the use of the land for the stationing of a mobile home for independent residential occupation no longer subsisted. That use of land had ceased in favour of the construction of a single dwellinghouse and use of the land for residential purposes. I will consider the date when this occurred within my ground (d) assessment. However, as a matter of fact and degree, this physical alteration of the land was materially different from what went before. The character of the land had undoubtedly changed from the previous unauthorised use as a sizeable building had been created and the permanence arising was of a radical nature so as to create a new chapter in the planning history. Thus, a new planning unit was created, and I agree with the parties that the unit of occupation now relates to the entirety of the appeal site. There is accordingly no smaller unit in the same occupation where there is both physical and functional separation of activity.

18. Despite my questioning during the Inquiry, no caselaw was expressly brought to my attention to precisely and unambiguously demonstrate on the balance of probabilities that the sequence of events at the appeal site, and creation of one or more new planning units since the appellants occupation, had not affected material changes of use of the land.

19. Development requiring planning permission has therefore occurred. There has therefore been a change in the character of the activity on the land since part of the land was in an ancillary use to Sunnybank prior to April 2010 and part in a non-residential use.

20. I appreciate that during the oral evidence one of the appellants put forward that even before the mobile home was transported to the site it was a building owing to the works undertaken to it. However, even if that were the case, there is little evidence before me to demonstrate on the balance of probabilities that the subdivision of the Sunnybank site, resulting in the creation of a new independent residential use, would have done anything other, as a matter of fact and degree, than affect a material change of use of the land.

21. The appeal on ground (c) appeal therefore fails.

The ground (d) appeal

22. For the ground (d) appeal to succeed the onus is on the appellants to demonstrate, on the balance of probabilities, that at the time the enforcement notice was issued it was too late to take enforcement action against the various matters stated in the notice. The notice was issued on 24 September 2020.

Time periods for immunity

23. The first consideration is the appropriate time periods for immunity from enforcement action that are relevant to this appeal. The notice is principally concerned with the construction of a single dwellinghouse and residential use of the land and was issued based on the breaches of planning control having occurred within the last 4 and 10 years respectively. It is common ground the dwelling was a mobile home (caravan), albeit the parties differ as to when sufficient building works were undertaken to render it a building for planning purposes. The Council relies on the statutory provisions set out in s171B(1) of the Act for the operational development and s171B(3) in respect of the change of use to support the 4 and 10 year time limits referred to in the notice.

24. Section 171B(2) then only applies to the change of use of a building to a single dwelling or to a breach of a condition which prevents a change of use of a building to a single dwelling. However, if a building is erected unlawfully and used as a single dwellinghouse from the outset, meaning that no change of use of a building has occurred, s171B(2) is not relevant. The implication is that the time limit for enforcement action against the use is then ten years under s171B(3)[1] and relates to the land.

25. Section 171B(2) is therefore not applicable where the building was constructed unlawfully and used as a single dwelling from the outset, meaning there was no change of use of any pre-existing building. That is the case here, even though the building originated as a caravan, which is thus not a building, and was subject to extensive building works as I will subsequently assess.

26. It was not the case of the Council that the 10-year rule applied to the creation of the dwelling, and it followed that neither was it the appellants. The matter was however raised during the cross-examination of the appellant’s planning witness and oral evidence of both the R6P and Council witnesses. I invited legal submissions on the point as a consequence.

[1] Welwyn Hatfield BC v SSCLG & Beesley [2011] UKSC 15

27. Given the correct position in law in respect of the residential use of land is that of the 10-year rule, a situation could arise where only the operational development of the building itself is immune from enforcement action, on the 4-year rule. The dates for immunity in this case would therefore be 24 September 2010 and 24 September 2016 respectively. These are all matters for my assessment below.

Whether lawfulness can be demonstrated

28. The evidence before me demonstrates on the balance of probabilities that the caravan was brought to the site in February 2010 and first occupied in the April. By May an area had been demarcated around it and there is photographic evidence of progressive works to this and part of the adjoining large glasshouse structure.

The dwellinghouse

29. The evidence of one of the appellants during the Inquiry was that before the caravan was brought to the site, he had undertaken various works including the removal of internal fixtures and fittings. He asserted that this removal also reduced the structural integrity of the caravan and that he then undertook building works in respect of the remaining walls, amongst other things, describing the caravan as a wobbly box. It was however confirmed during cross-examination that there was no structural assessment before the Inquiry. Even if I take his case as its highest: that the caravan had lost structural rigidity and had walls replaced or reinforced or modified, internally, that does not demonstrate on the balance of probabilities that it had become a building. The structure came into being as a caravan, its size had not changed and so it accorded with the definition of a caravan as set out in the relevant sections of the Act[2] in respect of its size.

30. Moreover, it is evident the caravan remained mobile as it was transported to the site and there is then no evidence of physical attachment to the ground. Furthermore, caravans tend to be ephemeral in that they are designed to move; that is not to have a permanent presence in any particular location. This was indeed the case given the caravan was moved from a caravan park to the site and therefore did not exhibit signs of permanence in 2010.

31. The appellants have therefore not demonstrated on the balance of probabilities that the caravan was a building at any point in 2010 as was asserted.

32. The evidence of the R6P then was the caravan was replaced in late 2010 by another example. The stationing of a caravan is not of itself development. For the purposes of ground (d) in respect of the dwellinghouse it is necessary to consider at what point the works to create it were substantially complete.

33. The principal contention of the appellant's planning witness was that the caravan became a building in 2013. The building works undertaken can be summarised as the replacement of doors with a larger double-glazed unit and removal of part of the chassis. The other parties dispute that these works were undertaken at this time. However, even if I take this case at its highest, a door was simply replaced with a larger unit and a small piece of chassis was removed. There is very little professional structural evidence before me concerning the effect this would have, nor sufficiently precise or unambiguous

[2] Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968

evidence to demonstrate on the balance of probabilities that the caravan, in this very small area, then rested on the ground.

34. I appreciate that two letters from hauliers were produced for the purposes of the Inquiry, but again even if I were to take these at their highest, they do not provide evidence to demonstrate on the balance of probabilities that the caravan had permanence or physical attachment to the ground such that it was a building for planning purposes. Transportation may therefore have still been possible, as other options had not been pursued. That the caravan may not have been capable of safe transportation by road is not a relevant consideration for the purposes of whether it was a building. My assessment is that it was not a building in 2013.

35. There is then very little evidence of further building works being undertaken to the caravan until 2017/18. At that point, significant building works were undertaken, which included, amongst other things, a large extension, new roof, insulted walls, ring beam beneath the entire structure, lowering of part of the floor and pouring of concrete. I have little hesitation that this demonstrates on the balance of probabilities that the caravan became a building for planning purposes owing to these works.

36. However, given this was within 4 years of the issue of the notice, the appellants are unable to demonstrate on the balance of probabilities that the operational development, being the construction of a building, is immune from enforcement action.

The land

37. I have considered under the ground (c) appeal the relevant changes that have occurred since the first subdivision of the land in 2010 through to the last changes when the dwellinghouse was created. Based on my findings, although the residential use of part of the land commenced in 2010, the clock was effectively re-set with each subsequent material change of use that arose whether as a result of a change in the planning unit or a change in the character of the use, or both, as I have set out. Accordingly, the inclusion of additional land brought about a material change in 2015, as did the creation of the dwellinghouse in 2017/18, neither of which provide a period of 10 years of more prior to the issue of the notice.

38. Given the matters alleged in sub-section (ii) of the notice occurred within 10 years of the issue of the notice, the appellants are unable to demonstrate on the balance of probabilities that the use of the land for separate residential purposes, being the material change of use attacked by the corrected notice, is immune from enforcement action.

Conclusion

39. Accordingly, as a matter of fact and degree, the appellants are unable to demonstrate on the balance of probabilities that at the time the notice was issued it was too late to take enforcement action against the various matters stated in the notice. I shall nevertheless still consider the arguments advanced in relation to deliberate concealment.

Deliberate concealment

40. The Supreme Court has held that, while the Act contains a complete statutory code, the public policy principle that no one should benefit from their own wrong may nonetheless apply. Where the actions of persons amount to positive deception in matters integral to the planning process, and this was directly intended to undermine the regular operation of that process, those persons are not entitled to rely on the provisions of the Act.

41. It was emphasised in *Welwyn Hatfield* and later cases that this principle should only be applied in extreme cases. The statutory immunity periods must have been conceived, in part, as sufficient for a local planning authority to normally discover an unlawful operation or use. Thus, there must be some connection between what is done to evade discovery and the statutory provision. This is a highly fact-sensitive question.

42. The original stationing of a mobile home for independent residential occupation, and therefore breach of planning control, came about in unusual circumstances. The appellants had lost their home and had been temporarily living in a house owned by a friend. More precisely, this was the longstanding friend of the mother of one of the appellants, and he was a planning agent. He was also a longstanding friend of the R6P, who is also a planning agent.

43. He approached the R6P about allowing the appellants to station a mobile home in his garden. The R6P was initially reluctant as he had been the subject of recent enforcement proceedings by the Council, albeit the eventual appeal was allowed. The R6P however agreed to meet with the appellants, who he otherwise did not know. That meeting took place in early 2010 when it was agreed the appellants could station the mobile home in what was considered to be part of the R6P's curtilage at Sunnybank. In return, their mutual friend and planning agent would be responsible for any planning issues arising and the R6P would receive rent for the land as well as payment to cover the cost of utilities. During the Inquiry, the R6P confirmed he was aware during that first meeting that this agreement amounted to a breach of planning control as it was not an ancillary use.

44. The stationing of the mobile home was then brought to the Council's attention in 2010. It is now clear the mutual friend and planning agent responded falsely to a Planning Contravention Notice (PCN). There was also an orchestrated site visit in August 2010 to deliberately mislead the Council into believing the use of the mobile home was an ancillary one to the R6P's occupation of his home.

45. That orchestration was however facilitated by atleast one member of the R6P's family as toys were used to stage the appearance of the mobile home. It appears to me that the mutual friend was trusted implicitly by both families, even though the R6P himself always knew there was a breach of planning control. In respect of the appellants, it is clear to me they followed the advice of the friend without hesitation. They may have known their occupation was suspect, and even though it is strenuously denied, may have had some involvement in the staging for the purposes of the Council's site visit. At the very least, they were naïve in the unwavering trust they placed in the friend, but they also had no planning knowledge and nowhere else to live at that point in time. That naivety was nevertheless based on sound principles given the longstanding nature of friendship and his employment.

46. In 2016 the Council issued another PCN. Despite the initial complaint seemingly also concerning the mobile home and officers visiting the site, the PCN itself only concerned an unoccupied touring caravan stored in the greenhouse. The appellants then swiftly removed the touring caravan and were subsequently advised they did not need to respond to the PCN.

47. The appellants case is that it was as a result of this investigation that they first understood their residential occupation of the mobile home was a planning issue. This arises because of telephone discussions and email correspondence between them and the friend, whom they naturally continued to use for planning advice.

48. It is clear to me that because of the 2016 investigation the appellants became aware of their perilous planning situation owing to the discussions and correspondence that arose. This does not evidence that the appellants were aware of the entirety of the situation in 2010, only that they had grasped the reality of it in 2016. Moreover, they had purchased the site, which included further land, in 2015, and it seems highly unlikely to me that they would have done so in full knowledge that the place where they had invested significant time and money, as their home, was at risk. There was no evidence before the Inquiry that either the R6P, who benefitted considerably from the rent and then sale of the site to the appellants, and who was in full knowledge before they even moved onto the site that this was a breach of planning control, or the mutual friend, who was also a planning agent, had advised the appellants that they were investing still further on an unauthorised premise.

49. Given this, it is then apparent that the very extensive works to the mobile home in 2017/18, rendering it a building, was a flagrant breach of planning control. Moreover, a certificate of lawfulness was applied for in 2019 which included a signed and dated statutory declaration that one of the appellants confirmed during their oral evidence included misrepresentations. That declaration was however fundamentally misleading and/or inconsistent with the evidence provided before this Inquiry. Either way, I am firmly of the view that this demonstrates deliberate concealment on the balance of probabilities. I do not find the medical condition of one of the appellants and stress this was causing at that time to be a sufficient mitigating circumstance.

50. However, all of this was still under the unwavering guidance of the friend and nose of the R6P. It is clear to me that the appellants have been at the very least misguided by these parties, whom were parties they trusted and in the case of the R6P purchased the site from and who now takes exception to their continued residential occupation. They were therefore highly vulnerable. There is accordingly this triangulation between these three parties that led to the initial breach of planning control, its continuation, including further breaches, as well as acts of deliberate concealment. Those acts of positive deception were then in respect of matters integral to the planning process, and this was clearly intended to undermine the regular operation of that process. This can by no means be laid entirely at the door of the appellants, however.

51. In respect of the implications for the appellants, they had been placed in an invidious position having purchased the site. In my view their actions are also significantly tempered by the triangulation between the parties, actions of the friend in particular and my findings the appellants themselves only became

fully aware of the breaches and their implications in 2016. Their personal actions of positive deception then occurred from 2019.

52. It is also clear to me the Council had opportunities to enforce against the unauthorised residential use much sooner. In light of the allowed appeal at Sunnybank, and the striking similarities between the case presented during that appeal and then to the Council in respect of what was the appellants mobile home, it would, at the very least, have been prudent to monitor the site on subsequent occasions. Then, in 2016, the investigation did not pursue the mobile home, despite it being in plain sight and subject of complaint, and similarly the extensive works undertaken in 2017/18 did not result in enforcement action until September 2020.

53. I accept that legitimate queries were raised during the Inquiry about the postal address used by the appellants and that some evidence had been fabricated, albeit I accept this was based upon factual events. I also accept that some of the oral evidence of one of the appellants appeared evasive and changed under cross-examination and this undermines his credibility as a witness of fact. However, not volunteering information is not attributable to an act of deliberate concealment and my above findings take account of both the reduced weight that can be afforded to this evidence, but also the unwavering reliance on that friend, the appellants vulnerability in this respect, and the highly fact-sensitive evidence and nature of deliberate concealment.

54. Even if I am therefore wrong in my assessment as to whether the use has occurred for a period of 10 years or more, for the above reasons the appellants are unable to find success on the ground (d) appeal in any event.

Overall conclusion

55. For these reasons I conclude that the appeal on ground (d) therefore fails.

The ground (a) appeal

Main Issue

56. The main issue is whether or not the site is in a suitable location for a dwellinghouse having regard to local and national planning policy.

Reasons

57. The deemed application before me relates to the construction of a dwellinghouse and decking and use of the site for residential purposes.

58. The site amounts to an area of around 0.173 ha. It is located in an area of countryside to the north of Shirrell Heath, but within the immediate area are buildings in various uses, including those as dwellings and for agricultural, equestrian and commercial purposes. In addition, immediately to the east is a caravan site for gypsies and travellers, with 3 mobile homes and associated buildings, accessed via the same track as the site.

59. For the purposes of the adopted Winchester District Local Plan Part 1 – Joint Core Strategy, March 2013 (the LP), the site is located in the countryside. The Council's overall strategy for housing delivery generally follows a hierarchical approach with most development directed towards larger settlements, alongside new allocations and some small-scale housing in small rural communities. The Council's approach to residential development is therefore

broadly consistent with the housing approach and objectives set out in the National Planning Policy Framework (the Framework).

60. The Council and appellant have agreed[3] the main policy of relevance in respect of this appeal is policy MTRA4 of the LP. This is a restrictive policy which concerns development in the countryside, and which lists only four types of development that will be permitted. None of these however specifically apply to the developments before me.

61. Policy MTRA4 is therefore a closed list policy. It was however highlighted that the Council have granted planning permission for garden extensions and buildings in the countryside outside of that list. Whilst that might be so, the developments before me relate to the principle of residential use in the countryside as opposed merely ancillary structures at lawful sites or extensions. I therefore do not consider this assists the appellants in respect of the deemed application before me. Moreover, during the Inquiry it was accepted on behalf of the appellants that the developments were contrary to the suite of housing policies within the LP, including policy DM1, location of new development, and policy MTRA3, in respect of infilling within a continuously developed frontage.

62. I accept the site is not an isolated one and can be described as being reasonably well related to Shirrell Heath and the facilities at Waltham Chase. This formed part of the assessment when planning permission was granted for the gypsy and traveller caravan site[4]. However, whilst there is an objectively assessed need for gypsy and traveller sites, it was highlighted there was no assessment for the non gypsy and traveller community for housing on mobile home and caravan sites and that this amounted to a policy failure. However, as a site intended to provide accommodation for gypsies and travellers in addition to the need for sites, it would have been assessed against the Planning Policy for Traveller Sites (PPTS) and any local policies relevant to gypsy and traveller accommodation, which would not be applicable here. In the case of the appellants, there is no cultural or other need for them to reside in a caravan. Rather, the evidence is that it became a practical lower cost housing option for them.

63. Whilst it then could be said there is no specific policy in the LP for very low-cost housing options, it strikes me that it would be a difficult task placed upon the Council to seek to assess and then deliver sites for every conceivable budget. There is therefore very limited evidence of realistic policy failure and it was accepted on behalf of the appellants that the Council was able to demonstrate a five-year supply of deliverable housing sites and that the policies most important for the determining the deemed application were not out-of-date. I also do not accept that the appellants occupation of the site amounts to the provision of affordable housing[5].

64. I acknowledge that the conflict with policy could be regarded as one of principle. I however do not accept that the need to identify and consider whether the location for housing is suitable is not a matter of substance.

[3] Statement of Common Ground signed 23 June 2021
[4] 17/02213/FUL
[5] See Annex 2 Glossary to the Framework

65. I conclude the site is not in a suitable location for a dwellinghouse having regard to local and national planning policy. The construction of a dwellinghouse and decking and use of the site for residential purposes therefore conflicts with Policy MTRA4 of the LP and the housing objectives of the Framework. This is a planning harm to which I attach considerable weight.

Other Considerations

Personal circumstances

66. It became apparent during the Inquiry that a case was being made on behalf of the appellants for consideration of either a temporary or personal planning permission. This was borne out of evidence relating to how long the appellants had occupied the site and that one has been diagnosed with a health condition which is said to leave them physically and mentally incapacitated. This results in an appellant with a protected characteristic of disability. The Council had seemingly not made enquiries about the appellants and therefore had not fully considered the impacts arising from the enforcement action.

67. Due regard must be had to advancing equality of opportunity, and the needs of those with a protected characteristic will be different to those who do not share it. In addition, everyone has the right to respect for their home. The engagement of these private interest rights must however be balanced against the public interest.

68. I accept the evidence before me concerning personal circumstances and have considerable sympathy for the position the appellants find themselves in. However, there were no medical reports to independently evidence the effects of the enforcement action, and which then could have been tested during the Inquiry to afford it even greater weight. That is not a discriminatory approach, but rather an opportunity the appellants did not take.

69. Neither was there any detailed evidence about the appellants financial circumstances and there was very little evidence that they would become homeless given other options, including through the local authority, that might be available to them.

70. It is therefore justified in a democratic society to remedy breaches of planning control; the planning harm for which I have attached considerable weight. The enforcement action and any subsequent refusal of planning permission would result in a legitimate and proportionate interference in the private rights of the appellants, in accordance with the law. This interference is necessary as it relates to the regulation of land use through the use of measures that are recognised as an important function of Government, even though I accept less planning harm may arise from a temporary or personal planning permission. Nevertheless, the location of the dwellinghouse is unacceptably harmful even if only for a temporary or personal period.

71. The personal circumstances of the appellants accordingly do not amount to material considerations that give rise to a decision other than in accordance with the development plan, even on a temporary or personal basis. These are therefore considerations to which I attach only moderate weight.

Highway safety

72. The R6P advanced a case concerning substandard visibility splays onto Gravel Hill. During the Inquiry I heard that a professional assessment had been undertaken. However, the report before the Inquiry was prepared by the R6P himself and cross-examination of an expert highways witness was not made available.

73. I accept that the 'Y' distances for visibility are significantly less than the required desirable minimum and that the highway authority would not be able to reduce the growth of hedgerows onto private land. However, I was able to observe during my site visit that the road, subject to a 40mph limit, was otherwise straight. Moreover, there is no accident record data before me to demonstrate actual highway safety concerns. The access has been used by the appellants themselves for approximately 10 years, is shared by other residential sites and there is no evidence of accidents. There is accordingly very little evidence of an unacceptable impact on highway safety or severe residual cumulative impact arising.

74. In light of this, I conclude the access would remain appropriate to serve the dwellinghouse at the site and therefore does not conflict with Policy DM17 of the LP. For the same reasons, the access does not contravene the highway safety objectives of the Framework. The absence of this planning harm is however a consideration that neither weighs against nor in favour of a grant of planning permission and as such it attracts neutral weight.

Other matters

75. I acknowledge there are an absence of other planning harms and that the original site clearance and what was described as the resultant greenery may not have arisen had the appellants not been in residential occupation. Such considerations are however not disputed by the Council and the absence of other harms and addition of greenery, on what was previously a garden and horticultural site, are not factors that weigh in favour of the developments, they merely carry neutral weight. For the reasons I have given under the ground (d) appeal, the act of deliberate concealment and with-it intentional unauthorised development will then only carry neutral weight for the purposes of the ground (a) appeal assessment given the fact specific circumstances arising in this case.

76. The Government is seeking to significantly boost the supply of housing and be responsive to local circumstances. The development contributes, albeit very modestly, to this supply. However, a single unit of residential accommodation brings only very limited benefits to the economy and very limited benefits to the social well-being of the local community and is contrary to the LP and Framework.

Planning Balance

77. I find conflict with the development plan as a whole as I have found the developments are not in a suitable location which is a matter to which I have attached considerable weight. The absence of other planning harms and the topic of intentional unauthorised development are only neutral factors and the contribution of one home attracts only very limited weight. The consideration of

the appellants personal circumstances are only afforded moderate weight, despite my sympathy for their position.

78. Even though the site has provided a longstanding home to the appellants, this, and the other considerations before me, are not sufficient to outweigh the planning harm I have found, even on a temporary or personal basis. It is therefore a proportionate and legitimate response to dismiss the appeal in accordance with the development plan as material considerations do not indicate otherwise.

79. The relevant planning policy objectives cannot therefore be achieved by means which interfere less with the appellant's rights. Dismissing the ground (a) appeal is accordingly the minimum action necessary and would not have a disproportionate effect on the interests of the appellants.

80. It was then not disputed between the parties that there would need to be mitigation in respect of nutrient neutrality arising from the use of the dwelling as overnight accommodation as well as in respect of the Special Protection Area (SPA). This is because the site is within identified Solent catchment areas. Policies CP16 and CP17 of the LP respectively deal with these considerations.

81. Planning permission should therefore not be granted where there is a risk that a development may have a significant effect on designated sites either individually or in combination with other plans or projects. I raised at the opening of the Inquiry that I would require sufficient evidence to discharge my responsibilities as the competent authority for the purposes of undertaking an appropriate assessment. Natural England have provided consultation responses, but these were only of limited value given the deemed application relates to a continued use and the appellants were in the somewhat invidious position of having to calculate differing nitrate values based upon potential levels of success under the various grounds of appeal.

82. As I am dismissing the ground (a) appeal in respect of the main issue I no longer need to undertake an appropriate assessment. Had I needed to do so, I am grateful for the efforts of the appellants and Council in submitting an executed Unilateral Undertaking (UU), notwithstanding the initial concern raised about land ownership, and the payment made pursuant to the SPA mitigation, in an effort to address these considerations. Success for the appellants in respect of nutrient neutrality would have been highly dependent on a UU securing mitigation, which should not be left to planning conditions. That there was a likelihood this planning harm could have been mitigated, means it is a consideration to which I attach neutral weight.

Conclusion

83. For these reasons and having regard to all other relevant matters raised, I conclude that the appeal on ground (a) should fail.

The ground (f) appeal

84. The purpose of the enforcement notice is clearly to remedy the breaches of planning control. It does not seek to under-enforce. Accordingly, for an appeal on ground (f) to succeed it would be necessary for the appellants to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breaches of planning control and propose lesser alternatives steps.

85. The corrections put forward by the Council go some way to addressing the appellants concerns raised under the ground (f) appeal.

86. I have found the dwellinghouse and residential use of the entirety of the site to be breaches of planning control. The corrected requirements of the notice then go no further than requiring the demolition of the dwellinghouse and accoutrements and removal of resultant materials, cessation of the residential use of the land and removal of structures and items associated with that residential use.

87. This accordingly remedies the breaches of planning control. It is not over-enforcement. Whilst there was very limited evidence before the Inquiry, should the appellants wish to retain any such structures for a future alternative use that would be a separate matter for which planning permission will likely need to be secured. Indeed, there is very little evidence that retaining, for example, the building currently occupied as a dwellinghouse for an alternative use, would amount to permitted development or not development for the purposes of the Act. Future uses, or whether the use of the greenhouse for horticulture is unviable, are accordingly not matters before me or considerations for the ground (f) appeal.

88. I recognise there is operational development, such as the summerhouse, that were substantially complete more than 4 years prior to the issue of the notice. However, the principle applies[6] that an enforcement notice can lawfully require the removal of any operational development connected to an unauthorised residential use. It is accordingly not excessive to require the removal of such development.

89. The appeal on ground (f) therefore fails.

The ground (g) appeal

90. The appellants contend that the time given to comply with the notice is too short and request a period of two years.

91. Such an extended period would however only delay the inevitable consequences of the enforcement action and would unnecessarily perpetuate the breaches of planning control. Despite the limited evidence before me concerning the appellants medical circumstances, I accept the need for a longer compliance period than 6 months. Moreover, compliance with the physical requirements of the notice will require time following the cessation of the appellants residential occupation, in order to remove buildings and items from the land.

92. That there might however be limited alternative housing options does not persuade me that a period greater than 12 months would then be too short in which to comply. This therefore strikes an appropriate and proportionate balance. The appellants have not yet approached the local authority for housing assistance, and there was evidence before the Inquiry of mobile homes available on authorised sites. Whether or not they are affordable for the appellants does not translate into a compelling argument that the compliance period is too short. The ground (g) appeal is accordingly not concerned with the right to a home, or time to replicate the amenity said to be afforded, elsewhere.

[6] Murfitt v SSE (1980) 40 P&CR 254

93. I am not persuaded that the deliberate concealment I have found should result in the appellants being penalised in respect of the ground (g) appeal. That the appellants pursued their appeals should not count against them in this regard.

94. The appeal on ground (g) therefore succeeds to this extent.

Overall Conclusion

95. For the reasons given above I conclude that the appeals should not succeed other than to the extent described on ground (g). I shall uphold the enforcement notice with corrections and a variation and refuse to grant planning permission on the deemed application.

Formal Decisions

Appeals A and B

96. It is directed that the enforcement notice be corrected and varied by:

- substituting the words '*The material change of use of the Land to residential use*.' for those at section 3. (ii).
- substituting the words '*Cease the use of the Land for residential purposes.*' for those at section 5. 3.
- substituting the words '*Remove from the Land all structures and items brought onto the land in connection with the residential use, including the summerhouse / shed, oil tank, hard landscaping and internal fencing, and all items being stored in the greenhouse (except that connected to agriculture or horticulture).*' for those at section 5. 4.
- substituting the words '*Twelve calendar months after this notice takes effect*' for those at section 6.

97. Subject to these corrections and variation the appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul T Hocking

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ms Felicity Thomas, of Counsel, instructed by Mr Ward in his capacity as Planning Consultant

She called	Mr Graham Snape	Appellant
	Mr Christopher Ward	Planning Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Ms Ruchi Parekh, of Counsel, instructed by Winchester City Council

She called	Mr Neil March	Planning Consultant

FOR THE RULE 6 PARTY:

Mr Wayne Beglan (and Mr Jack Parker), of Counsel, instructed by Robert Locke Solicitors

He Called	Mr Richard Stone	Rule 6 Party
	Ms Katie Andrews	Neighbour
	Ms Jane Foster	Neighbour

INTERESTED PERSONS

Ms Fiona Sutherland, Solicitor, Winchester City Council

DOCUMENTS

1. Site plan provided by the appellants
2. Copy of correspondence from Shedfield Parish Council
3. Email correspondence provided by the Council incl. from Natural England
4. Annotated site plans provided by the appellants
5. Concealment note on behalf of the appellants
6. Nitrates note on behalf of the appellants
7. Additional response by Mr Snape
8. Suggested corrections to notice provided by the Council
9. Opening submission (grounds (b) and (d)) on behalf of the appellants
10. Opening submission on behalf of the Council
11. Opening submission on behalf of the Rule 6 party
12. Email correspondence provided by the Rule 6 party
13. Email correspondence provided by the appellants
14. Bundle of correspondence provided by the appellants
15. Site visit photographs taken by the Council
16. Copy of appeal decision APP/L1765/W/20/3254522
17. Opening submission (grounds (f), (g) and (a)) on behalf of the appellants
18. Copy of appeal decision APP/L1765/C/19/3230907

19. Copy of Eastleigh Borough Council nitrate offset scheme
20. Copy of wastewater treatment solutions provided by the appellant
21. LP Policy extracts provided by the appellants
22. Copy of Solent Recreation Mitigation Strategy provided by the Council
23. Authorities bundle incl. addendums provided on behalf of the parties
24. Copy of Natural England correspondence provided by the Council
25. Closing submission on behalf of the Rule 6 party
26. Closing submission on behalf of the Council
27. Closing submission on behalf of the appellants
28. Executed Unilateral Undertaking (final version)