



Appeal Decision

Inquiry Held on 2 February 2021

Site visit made on 4 February 2021

by **M Madge DipTP, MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 March 2021

Appeal Ref: APP/C3810/C/18/3212055

Land at Hales Barn Farm, Arundel Road, Norton, West Sussex PO18 0JX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs Jacqueline Shurey against an enforcement notice issued by Arun District Council.
 - The enforcement notice, numbered ENF/505/12, was issued on 6 September 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from use for agriculture to a mixed use for agriculture and the siting of a mobile home occupied for residential use.
 - The requirements of the notice are:
 1. Cease the use of the mobile home on the Land for the purpose of residential occupation.
 2. Remove from the Land the outside table and chairs, planters and all other paraphernalia associated with the residential use of the mobile home.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d) and (f) 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 s177(5) of the Act.
-

Decision

1. It is directed that the enforcement notice is corrected by:

The deletion of the plan attached to the enforcement notice and its substitution with the plan attached to this decision.

The deletion of the words "Without planning permission, the material change of use of the Land from use for agriculture to a mixed use for agriculture and the siting of a mobile home occupied for residential use." and substitution of the words "Without planning permission, the material change of use of the Land to use for the siting of a mobile home occupied for residential use." in paragraph 3: The Breach of Planning Control Alleged.

Subject to the corrections, the appeal is allowed, and the enforcement notice is quashed.

The notice

2. Under the ground (b) appeal the appellant claims that the Land identified on the plan attached to the notice is either too large or too small. Furthermore, the Land is not used and has not been used by the appellant for agriculture. Instead they claim the Land is put to ancillary residential, equestrian and workshop use, in addition to the siting of a mobile home occupied for

residential use. In the appellant's opinion, the failure to correctly identify the Land and alleged mixed use makes the notice a nullity.

3. The wording of the allegation and the extent of the Land identified on the plan attached to the notice was discussed at the Inquiry. The appellant suggests that the Land should only encompass that identified on the plan found in Appendix 5 of Mr Jupp's Proof of Evidence ("the Plan"). The mobile home sits within a grassed area bounded by fencing to the north and east and a hedgerow to the south. The western boundary, however, is undefined and the proposed western boundary identified on the Plan is located beyond the grassed area, and includes part of the area of hard standing adjacent to the timber stables. From what I saw during my visit, and what is evident on some aerial photographs, the hard standing is used for the parking of vehicles associated with the appellant's wider land holding and not the residential occupation of the mobile home. I also saw that the jagged nature of the western boundary marked on the Plan is not identifiable on the ground. I find the western edge of the grassed area provides an easily identified visual break between the Land containing the mobile home and the appellant's wider landholding. I will correct the plan attached to the notice accordingly.
4. Having determined that the Land should be reduced, the appellant suggests that the allegation should be corrected to read '*Without planning permission, the material change of use of the Land to use for the siting of a mobile home occupied for residential use*'. There is no need for the use of the land prior to the alleged breach to be identified. The appellant's wording would also succinctly describe the matter alleged. The Council agreed that it would not be prejudiced if the plan and allegation were corrected in this manner.
5. I will therefore correct the plan attached to the notice by replacing it with the plan attached to this decision and correct the matters alleged to omit the references to the former use of the land and to the mixed-use including agriculture. This will not prejudice the appellant or Council as their cases are based on the residential use of the mobile home.

Background

6. The appellant purchased Hales Barn Farm in 1997. The property extends to 11.33 hectares and includes all the buildings in the group except for Thatch Cottage. The appellant and her family lived in North Cottage when they moved to the property. Hales Farm Cottage was, and remains, rented out to tenants. The appellant secured planning permission to convert a traditional agricultural building to a dwelling. The appellant and her family moved from North Cottage into the converted barn when it was completed in 2013. Thereafter, North Cottage has also been tenanted.

Ground (b)

7. For the appeal on this ground to succeed the appellant should show that the matters alleged in the corrected notice have not occurred as a matter of fact.
8. As identified above, the breach is the siting of a mobile home occupied for residential use. There is no dispute that this breach of control has occurred as a matter of fact and the appeal on ground (b) fails.

Ground (d)

9. For the appeal to succeed on this ground the appellant must show that, at the date the notice was issued, no enforcement action could be taken in respect of the alleged matters. The relevant test is the balance of probability. The relevant period of immunity is 10 years, beginning with the date of the breach¹. The notice was served on 6 September 2018 and the breach would have to be shown to have occurred on or before 6 September 2008.
10. The appellant claims that the mobile home has been occupied for residential use without substantial interruption since February 2003. The alleged breach of planning control is therefore immune from enforcement action as it has been carried out for more than 10 years. The appellant claims that the mobile home was stationed on site in 2000 and until 2003 it was used intermittently for residential purposes. No records exist for this period. After that period the mobile home was occupied by a succession of people for which corroborating evidence is provided.
11. The Council claims that the evidence provided by the appellant is imprecise and ambiguous. Furthermore, the appellant's responses to enforcement investigations and a Planning Contravention Notice sought to deliberately conceal the residential use of the mobile home and therefore deprived the Council from the opportunity of taking enforcement action at an earlier date.

Immunity from enforcement

12. The Council's arguments relating to imprecision and ambiguity relate to:
 - The property occupied by the various tenants has overtime been identified as 'The Cottage', 'The Lodge', 'The Lodge Cottage' and 'The Caravan' without adequate explanation or evidence that these names apply to the mobile home and not some other property.
 - Mr Long occupying some other dwelling in the appellant's ownership, rather than the mobile home.
 - The appellant having changed the wording on some of the rent receipts, some receipts being duplicates and other receipts being missing.
13. The Inland Revenue documentation consists of 2 P60s, one addressed to Lee McRickus at 'Hales Barn Farm, Level Mare Lane, Fontwell, West Sussex' dated '26 09 2003' and one addressed to him at '33 Cavendish Place, Flat 3, Eastbourne, East Sussex BN21 3JN' dated '02 02 2004', an undated complements slip referencing the Hales Barn Farm address, and an Employment Record request form dated 9 March 2004. The appellant claims the complement slip redirected the '33 Cavendish Place' P60 to the mobile home. This documentation does not confirm that Lee McRickus occupied the mobile home, and even if it did, it offers no information relating to his period of occupation. There is no evidence of Hannah Manderson's occupation.
14. Gary Footman's letter identifies the mobile home as 'The Lodge', and claims his occupation between '*late spring 2004 until late summer 2005*'. The appellant however claims his occupation to have been between April 2004 until

¹ S171B(3) of the Town and Country Planning Act 1990 (as amended)

September 2005. I consider these periods to be sufficiently similar so as not to be contradictory.

15. Correspondence from Planning & Property Consultants Ltd, dated 24 October 2005, on behalf of the appellant, confirms that the mobile homes are being used for purposes ancillary to the occupation of 'North Cottage'. As such, there is a clear break in occupation after Mr Footman moved out and any preceding residential use of the mobile home could not contribute to the immunity period.
16. The appellant's bank statement extract and handwritten deposit receipt were submitted to demonstrate Barbara Warne's occupation of the mobile home between January 2006 and August 2007. The appellant's copies of the rent receipts show that payments from Barbara Warne commenced on 1 February 2006, with a payment equivalent to 2 months rent, and thereafter payments were made towards the end of each month, until July 2007. While this evidence shows Barbara Warne's continued occupation, it does not show that she moved into the mobile home in January 2006. February 2006 is the more likely date of first occupation.
17. Given the break in the chain of continuous occupation prior to Ms Warne's occupation, the period of immunity would start over from 1 February 2006. The next tenant, Mr Tony Long, is claimed to have commenced occupation of the mobile home in October 2007. The period of August 2007 to October 2007 represents a break in occupation and Ms Warne's occupation would not contribute to achieving immunity.
18. The appellant's evidence relating to Mr Long's occupation is corroborated by an undated letter from Mr Long². In that letter he refers to where he lived as 'The Cottage'. A letter of representation, submitted in response to the Council's appeal notification letter, from Mrs Joanne Hammond, dated 6 November 2019, states that she lived in Hales Farm Cottage between 1 July 2008 and 30 April 2010. Mrs Hammond confirms that Mr Long was already living in the mobile home when she moved in and that he moved out shortly before she left.
19. Given the independent confirmation that Mr Long was occupying the mobile home, I find no ambiguity with Mr Long's reference to occupying 'The Cottage' as opposed to 'The Lodge'. Furthermore, it is clear that Mr Long could not have been occupying either 'Hales Farm Cottage' or 'North Cottage' as they were occupied by Mrs Hammond and the appellant respectively.
20. The Council questioned the integrity of the appellant's rent receipt records for Mr Long's occupation as some are too faint to read, some have been rewritten and others are missing. The Council claim this shows that Mr Long may have occupied the mobile home at some times, but not others. Based on the appellant's evidence at the Inquiry and having regard to the written submissions, I consider the appellant's version of events to be credible and conclude that Mr Long occupied the mobile home throughout the specified period.
21. Within weeks of Mr Long moving out, Mr Gary Francis moved into the mobile home. The appellant claims his occupation took place between April 2010 until April 2011. A copy of the press advert identifying the mobile home's availability for occupation is provided as well as Mr Francis's letter giving notice to quit,

² Appendix 5 of Mrs Jacky Shury's Proof of Evidence

which identifies the mobile home as 'The Lodge'. Mrs Jane Wilkinson's response to the appeal notification letter, dated 6 November 2019, states that she lived at Hales Farm Cottage from 1 May 2010 until 1 September 2013. She confirms that Mr Francis was living in the mobile home when she moved in and that he moved out in the spring of 2011, with Mr Steven Rooke taking up occupation a few days later. Mr Rooke was still residing in the mobile home when she moved out.

22. The final and current occupier of the mobile home is Mr Steven Rooke, who moved in at the end of May 2011. Mr Rooke has provided a statutory declaration, which confirms that he viewed the mobile home while Mr Francis was still in occupation and confirmed that he would take up the lease. The Council has raised no concerns with Mr Rooke's evidence, and I consider his evidence to be precise and unambiguous.
23. The appellant provided plausible responses to the Council's concerns in respect of a number of the rent receipts. Even had the Council's concerns not been addressed, I find it unlikely that the claimed discrepancies would amount to evidence that the mobile home was not occupied during those specific months.
24. There is no dispute that Mr Rooke and Mr Francis's occupation of the mobile home has been continuous. While the Council claims Mr Long's occupation has not been precisely and unambiguously demonstrated, for the reasons given above I do not agree. I find the appellant's evidence to be concise and any ambiguity was reasonably addressed during the Inquiry. This shows, on the balance of probability, that the residential use commenced in October 2007 and the 10 year immunity period would have been achieved by end of October 2017.

Deliberate concealment

25. The Council's arguments relating to deliberate concealment relate to:
 - Their letter to the appellant, dated 21 September 2005, makes it clear that planning permission would be required for any residential occupation of the mobile home.
 - Correspondence from the appellant's agent, dated 24 October 2005, confirms that the "use of the subject land, buildings, and the mobile home [is] for purposes ancillary to the occupation of their house which is called North Cottage".
 - The appellant's response to the Planning Contravention Notice, received by the Council on 8 January 2013 ("the 2013 PCN"), presented the case that the mobile home was used for ancillary purposes to North Cottage.
 - The appellant's verbal statements to the Council's Compliance Officer on 21 January 2014 and 28 May 2014, along with an email from the appellant, dated 23 April 2014, presented the case that the mobile home was used for ancillary purposes to North Cottage.
 - The failure to register for Council Tax until 1 April 2018.
26. It is a public policy principle that no-one should benefit from their own wrongdoing. *Welwyn Hatfield*³³ found that the actions of the developer

³³ *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15

amounted to '*positive deception in matters integral to the planning process ... [which] was directly intended to and did undermine the regular operation of that process*'. The Council would need to show some connection between what the appellant had done to evade discovery and the statutory provision in s171B.

27. It is a matter of fact that the appellant had been made aware that planning permission would be required for the residential use of a mobile home in 2005. The content of the appellant's subsequent verbal responses to enforcement investigations, as detailed in Council Officers' file notes, have been refuted by the appellant. The appellant provided explanations for her written and verbal responses under oath. While the appellant could have sought professional assistance when responding to the 2013 PCN, she offered a plausible explanation as to how, what she claims was a 'draft' response, came to be submitted to the Council. Mr Rooke's response to the Planning Contravention Notice ("PCN") he received did however confirm his residential use of the mobile home.
28. Upon receipt of Mr Rooke's PCN response, the Council would have been aware that the breach of control had occurred. The Council could therefore have taken enforcement from that date, 24 October 2014. Instead the appellant was afforded an opportunity to pursue a Lawful Development Certificate application ("LDC"). The LDC was made on 28 January 2015 for the '*Use of land for the stationing of a mobile home for the purposes of human habitation*' (Council ref: AL/9/15/CLE). The Council did not determine the LDC until 13 March 2018. Additional evidence was provided in support of the LDC, which would account for part of the lengthy determination period. A determination period of over 3 years seems excessive, given the Council's concerns relating to the unauthorised residential use.
29. The Council was aware of the breach in October 2014, and as such they were in a position to exercise the regular operation of the planning process. I find no correlation between the actions of the appellant and the submission of the LDC. Furthermore, the appellant had not 'concealed' the latter years of residential use, which I have found to be necessary to achieve immunity.
30. For these reasons, the appeal on ground (d) succeeds and the appeal on grounds (a) and (f) do not need to be considered.

Overall conclusion

31. On the balance of probabilities, the appeal on ground (d) should succeed in respect of those matters, which following the correction of the notice, are stated as constituting the breach of planning control. The enforcement notice will be quashed. In these circumstances, the appeal on grounds (a) and (f) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

M Madge

INSPECTOR



Plan

This is the plan referred to in my decision dated: 16 March 2021

by M Madge MA DipTP MRTPI

**Land at: Hales Barn Farm, Arundel Road, Norton, Chichester,
West Sussex PO18 0JX**

Reference: APP/C3810/C/18/3212055

Not to Scale



APPEARANCES

FOR THE APPELLANT:

David Lintott

of Counsel
Instructed by Mr Stephen Jupp

He called:
Jacqueline Shurry
Stephen Jupp BA (Hons),
LLM, MRTPI

FOR THE LOCAL PLANNING AUTHORITY:

Felicity Thomas

Of Counsel
Instructed by Arun District Council

She called:
Simon Davies BA (Hons),
Dip TP, MRTPI

Principal Planning Officer, Arun District
Council

DOCUMENTS SUBMITTED DURING THE INQUIRY

- 1 Council File Note dated 19 November 2012
- 2 Draft conditions
- 3 Closing Statement (Partial) of Felicity Thomas
- 4 Opening Statement of David Lintott