



Appeal Decisions

Hearing held on 28 November 2024

Site visit made on 27 November 2024

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 6 December 2024

Appeal Ref: APP/L3815/C/23/3328981

The Rubbing House, Town Lane, Goodwood, CHICHESTER, PO18 0SP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Adrian Burrows against an enforcement notice issued by Chichester District Council.
 - The notice was issued on 26 July 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land to a use for recreational amenity storage.
 - The requirements of the notice are: i) Cease the recreational amenity and storage use of the land; ii) Remove the timber clad water bowser, the timber clad container buildings, the coffee van, motor vehicles, garden furniture, barrels, fire pit, party tent shelter, mobile toilet unit and horse trailer from the land; iii) Breakup the areas of hardstanding in the approximate location shown on the Plan and remove the resulting debris from the land; iv) Dismantle the brick gate pillars in the approximate location shown on the Plan and remove the resulting debris from the land; v) Remove the field gate in the approximate location shown on the Plan from the land; vi) On completion of (iv) and (v) above, close off the two access points by planting a line native hedgerow plants: and vii) Using the materials formed into a bund in the approximate location shown on the Plan, recontour the land to match the existing contours of the adjoining land and reseed the area affected with grass.
 - The period for compliance with the requirements is: 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) 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 section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected and varied by: the substitution of the plan annexed to this decision for the plan attached to the enforcement notice; the deletion of the words "*use for recreational amenity storage*" from the allegation and their substitution with the words "*mixed use for recreational, amenity, storage and commercial*": from the requirements: delete the words "*recreational amenity and storage use*" and replace them with "*recreational, amenity, storage and commercial use*" in requirement (i): add the words "*pizza van*" after "*coffee van*" in requirement (ii): and add the words "*where the coffee van was positioned*" between "*land*" and "*to match*" in requirement (vii) and by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.
2. Subject to the corrections and 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.

Applications for costs

3. A partial application for costs was made by the Council and is the subject of a separate decision.

Preliminary Matters

4. There was some doubt as to whether the appellant was making a hidden ground (c) but it was confirmed this was not the case.
5. The Council have an ongoing enforcement inquiry into the use of the Rubbing House, but no enforcement notice has been issued. The appellant's evidence for this hearing was that it was let for holiday purposes for 150 nights a year and for the remainder of the time was used by his family. That is the starting point for considering the ground (a).
6. The site is being used primarily in conjunction with the holiday let, but there are also a coffee van and pizza van on the land. The Council originally assumed the coffee van was only stored there, but it was clear from the representations that it was a fully-fledged commercial concern, selling coffee etc to people using the car park at the Trundle and to walkers. There was also a pizza van on the site and it was explained at the Hearing this too was available for any member of the public when it was open. Mr Burrows employed people to open the pizza van when convenient. Although this is mostly when it is required by people renting the house it could be at any time.
7. It was agreed I could correct the allegation to include these commercial uses and include their cessation and removal in the requirements. Both parties had an opportunity to discuss the merits and issues with their uses at the Hearing. It was also agreed the red line on the enforcement notice plan was incorrect as it went through the middle of a group of outbuildings and should have gone round them so they were excluded from the site.
8. The history of the site is important. The original Seven Points house burned down and several planning permissions were granted for a replacement dwelling. The most relevant being one in 1994¹ and another in 1996². The site plans handed in at the Hearing show considerable differences in the layout of the site. Originally it would seem there was not a formal access to the house but a series of chalk paths, one of which was used as a drive. A number of these paths still exist today and form the basis of an extensive network of rights of way that meet at the car park at the foot of the Trundle. In the 1994 plan the access was taken from one of the paths and looped through the neighbouring woodland (part of the appeal site) into the top (northern) part of the site for the new house. In 1996, the access was taken along a track that meets Town Lane at a small memorial and comes into the site for the house from the south.
9. It is the 1996 access that is in use today, but the 1994 access has also been opened up to provide another way into the appeal site. The appellant argues that as planning permission was granted for this in 1994 it is a lawful access.

¹ 94/01551/DOM

² 96/00355/FUL

Despite their claim that it is impossible to tell, now, what happened back in the 1990s, it is clear simply from the block plans that the 1996 plan was the one implemented and the Council further point out it was the 1996 conditions that were discharged. Consequently, the 1994 planning permission can no longer be implemented (the two houses are in more or less the same position) so the new access does not benefit from that planning permission.

10. Finally, there is the question of curtilage. Again the appellant argues it is uncertain exactly where the curtilage lies. The old Seven Points house may have had a much larger curtilage and in response to the new uses at the replacement house a new curtilage has been defined. They argue therefore the appeal site has a lawful residential use, whereas the Council say it is forestry.
11. Both parties were aware that curtilage and use are different concepts, although in domestic situations curtilage usually follows the area granted planning permission for the house and its garden. In the 1996 site plan the new house, access, garages and outbuildings along with an area of garden are shown separated of from the rest of the land owned by the appellant by a line labelled "domestic curtilage". This seems pretty clear to me. The rest of the land (effectively the current appeal site) is labelled "grassland", although a later aerial photograph, taken after the house was built, showed it to be a mix of open land and woodland, much as it is today. The evidence thus strongly suggests the residential planning permission that went with the Rubbing House was confined to the area around the house itself, currently in use as garden, and the appeal site lay outside this. The lawful use would therefore have been agricultural/forestry. No planning permissions have been granted since to turn the appeal site into residential land so it remains lawfully agricultural.
12. Curtilage is a more complex issue, but it is not just any area of land the appellant says. The various court cases concerning curtilage are clear that its essential characteristic is that it is intimately associated with dwelling and serves the purpose of the house in a necessary and useful way. The use of the house is predominantly domestic (as opposed to a holiday use) but the use of the land is mostly in connection with the holiday lets, and even then, only when required. While it may be handy to have a large area of woodland and clearings set out for parties adjacent to the gardens of the house that does not mean they are intimately associated. Indeed, the land is also partially associated with the car park and users of the wider rights of way network. In my view the appeal site is not within the curtilage of the Rubbing House. One issue that follows from this is that it does not benefit from any permitted development rights in terms of Class E garden buildings and so on.

The Appeal on Ground (a)

13. The site lies in the South Downs National Park to the west of Town Lane, which is a dead end for cars at the car park for the Trundle, opposite which lies the access to the Rubbing House. The house is set back from the Lane and is well screened by trees. The appeal site lies to the north of the access to the house and west of the lane. As noted above a new access has been created with brick gate pillars adjacent to an area that has been cleared for the coffee van and another new access opened up onto the land closer to the northern corner of the site. Thus as one approaches the car park for the Trundle down Town Lane there used to be a wooded area with a hedge along the lane, the only

opening was an inset with steps up to the memorial and further beyond that as the land curved away the end of the track that leads to the house. Now, there are double gates opening up into the top of the site with clear views into the site, where various structures and vehicles can be seen, followed by the memorial. The bank on the corner next to the memorial has been flattened to create a space for the coffee van which is stored there under a large cover, and operates from the same place when open. Immediately next to that is the new entrance with the gate pillars.

14. Within the site are a pair of shipping containers that are linked and used for storage associated with the use. They are clad in wood. Behind them is a pair of toilets that discharge into a septic tank. In front is the clearing used for gatherings with a fire pit, barrel seats and backed by the pizza van. Close to that is a horse box used for storage – it was full of logs when I saw it. A large water bowser stands in the northern corner, also clad in wood. Wide paths have been laid with gravel surfaces that snake through the site towards the house and garden. Some additional planting has also been made within the site.
15. The Trundle is a protected ancient monument that sits atop a hill to the east, about half a kilometre away and most of the land to the south and east is open downland that falls away next to the house and car park to provide striking views towards Chichester harbour. This is one of the reasons this is such a popular destination with walkers and tourists. Beyond the Trundle further east is Goodwood race course, with large grandstands and car parks, although this is invisible from the site, hidden by the hills and folds in the land. Goodwood house lies several kilometres further south and the motor racing circuit further beyond that. Both are invisible from the site, but all these elements associated with Goodwood have an impact on the wider locality.
16. Given the changes proposed to the notice, the ground (a) appeal is to retain the use of the coffee van and pizza van for sales off the site and to continue using the site for parties and gatherings, mostly, but not solely, associated with the holiday lettings at the Rubbing House. The main issues are the impact on dark skies, on bio-diversity, on the landscape and on tranquillity.
17. I do not need to go into the Dark Skies issue in great detail. It was agreed that there is lighting at the site, currently in the form of several strings of light bulbs. The Rubbing House itself has no conditions affecting external lighting and in that context low key lighting on the site would be acceptable and could be controlled by condition.
18. Similarly the question of bio-diversity turned on bats using the nearby Singleton and Cocking Tunnels SAC. The site lay within the SAC buffer zone, but given the size of the site it was highly unlikely that a bat survey would throw up anything so serious that it would call into doubt a grant of planning permission in the first place. So subject to a condition requiring a survey and appropriate mitigation measures there should not be a bio-diversity problem.

Landscape issues

19. Landscape is a different matter. Policy SD1 sets out the purposes of the National Park, firstly to conserve and enhance its natural beauty, wildlife and heritage and secondly to promote opportunities for understanding and enjoyment of its special qualities. If those two conflict, then the first takes

priority. It is in this overall context that any discussion of impacts and harm must take place. SD4 deals with landscape specifically and requires development to conserve and enhance landscape character.

20. I have described the surroundings above. This is an important part of the National Park, very well known locally for its wide ranging views and opportunities for walking. Consequently, the car park is often very busy. Essentially the appellant's argument was that the impacts of the use and various structures/vehicles associated with it were so minimal, that when seen in the context of the busy car park they caused no harm. The wider site was well screened by trees and further boundary planting could be provided. The coffee van was an appropriate facility, closely linked to the car park, both visually and psychologically, providing a popular facility to enhance users' enjoyment of the National Park.
21. I agree that when looked at individually, many of the items would not be harmful but taken together they do amount to a significant change to the character and appearance of the site. It has been opened up and there are views into it. Despite the cladding and planting, it is obvious from outside this is not a natural woodland, but a created venue for outdoor entertainment. As such it is not in accord with the policies described above. The coffee van is physically large, and shrouded in its winter protective cover stands out prominently. The new entrances and alterations to the boundary with Town Lane, especially the levelled area for the coffee van and the new brick pillars all look out of place. They are not associated with the Rubbing House, which is well screened to the west and where they are associated with the car park, they serve to extend its influence across the lane into the woodland.
22. I accept the car park may be busy, and when full of cars clearly has a greater impact on the landscape than the use before me, but that is not the point. The policies outlined above are quite clear and they are not to enable development simply because it is not as bad as something else nearby. Given there is already a car park here, in this particularly sensitive and busy part of the National Park, adding to the harm, with a new intrusive use simply makes things worse. This is contrary to SD1 and 4.
23. I agree that a coffee van would be a benefit to walkers and users of the car park but this is not the only location for it. I was informed that other car parks are served by mobile vans that turn up, park in the car park and then go home. This is much less disruptive than a permanent position on the opposite side of the road, where the land has been levelled and new fencing put up. It became clear at the hearing the pizza van would also be used by the public, as indeed could the toilets. While this use is sporadic it is also not what would be expected at such a location. I disagree with the appellants that no-one would be attracted here just for a pizza. I would have thought driving up for an evening pizza and a walk up to the Trundle could become very popular. But even if this is not the case there is a considerable difference between a car park in the National Park and a car park with a nearby coffee van, pizza van and toilet facilities. I don't think either a coffee or pizza van are required to promote opportunities for understanding and enjoyment of the National Park's special qualities, but even if they were they would conflict with the first principle of conserving the National Park's natural beauty.

Tranquillity issues

24. The National Park has a detailed tranquillity policy based on the 2017 Tranquillity Study. The site lies in an area of intermediate to high tranquillity. In other words it is not as tranquil as some places in the heart of the National Park but is on the edge of being so. One reason for this is that the study takes into account all the existing factors, including the impact of Goodwood racecourse. Policy SD7 deals with tranquillity and says proposals will only be allowed where they "*conserve and enhance relative tranquillity*". The policy goes on to reinforce this for areas of high or intermediate tranquillity where proposals should in addition "*not cause harm to relative tranquillity*".
25. I agree that this is often a busy area, the car park can be busy and when there are events at the racecourse hundreds if not thousands of people converge on the area, although mostly to the east of the Trundle and these events would not be likely to directly affect the appeal site. Nevertheless the policy has already taken these into account and even given this sporadic intrusion relative tranquillity should not be harmed. The policy defines tranquillity as not just noise, but it is a rather more embracing concept "*a state of calm, quietude and is associated with a feeling of place.....it is a perceptual quality of the landscape and influenced by things people can both see and hear...*". The perceptual quality of the landscape for me is open downland with sweeping views and pockets of woodland. Apart from the occasional car movement it is quiet and calm. There is a car park, and somewhat hidden in the trees a large house. It does not include a food and drink outlet nor an outdoor party venue. Even if controlled by conditions (and none were suggested to limit the intensity of the use) the use would not conserve the relative tranquillity. The impact does not have to be great as even a small or intermittent impact is contrary to SD7.

Other issues

26. The Council were also concerned about the impact on the setting of the ancient monument on top of the Trundle. This hill fort is some way from the site. The woodland is visible from the Trundle but at that distance even the coffee van is inconspicuous. I do not think the setting of the monument is affected by the uses at the site.
27. A number of decision letters were provided by the appellant, but none are directly relevant. Each decision turns on its own facts. None of the decision letters set a binding precedent and I have set out above why in this case planning permission should not be granted.

The Appeal on Ground (f)

28. This ground is that the matters required are excessive. The appellant's arguments that the structures on the site are not harmful when considered individually is actually a ground (a) argument that I have dealt with above. I think it was accepted at the Hearing that if I found against the appellant on ground (a) then requiring the use to cease and the structures associated with it, the storage, toilets, horse box, furniture, barrels, fire pit, coffee and pizza van etc would have to go.
29. The hardstanding weaves through the site and I think is more or less confined to the area outlined in brown on the enforcement notice plan, albeit not the entire area. Given the lawful use of the land is agriculture then the paths and hardstanding clearings must facilitate the unlawful use and so need to be

removed. The brick pillars are not permitted development, they do not relate any agricultural or forestry use and are not seen in the context of the house but are associated with the unlawful use and also need to be removed. The access points should be closed up as I have identified the harm they cause.

30. There is a small bund on the northern boundary of the site. While I do not find this to be objectionable in itself, the part of the site that was excavated for the coffee van does need filling in (or recontouring) and this would be where the material for that operation would be found. It is not entirely clear what recontouring is required from the requirements alone, but the plan shows the coffee van area and labels it "to be recontoured". So I think it not difficult to work it out. I shall add to requirement (vii) to make it clear.

Conclusion

- 31.** The uses that are or would take place are contrary to policies SD1, 4 and 7 of the South Downs Local Plan. The harm I have identified cannot be mitigated by conditions and the appeal on ground (a) should fail. It follows that to return the site to its lawful use, agriculture or forestry, the structures and items associated with the unlawful use should be removed and the ground (f) appeal fails. Subject to the various corrections and variations I have identified I shall uphold the notice, dismiss the appeal and refuse planning permission on the deemed application.

Simon Hand

INSPECTOR



Plan

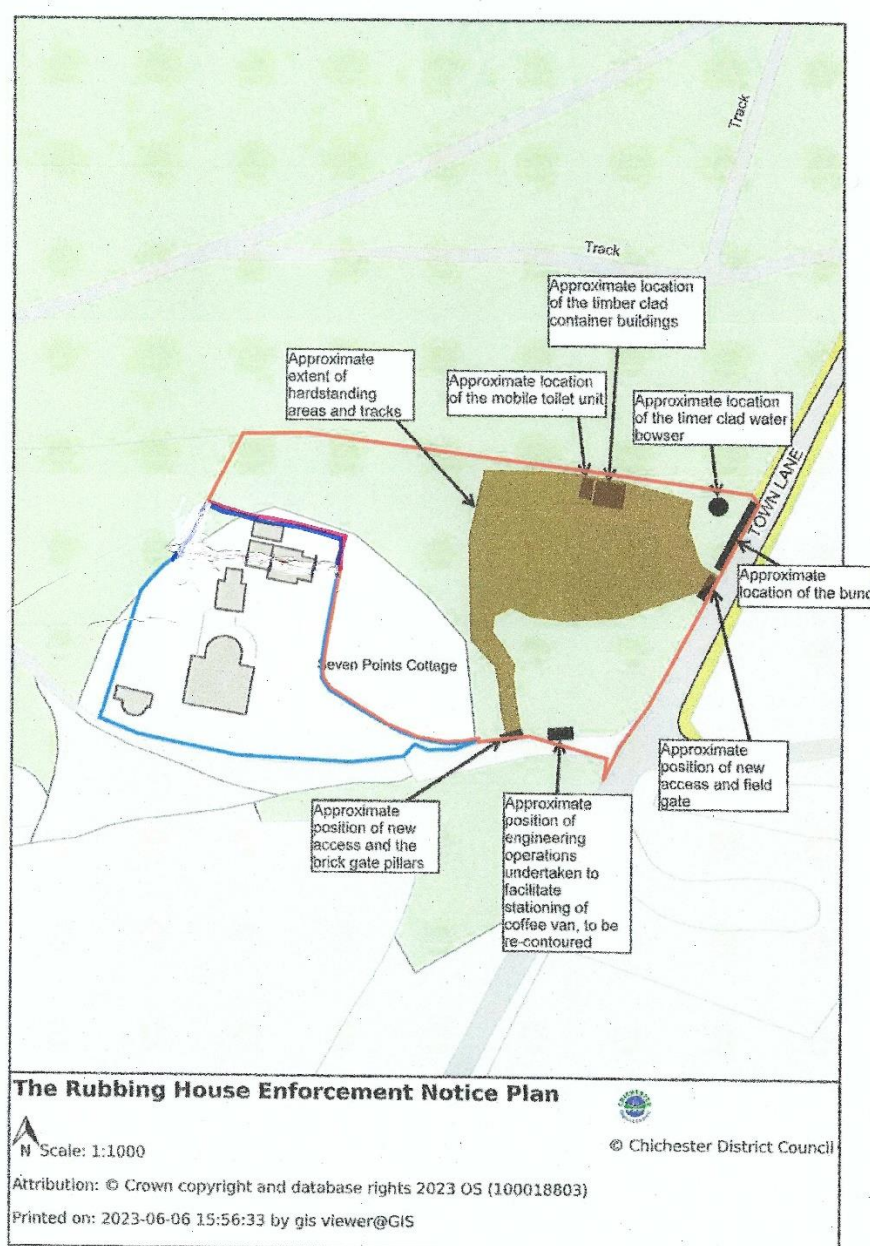
This is the plan referred to in the decision above

by **Simon Hand**

Land at: The Rubbing House, Town Lane, Goodwood, CHICHESTER, PO18 0SP

Reference: APP/L3815/C/23/3328981

Scale: Not to Scale



APPEARANCES

FOR THE APPELLANT:

Ollie Haydan	Stantec
Robin Shepherd	Stantec
Adrian Burrows	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Shona Archer
Michael Coates-Evans

DOCUMENTS

1. 1994 site plan
2. 1996 site plan
3. aerial photograph of site after house built

PLANS

PHOTOGRAPHS