

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

Section 174 Enforcement Notice Appeal

**STATEMENT OF CASE
HAVANT BOROUGH COUNCIL**

**Land South of Mandai, St Peters Road, Hayling
Island, PO11 0RT**

**Local Planning Authority Reference:
13/00262/CMP**

**Planning Inspectorate Reference:
APP/X1735/C/16/3153416**



HAVANT BOROUGH COUNCIL

TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)

APPEAL BY MR LAURENCE STANLEY ON GROUNDS (D), (F) AND (G) AGAINST THE DECISION OF HAVANT BOROUGH COUNCIL TO ISSUE AN ENFORCEMENT NOTICE FOR THE UNAUTHORISED , CHANGE OF USE WITHIN THE LAST 10 YEARS OF THE LAND TO USE AS A LEISURE PLOT WITH ANCILLARY DEVELOPMENT AT THE SITE – LAND SOUTH OF MANDAI, ST PETERS ROAD, HAYLING ISLAND, PO11 0RT.

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LPA REF: 13/00262/CMP

1.0 THE APPEAL SITE AND ITS SURROUNDINGS

- 1.1 The appeal 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 appeal site. The site also benefits from vehicular access onto St Peters Road in the south-east corner of the site.
- 1.3 There are 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.

2.0 RELEVANT PLANNING HISTORY

2.1 APP/14/00999

Application for lawful development certificate relating to existing use of land as leisure plot.

Refused 21 January 2015 – No appeal lodged.

2.2 05/60059/000

Outline application for construction of a chalet bungalow with/without shared access

Planning permission refused – 24 May 2005

Appeal Dismissed – 02 March 2006 – APP/X1735/A/05/1192877

High Court Challenge – Withdrawn – 11/07/2006

2.3 Enforcement History

08/73262/000/CMP

Enforcement enquiry in respect of alleged unauthorised access being created on to St Peters Road.

Following a site visit by the enforcement team on 26/06/2008 no breach of planning control was identified as the works related to an established access. No further action was taken.

2.4 08/73262/001/CMP

Alleged unauthorised work to land.

Entrance area behind gate blocked with broken roofing tiles/driveway access apparently part dug towards back of site and earth piled up/brash and soil in pile behind fence/kerbing stones at top of field.

Mr Stanley (owner) rang and stated he was enjoying the benefit of the garden of Mandai. Letter written to Mr Stanley requesting clarification.

Following the telephone conversation between Mr Stanley and the Enforcement Officer in which Mr Stanley claimed the site was being used as a garden the enforcement case was closed 15/09/2008.

2.5 13/00262/CMP

Alleged unauthorised use of land.

A site visit was undertaken on 28/03/2014 in respect of the above breach. Following the officer site visit a Planning Contravention Notice (PCN) was served on the registered owner (Mr Stanley) - 16/05/2014

Mr Stanley completed and returned the PCN dated - 21/05/2014

Following the return of the PCN investigations in to the history of the site began and discussions were held with Mr Stanley regarding the use and the planning status of the land. Mr Stanley was advised that there appeared to be a breach of planning control and if it continued an enforcement notice would be served.

Mr Stanley eventually sought professional advice and a meeting was held at the Council offices on 12th August 2014 with Mr Stanley, Ms Hardy and their planning agent Mr Oliver. They were advised that as it stood there was no evidence to suggest the use was lawful and that an enforcement notice would be issued. It was agreed to meet on site to record the use and operational development at that time. The site visit was undertaken 19/09/2014.

Following the 19/09/2014 site visit an enforcement notice was served under paragraph (a) of Section 171A(1) of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991), dated 23/09/2014.

The notice was appealed and progressed to public inquiry. However it was pointed out by the Inspectorate that the notice did not require the cessation of the unauthorised use. The Inspector considered that this omission may prejudice the appellant and the local planning authority was invited to withdraw the notice, which they did.

2.6 A second enforcement notice was issued but the appellant's professional advisor pointed out that the requirement to re-instate the land to countryside was not

reasonable as this was not a defined use of the land. The authority therefore withdrew the notice prior to it coming into effect.

3.0 PLANNING POLICY

- 3.1 It is noted that the appeal is made on the grounds of (d) (f) and (g) only. However, in the interests of completeness the policy context for the site and in support of the enforcement notice has been included. However, it is understood that the policies will not be relied upon in respect of this appeal.

The National Planning Policy Framework, 2012 (NPPF)

- 3.2 The National Planning Policy Framework sets out the Government's planning policies for England and how these are expected to be applied.
- 3.3 Specifically in relation to Enforcement paragraph 207 states that, *'Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control'*. It is considered that the Council has followed this approach. Thorough consideration of the limited evidence produced prior to the service of the enforcement notice was issued, in discussion with the appellant, with the evidence produced in this proof of evidence informed by the information provided by the appellant in respect of a Lawful Development Certificate for the site; currently being determined by the Local Planning Authority.
- 3.4 Paragraph 2 confirms that *'Planning law requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise'*. The Council considered the requirements of the Development Plan in determining whether to issue an Enforcement Notice. The absence of policy support for the unauthorised use supported the Council's decision to serve an enforcement notice to address the breach of planning control.
- 3.5 At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.
For plan-making this means that:

- local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole;
 - or
 - specific policies in this Framework indicate development should be restricted.

For decision-taking this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole;
 - or
 - specific policies in this Framework indicate development should be Restricted (paragraph 14).

- 3.6 *“Within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking.” Of these 12 principles bullet 5 is the most relevant, stating that:*
“take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it” (paragraph 17).
- 3.7 Bullet 3 of paragraph 28 offers support for *“rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors, and which respect the character of the countryside.”* In this instance the appeal site, referred to as a leisure plot, would fail to accord with the provisions of paragraph 28 because it does not benefit rural business and does not respect the intrinsic character of the countryside due to the intensification of use and development on the site.
- 3.8 Paragraph 187 confirms that *‘Local Planning Authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve*

applications for sustainable development where possible'. In this case the Council has advised the appellant of the issues surrounding the unlawful development and does not consider that the unlawful development would accord with the development plan. In addition it is not considered that the appellant can reasonably demonstrate that the unlawful use and associated development has occurred for a continuous period of more than 10 years. This assertion is supported by the fact that LDC application APP/14/00999 was refused by the local planning authority and no appeal was lodged following that decision.

Havant borough Local Plan (Core Strategy) 2011

- 3.9 The relevant policies of the Havant Borough Local Plan (Core Strategy) 2011 are included in the Enforcement Notice.
- 3.10 Policy CS16 High Quality Design
The development is considered to conflict with Part 1 points (a), (b), (c) and (d).
- 3.11 Policy CS17 Concentration and Distribution of Development Within the Urban Areas
"Development in the non-urban areas will only be permitted if it is consistent with the policies for the countryside set out in national policy."
- 3.12 Policy DM8 Conservation, Protection and Enhancement of Existing Natural Features
"Development will only be permitted where it protects and enhances local habitats and landscape distinctiveness and which addresses all of the relevant criteria" listed in the policy. It is not considered that the development fulfils the requirements of the four criteria listed.
- 3.13 The development identified in paragraph 1.3 above is development that is considered to be inappropriate within the defined countryside. The development introduces equipment, vehicles and structures that are inappropriate within a rural setting, out of character with and harmful to the rural appearance, visual amenity and intrinsic beauty of the countryside.
- 3.14 The development introduces an urban form of development that amounts to an overdevelopment of the site in an inappropriate manner resulting in visual clutter, with both the use and associated works appearing incongruous within the otherwise open and undeveloped nature of the area.

4.0 THE ENFORCEMENT NOTICE

4.1 The Enforcement Notice the subject of this appeal was served on the 27th May 2016.

4.2 The land to which the notice relates is the land south of Mandai, St Peters Road, Hayling Island, PO11 0RT

4.3 The matters which appear to constitute the breach of planning control is 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 are 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.

4.4 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, 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.

4.5 The time period for compliance with the notice is 3 months from the date it takes effect.

4.6 The notice would have taken effect on 1st July 2016, but is now held in abeyance pending the outcome of this appeal.

5.0 THE APPEAL

5.1 The appeal is 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 are excessive, and lesser steps would overcome the objections. Ground (g) that the time given to comply with the notice is too short.

5.2 Ground (d)

The appellant has submitted various information in support of the case that the unauthorised use of the site has occurred for more than 10 years. In addition it is claimed that the operational development associated with the unauthorised change of use has occurred in excess of four years.

5.3 The Council will demonstrate that the claims made by the appellant are inaccurate and the information provided conflicting. It will also demonstrate that the site has not been used for leisure purposes for 10 years or more.

5.4 The Council will evidence that it cannot be ascertained beyond the reasons of probability that the unauthorised use of the site and associated ancillary development has occurred for 10 years or more and where applicable 4 years.

5.5 Supporting documents in respect of ground (d) appeal

The Council will rely on the following documents in support of its case:

- (a) Aerial photographs from 2000, 2002, 2005, 2008, 2010 and 2013
- (b) Photographs taken of the site on the 28/03/2014, 19/09/2014 and 23/05/16
- (c) Planning application 05/60059/000 and supporting correspondence
- (d) Planning appeal APP/X1735/A/05/1192877 and associated documentation
- (e) Enforcement case 08/73262/000/CMP and associated documentation
- (f) Enforcement case 08/73262/001/CMP and associated documentation
- (g) Planning Contravention Notice (PCN) dated 16 May 2014 completed by Mr Stanley
- (h) Lawful Development Certificate Application APP/14/00999 and associated documentation
- (i) Documents supplied in respect of public inquiry APP/X1735/C/14/2226702
- (j) Use Classes Gazetteer

5.6 The Council wishes to put the appellant on notice that in respect of the conflicting evidence from the appellant, contained within the above documents, the Council will seek to recover the costs incurred in defence of this appeal should this appeal be pursued to inquiry.

5.7 **Ground (f)**

It is not considered that the steps in the notice are excessive, the measures taken seek to re-instate the land to its condition prior to the breach of planning control. The Council is confident that it can clearly demonstrate that the leisure use has occurred for under 10 years, with much of the operational development under four years. However, the Council will have regard to case law which will seek to demonstrate that the ancillary operational development would run with the authorised use of the land and as such would be caught by the 10 year rule and not the four year rule in any event.

5.8 The local planning authority does not consider that lesser steps would address the identified breach of planning control.

5.9 **Ground (g)**

The appellant has claimed that three months to comply with the enforcement notice is an insufficient time period and that six months would be more acceptable.

5.10 The basis for this is the level of development that will need to be removed and that this would need to be done over the winter period when conditions are likely to be poor.

5.11 The Council will demonstrate that three months is ample time to clear the site, particularly as much of the unauthorised development relates to use. The vehicles, caravans and storage container can be removed from the site relatively quickly. In addition by the appellant's own submission (paragraph 4.28 of the submitted grounds of appeal document) *"None of the structures are fixed to the land and all can be removed in a short period of time should the need arise."*

5.12 Further in light of the appeal and that the inquiry is due to be held in April 2017 it is likely that a decision will be made over the summer period. The three month period should not therefore be affected by normal winter weather and shorter days. In contrast a six month period would extend into the winter period.

6.0 INSPECTION DOCUMENTS

- 6.1 The Local Planning Authority will afford to any person who so requests, a reasonable opportunity to inspect and, where practicable, take copies of:
- (a.) Any statement of case, written comments, information or other document a copy of which has been sent to the Local Planning Authority in accordance with Rule 6: and
- (b) The Local Planning Authority's completed questionnaire and Statement of Case together with a copy of any document, or of the relevant part of the document referred to in the list comprised in that statement, and any written comments, information or other documents sent by the Local Planning Authority pursuant to Rule 6.
- 6.2 Documents may be inspected/copies taken (as above) by appointment (9:00am – 5:00pm Monday – Friday) from Monday 26 September 2016 for all documents other than the Proofs of Evidence which will be available from Tuesday 28 March 2017 until the date of the Inquiry, at:

Customer Service Reception (Ground floor)
Havant Borough Council
Public Service Plaza
Civic Centre Road
Havant
PO9 2AX
Tel: (023) 9244 6015