

Winchester City Council

The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009

Appeal by Kevin Hall and Claire Slater against the issue of an enforcement notice dated 26th August 2022 which requires 1. Cessation of the use of the land for stationing a residential caravan/mobile home;
2. Removal of the caravan/mobile home, hard surfacing, outbuildings, storage containers and all other paraphernalia brought onto the land to facilitate the residential use; 3. Reseed the land to grass at:

Southfield Nursery also known as S&D Nurseries, Dradfield Lane, Soberton, Southampton, Hampshire, SO32 3QD

Appeal Statement

PINS reference: APP/L1765/C/22/3306531 & APP/L1765/C/22/3306532
LPA reference: 13/00205/USE

Statement on behalf of Winchester City Council produced by Kate Longley



CONTENTS

1. Introduction
2. Ground (A); that planning permission should be granted for what is alleged in the notice.
3. Ground (F); the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections
4. Ground (G); the time given to comply with the notice is too short.
5. Conclusion

1. Introduction

1.1 This appeal follows the Council's issuing of an enforcement notice ("the Notice") dated 26th August 2022. The alleged breach of planning control is:
"Without planning permission, the breach of condition 1 of the planning permission granted on appeal on 11 March 2014 under Council reference 13/01686/FUL (appeal reference APP/L1765/A/13/2207540) for the continued use of land to station a mobile home for a horticultural worker for a further three years ("the Planning Permission").

Condition 1 states:

"The mobile home hereby permitted shall be removed and the land restored to its former condition on or before the expiry of three years from the date of this decision in accordance with a scheme of works submitted to and approved by the Local Planning authority".

This condition has not been complied with in that the mobile home remains stationed on the land and is occupied for residential purposes and the land has not been restored to its former condition."

1.2 The notice requires the following;

- i) Cease the use of the Land for stationing a residential caravan/mobile home;
- ii) Remove from the Land the caravan/mobile home (shown in the approximate location marked "X" on the attached plan), the hard surfacing, outbuildings, storage containers and all paraphernalia brought onto the Land to facilitate the residential use.;
- iii) Reseed the Land to grass.

1.3 The appellant appeal the notice on grounds (a), (f) and (g).

1.4 In this statement the Council sets out its case in relation to ground (a), (f) and (g) and responds to the points raised by the Appellant in their appeal form.

1.5 The evidence that I have prepared and provide in this written statement is true and has been prepared and given in accordance with the Royal Town Planning Institute guidance. I confirm that opinions expressed are my true and professional opinions. \

2. Ground (A); that planning permission should be granted for what is alleged in the notice

2.1 Firstly, the information regarding an equestrian enterprise has not been presented to the Council until now. During the site visit of the 8th February 2022 the owner advised myself that the horses on site were private horses and that the stables, menage and land are purely for personal use, with no commercial activity. There was also no evidence of such an enterprise during Council site visits. Notwithstanding this the assessment is much the same as for an agricultural enterprise with only an additional policy DM12 and the Council still feel the appeal on ground A should fail.

2.2 The relevant material considerations are:

- The principle of the development
- The impact on the character of the area

- Nutrient impact
- Impact on neighbouring amenities

Principle of development

2.3 Temporary consent for three years was granted at appeal in August 2010 (09/02210/FUL and APP/L1765/A/10/2124754). A further temporary permission was granted at appeal (13/01686/FUL and APP/L1765/A/13/2207540) in March 2014.

2.4 The Inspector concluded that the occupation of a mobile home for a horticultural worker would satisfy the criteria of policy DM11 of the WDLPR as the appellant had demonstrated a firm intention to develop the enterprise and the provision of on-site temporary accommodation for three years would allow him sufficient time to achieve this objective, at which point the Council would have the opportunity to review the situation.

2.5 The initial 3 years and the additional 3 years have now expired. The original applicant sold the land with no enterprise, indicating the agricultural business was not viable. The current occupier does not work in agriculture and does not operate an agricultural use on the land. An equestrian operation has now been referenced but no information regarding this has been provided and the Council saw no evidence of such a business, with the owner actually advising there was no equestrian operation.

2.6 Paragraph 47 of the NPPF requires that applications for planning permission be determined in accordance with the Development Plan unless material considerations indicate otherwise.

2.7 Paragraph 80 of the NPPF states that: '*Local authorities should avoid new isolated homes in the countryside unless there are special circumstances such as: The essential need for a rural worker to live permanently at or near to their place of work in the countryside...*'

2.8 This is reflected in Policy MTRA 4 of the Winchester District Local Plan Part 1 which states that development in the countryside is only acceptable in certain circumstances such as for agriculture, horticulture or forestry.

2.9 Policy DM11 of the Winchester District Local Part 2 continues to set out the criteria for the assessment of applications in respect of temporary residential accommodation. This essentially sets out two tests; *functional test* which seeks to establish that the labour requirements of the holding justify the works and that a continual presence on the holding is essential to the efficient working and development of the enterprise and a *financial test* which requires clear evidence of a firm intention and ability to develop the enterprise based on a sound financial projection.

Functional test

2.10 The preliminary question noted in the last appeal was 'whether there is a firm intention to develop the enterprise'. Given the applicant for the previous temporary permissions has vacated the site and the enterprise no longer remains and that the current occupier does not work in agriculture or appear to be operating the land in any agricultural manner let alone a

business there appears to be no intention to develop an agricultural enterprise. There is also clearly no agricultural activity that would justify the requirement for someone to live on site. At this time there are a small number of chickens on the land, 3-4 horses and there are no longer any crops. This test fails, there is no agricultural activity on the land and the occupier is not an agricultural worker.

2.11 The applicants appeal form mentions an equestrian activity. As already mentioned no such activity was witnessed on the land. No pregnant mares were witnessed and whilst a small number of horses were present these were advised by the owner of the land to be personal and not commercial. He also confirmed no commercial activity was occurring on the land, this being asked due to a number of commercial vehicles and an advert for landscaping. He advised no commercial business is present on the land but his vehicles are parked there in relation to his residential use. The nature of the equine business has not been outlined but it seems unlikely that such a business could operate with no evidence present during the officer visit. The appellant advised he has lived on the land for 7 years, this would appear to be a substantial period of time to prove a viable and functional equine operation, of which no evidence has as of yet been received.

Financial test

2.12 There is no agricultural business/enterprise operating from the land, and despite the appeal form there would appear to be no equine commercial business on the land and it would appear viability of such a business did not succeed. The Council cannot as yet comment on the evidence the appeal form advises is forthcoming and so will address this once it has seen sight of such information.

2.13 The use of the land to station a mobile home for residential purposes does not meet any of the criteria set out in DM11. Furthermore, paragraph 4.65 of the text supporting Policy DM11 states that three years should be sufficient to demonstrate the viability and needs of an enterprise, and therefore a temporary permission is unlikely to be renewed. In this instance a renewal was granted. The evidence indicates that the enterprise failed given the original applicant sold the site without the enterprise, this being from the initial temporary permission and a renewal over a total period of 6 years.

2.14 Policy MTRA4 of the LPP1 allows for development in the countryside which has an operational need for a countryside location, such as agriculture, horticulture or forestry. The development on site is not associated with any of the use allowances. The storage containers, buildings, greenhouse, hardsurfacing all appear to be in use in connection with the unauthorised residential aspect. This being because during the visit residential aspects were observed and the storage is in connection with the occupier (washing line, fridges/utilities etc. Some of the storage appears to be on site in connection with the occupiers fencing/landscaping business. The owner advised the business is not run from the land and so it would appear more ancillary to the residential use. Parking of the business vehicles etc. It is clear that these aspects are not used in connection with agriculture, horticulture or forestry as there is no such use on the land. DM12 will also now be relevant with an equestrian use alleged although this reverts to DM11 for the residential aspect in relation to equestrian purposes, and as of yet no information about the equestrian activity has been presented so the Council reserves the right to comment on this aspect further.

2.15 The continued use of land to station a mobile home for residential purposes, along with the associated operational development is unacceptable because it fails to meet the criteria

set out in Policy DM11 of the Winchester District Local Plan Review. As such it is also contrary to Policy MTRA4 of the LPP1 and the NPPF 2021 in that it has not been demonstrated that there is an essential agricultural or equestrian need for the proposal.

The impact on the character of the area

2.16 Paragraph 134 of the NPPF states that *'Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design'*.

2.17 Paragraph 174 of the NPPF states that planning decisions *'should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes' and 'recognising the intrinsic character and beauty of the countryside'*.

2.18 Policy CP20 of the LPP1 requires new development to conserve local distinctiveness, especially in terms of characteristic materials, trees, built form and layout, tranquillity, sense of place and setting. Policy DM23 of the LPP2 seeks to protect the rural character of the area through the avoidance of visual intrusion, the introduction of incongruous features, the destruction of locally characteristic rural assets, or by impacts on the tranquillity of the environment.

2.19 Winchester City Council's landscape character assessment (LCA) highlights the importance of Winchester's landscape, both locally and nationally, and the pressures that are being placed upon it. An LCA can help to protect and enhance the strong identity of Winchester's landscape, whilst accommodating necessary development and change. The LCA also aims to highlight trends and issues that are threatening the character of the landscape.

2.20 The LCA highlights a key issue in this rural area being the gradual proliferation of a suburbanised urban fringe character with assorted sheds, horse paddocks and fencing, a neglect of hedgerows, small nurseries, tipping and the introduction of artificial lighting (LCA p207). The character assessment recommends retaining the rural character of the local minor roads and resisting development which suburbanises local settlements (LCA p208). This advice is carried forward in to the Local Plan and specifically policies DM15, DM16, DM17 and DM23 which all have the objective of maintaining rural character and distinctiveness. Reference is also made to the Soberton and Newton Village Design Statement (2002) which identifies green gaps as locations between settled areas with views in and out of the Parish. Green Gaps should be preserved for outlook and communal identity reasons. Green Gap D incorporates Dradfield Lane.

2.21 Development should be done in a sympathetic and appropriate nature to reflect the rural setting of the site in accordance with policy CP20 of the LPP1 and policies DM15, DM16, DM17 and DM23 of the LPP2.

2.22 The residential use of the land would not currently fulfil this expectation as it is not typical of the rural nature of the area. The urbanising of the rural area with an unlawful residential use which has no justification and is contrary to the MTRA4 Development Plan strategy for new housing will have an intrinsic harm to the countryside character however there is no demonstrable harm in terms of visual intrusion in respect of DM15, DM16, DM17 and DM23.

2.23 This is a satellite from 2007 with the lawful and approved permission on the land;



This is the land in a more recent satellite showing the development and further indicating the harm outlined above (note the barn and greenhouses are also approved but for an agricultural purpose);



Nutrient impact

2.24 No information has been provided to address the uncertainty of whether the development adds to existing nutrient burdens, this means it is not possible to assess whether the development is in line with the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended).

2.25 The development is contrary to Policy CP15 and CP16 of the Winchester District Local Plan Part 1 - Joint Core Strategy, in that it fails to protect and enhance biodiversity across the District by failing to make appropriate mitigation in regard to increased nutrients (nitrates) into the Solent SPAs. As a result, it is considered that the development would result in significant harm to the Special Protection Area (SPA) and the species that it supports, therefore contravening the legal requirements of the Wildlife and Countryside Act 1981, the Habitat Regulations.

Impact on neighbouring properties

2.26 There are no near neighbours on this side of Dradfield Lane and so the proposals are considered to have no materially harmful impact on residential amenity.

2.27 In summary, the unauthorised uses and associated operational development are unacceptable for the above reasons the Council believe this ground a) appeal must fail.

3. Ground (F); the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections

3.1 The appellant has stated on the appeal form that the mobile home should be allowed to remain with the removal of the bed and sleeping facilities. The use of the land for residential purposes would not be acceptable, it is considered that the requirement to cease remove the mobile home is reasonable³. It is considered that the mobile home has been placed on the land for residential occupation the siting of the mobile home is considered to form part and parcel of the unauthorised use of the land as residential.

3.2 The appeal form references Wealden, although no real further elaboration of why this case is relevant is provided. Or which Wealdon case, it would seem the reference is to Wealdon District council v Secretary of State for Environment and Colin Day, 1988. This decision relates to a mobile home used as ancillary cattle store on an agricultural piece of land, this is very different circumstances to the current appeal. The appeal caravan would not be located at the site except for the breach of planning control, and there is no apparent need for it for purposes ancillary to the permitted uses. The Council do not consider that the removal of the caravan to be an excessive requirement. Further comments will be provided once clarification as to which Wealden case is being referred to has been provided.

3.3 The Council considers that the cessation of the unauthorised use and removal of the unauthorised development facilitating the use in line with the required steps is necessary in order to remedy the breach and associated harm to amenity, in accordance with S173(4) sections (a) and (b) and no lesser steps would be sensible to impose.

3.4 For the above reasons the Council believe this ground f) appeal must fail.

4. Ground (G); the time given to comply with the notice is too short.

4.1 As stated previously no evidence of a commercial livery, or equine operation has been witnessed. At the time of serving the enforcement notice on the 26th August 2022 no such operation was present on the land. It is hard to envision how this has apparently become so established on the land that it would now be impossible to move the horses and why this would be a reason for an extension of the compliance period.

4.2 The appeal form references difficulty locating stabling for stallions, no evidence of attempts to locate such accommodation have been provided and a quick google search appears to show quite an extensive range of such accommodation available.

4.3 The 9 month period took into account that the occupier would need to locate suitable alternative residential accommodation and it is considered to be a more than reasonable period of time for compliance with all aspects.

4.4 For the above reasons the Council believe this ground g) appeal must fail.

5. Conclusion

5.1 In all the circumstances of this appeal the inspector is respectfully requested to dismiss the appeal and uphold the terms of the enforcement notice.