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## Appeal Decision

Hearing Held on 11 January and 24 February 2021

Site visit made on 23 February 2021

**by Andy Harwood CMS MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 March 2021**

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### **Appeal Refs: APP/D0840/C/19/3225133; 3224880; and 3224884 Land at West Rose Works, St Mewan, St Austell, Cornwall PL26 7DR**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act) by the Planning and Compensation Act 1991.
  - The appeals are made by Alice Knott (3225133); Mr Nathan Brokenshire (3224880); and Miss Stacey Rowe (3224884) are against an enforcement notice issued by Cornwall Council.
  - The enforcement notice was issued on 14 February 2019.
  - The breach of planning control as alleged in the notice is:  
Without planning permission, the material change of use with associated operational development of the land to residential use including the construction of a two storey dwelling approximate position outlined in green labelled A, a cabin approximate position outlined in green labelled C and the stationing of a two mobile homes approximate positions outlined in green labelled B and D together with various associated structures approximate positions outlined in blue and labelled O1, O2, S1, S2 and S3 on the attached plan and residential paraphernalia such as septic tanks, gas bottles, fences, decking, walls and outdoor seating etc.
  - The requirements of the notice are:
    1. Cease the use of the land outlined in red on the attached plan for residential purposes.
    2. Remove all buildings, mobile homes, foundations, and block bases marked in the approximate positions outlined in green and labelled A, B, C and D on the attached plan, from the Land.
    3. Remove all the outbuildings and shipping containers and their bases marked in the approximate positions outlined in blue and labelled O1, O2, S1, S2 and S3 on the attached plan, from the land.
    4. Remove septic tanks, gas bottles, decking, fencing, walls, outdoor seating and all other domestic items and associated paraphernalia brought on to the land for the purposes of the unauthorised residential use, from the land outlined in red.
    5. Restore the land to its condition before the breach took place and where the land profile has been altered re-profile the land to previous levels.
    6. Remove all hard core imported to facilitate the access to the site and hard core used in the construction of the site.
    7. Remove all services connected to the land.
  - The period for compliance with the requirements is 9 months.
  - The appeals are proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. In addition, the appeal by Alice Knott is also proceeding on grounds (b) and (g). The appeal by Mr Brokenshire is also proceeding on ground (e).
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### **Decision**

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

Deleting the allegation as set out under the heading "The Matters Which Appear to Constitute the Breach of Planning Control" at section 3 of the notice and replacing it with:-

- The making of a material change in the use of the land by the siting of two mobile homes for residential purposes, in the approximate positions outlined in green and labelled 'B' and 'D' on the attached plan; and
- Operational development by the construction of a two-storey dwelling in the approximate position outlined in green labelled 'A'; and the construction of a residential cabin in the approximate position outlined in green labelled 'C'.

Within section 5 of the notice "What You Are Required To Do", deleting steps '6' and '7'.

2. Subject to the variations the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **Application for costs**

3. At the Hearing an application for partial costs was made by Miss Alice Knott against Cornwall Council. This application is the subject of a separate Decision.

### **Preliminary Matters**

4. On the appeal form for appeal ref '3225133', 2 names were entered but subsequent correspondence has been solely in the name of Alice Knott and that appeal proceeds in her name only.
5. The case was previously proceeding by way of written representations and a fellow Planning Inspector was at that time dealing with it. However, it was decided that the issues raised warranted a hearing. This decision is solely my own. I opened the hearing on 11 January, and it became clear that 1 of the appellants, Mr Brokenshire, was not likely to attend. In addition, I was informed that Mr Brokenshire had vacated the site but that there was a new family with children living within the building marked as 'A' on the notice plan. It was not clear whether the new occupiers were aware of the notice, or the appeal, or that they could appear at the hearing or make written submissions.
6. The requirements of the notice would mean that people will lose their homes. Of primary consideration in this case are the best interests of any children that would be affected, given Article 3(1) of the United Nations Convention on the Rights of the Child. I therefore adjourned the hearing to enable the new occupiers to be consulted. The Council wrote to the occupiers and before the hearing recommenced on 24 February, I received written submissions from them and also Miss Knott's agent was instructed to represent their views too.
7. Mr Brokenshire did contact the Planning Inspectorate saying that he no longer has an interest in the site. However, no formal consent was provided to me to change the name of the appellant. That appeal has not been withdrawn and will therefore continue in Mr Brokenshire's name.
8. It was agreed at the hearing that although a potential appeal on ground (c) is mentioned within one of the appeal statements, but was not included on the appeal form, that there is no dispute that planning permission is required for what has occurred. I have not therefore considered ground (c).

## The Enforcement Notice

9. The notice makes no reference to which of the time limits in s171B of the Act should apply to the allegation. It is not essential to do so and the requirements of s173 of the Act and The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, have overall been met. However, it would have been helpful in order to ensure that it is clear to recipients of the notice, what the period for a ground 'd' appeal would be applicable, particularly given the way in which the allegations have been worded.
10. With respect to the use of the land, no previous use has been described but it has been held that it is not essential to do so. However, within the first sentence, the allegation is described as "the material change of use with associated operational development". This implies that the "operational development", may not in itself part of the breach of planning control but has only facilitated the change of use. The wording does distinguish between the "two storey dwelling" (labelled 'A') as well as the "cabin" (labelled 'C') as being buildings as opposed to the "two mobile homes" which are described as being "stationed". The dwelling and the cabin cannot however be considered only as "ancillary" as their residential occupation is a primary use. Given relevant case law<sup>1</sup>, it would not be appropriate in my view to require the removal of residentially occupied buildings, if the notice is targeted only at the material change of use of land.
11. The notice is therefore ambiguous with respect to whether the construction of buildings for residential occupation is one of the primary matters addressed by the notice or not. It was also pointed out to me at the hearing that the notice does, within the header, state "material change of use and operational development". This does help to clarify matters to some extent and this was discussed at some length following the initial opening of the hearing. The allegation also refers to things that in my view clearly have only facilitated the use and are ancillary, such as the "various associated structures" and "residential paraphernalia" which need not essentially be included there, even if they are addressed within the requirements. Upon careful reading, the notice does therefore discriminate between the occupied buildings and other structures.
12. Following the adjournment, I circulated some potential revised wording as I have a duty to try and get the notice in order where I can do so. In that respect, I have broad powers to correct any defect, error or misdescription under the provisions of s176(1)(a). I can however only do so where it would not cause injustice to the appellants or the Council.
13. The wording I suggested breaks the allegation into 2 paragraphs, the first relates to the alleged material change of use and the second to the construction of the buildings used for residential purposes. There is no need to include other ancillary items. Although my draft for discussion did do so, I mentioned that I may review that and have decided that the wording is clearer without them.
14. The corrected wording I have formally used contains no extension of the scope of the alleged breach. There is no evidence and it has not been argued, that

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<sup>1</sup> Including *Murfitt v SSE & East Cambridgeshire CC* [1980] JPL 598 A; and *Kestrel Hydro v SSCLG & Spelthorne BC* [2015] EWHC 1654 (Admin), [2016] EWCA Civ 784

had the notice been clearer, it would have resulted in an appeal on ground 'd' in relation to any of the matters covered by the allegation. I consider that to correct the notice in this way would not cause injustice to the appellants or to the Council.

15. Another concern about the form of the notice relates to it covering the whole of the site enclosed by the red-line on the accompanying map. This is relevant to whether the notice is 'in order' but it is logical to deal with it under the appeal on ground (b). Related to that, the appellant for '3225133' Miss Knott, has raised a concern that the way in which the notice has been issued has potentially prejudiced her rights to a fair trial under Article 6 of the provisions of the Human Rights Act 1998. The fee for the ground 'a' appeal and the deemed planning application had to be paid for the whole area even if only 1 of the occupiers of the land wished to appeal on that basis. One of the appellants, Miss Knott, therefore had to pay the whole fee due to the other owners not being able or willing to do so.
16. Article 6(3) relates to fairness in terms of how the planning appeal is conducted. In summary, everyone is: entitled to a fair and public hearing; within a reasonable time; and by an impartial tribunal established by law. As a matter of fact, Miss Knott did pay the fee and so her Article 6(3) rights have not been interfered with. Whether there was merit in planning law and procedural terms for the Council to issue the notice in the way it did, is considered below and within the application for costs.

### **The Appeal on ground (b)**

17. To succeed on ground (b), it is incumbent on the appellant to demonstrate that the matters which are stated in the allegation, have not occurred, as a matter of fact. It is not suggested in this case that the matters have not occurred, rather that the use of the site is not as alleged. In particular, it is suggested that a mixed use is taking place within part of the area covered by the notice and that this is occurring within a separate planning unit. The onus on this ground of appeal is upon the appellant to prove their case on the balance of probabilities but is only argued on behalf of Miss Knott. The arguments as put do however affect the whole of the appeal site and therefore the notice.
18. There was some debate at the hearing regarding the previous use of the site and that was related both to this ground of appeal and also the appeal on ground (a). It was agreed that there was some china clay related activity at some point in the past on the site although the Council is of the view that the remains had blended into the landscape.
19. The site currently includes an access track, with a bund along the eastern side and a fence along the western side. This leads up from the main public road and opens out into a broader area which has been largely separated out into 3 main plots. There is also access through to another plot to the north which is outside of the area covered by the notice. These plots are separated out mainly by timber fencing and gates that provide a boundary between each of them. When I visited the site, there was less distinct separation between the "cabin" ('C') and one of the mobile homes ('D'). There was some metal temporary site-fencing enclosing some areas but this was in the area around 'C' and 'D' which it was confirmed at the hearing on behalf of Miss Knott, is occupied by one family with the mobile home also being used by members of

- that family. It was also confirmed that the plots enclosed by fencing around the mobile home 'B' and the dwelling 'A' were also in separate occupation.
20. In my view given the degree of separation between parts of the site and each of those parts being in separate occupation, notwithstanding that they have not been officially registered as separate titles, there are 3 planning units. There was general agreement that this was the case, including from the Council at the hearing. The activities of the planning unit containing the dwelling 'A' and also that including the mobile home 'B', both appeared, as far as I could tell, to be related to their residential occupation. There is however a need to gain access through the land to the eastern side of 'B' into the land around 'A' and through both to get to the land beyond, just to the north of the appeal site. The use of the land within the unit containing the cabin 'C' and mobile home 'D' as well as the land to the south of it which is closely related to those features but separated from the rest of the site, is used presently by the family occupying the cabin and mobile home, in connection with their business. This business includes, I am told, waste processing and transfer including sorting of building materials for recycling and also future classic vehicle storage, breaking and repairs.
21. It is unusual in a situation such as this for 3 separated planning units to all be amalgamated together on 1 enforcement notice. The Council's evidence including photographs from before the notice was issued, show that the current separation between the units was in existence by October 2018 and the notice was not issued until February of the following year. The photos also show however, as I saw, that there is not complete enclosure or separation between where neighbouring occupiers need to access. The Council say that the separation of ownership was not clear, had not been registered with the Land Registry and may have been subject to change. It is apparent that the ownership separation does not appear to have been completely agreed between the co-owners of the site. Given the above and also that some of the residential occupation is within caravans which by definition can be moved, I can understand the Council's reluctance to break the site down into distinct units on the notice plan. Whilst the drafting of the notice in this manner was complicated, I do not consider that it is invalid as a consequence. I am not directed to any specific legal point that would lead me to consider the notice is fatally flawed in this or in other respects.
22. A further outstanding issue is however the matter of whether the use of the unit containing 'C' and 'D' is as alleged. As it stands, the amount of waste skips, materials, building apparatus, dismantled site-fencing, vehicles including commercial vehicles would indicate that activities are currently taking place which may not be limited to what could reasonably be considered as ancillary to the residential use of that planning unit. However, I have to consider this ground of appeal in relation to what had taken place on or before the date that the notice was issued.
23. Miss Rowe indicated at the hearing that the present activities on site have been like it for a while but did not provide a specific date or period. One of Miss Knott's representatives, Mr Bateman, said that he first visited the site on 18 February 2019, only 4 days after the notice was issued. He said that there were piles of different types of aggregates, blocks, tyres and some other vehicle parts on site at that time. Unfortunately, he did not take any photographs at the time of that site visit. He specifically referred to 'plate 14'

within the Council's hearing statement which clearly shows a dumper truck loaded with some materials but it is not clearly showing that there was some other use other than what is alleged.

24. At the snap-shot in time of those images there is for instance, no discerning covering of aggregate on the ground with grass and bare earth on the ground in a number of the photographs. By stark contrast, at the time of my visit there was an extensive cover of aggregate and hardcore on much of the ground surfaces around the areas to the front of the buildings and mobile homes, some further walls and fences appear to be have been constructed.
25. There is very little evidence to tie any business activities to the site at or before the time the notice was issued. The documentation that has been submitted such as the Environment Agency exemption post-dates the issuing of the notice. Some photographs within the appellant's statement do not have a date but do show that there has been at those times substantial amounts of building materials and a large pile of scrap but they were also taken following the issuing of the notice.
26. As I pointed out at the hearing, the onus is upon the appellant to demonstrate their case and the verbal descriptions of what was on site and what is shown in the photographs referred to are not clearly linked to the degree of activity that is now occurring. The appellant was not present at the hearing to explain first hand when these non-residential activities commenced. Even if some of that industrial activity was taking place when the notice was issued, as a matter of fact and degree, it was not clearly a further primary use of the whole site or the individual planning unit that includes the cabin 'C' and the mobile home at 'D' at or prior to the issuing of the notice. The appellant's version of events in this respect appears from the evidence, to be less than probable.
27. I therefore consider that, on the balance of probabilities, the alleged breaches of planning control had taken place as described, at the date the notice was issued. The appeal on ground (b) therefore fails.

### **The Appeal on ground (e)**

28. To succeed on this ground, it is necessary for the appellant to demonstrate that copies of the notice were not served as required by s172 of the Act. This ground is only brought by Mr Brokenshire with respect to appeal '3224880'.
29. I have limited information from this appellant about why there was a suggestion that the notice was not served on everyone with relevant interest in the land. At the hearing, it was explained by those who did attend that the freehold of the land had been owned by Mr John Beaumont. He and the other named recipients including Mr Brokenshire were issued with a copy of the notice according to the information contained with it.
30. It therefore appears, on the balance of probability that copies of the notice were correctly served and the appeal on ground (e) fails.

### **The Appeal on Ground (a) and the deemed planning application**

31. Under this ground of appeal, planning permission is sought for what is alleged on the notice. The terms of the deemed application for planning permission are therefore limited to the breaches of planning control as corrected. I can

consider whether the whole or any part of those matters are acceptable on their planning merits.

32. Miss Knott, the appellant in relation to appeal '3225133', is seeking permission for live-work accommodation with the 'work' part of this being the waste processing and transfer including sorting of building materials for recycling and also future classic vehicle storage, breaking and repairs. However, that use would be beyond the scope of the deemed planning application because it is not what is alleged or part of what is alleged. I have already, in respect of ground (b) above, made a determination that those activities were not occurring when the notice was issued.
33. Miss Rowe, within her appeal grounds on 'f', has also stated that she would like to retain her caravan ('B') and other infrastructure ('O1' and 'O2') for her hairdressing business. I cannot consider that alternative option either as it would be a materially different use and not be part of the alleged breach of planning control.

#### *Main issue*

34. The main issue is whether this is an appropriate location for the development as alleged taking account of:-

- The effect on the character and appearance of the area;
  - The accessibility of the site including planning policies for the provision of housing;
- and if not
- Whether there are any other primary issues such as the best interests of any children living at the site, the human rights of occupants and other personal circumstance of sufficient to outweigh those other matters.

#### *Character and appearance*

35. The appeal site is located within a rural area to the south of St Austell. The surrounding area contains a mixture of agricultural activities, a nearby solar farm and former industrial buildings such as those close to the entrance of the appeal site. There are some residential properties scattered around and my attention was drawn to the residential developments close to the appeal site. However, they do not override the general character of the area which has a mainly undeveloped rural feel.
36. The Council has referred to the Landscape Character Area LCA40 which is described, amongst other things, as including a "very varied, dramatic landscape of china clay waste tips and areas of rough vegetation, characterised by open pit mining." Additionally, the ruggedness, variety and mix of remnants of china clay mining along with naturally regenerated scrub, heath and small field patterns are all referred to. The area around the appeal site is rather typical of those elements of the LCA40 description. Furthermore, the historic aerial images provided by the Council indicate that prior to the unauthorised development taking place, the appeal site was more overgrown with substantial tree cover and this is also evidenced by the photographs taken in 2013, submitted by the Council.

37. In contrast, the site has been cleared to make way for the buildings, mobile homes and other items such as containers and outbuildings. The dwelling 'A' and the mobile home 'B' are surrounded by neatly enclosed plots with substantial fencing which are akin to a suburban residential development. The rest of the site also has an urban feel albeit more industrial look. However, based upon what appears to have existed when the notice was issued, the breach of planning control relates to a substantial intrusion of incongruous residential development within the rural area.
38. The development does not maintain or respect the landscape character of the surrounding area, in stark contrast with what went immediately before. This cul-de-sac of residential properties is not prominent from neighbouring public roads and I was not invited to visit from properties that seem to have potential views down towards the site, particularly those in higher positions to the east. However, such development has an fundamentally harmful impact upon the character and appearance of the area. As such, in these respects, the development does not comply with Policies 2 or 23 of the Cornwall Local Plan Strategic Policies 2010 – 2030, adopted November 2016 (LP). The development has not responded to local character and does not comply with Policy 11 of the St Mewan Neighbourhood plan (NP), made on 4 June 2018.

*Accessibility and housing policies*

39. The appeal site is within a generally rural area albeit one that contains some limited facilities such as St Mewan School and Church. Other facilities such as shops are also available in Trewoon and Lanjeth. To reach any of these requires negotiation of country lanes largely without footpaths or streetlights. Whilst it may be practical to walk to those services or to bus routes along the busier main roads in fine weather during daylight hours, it would be less conducive to do so at other times. Walking or cycling may be an alternative to private vehicle use to a limited extent but generally I consider that the establishment of 3 households on the appeal site would lead to more private vehicle usage.
40. As such, the appeal site is not within what I consider is an accessible location. I recognise that there may be sites within existing settlements that are also remote from services. However, LP Policy 3 directs housing to the main, named towns in Cornwall and other than that, sites should be identified through neighbourhood plans, rounding off of settlements, infill schemes and rural exception schemes. It is also likely that walking and cycling are more conducive within an urban area notwithstanding the attitudes of individuals who may choose to drive however close they live to services or how convenient alternative forms of transport may be.
41. In terms of policies that may allow limited housing in the rural area, none of the circumstances for housing in the countryside as set out within LP Policy 7 apply in these appeals. NP Policy 2 also relates to development outside of settlement boundaries or "rural exception sites". As a prerequisite this states that the requirements of the LP rural exception site policy (LP Policy 9) needs to be met which has not been argued. Neither is it suggested that there is an existing built development boundary forming part of a drawn settlement on at least one side of the appeal site, as required.
42. Furthermore, I am not persuaded to take a different view due to comments that the Council's officers made about highway conditions, within a report

relating to different type of application for the change of use of adjoining business premises to a dwellinghouse (Council ref PA18/03808). That was a prior notification application submitted under the provisions of Class O, Part 3 of Schedule 2 of the GPDO<sup>2</sup> and therefore deemed planning permission was granted by the GPDO. That proposal did not therefore involve an application for planning permission to which s38(6) of the Planning and Compulsory Purchase Act 2004 (PCP Act) required an assessment of development plan policies.

43. With respects to the application for 5 dwellings at Calenick (Council ref PA18/09066), the position of that site close to Truro which is expanding towards it, is not directly comparable. This does not mean that I should consider the location of this site relative to the nearest settlements in the same way. Sites around the southern fringes of St Austell have been referred to. Some of those sites are being developed for housing at the moment. I have no evidence that this will bring a similar set of circumstances to this part of the countryside to the south of St Austell as is planned to the south of Truro.
44. It is argued that the site is on previously developed land (PDL) and that this lends further weight to allowing the appeals. The definition of PDL in the National Planning Policy Framework (the Framework), was discussed at some length within the hearing. The aerial images provided by the Council clearly show that the site had an extensive covering of vegetation, largely with trees, within the 2009 image. The photographs from a Council site visit resulted from a planning application submission in 2013 show some buildings but also an extensive cover of trees or remnant stumps of trees where the site was being cleared at that time.
45. There may have been, and may still be, some remnants of the clay drying within the site, possibly underground. However, it appears from the information available that the site had largely blended into the landscape prior to the tree clearance in 2013 and then the subsequent breach of planning control. As such, the site would not have been within the definition of PDL. I remain unconvinced and have not been pointed to any authority supporting Mr Bateman's suggestion that this was a reversible matter and that PDL can be reinstated by removing the attributes that had resulted in the site being blended in with the landscape. Furthermore, whilst LP Policy 21 encourages use of PDL, even if this site were considered in that way, it would not override other policies of the development plan, which I have to consider as a whole.
46. The development is not suitably accessible to a range of services and does not comply with specific policies directing where residential development should be located including LP Policies 2, 3, 21 and 23 as well as NP Policy 2.

*Best interests of children, human rights and other personal circumstances*

47. There are 3 family households that live on the site and although the occupiers of dwelling 'A' have arrived relatively recently, all of the separate families enjoy a pleasant external environment. Due to the Covid-19 pandemic, I could not enter the buildings and mobile homes but there is no dispute that the living conditions are comfortable. There is a total of 10 children living on site, although 1 of those is over 18 years old, and one of the appellants is expecting her second child. I am told that some of the medical conditions of 1 of the

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<sup>2</sup> Town and Country Planning (General Permitted Development) (England) Order 2015

children makes them clinically vulnerable and they are particularly assisted by the rural location.

48. I heard that St Mewan Primary School which I saw when I drove to the site as it is just off of the A390, provides an excellent learning environment for those children from the appeal site that attend it. This includes 2 children with particular special needs who feel very comfortable at the school where they are able to thrive. The other children who are under 18 years old go to schools and a nursery elsewhere within the local area in and around St Austell but are also very settled at those.
49. One of the appellants, who has 4 children, has parents within St Austell although her father has a medical condition which limits the amount of time that they can help to look after the children. This in-turn, limits the amount of time that this appellant can work as a self-employed hairdresser and whilst the youngest child goes to a local nursery which can be expensive. They would have a significant affordability problem in finding alternative accommodation.
50. Of the other appellants, one is described as a 'Critical Worker' within health and social care by their employer. Such workers have played an even more important part than normal in society over recent months.
51. Little evidence is provided about the availability of alternative accommodation within the area. I heard that re-housing is a challenge both in terms of supply and affordability as well as difficulty obtaining alternative housing through the Council. On the other hand, the present accommodation has been provided at no cost to the public purse at a time when self-build projects are encouraged by the government.
52. As I have stated above, I cannot consider granting planning permission for the additional primary use as it does not form a part of the allegation. I do however take into account that the work of Miss Knott's partner is assisted by his being able to stay at the site whilst operating his business. Also, Miss Knott is able to work part-time by living here in the way she does.
53. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law most of the fundamental rights and freedoms contained in the European Convention on Human Rights. I recognise that dismissal of the appeal would interfere with some of the appellants' and all of the occupiers' rights under Article 8 of the First Protocol. Article 8 states that everyone has a right to respect for his home and private life, his home and correspondence. If these appeals fail it is likely that the families would have to leave the appeal site. This would result in an interference with these human rights.
54. In my view, there are a combination of personal circumstances that are of some substance in this case. The best interests of the resident children on site are of primary concern. I therefore give a significant degree of weight in support of the development, to these matters within my overall planning balance below.

#### *Other matters*

55. I was informed by 1 of the appellants that there has been an occupied caravan close to the site for some time, which gave an impression that a similar development would be acceptable. It would seem from what else has been said that the planning status of that caravan is not clear but it does seem that

the Council has not given planning permission for it. This does not help to justify the development covered by the notice. I would expect any person looking to develop any site to make some reasonable investigations of the circumstances rather than to assume that because something similar may have happened once, that it could happen again without potential repercussions through planning enforcement procedures.

#### *Overall planning balance*

56. I am required, by s38(6) of the PCP Act, to make my decision on this ground of appeal, in accordance with the development plan unless material considerations indicate otherwise. My starting point is conflict with both the LP and the NP, for the reasons that are set out above. The development is not therefore in accordance with the development plan as a whole. I do however consider that significant weight should be attributed to the best interests of children, human rights and other personal circumstances of those living on the site. However, this is not sufficient to outweigh the harm to the conflict with the development plan in my considered view. This is not a sustainable form of development as defined by the Framework.
57. In reaching that conclusion, I have also considered whether planning conditions could overcome any elements of the harm caused but they cannot, taking into account the advice in the Planning Practice Guidance (PPG). Planning conditions could not be used to bring the development into compliance with the development plan. The harm caused relates largely to the aims of the development plan to manage where housing should be located and its integral impact upon the character and appearance of the area. A temporary permission would not be acceptable as such a measure should only generally be used in limited circumstances such as where a trial run is needed in order to assess the effect of a development or as a temporary use of vacant land or buildings prior to longer term proposals. The impacts of this development are apparent without a need for a trial run. Furthermore, the circumstances in this case are not exceptional and I do not consider that a personal planning permission is justified in relation to any of the developments.
58. Whilst I consider that it is in the wider public interest to interfere with the qualified rights under Article 8 in the interests of remedying the harm that has been caused, my role in this appeal is to ensure that any interference with those rights is necessary and proportionate. I will go on to consider this further in the appeal on ground (g).

#### *Conclusion on ground (a)*

59. For the reasons given above and having regard to other matters raised, the harm I have identified in relation to the main issue is not outweighed by the other matters. The appeal on ground (a) and the application for deemed planning permission fail.

#### **The Appeal on ground (f)**

60. The appeal on this ground is that the steps required exceed what is necessary to achieve the purpose of the notice. The Council confirms that the purpose of the notice is to remedy the breach of planning control.
61. This ground is pleaded by Miss Knott and Miss Rowe.

62. I explained to Miss Rowe at the hearing that in my view, her requests to retain the caravan 'B' and buildings 'O1' and 'O2' as a play area, to keep her children's toys and for her hairdressing business is not part of the development as alleged. I have not therefore been able to consider this different proposed use under ground (a) and her suggestions do not relate to reduced steps that would wholly or partly remedy the breach of planning control.
63. Miss Knott's case on ground (f) does suggest that the steps required go further than they should to achieve the purpose of the notice. She considers that steps '5, 1' to cease the use for residential purposes and '5, 4' would achieve the purpose of the notice to remedy the breach of planning control.
64. Some of Miss Knott's case relies upon me having found on ground (b) that other uses are taking place at the time that the notice was issued. I did not find that. The matter of an alternative use of the buildings and the land cannot be considered here.
65. In addition to the cessation of the residential use of the land, I consider that it is necessary to require the removal of the buildings 'A' and 'C' because they are integral to the use in each of the planning units and also contribute to the harm as set out under my reasoning on ground (a). Similarly, the mobile homes enable the residential uses to take place and they appear, on the balance of probabilities, to have been brought onto the site for residential purposes rather than any previous lawful use. They also contribute to the harm to the character and appearance of the area.
66. It has been held that an enforcement notice can require removal of works that were not development or which perhaps were permitted development, where they were there to facilitate the use or were part and parcel of the development. I consider that removal of the fencing that has sub-divided the site into separate planning units should be removed. Those structures have facilitated the material change of use of the site and also cause part of the harm caused overall as I have explained in the appeal on ground (a).
67. I also have to be mindful that the requirements of an enforcement notice should only address the minimum necessary to remedy the breach of planning control. With respect to requirements '5, 5', restoration of sites can be difficult and simply requiring the restoration of the land the condition before the breach took place, whilst not very specific, is often the best that can be done. However, the benefit in this case, is that a relatively recent topographical survey was undertaken and accompanied Miss Knott's planning application that was submitted in April 2017. The survey is dated 21 March 2017 (Drawing No HN/70/02/I, produced by Hana and Company Ltd) during the period when the developments alleged on the notice were being undertaken. Given that this is contemporary with the undertaking of the development, it is reasonable to consider that changes from the survey levels are as a result of the unauthorised development. Although the requirement to alter and re-profile the land to previous levels appears imprecise in terms of what is stated on the notice itself, I consider that the survey will help the Council and anyone looking to secure compliance will be able to reach a reasonable agreement.
68. With respect to requirement '5, 6', the access to the site was in existence before this unauthorised development took place. Although it may have been surfaced with compacted hard-core as part of the works, such a surface is often used to improve tracks in rural areas. Furthermore, although the topographical

survey does not extend all the way down to the public road, I can see no reason why changing the surface by removing hardcore beyond what will be required by step '5.5' is necessary to achieve the purpose of the notice.

69. With respect to requirement '5, 7', although further services may well have been installed at the site, it seems that the site did previously have some, limited, services. To require all services to the land are removed would go further than appears necessary to remedy the breach.
70. I therefore find that the appeal on ground (f) should succeed only to the extent that I shall vary the notice by deleting the steps required at paragraphs '5, 6' and '5, 7'

### **The Appeal on ground (g)**

71. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The notice requires all of the requirements to be completed within 9 months.
72. Within the appeal on ground (a) I have said that the circumstances of the appeal are not exceptional. That relates to the planning merits of the case. However, I have given significant weight to the matters that support the appellants' cases and the Covid-19 pandemic does mean that we are in exceptional times. The ability to find alternative accommodation at the moment is likely to be even more difficult than it would be normally.
73. There is some harm caused to the environment of the area due to the impacts upon the character and appearance of the site but the harm is otherwise related to planning policy. I am also aware that some other disputes have arisen with an adjoining landowner. It is however necessary to find a proportionate balance between the difficulties of the occupiers to find alternative accommodation with the harm that is caused by the development.
74. When discussing this ground of appeal, the Council did refer me to their ability to extend the period for compliance should it be necessary to do so in future if the occupiers have difficulties with finding alternative accommodation. They also pointed out that tenancy agreements give less notice. I recognise these factors although I did also raise the issue that evictions from tenanted properties are subject to changed procedure due to the current pandemic.
75. Given the evidence that I have before me in this appeal, I consider that there is substantial justification for striking a better balance now. We are presently still within a national lock-down and although a road-map for releasing restrictions has been provided by the government, there can be no absolute certainty to that time-frame. There is little stability or certainty to how things will pan out.
76. In these circumstances, I consider that it would be more proportionate and reasonable to allow at least a year for compliance which would give each of the occupiers some certainty and stability within their present homes for a substantial period of time. It would also take the period beyond the depths of winter. However, given that part of the sensitivity around the impacts upon the occupants concerns the best interests of the children on the site, I consider that I should also take account of the planned school terms. To that end, I consider that allowing 16 months would require compliance after the end of the summer term 2022, allowing the children living on the site to complete a further year in education without disruption of having to move. This is justified

in my view due to the exceptional period of disruption that school age children are having to endure at the moment.

77. For that reason, the appeal on ground (g) therefore succeeds.

**Conclusion**

78. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*A Harwood*

INSPECTOR

## **APPEARANCES**

FOR THE APPELLANT  
(APP/D0840/C/19/3225133 & for  
occupant of dwelling related to  
appeal APP/D0840/C/19/3224880):

|                                     |                     |
|-------------------------------------|---------------------|
| Mr P Bateman,<br>Influence Planning | Planning Consultant |
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|---------------------------------------------|---------------------|
| Mr D Mitchell, MRTPI,<br>Influence Planning | Planning Consultant |
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FOR THE APPELLANT  
(APP/D0840/C/19/3224884):

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| Miss Rowe | Appellant |
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FOR THE LOCAL PLANNING AUTHORITY:

|                         |                               |
|-------------------------|-------------------------------|
| Mr J Holman MRICS MRTPI | Principal Development Officer |
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| Mr M Sleeman BD (Hons)<br>MRTPI, FAAV | Development Officer |
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| Mr C Cooper-Young Assoc RTPI<br>(attended 11 January only) | Principal Development Officer |
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INTERESTED PERSONS:

Mr Lemin

## **DOCUMENTS**

- 1 Portman Dental Care 'key worker' letter 5 January 2021
- 2 Email correspondence and attached information about 'EA' exemptions
- 3 Letter from Mr Lang of 'The Lodge'