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## Appeal Decisions

Site visit made on 26 October 2021

**by Stephen Hawkins MA MRTPI**

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

**Decision date: 15<sup>th</sup> November 2021**

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**Appeal A Ref: APP/M1710/C/21/3275552**

**Appeal B Ref: APP/M1710/C/21/3275553**

**Land at 10 Kings Hill, Beech, Alton GU34 4AL**

- 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 Mr Allen Taylor (Appeal A) and Miss Catherine Evans (Appeal B) against an enforcement notice issued by East Hampshire District Council.
- The enforcement notice was issued on 23 April 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use from agriculture to residential and the erection of a building for residential purposes.
- The requirements of the notice are: (i) Cease the unauthorised residential use the land (*sic*). (ii) Remove the unauthorised residential structure from the land. (iii) Remove all resultant materials from the land.
- The period for compliance with the requirements is nine months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b) and (f) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on the grounds set out in section 174(2)(b) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended has lapsed.

**Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with corrections.**

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### Preliminary Matters

1. The Council submitted a plan that reduces the area of the land to which the notice relates. The substitute plan is a more accurate reflection of the relevant planning unit. Accordingly, using the powers in s176(1) of the Act I shall correct the notice to substitute the plan, with consequent corrections being made to paragraph 2 and step (ii) of paragraph 5. Also, I shall correct the notice to insert the word "of", omitted from paragraph 5 step (i) in error. As the notice would not be more onerous, I am satisfied that there would be no injustice in making the above corrections.
2. In their ground (f) appeals, the appellants argued that the structure used for residential purposes was in fact a caravan, not a building. This concerns whether the alleged breach has been correctly described in the notice rather than the requirements and in consequence is more relevant to ground (b)-"the matters alleged in the notice have not occurred". Where an argument which relates to ground (b) is raised I am still bound to consider it, even though the appeal was not made on that ground. The fact that the argument was not raised under the relevant ground is not of itself fatal to a ground (b) appeal. Therefore, although not initially made under that heading, after seeking further

comments from the main parties I have dealt with the appeals as if they had also been made on ground (b).

3. The revised National Planning Policy Framework (the Framework) came into force during the course of the appeals. The main parties have been given an opportunity to comment on the implications of the revised Framework in respect of Appeal A, ground (a) and I have taken it into account in my decision.

### **Appeals A & B-Ground (b) appeals**

4. That the site is in use for primary residential purposes is not in dispute. It is for the appellants to show that the structure used for such purposes is a caravan, the relevant test of the evidence being on the balance of probability.
5. The statutory definition of a caravan is set out in s29(1) of the Caravan Sites and Control of Development Act 1960 "*... any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted...*". Given s13(2) of the Caravan Sites Act 1968, a structure not exceeding the length, width and height limits specified therein can fall within the above definition.
6. A building is defined by s336(1) of the 1990 Act as including any structure or erection and any part of a building. Relevant case law identifies three primary factors as being determinative of what is a building: that it is of a size to be constructed on site, as opposed to being brought onto the site; permanence, and physical attachment to the ground. No one factor is decisive<sup>1</sup>. Case law also confirms that generally, a caravan would not satisfy the definition of a building, having regard to the factors of permanence and attachment<sup>2</sup>.
7. Little indication was provided as to how the structure was brought to the site- i.e. whether it arrived in the form of several components requiring assembly or it was transported there in a largely pre-assembled state. There was no explanation as to the works involved in setting the structure up at the site, including the method of assembly and the length of time that the works took to carry out. It is unclear whether a series of steps were required to assemble the structure, possibly taking place over a number of weeks, or whether it was simply a matter of joining a couple of sections together with clamps or bolts, perhaps taking no more than a day. Case law referenced by the appellants is of limited relevance, as it did not concern whether a structure could be regarded as a caravan. In any event, in that case it was held that a structure could still be a building even if it was capable of being moved, which does not lend support to the appellants' argument<sup>3</sup>. Therefore, the appellants have provided little clear and convincing evidence to show that the structure is indeed a caravan. It is hard to draw much from their submissions which might indicate that the structure should be so regarded.
8. During my visit, I observed that the structure has a timber underframe which rests on a series of concrete pads set into the ground. The walls of the structure are covered with timber boarding and the pitched roof is covered in a

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<sup>1</sup> *Cardiff Rating Authority v Guest Keens* [1949] 1 KB 385; *Skerritts of Nottingham Ltd v SSTER* (No 2) [2000] 2 PLR 102.

<sup>2</sup> *Measor v SSETR & Tunbridge Wells DC* [1999] JPL 182.

<sup>3</sup> *R (aoa Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council* [2012] EWHC 2161 (Admin).

tile effect sheet. What I am given to understand are bespoke glazing units have been installed. A substantial metal heating flue projects from the rear elevation, which is supported by metal uprights resting on another concrete pad. The works to clad the walls, provide a roof over the structure and install windows and a flue are what would commonly be understood to be building operations within the definition of development in s55(1) of the 1990 Act. Such works point to considerable portions of the structure having been assembled in situ; there was no firm evidence to indicate otherwise. In my estimation, the structure is within the size limits in s13(2) of the 1968 Act. However, this in itself is not determinative of the structure being a caravan.

9. Furthermore, when taken together it is likely that the above works have had significant implications in terms of the mobility of the structure and have given it a considerable degree of permanence. It is unclear whether the structure could be removed at short notice and transported elsewhere, in particular whether it could be lifted as a whole without leading to significant damage. Based on my observations, it is likely that the structure is incapable of being moved intact and that it would need to largely be dismantled before moving it could be contemplated. The size and likely overall weight of the structure have also given it a considerable degree of physical attachment to the ground. Such attachment is not limited solely to the service connections and entrance steps.
10. Accordingly, based on the available evidence and as a matter of fact and degree, in my view it is likely that the structure has made a permanent physical change to the site with planning consequences which are consistent with a building. It follows that the appellants have failed to show to the required standard that the matters alleged in the notice have not occurred. The ground (b) appeals fail.

## **Appeal A-Ground (a) appeal**

### **Main Issues**

11. The main issues in the appeal are:

- Whether the building is a suitable form of development in the countryside, having regard to the Development Plan and the Framework.
- The effect on the character and appearance of the surrounding countryside.
- If there is conflict with the Development Plan and the Framework, whether this is outweighed by other considerations.

### **Reasons**

*Whether the building is a suitable form of development in the countryside*

12. The site is located outside of a settlement policy boundary, in an area regarded as countryside for the purposes of Policy CP19 of the East Hampshire District Local Plan: Joint Core Strategy (CS). The Council's spatial strategy for housing is set out in CS Policy CP10. This provides for housing development outside of a settlement policy boundary where there is a genuine and proven need for a countryside location, such as development necessary for farming, forestry, or other rural enterprises meeting the requirements of CS Policy CP19, or for affordable housing within the meaning of CS Policy CP14 meeting the criteria

set out therein. Policy H14 of the East Hampshire District Local Plan (LP) adopts a similar approach in relation to housing in the countryside. CS Policy CP10 also provides for development outside settlement policy boundaries in a limited range of other circumstances, including where a community need would be met or a local community aspiration realised. The above is consistent with meeting the economic, social and environmental objectives of sustainable development set out in paragraph 8 of the Framework. More particularly, it is consistent with the Framework at paragraph 80, which advises that the development of isolated homes in the countryside should be avoided.

13. There is no firm evidence to demonstrate that there is a genuine and proven need for residential accommodation at the site to support a farming, forestry or other rural enterprise, or that the building provides what could be regarded as affordable housing. There is also no firm evidence that the building meets a community need or any of the other circumstances in CS Policy CP10 where housing outside of a settlement policy boundary might be permitted. The occupier of the building is elderly and in poor health. The relatively limited distance between the site and the appellant's residence enables them to provide care and support to the occupier. However, such circumstances are not uncommon, nor are they unique to the countryside. Similar circumstances might equally apply in an urban or suburban context. Moreover, why suitable alternative accommodation meeting the occupier's needs could not be provided at or within the grounds of the appellant's residence has not been convincingly explained. Therefore, in my opinion the occupier's state of health does not equate to a need for the building to be located in the countryside.
14. The Planning Practice Guidance section "Housing for older and disabled people" stresses the important role that suitable accommodation can play in terms of them living independently and safely with greater choice and control over their lives and helping to reduce costs to the social care and health systems. CS Policy CP12 provides for housing, including extra care accommodation, which meets the needs of the Council's ageing population, subject to locational considerations. Nevertheless, the site is in a rural location where there is likely to be relatively restricted access to services and facilities, including those which might be frequented by elderly persons, for example social care or medical care provision. To my mind, this indicates that the site is not in a location which is suitable to meet the needs of elderly persons. An appeal decision was submitted concerning the provision of a disabled persons' dwelling<sup>4</sup>. However, each case must be determined on its individual planning merits. In any event, there is no firm evidence of an unmet need for such accommodation in the Council's area. Accordingly, I afford that decision limited weight.
15. For the above reasons, I find that the building is not a suitable form of development in the countryside and it is contrary to the objectives of the Council's spatial strategy, failing to accord with CS Policies CP10, CP12, CP14 and CP19 as well as LP Policy H14, also being inconsistent with the Framework. For similar reasons, the building fails to accord with Policy BPC02 of the Beech Neighbourhood Development Plan (NP). I am given to understand that the NP has superseded the Beech Village Design Statement.

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<sup>4</sup> Appeal Ref: APP/W1715/W/18/3216696.

### *Character and appearance of the surrounding countryside*

16. The site is located on the upper slopes of a hillside and is adjoined by land which apart from nearby tracts of woodland is largely open, undeveloped and in rural uses. The site is a significant distance from the built-up part of Beech village, which extends along the lower valley slopes. Also, the site is located away from the closest group of substantial buildings. As a result, by and large the site and its surroundings would have possessed an attractive, undeveloped rural character and appearance prior to erection of the building.
17. The siting of the building adjacent to a substantial maturing boundary hedge has assisted slightly in offsetting its visual impact. Even so, the building is of substantial size and has an angular profile, with an obviously residential appearance. The principal external finishes are light green colour walls and reflective tile effect roof sheeting. Due to the above factors, the building contrasts starkly with the softer, more naturalistic contours and muted colours of its largely undeveloped, countryside setting. This has given the site an appreciably more built-up feel, which is entirely at odds with the mostly open, rural qualities of the surroundings. It has also resulted in the building appearing as an alien and intrusive built feature in the otherwise predominantly countryside setting. Views into the site from the public footpath lying to the north serve to emphasise the visual harm caused by the building.
18. Therefore, the building has caused unacceptable harm to the character and appearance of the surrounding countryside. This fails to accord with CS Policy CP20, as the special characteristics of the natural environment have not been conserved. In addition, as the building does not respect the character, identity and context of the countryside it fails to accord with CS Policy CP29. Furthermore, the building does not accord with criterion in NP Policy BPC06, being constructed in a location significantly further up the hillside than buildings on neighbouring plots. Moreover, by not conserving the natural environment the building is inconsistent with the Framework.

### *Other considerations*

19. The elderly occupier of the building also suffers from at least two acute health conditions. I am informed that both conditions are likely to have a severe adverse effect on the occupier's life expectancy. Although the medical information supplied dated from around three years ago, I am given to understand that the occupier's state of health has deteriorated in the meantime. Additionally, I understand that the occupier has impaired mobility and relies on a wheelchair and mobility scooter, the building having been laid out internally to ensure their ease of access to rooms and facilities. The state of the occupier's health and impaired mobility are likely to have had a considerable impact on their ability to live independently without an element of care provision. At present, I understand that the occupier's care is mostly provided by the appellant and their family. It is probable that the occupier's needs will increase in future. Upholding the notice and refusing to grant planning permission for the building would have very serious consequences for the occupier, as it would result in the loss of their home, where they have lived for some years. Furthermore, it might be that the occupier would have to move away from other family members to find accommodation suitable for their needs. I am also mindful of the likely adverse effects, including the associated uncertainty, stress and anxiety, that the above course of action

would have on the state of the occupier's health. Therefore, the personal circumstances of the occupier weigh slightly in favour of granting permission for the building to remain.

20. An appeal against the Council's refusal to grant a certificate of lawful use or development (LDC) under s191 of the Act in respect of the residential amenity use of land including the site was dismissed on 9 December 2020<sup>5</sup>. I shall dismiss separate contemporaneous appeals and uphold an enforcement notice concerning use of the adjoining land for recreational amenity purposes<sup>6</sup>. Therefore, any prior use of the site for such purposes has little bearing on the merits of retaining the building.
21. It was suggested that the building could be adapted and used for agriculture instead of being removed. Although this was a point made in the ground (f) appeals, retaining the building would involve granting planning permission for development and so is a matter relevant to ground (a). However, the deemed application arising from the ground (a) appeal is for residential use and the erection of a building for residential purposes. As use of the building for agriculture is a different development to that enforced against, it is not part of the deemed application and cannot therefore be considered in this appeal.

#### *Planning Balance & Conclusion*

22. The building is not a suitable form of development in the countryside, being contrary to the objectives of the Council's spatial strategy. Also, the building has caused unacceptable harm to the character and appearance of the countryside. The personal circumstances of the building's occupier are a matter to which I attach some weight. Nevertheless, planning permission usually runs with the land and it is rarely appropriate to provide otherwise. Granting a permanent permission would be in conflict with the Development Plan and would be inconsistent with the Framework. Although the appellant sought a temporary and personal permission, this would perpetuate the planning harm caused for an uncertain, potentially considerable, period and so would not overcome the objections to the building. Moreover, as this is a permanent building a temporary permission would fail the reasonableness test applied to conditions by the Framework paragraph 56.
23. Article 8 of the Human Rights Act 1998 affords individuals the right to respect for their private and family life. The occupier's Article 8 rights are qualified such that interference may be justified where it is in accordance with the law and in the public interest. I am mindful of the very serious consequences that upholding the notice and refusing to grant permission would have for the occupier, which would include the loss of their home. Even so, the interference with the occupier's Article 8 rights would be in accordance with the law and in pursuance of the legitimate aim of upholding the Development Plan and national planning policy and is therefore justified. As there are no lesser alternatives to enforcement action that would achieve the public interest aims, such interference is also proportionate.
24. Furthermore, I have had due regard to the Public Sector Equality Duty (PSED) contained in s149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance

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<sup>5</sup> Appeal Ref: APP/M1710/X/20/3254206.

<sup>6</sup> Appeal Refs: APP/M1710/C/21/3275554 & APP/M1710/C/21/3275555.

equality of opportunity and foster good relations between people who share a relevant protected characteristic and people who do not share it. Having regard to the occupier's age and disability, they have protected characteristics for the purposes of the PSED. I have given careful consideration to and can empathise with the occupier's personal circumstances. However, it has not been shown that the occupier's accommodation needs cannot be met in another way, or that the harm caused could be overcome by imposing conditions. Given these circumstances, upholding the enforcement notice and refusing to grant planning permission for the building would be proportionate, and doing so is necessary to foster good relations in accordance with the PSED.

25. Therefore, the ground (a) appeal does not succeed.

### **Appeals A and B-Ground (f) appeals**

26. The ground of appeal is that the notice requirements are excessive.

27. By requiring the residential use to cease, together with removal of the building and all the resulting materials, the notice is clearly intended to remedy the breach by restoring the site to its condition before the breach took place.

28. As the building sustains the unauthorised residential use, retaining it or any materials arising from dismantling the building-which is clearly what is meant in step (iii), would not restore the site to its condition before the breach took place and so would not remedy the breach of planning control.

29. It follows that the requirements are not excessive having regard to the purpose of the notice and the ground (f) appeals fail.

### **Conclusions**

30. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application arising from Appeal A.

### **Formal Decisions**

31. Appeals A and B-it is directed that the enforcement notice be corrected by:

- Substitution of the plan attached to the enforcement notice by the plan attached to these decisions.
- Substitution of the words "edged red" by the words "edged black" in paragraph 2.
- Insertion of the word "of" between the words "use" and "the" in paragraph 5, step (i).
- Substitution of the words "cross-hatched black" by the words "shown marked with an X" in paragraph 5, step (ii).

Subject to the corrections the appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made in respect of Appeal A under section 177(5) of the 1990 Act.

*Stephen Hawkins*      INSPECTOR



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## Plan

This is the plan referred to in my decisions dated: 15<sup>th</sup> November 2021

**by Stephen Hawkins MA MRTPI**

**Land at: 10 Kings Hill, Beech, Alton GU34 4AL**

**References: APP/M1710/C/21/3275552 & APP/M1710/C/21/3275553**

**Scale: Not to scale**

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