

**TOWN AND COUNTRY PLANNING
ACT 1990 (AS AMENDED)**

**STATEMENT OF
HAVANT BOROUGH COUNCIL**

**Land adj Mandai
St Peters Road
Hayling Island
PO11 0RT**

**Local Planning Authority Reference:-18/00207/
Planning Inspectorate Reference:-
APP/X1735/W/18/3214079**



APPEAL BY Mr Stanley AGAINST REF Use of Land for touring holiday/tourism caravan site and erection of utility block (Resubmission). AT Land adj Mandai, St Peters Road, Hayling Island, PO11 0RT

Planning Inspectorate Reference:APP/X1735/W/18/3214079

LPA Ref:18/00207/

1.0 THE APPEAL SITE AND ITS SURROUNDINGS

- 1.1 The site is located to the south of the residential curtilage of the dwellinghouse known as Mandai. Mandai is one of a linear form of residential properties, made up of detached dwellings, to the north of the site. To the west and south of the appeal site are open agricultural fields. St Peters Road runs along the eastern boundary of the site, beyond which is additional agricultural land.
- 1.2 The site is enclosed by mature planting to all boundaries, with the addition of timber fencing between the boundary of Mandai and the application site. The site also benefits from vehicular access onto St Peters Road in the south-east corner of the site.
- 1.3 The site has recently had two touring caravans on the site, one towards the front boundary of the site and the second more centrally positioned. In addition to the touring caravans there is a Wendy house, used for play, an enclosed hot tub, a timber shed like structure containing a shower, toilet and washing machine, a storage container with building equipment inside to the far west of the site, a white van, electric connection, decked area in front of the central caravan and additional hardstandings.
- 1.4 The site is located outside of the settlement boundary within a rural setting, and is within the defined 'Non-Urban' area, as defined by the Havant Borough Local Plan (Allocations) 2014. The site is within Flood Zone 1, although the access and adjoining road fall within Flood Zones 2 and 3.

2.0 PLANNING HISTORY

- 2.1 APP/17/00942 - Use of land for touring caravan site and alteration of access. Application withdrawn 30/01/2018.
- 2.2 APP/14/00999 Application for lawful development certificate relating to existing use of land as leisure plot. Refused 21 January 2015 – No appeal lodged.
- 2.3 05/60059/000 Outline application for construction of a chalet bungalow with/without shared access - Refused 24 May 2005.

Appeal Dismissed – 02 March 2006 – APP/X1735/A/05/1192877
High Court Challenge – Withdrawn – 11/07/2006.

- 2.4 Enforcement History
13/00262/CMP Alleged unauthorised use of land.

Following an enforcement investigation, a Planning Enforcement notice was served in respect of the site on 27 May 2016, which was appealed and was the subject of a Public Inquiry.

The matters which appeared to constitute the breach of planning control were, within the last 10 years, the change of use of the Land to use as a leisure plot with ancillary development. In addition to the unauthorised development the following ancillary items were on the land in breach of planning control:

- (a) The siting and use of two caravans
- (b) The parking and storing of vehicles on site

(c) The siting of a storage container

(d) Associated ancillary development including CCTV installation, hardstandings, decking, patios, siting of hot tub, siting of timber shed, chimenea and skips, kerbing and play house.

2.5 The requirements of the notice were to:

1. Permanently cease the use of the Land as a leisure plot.
2. Permanently remove all vehicles parked and stored on the Land.
3. Permanently remove boat and trailer parked and stored on the Land.
4. Permanently remove the storage container from the Land
5. Permanently remove the caravans from the Land
6. Permanently remove all associated development and paraphernalia from the Land, including CCTV installation, hardstanding and patios, hot tub, timber sheds, decking, chimenea, skips, bench, picnic table, kerbing and playhouse.
7. Re-instate the Land to its original undeveloped condition prior to the breach of planning control.

2.6 The time period for compliance with the notice was for 3 months from the date it took effect.

2.7 The notice would have taken effect on 1st July 2016, but was held in abeyance pending the outcome of the appeal.

2.8 The appeal was made on three grounds; (d), (f) and (g). Ground (d) that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. Ground (f) that the steps required to comply with the requirements of the notice were excessive, and lesser steps would overcome the objections. Ground (g) that the time given to comply with the notice was too short. It is important to note that the grounds of appeal did not include ground (a), which refers to an opinion that planning permission should be granted for the proposal. As such the Inspector did not consider whether Planning Permission should have been granted, and only considered those matters contained under grounds (d), (f) and (g).

2.9 The appeal was dismissed, with the Enforcement Notice Varied and upheld, on 2 May 2017, for the following reasons:

Ground (d) – that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. The Inspector did not consider that the appellant had proven on the balance of probability that no material change of use requiring planning permission had occurred since 23 September 2004. The evidence indicates that a material change of use occurred in or around 2009/2010 from use as a garden detached from a dwelling to use as a leisure plot with ancillary development. As this represents development for which planning permission is required, the current use of the land is unauthorised. The appeal on ground (g) therefore was dismissed.

Ground (f) - An appeal on this ground is that the steps exceed what is necessary to remedy the breach of planning control. The Inspector concluded that the requirements did not exceed what was necessary to remedy the breach of planning control and did not preclude the appellant doing what he is lawfully entitled to do in the future once the notice has been complied with.

Ground (g) - An appeal on this ground is that the compliance period is too short. The Inspector outlined that the three-month compliance period specified in the notice would place the appellant in some difficulty bearing in mind his personal circumstances. Instead, the Inspector considered a compliance period of 6 months to be more appropriate and varied the compliance period of the notice to this effect.

As such the requirements of the Enforcement Notice should have been complied with by 2 November 2017.

3.0 **THE APPLICATION**

3.1 The application is for the Use of Land for touring holiday/tourism caravan site and erection of utility block. The application proposes that the number of pitches would be restricted to three, with it being anticipated that those using the site would stay for 1 or 2 weeks, using the site as a base to explore the local area.

3.2 The proposal would be utilising some of the existing hardstandings for the caravans, which would be restricted to concrete strips to form a hard surface under the wheels, while retaining the rural

appearance of the site.

- 3.3 The site already has electricity and water supplies. Toilet and shower facilities would be provided near the entrance in the form of a small building. These would be connected to the main sewer, in order to ensure that the site is appropriately drained. The application outlines that no additional facilities to be brought on to the site

4.0 **PLANNING POLICIES**

National Planning Policy Framework 2018

Havant Borough Local Plan (Core Strategy) March 2011

CS11 (Protecting and Enhancing the Special Environment and Heritage of Havant Borough)

CS16 (High Quality Design)

CS17 (Concentration and Distribution of Development within the Urban Areas)

CS20 (Transport and Access Strategy)

CS5 (Tourism)

DM11 (Planning for More Sustainable Travel)

DM12 (Mitigating the Impacts of Travel)

DM14 (Car and Cycle Parking on Development (excluding residential))

DM8 (Conservation, Protection and Enhancement of Existing Natural Features)

Havant Borough Local Plan (Allocations) July 2014

AL1 (Presumption in Favour of Sustainable Development)

AL2 (Urban Area Boundaries and Undeveloped Gaps between Settlements)

5.0 **PLANNING CONSIDERATIONS**

- 5.1 Planning permission was refused for the proposed development by the Local Planning Authority's (LPA) Development Management Committee contrary to the officer's recommendation. Whilst noting the applicant's frustration that members did not accept the officer's recommendation, nevertheless, the Committee is entitled to go against the advice of its officers and reach its own judgement in relation to planning considerations. The reason for refusal is:

The proposal represents the undesirable addition of a touring holiday/tourism caravan site in a non-urban area, for which there is no overriding justification, and which would adversely affect the character and appearance of the countryside. It is therefore contrary to policies CS9 and CS17 of the Havant Borough Local Plan (Core Strategy) 2011, policy AL2 of the Havant Borough Publication Local Plan (Allocations) and the National Planning Policy Framework 2012.

- 5.2 As was highlighted in previous correspondence the Local Planning Authority acknowledge that the reference to policy CS9 in the reason for refusal was an error, as it is clear from the description of development that this proposal is not a housing application, but relates to the Use of Land for touring holiday/tourism caravan site. The relevant policies that the Decision Notice should have referred to are policies CS5 – Tourism and CS16 - High Quality Design, as the reason for refusal refers to the proposal adversely affecting the character and appearance of the countryside. The Local Planning Authority have already attached these policies, which are **Policy CS5 – tourism and policy CS16 – High quality design** for the Inspectors attention and information.
- 5.3 In addition, the Local Planning Authority recognises that the reason for Refusal should have referred to the National Planning Policy Framework 2018, rather than the 2012 version. However, the LPA contend that the focus and thrust of the NPPF to protect the intrinsic value of rural areas remains.
- 5.4 The application site occupies an important position within the landscape context. When approaching Northney from the south, the site serves as a transition between the open countryside and the built form of the village. Policy AL2 and Policy CS17 of the adopted Local Plan seek to concentrate development in the defined urban area. The application site lies outside the urban area and would therefore be contrary to these policies, unless there is an overriding need for it to be located within

the countryside. Whilst the site is adjacent to an area of housing, the site has far more in common with the surrounding countryside than the built environment. It is clearly separated from the adjoining house, Mandai, by mature hedging, whilst there are open fields to the south, west and east.

- 5.5 It is considered that the proposed development of this site marks a significant change to the existing characteristics of St Peters Road, introducing a much more intensely developed built form that is distinct from the prevailing character of the area and does not achieve an effective transition between the respective patterns of development surrounding the site on this highly visible plot.
- 5.6 The site and proposed location of the touring caravans and toilet block would sit directly behind the close boarded fence on the boundary with St Peters Road, and would be glimpsed in views between the trees in front of that fence. There would as a result of the change of use to tourism result in paraphernalia associated with a domestic environment, including flower beds, refuse bins, close-boarded fencing, car parking spaces and the proposed toilet block. The character and appearance of this area would change from the generally open area at present to a character that was essentially sub-urban, in which the touring caravans would be closely spaced and with the attendant paraphernalia associated with a domestic cluttered environment.
- 5.7 Whilst only glimpsed views are possible from the road, by virtue of the boundary treatment, consisting of trees on the southern boundary and the close-boarded fence in front of the site. Nevertheless, even in these glimpsed views the generally open character is readily apparent. The transition between rural and built form when approaching from the south would be apparent. This would be significantly harmful to the generally open character of the countryside.
- 5.8 Moreover, should the line of trees die or be removed on the southern boundary, the change in the character of the area would be even more apparent. The Local Planning Authority considered whether this could be mitigated by additional landscaping, but it would not be appropriate to rely on landscaping to screen a development that would itself be intrinsically harmful to the character of the area, as outlined above, should the landscaping fail to take hold or subsequently die back.
- 5.9 On the above basis it is considered that the proposed development would result in the introduction of paraphernalia, in the form of with a domestic environment and associated human activity including vehicle movements and the proposed toilet block. It is therefore considered that the proposal by virtue of its size, scale, layout and associated camping paraphernalia would have a significant adverse impact on the appearance and landscape characteristics, within this open rural landscape and would therefore has no overriding justification for this location. The harm that would be caused to the character and appearance of the area would outweigh the benefits of providing touring caravan site. In conclusion on this issue the proposal would unacceptably harm the character and appearance of the area.

7.0 COMMENTS ON THE GROUNDS OF APPEAL

- 7.1 The appellant highlights in paragraph 5.30 of their statement about the existing use of the site. However, in the previous appeal (APP/X1735/C/16/3153416) the Inspector concluded in paragraph 33, that an unauthorised change of use of the land had occurred. As such given the previous unauthorised use of this land, the appellant cannot rely on this to justify the proposed development within this application. This appeal decision is attached at

8.0 CONCLUSIONS

- 8.1 It is considered that the proposed development would result in the introduction of paraphernalia, in the form of with a domestic environment and associated human activity including vehicle movements and the proposed toilet block. It is therefore considered that the proposal by virtue of its size, scale, layout and associated camping paraphernalia would have a significant adverse impact on the appearance and landscape characteristics, within this open rural landscape and would therefore has no overriding justification for this location. The harm that would be caused to the character and appearance of the area would outweigh the benefits of providing a touring caravan site. In conclusion on this issue the proposal would unacceptably harm the character and appearance of the area. As such the proposed development is considered to be contrary to the NPPF and policies CS5, CS16 and CS17 of the Havant Borough Local Plan (Core Strategy) 2011 and policy AL2 of the Havant Borough Publication Local Plan (Allocations).

APPENDICES

Appendix A Borough Map and Location Plan

Appendix B Suggested Conditions

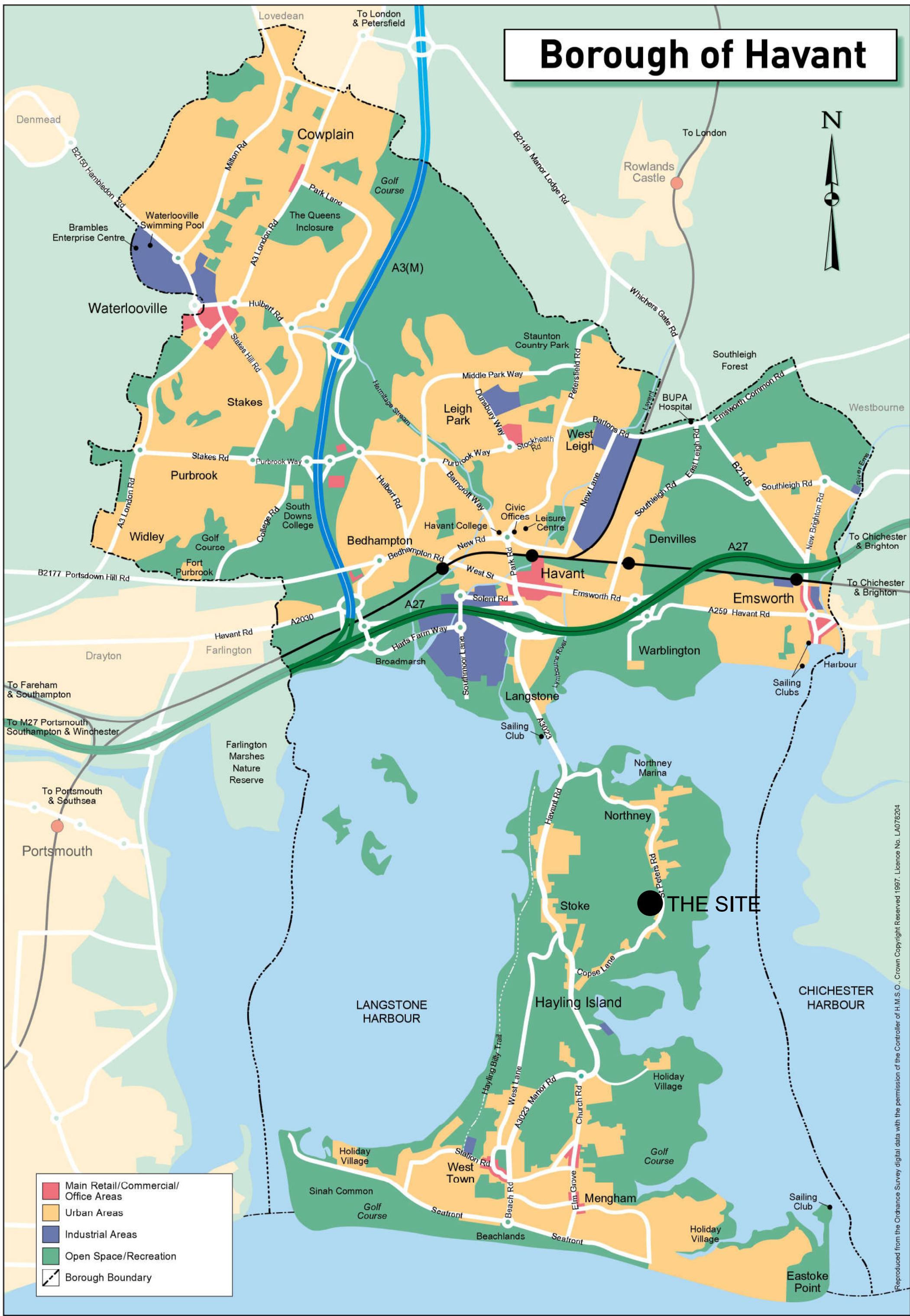
Appendix C Appeal Decision - Appeal Ref: APP/X1735/C/16/3153416

APPENDIX A

**APPEAL – Land adj Mandai
St Peters Road
Hayling Island
PO11 0RT**

**LPA REF:-18/00207/
Planning Inspectorate Reference:-
APP/X1735/W/18/3214079**

Borough of Havant



- Main Retail/Commercial/Office Areas
- Urban Areas
- Industrial Areas
- Open Space/Recreation
- Borough Boundary



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Land adj Mandai, St Peters Road, Hayling Island, PO11 0RT

Havant
BOROUGH COUNCIL

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**TOWN AND COUNTRY PLANNING
ACT 1990 (AS AMENDED)**

APPENDIX B

**LOCAL PLANNING AUTHORITIES SUGGESTED
CONDITIONS**

**Local Planning Authority Reference:-18/00207/
Planning Inspectorate Reference:-
APP/X1735/W/18/3214079**



APPEAL BY Mr Stanley AGAINST REF Use of Land for touring holiday/tourism caravan site and erection of utility block (Resubmission). AT Land adj Mandai, St Peters Road, Hayling Island, PO11 0RT

Planning Inspectorate Reference: APP/X1735/W/18/3214079

LPA Ref:18/00207/

SUGGESTED CONDITIONS

1 The development must be begun not later than three years beginning with the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2 The development hereby permitted shall be carried out in accordance with the following approved plans and details:

PROPOSED BLOCK PLAN HAYLING 02

SITE PLAN - HAYLING 03

LOCATION MAP - HAYLING 04

Proposed elevations of utility block HAYLING 05

Flood Risk Assessment dated 21 December 2017

Transport Statement

Ecological Assessment of Impacts on Brent Geese Report - January 2018

Design and access statement, which includes the management plan of the site (Paragraphs 5.25 – 5.27)

Reason: - To ensure provision of a satisfactory development.

3 The holiday touring caravans shall be occupied for holiday purposes only and shall not be occupied as a person's sole or main place of residence. The operators shall maintain an up-to-date register of the names of all owners of caravans on the site and of their main home addresses and shall make this information available at all reasonable times to the Local Planning Authority.

Reason: To ensure that control over the development and that the caravans do not become separate residential dwellings in accordance with policy DM4 of the Havant Borough Local Plan (Core Strategy) 2011 and NPPF.

4 There shall be no more than 3 touring caravans (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968) stationed on the site at any time,

Reason: To ensure that control over the development and that level of development on the site, given its sensitive location in accordance with policies DM4, DM8 of the Havant Borough Local Plan (Core Strategy) 2011 and policies AL1 and AL2 of the Havant Borough Local Plan (Allocations) 2014.

5 No development shall take place until a Site Development Scheme has been submitted to and approved in writing by the Local Planning Authority. Notwithstanding the details shown on any of the previously submitted plans, the Site Development Scheme shall include details of:

- (a) the positioning of the proposed touring caravans;
- (b) all boundary treatments;
- (c) all parking and hardstanding areas;
- (d) all external lighting;
- (e) any proposed new landscaping, planting, seeding or turfing;
- (f) the proposed means of foul water disposal; and

(g) a timetable for the implementation of the above works.

The approved Scheme shall have been carried out in full, and completed in accordance with the approved timetable, unless otherwise agreed in writing by the Local Planning Authority. Following the implementation of the approved Site Development Scheme specified in this condition, the works thus carried out shall thereafter be retained and maintained, and shall remain in use throughout the lifetime of the development.

Reason: To achieve an appropriate landscaping scheme to integrate the development into the landscape and mitigate any impact upon the amenities of neighbouring properties, in accordance with policies CS12 and CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the NPPF.

6 Details of external lighting to be installed at the site shall be submitted to, and approved in writing by the Local Planning Authority prior to the commencement of the development. The lighting shall be installed, maintained and operated in accordance with the approved details unless otherwise approved in writing by the Local Planning Authority.

Reason: To protect the amenity of future residents, create an appropriate public realm, and conserve the character of the area in accordance with policies CS12 and CS16 of the Havant Borough Local Plan (Core Strategy) 2011, and the NPPF.

7 Development shall proceed in accordance with the ecological mitigation measures detailed within the Ecological Assessment of Impacts on Brent Geese Report (HES, January 2018) unless otherwise agreed in writing by the Local Planning Authority. All avoidance and mitigation features shall be permanently retained and maintained in accordance with the agreed details

Reason: To protect biodiversity in accordance with the Conservation Regulations 2010, Wildlife & Countryside Act 1981, the NERC Act (2006), NPPF and Policy CS 11 of the Havant Borough Local Plan (Core Strategy) 2011, in order to provide ecological protection and enhancement in accordance with the Wildlife & Countryside Act 1981, NERC Act 2006, NPPF, Policies DM23 and DM24, CS21 of the Havant Borough Local Plan (Allocations) 2014, and the NPPF.

8 Prior to the occupation of any relevant part of the permitted development, a Flood Warning and Evacuation Plan to ensure the safety of residents/occupiers in the event of a flood or tidal occurrence shall be submitted to and approved in writing by the Local Planning Authority. The Flood Warning and Evacuation Plan shall be implemented in accordance with the approved details.

Reason: To ensure the safe evacuation of residents in accordance with Section 9 of the Planning Practice Guidance to the National Planning Policy Framework (NPPF) for Flood Risk and Coastal Change and Policy CS15 Flood and Coastal Erosion Risk of the Havant Borough Local Plan (Core Strategy) 2011.

9 Prior to the commencement of development, details including methods of protection in order to protect the public sewer which runs across the site shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.

Reason: To ensure adequate provision for drainage in accordance with the NPPF and in accordance with policy CS15 of the Havant Borough Local Plan (Core Strategy) 2011

**TOWN AND COUNTRY PLANNING
ACT 1990 (AS AMENDED)**

APPENDIX C

**APPEAL DECISION – APPEAL REF:
APP/X1735/X/16/3153416**

**Local Planning Authority Reference:-18/00207/
Planning Inspectorate Reference:-
APP/X1735/W/18/3214079**



Appeal Decision

Inquiry held on 25 April 2017

Site visit made on 25 April 2017

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 02 May 2017

Appeal Ref: APP/X1735/C/16/3153416

Land south of Mandai, St Peter's Road, Hayling Island, Hampshire, PO11 0RT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Laurence Stanley against an enforcement notice issued by Havant Borough Council.
 - The enforcement notice, numbered APP/14/01182, was issued on 27 May 2016.
 - The breach of planning control as alleged in the notice is without planning permission and within the last ten years, change of use of the land to use as a leisure plot with ancillary development.
 - The requirements of the notice are:
 - 1 Permanently cease the use of the land as a leisure plot.
 - 2 Permanently remove all vehicles parked and stored on the land.
 - 3 Permanently remove boat and trailer parked and stored on the land.
 - 4 Permanently remove the storage container from the land.
 - 5 Permanently remove the caravans from the land.
 - 6 Permanently remove all associated development and paraphernalia from the land, including CCTV installation, hardstanding and patios, hot tub, timber sheds, decking, chiminea, skips, bench, picnic table, kerbing and playhouse.
 - 7 Re-instate the land to its original undeveloped condition prior to the breach of planning control.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
 - **Summary of Decision: Notice varied and upheld**
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Procedural Matters

1. A Statement of Common Ground was provided prior to the commencement of the appeal.
2. All evidence was given under oath.

The Notice

3. The parties agree that the relevant date in view of the second bite provisions of s171B (4) (b) is 10 years before the date of the first notice which was 23 September 2014, and not 10 years before the date of the notice the subject of this appeal.
 4. The appellant asserts that the notice is invalid as it cannot be corrected without injustice. It is claimed that the notice fails to specify what the alleged
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unauthorised use has been changed from and specifies steps not related to the allegation but related to other uses of land. On the basis of the specified steps it is asserted that the proper use of the land is not as a sole leisure plot. Steps cannot be taken in relation to alleged breaches consisting of parking or storage related matters and there is a failure to specify the use of the land for the siting of caravans or the purpose to which those caravans are said to be put since these are not identified as matters constituting a breach. Step 6 fails to specify what use(s) the 'associated development' relates to and there is no way of identifying whether they relate to any of the matters for which steps are required but which do not constitute the breach alleged. Step 7 requires removal of all development irrespective of whether it is within the matter described in the breach or not. It goes beyond addressing matters which relate only to the breach alleged, since it requires the return of the land to an undeveloped state.

5. The appellant claims that the description of the breach and the steps required are so poor they cannot be corrected without causing injustice. The steps cannot simply be deleted since that leaves the appellant in an uncertain position as to what matters might be left on site or not in compliance with the notice. The appellant would be in jeopardy of prosecution, injunction and/or direct action that comes with material non-compliance in the view of the Council and exposed to a 'second round' of enforcement action in an attempt to cover matters simply deleted from the current notice.
6. It is established that a notice must seek to enforce solely by reference to the alleged breach¹. I consider that the allegation is clear in referring to a change of use of the land to use as a leisure plot, with ancillary development. The ancillary development provides a means for the appellant to enjoy the leisure use of the plot and the ancillary development is part and parcel of that use. It is not necessary for a notice to recite the previous use of the land² although it would have been helpful had it done so. The wording of the notice is sound and does not require correction.
7. S173(3) provides that a notice should set out the steps which the LPA requires to be taken or the activities which they require to cease. In this case step 1 requires the leisure use to cease and steps 2-6 require the removal of vehicles, caravans, a boat/trailer, a storage container and the various structures and associated paraphernalia from the land. These steps could not be more clear or unambiguous as to what is required and discloses exactly what the Council is seeking to achieve.
8. Step 7 specifies 'Re-instate the land to its original undeveloped condition prior to the breach of planning control'. A notice cannot go beyond requiring the restoration of the land to its condition before the breach took place. Whether the land was in an undeveloped condition before the breach is unlikely in view of the evidence before me as the land appeared to have been used for a period of time as a garden detached from a dwelling. Accordingly, I intend to vary step 7 of the notice by rewording it to 'Re-instate the land to its condition prior to the breach of planning control'.
9. Other than in respect of step 7, I am satisfied the steps are adequately drafted and relate to the allegation. There is therefore no need for the wording of the

¹ Encyclopaedia of Planning Law P173.07

² Westminster CC v SSE and Aboro [1983] JPL 602

allegation to be widened to embrace other uses purported by the appellant to be reflected in the wording of the steps. I have had regard to the Hickmet case cited by the appellant (Document 2) where it was established that the two concepts of parking and storage are distinct and mutually exclusive. However the facts of that case can be readily distinguished from those of the current case.

10. As it is not my intention to correct the wording of the notice or delete certain steps I do not accept that the appellant would suffer any prejudice. I am satisfied that under s176 the variation of step 7 would not cause injustice to the appellant as he is the person most knowledgeable about the state of the land prior to the breach taking place.

The appeal property

11. The appeal site is a rectangular plot of land in open countryside adjacent to a residential property known as 'Mandai' which is at the end of a number of residential properties on St Peters Road. The plot equates to the planning unit.
12. At my site inspection I observed that the site contained a number of structures and other items including a container set behind a timber screen on its long side within which were stored tools and equipment; 4 small skips, a rough area of ground containing rubble and earth; a substantial shredding machine; a well-tended lawn; a timber play house; a touring caravan with decking to its front; a structure containing a hot tub; a pool table; an arbour with seating; a structure containing services; a Peugeot motorhome between a raised area and the roadside hedge; a building containing a washing machine, a drier, WC, shower and drinks cooler and various domestic items; an above-ground foul water storage tank; together with paraphernalia associated with the leisure use such as a chiminea and picnic bench.
13. Vehicular access is from St Peters Road with gates set back from the highway giving way to a gravel drive to a second set of gates and a concrete hardstanding, beyond which is a third set of gates and a boat and a trailer. The site is fenced in part and hedged elsewhere.
14. The site was largely as depicted in the photographs in Appendix 8 attached to Mr Andrews proof on behalf of the Council.

Relevant planning history

15. An appeal was dismissed in March 2006 for outline planning permission for the construction of a chalet bungalow (APP/X1735/A/05/1192877).
16. A Planning Contravention Notice was completed by the appellant in May 2014.
17. The first enforcement notice dated 23 September 2014 was withdrawn by the Council at a public inquiry due to inadequacies in the requirements of the notice (APP/X1735/C/14/22267020).
18. A second notice was withdrawn before coming into effect due to inadequacies in the requirements of the notice.
19. A Lawful Development Certificate relating to use of the land as a leisure plot was refused in January 2015.
20. The third notice is the subject of this appeal.

The appeal on ground (d)

21. An appeal on this ground is that it is too late for enforcement action to be taken. The onus of proof rests with the appellant and the standard of proof is on the balance of probabilities.
22. The appellant states that there has been no material change of use of the site as it has been in a leisure use by the family and by the previous owner, a Mrs Cunningham, for many years. The site has been separated from Mandai since 1983 and there is mature vegetation separating the two properties.
23. In evidence, Mr McGowan confirmed he had managed the garden for Mrs Cunningham who lived away from the site and that that she used the plot as a garden and to enjoy wildlife. The old caravan had been used by Mrs Cunningham as a potting shed/tool store and for making tea and this use continued under the appellant when he acquired the property in September 2004. The appellant used it for occasional overnight accommodation and replaced the caravan on three occasions since 2004. The plot has been enjoyed by him and his family for leisure purposes since acquiring it, using the caravan as accommodation generally for weekend stays. There had also been a greenhouse on the land when the appellant purchased the plot but this has subsequently been removed.
24. The 2005 aerial photograph (Document 3) provides no conclusive evidence of a leisure plot, only a caravan and what appears to be the markings of a bonfire. Apart from these the site appears grass covered. I also note that correspondence in 2005 refers to the land as garden land³ and that in the 2005 planning application and subsequent appeal⁴ the appellant, the Council and Inspector at no time refer to the site as a leisure plot. The Inspector's view was that the site 'has more in common with the countryside' although no reference was made to a caravan on the site. Although the decision provides no clear indication on the use of the site at that time, in my experience any obvious use of the site would normally be referred to in an Inspector's decision, but such an omission is insufficient to identify the use of the land one way or the other.
25. The appellant's planning witness, Mr Oliver, makes no distinction in planning terms between the use of the land as a garden detached from a dwelling and use as a leisure plot. However I note that the 3rd Edition of the Land Use Gazetteer attached as Appendix 20 to Mr Andrew's evidence identifies such uses separately as *sui generis* uses. In cross examination Mr Andrews was unable to distinguish between specific characteristics of such uses but relied on it being a matter of planning judgement based on the facts. He stated that he has had regard to the cumulative totality of the activities and developments on the site. As there is no planning definition of a garden or a leisure plot, Mr Andrew has referred to the Oxford English Dictionary definition of a garden being '..the growing of plants, fruit and vegetables..'
26. Whilst I agree with the appellant's point that many of the activities carried out in a garden could also be carried out on a leisure plot, such as the activity of gardening, it is clear to me that in this case, in planning terms, there is a material difference between the use of land as a garden detached from a dwelling and its use as a leisure plot. It is probable that for the first few years

³ Appendix 10 of Mr Andrews' evidence

⁴ Appendices 10, 11, 14 and 15 of Mr Andrews' evidence

of the appellant's ownership of the plot no material change of use occurred in that any leisure use would have been *de minimis* but sometime around 2009/2010 the nature of the use changed to the extent that it became a material change of use.

27. In 2008 Council officers visited the site on 2 occasions but they were only concerned about works to the access track. The appellant states that the storage container was brought onto the site in the summer of 2009, the hot tub in 2009 and a timber shed in 2010. The hardstanding was laid around 2009 and the decking installed in 2013. These changes support the leisure use of the plot, rather than use as a detached garden as, in my view, facilities such as for showering, clothes washing and drying would not normally be expected to be found in a detached garden, nor would the provision of services such as electricity, a broadband connection and to some extent a flushing toilet and waste management facilities, or for people (albeit family members) staying overnight in a caravan and a motorhome with regularity. All this leads me to conclude that a material change of use has occurred.
28. In *Shephard and Love v SSE and Ashford BC [1992] JPL 827* (Document 5) it was held that there is no category of land use known as leisure activities, therefore a change from one leisure activity to another was capable of constituting a material change of use.
29. Although there were a few small discrepancies between the appellant's witnesses, I attach little weight to these and I am satisfied that the witnesses gave evidence as accurately as their memories recalled. I accept that in response to question 5 of the Planning Contravention Notice of May 2014, Mr Stanley misunderstood the question and only provided answers in respect of the site relating to his ownership.
30. In respect of the absence of the caravan on the 2008 aerial photograph (Document 3), it is plausible that it had been removed temporarily by the appellant but in any event its temporary removal is not a defining element of the use of the land as a leisure plot with ancillary development.
31. The Council's case is not based on any consideration of an intensification of use such as to constitute a material change of use, but that a material change of use has occurred from either a nil use or a garden detached from a dwelling to a leisure use.
32. The intentions of the appellant when acquiring the land are irrelevant to an appeal on ground (d) which relies on factual evidence regarding the use of land.
33. For the above reasons, I do not consider that the appellant has proven on the balance of probability that no material change of use requiring planning permission has occurred since 23 September 2004. The evidence indicates that a material change of use occurred in or around 2009/2010 from use as a garden detached from a dwelling to use as a leisure plot with ancillary development. As this represents development for which planning permission is required, the current use of the land is unauthorised.
34. The appeal on ground (g) therefore fails.

The appeal on ground (f)

35. An appeal on this ground is that the steps exceed what is necessary to remedy the breach of planning control.
36. I have already concluded on the appellant's assertion that the steps 2-7 do not remedy the breach alleged or go beyond the remit of what a notice can properly require.
37. I have had regard to case law referred to by the parties including *Murfitt v SSE [1980] JPL 598*, where it was established that an enforcement directed at a use can require the removal of ancillary operational development intended to facilitate the unlawful use; *Bowring v SSCLG & Waltham Forest BC [2013] EWHC 1115* where it was held that the question as to what steps were required to remedy the breach would depend on the facts of the case; and *Wealden DC v SSE and Day [1998] JPL 268* relating to the stationing of a caravan not being a material change of use in itself but the purpose for which a caravan is stationed should be considered.
38. The appellant points out that the notice cannot prohibit activities in connection with the lawful garden use and the steps cannot be directed at preventing potential future breaches.
39. I conclude that the requirements do not exceed what is necessary to remedy the breach of planning control and do not preclude the appellant doing what he is lawfully entitled to do in the future once the notice has been complied with.
40. The appeal on ground (f) fails.

The appeal on ground (g)

41. An appeal on this ground is that the compliance period is too short. The appellant claims that he would need in the region of 12 months if not longer, to comply with the notice due to the nature of his physically demanding and time-consuming employment.
42. The three month compliance period specified in the notice would in my view place the appellant in some difficulty bearing in mind his personal circumstances. However, a compliance period of 12 months appears to be an unnecessarily long period for the steps to be carried out bearing in mind the harm that the unauthorised leisure use and ancillary development continues to have on the character and appearance of the area. I note paragraph 4.28 in the appellant's Statement of Case that 'none of the structures are fixed to the land and all can be removed in a short period of time should the need arise' and that at paragraph 4.52, a compliance period of 6 months was requested.
43. In the light of the above I consider that a compliance period of 6 months to be more appropriate and I will vary the compliance period of the notice to this effect.
44. The appeal on ground (g) succeeds.

Conclusion

45. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice variations.

Formal Decision

46. I direct that the enforcement notice be varied by:

The deletion of the words 'Re-instate the land to its original undeveloped condition prior to the breach of planning control' in step 7 of the requirements of the notice and their replacement with the words 'Re-instate the land to its condition prior to the breach of planning control';

and

The deletion of the words '3 months after this notice takes effect' in the Time for Compliance with the words '6 months after this notice takes effect'

Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

P N Jarratt

Inspector

APPEARANCES

FOR THE APPELLANT: Mr S Stemp of Counsel, instructed by K Oliver

He called

Mr L McGowan	Gardener and roofer
Ms N Hardy	Appellant's partner
Mr L Stanley	Appellant
Mr K Oliver BA Hons	Principal Town Planner, the Town Planning
T&CP MRTPI	Experts

FOR THE LOCAL PLANNING AUTHORITY: Mr N Leach, Solicitor to the Council

He called

Mr S Andrews BA Hons	Senior Enforcement Planner
Dip TP MRTPI	

INTERESTED PERSONS:

None

DOCUMENTS

- 1 Opening on behalf of the appellant
- 2 Crawley BC v Hickmet Ltd (1997) 75 P&CR 500 (appellant)
- 3 Enlarged aerial photographs for 2005, 2008, 2010 and 2013 (LPA)
- 4 Closing on behalf of the appellant
- 5 Shephard and Love v SSE and Ashford BC [1992] JPL 827 (LPA)