

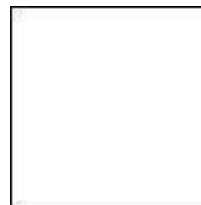
**TOWN AND COUNTRY PLANNING
ACT 1990**

Section 191 APPEAL

**STATEMENT OF
HAVANT BOROUGH COUNCIL**

**Stables and Land at
Croft Lane,
Hayling Island,
Hampshire, PO11 0LT**

**Local Planning Authority Reference:-APP/15/01372
Planning Inspectorate Reference:-
APP/X1735/X/16/3155332**



APPEAL BY Mr Kevin Butcher AGAINST the Decision by Havant Borough Council to REFUSE the Grant of a Lawful Development Certificate for the existing siting of 1No. 3 bed mobile home and its use for habitable accommodation associated with the use of land.

AT Stables and Land, Croft Lane, Hayling Island, PO11 0LT

Planning Inspectorate Reference: APP/X1735/X/16/3155332

LPA Ref: APP/15/01372

THIS IS AN UPDATED STATEMENT FOLLOWING THE CHANGE OF APPEAL PROCEDURE TO AN INQUIRY

1.0 DETAILS OF CASE

Application Received: 8th December 2015

Application Validated: 6th January 2016

Applicant: Mr Butcher

Description: Application for Certificate of Lawfulness relating to existing siting of 1No. 3 bed mobile home and its use for habitable accommodation associated with the use of land.

Decision: 7th July 2016

Reason for Refusal:

Havant Borough Council, as Local Planning Authority, **REFUSES** to certify that on 07 December 2015 the use described in the First Schedule to this certificate in respect of land described in the Second Schedule and as shown edged red on the submitted location plan identified as Location Plan date stamped 6 January 2016, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) for the following reason(s):

1. The applicant has failed to provided credible evidence of a continuous residential occupation of the mobile home, for a period in excess of 10 years. Having reviewed all the information submitted with the application and on the balance of probability, it has not therefore been satisfactorily demonstrated that the mobile home has been in continuous residential use, for a period of at least ten years.

FIRST SCHEDULE:

This decision relates to the following use:

Application for Certificate of Lawfulness relating to existing siting of 1No. 3 bed mobile home and its use for habitable accommodation associated with the use of land as described in the written particulars, plans and other documents submitted with your application.

SECOND SCHEDULE:

This decision relates to land at Stables and Land, Croft Lane, Hayling Island, and as shown edged red on the submitted location plan identified as Location Plan date stamped 6 January 2016.

- 1.1 The Officers Delegated Report that considered the application is attached as **Appendix I** and the Inspector is respectfully requested to first consider this document. This appeal statement will expand upon this background document.

2.0 THE APPEAL SITE AND ITS SURROUNDINGS

- 2.1 The appeal site comprises approximately 3.5 acres or 1.48 ha of land that is situated to the north of the dwellings located on the north side of Northwood Lane in Hayling Island. Access to the site is via Croft Lane which is a predominantly unmade private access located between Brambles, No. 94, and Briarscroft on Northwood Lane. This access is shared and provides vehicular access to rear garages serving several of the closest dwellings, 2 bungalows Merriville and The Retreat, as well as the appeal site.
- 2.2 The access track leads to a group of stable buildings, including feed store and hay barns, set along the southern boundary of the site. These buildings form a double row with central 'yard'. The mobile home the subject of this appeal is located alongside the western boundary, north of the stables. It has a timber/decked ramped access to its eastern side. A second mobile home is also currently sited on the land, set at 90 degrees to the appeal mobile home. This second mobile home has red tarpaulin over its roof as it is understood to have been damaged in transit and is not currently habitable. It is subject to planning application APP/16/00027 which was refused permission on 16 November 2016 for 3 reasons – namely an unjustified additional dwelling in a non-urban area; being unrelated to the existing stable yard, encroaching into the countryside; and lacking in appropriate ecological financial contribution. A copy of the delegated report and decision notice is attached at **Appendix II**. An Enforcement Notice to secure its removal from the land will be served in due course.
- 2.3 The remainder of the site to the north of the yard is laid to grass and subdivided into paddocks used for the grazing of horses. The southern most 'paddock' currently has two jumps placed within it and is clearly used for riding and exercising the horses.
- 2.4 With respect to the precise siting of the mobile homes it is noted that the submitted 1:1250 Location Plan and 1:500 Block Plan indicate the mobile home the subject of this appeal is sited approximately 18 - 20m north of the curtilage of The Retreat. However a site inspection on 14/11/2016 measured the front (south) elevation of this mobile home to be just 12.3m from the northern curtilage of The Retreat – with the caravan being 11m long. This clearly does not concur with the submitted plans which are therefore inaccurate.



View looking north at mobile home subject to this appeal (second mobile home with red tarpaulin over roof in distance has been refused planning permission under APP/16/00027)



View looking east to existing stables, barns and yard

- 2.5 For information the Defined Urban Area Boundary of Stoke includes the access lane and stable buildings and yard, but the remainder of the site is within the Countryside for policy purposes. Additionally there are some trees the subject of Tree Preservation Orders in the northern part of the site and most of the land is Flood Zone 2 and 3. These constraints are shown at **Appendix III**.

3.0 **PLANNING HISTORY**

GEN/12/00184 - Proposed establishment of use and proposed development of site.

This was a pre-application enquiry seeking the Local Planning Authority's view on alternative development opportunities for the site. The then submission documents included a report of the site and options by an agent employed by the current Appellant, Mr Butcher. That comprehensive site assessment did not mention the presence of any mobile home whatsoever and certainly made no reference at all to any habitable occupation of the site for grooms in association with the equine grazing. This document, together with the LPA's response dated 26/04/2012, is attached as **Appendix IV** for reference.

APP/16/00027 - Siting of an additional (second) mobile home for accommodation for an extra groom (retrospective application).

This is a current planning application and once determined the decision will be forwarded to the Inspectorate.

4.0 **APPEAL PROPOSAL**

- 4.1 This appeal seeks to obtain a lawful development certificate for the existing siting of 1No 3 bed mobile home and its use for habitable accommodation associated with the use of the land. It is claimed that a 3 bed mobile home has been sited on the land for the last 25 years and occupied for the last 12 years in connection with the equestrian use of the site. It is acknowledged that the original mobile home was removed and replaced 'recently'.
- 4.2 Evidence presented with this appeal includes signed statements by various people that have had knowledge of the site over the years. All except one are witnessed by the appellant himself but they are not made under oath signed in the presence of a Solicitor. Therefore they do not comprise Affidavits. Other evidence submitted includes sales invoices from 1988 and 1996/97/98 for the supply of wooden buildings, stables, containers and a concrete garage. A Portsmouth Water bill from 1997; two Southern Electric bills from 1993 and 1997 as well as the initial enquiry regarding supply of electricity in 1988. Additionally letters from the LPA dating back to 1988 and 2001 to 2003 about the buildings and storage containers on site and the debate of whether the land was used for agricultural or equestrian purposes.

The Balance of Probability

- 4.3 Whilst the LPA recognises that Circular 10/97, Enforcing Planning Control, has been replaced by a

new raft of Government guidance (i.e. in the NPPF and PPG), it considers that paragraph 8.15 of Annex 8 to that Circular to provide sound advice as to how evidence should be assessed. This states:

*"In appeals to the Secretary of State which raise "legal issues" (for example, enforcement appeals on grounds (b) to (e) in section 174(2)), where the burden of proof is on the appellant, the Courts have held that the relevant test of the evidence on such matters is "the balance of probability". As this test will accordingly be applied by the Secretary of State in any appeal against their decision, a LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "beyond reasonable doubt". Moreover, the Court has held (see *F W Gabbitts v SSE and Newham LBC* [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability". ..."*

- 4.4 The onus of proof is firmly on the appellant, and in this case the appellant must provide evidence that is sufficiently precise and unambiguous that demonstrates that on the balance of probability a mobile home has been sited on the land and occupied as habitable accommodation in connection with the use of the land, for a continuous 10 year period.

5.0 CASE FOR THE LOCAL PLANNING AUTHORITY

- 5.1 As a result of advertising the planning application, 23 letters of representations were received, all countering the alleged occupation of the mobile home. These letters of representation and the local information and knowledge they contain are important information and appropriate weight needs to be attached to their content when reaching a decision. The Inspector is therefore respectfully requested to spend some time reading them by following the link to the LPA's website below:

https://planningpublicaccess.havant.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=DCAPR_236891&documentOrdering.orderBy=date&documentOrdering.orderDirection=ascending

These are also attached at **Appendix V** for reference.

Use of Land

- 5.2 No planning permission has ever been sought or granted for a change of use of the land from agriculture to equestrian. However it is clear from submitted documents and third party comments that the land has been used for the grazing of horses for many years. The existing stable buildings and feed stores, hay barn etc on site appear to have enabled the recreational use of the land for the keeping of horses for in excess of 10 years. Therefore it is likely that a Certificate of Lawfulness would be issued for the keeping of horses on the land.

Use of Mobile Home

- 5.3 Evidence in the form of aerial photographs appears to show the presence of a mobile home set against the western boundary of the site for a period in excess of 10 years. The Council's own aerial photographs, see **Appendix VI**, show a structure present on the site since 2000. This is also generally corroborated by third party representations. However the mere presence of the structure does not convey its exact form or use. The photographs do not show what the structure is – all that can be seen is a roof. They also do not show beyond any doubt whether the structure was associated with the remainder of the appeal site land - some of the photographs seem to show it sited within a smaller parcel of land immediately to its east that could be separated from the remaining grazing land. As such it *could* have formed a separate planning unit.
- 5.4 With respect to this 'planning unit' issue it is further noted that the submitted plans outline the actual mobile home in red as well as the remaining land. As the mobile home is outlined in red then this indicates it is a planning unit in its own right, being independent of the remaining land.

Furthermore, as noted in paragraph 2.4 above, the submitted plans are also inaccurate with the red lined mobile home drawn further north than in reality on site. These inaccuracies need addressing by the Appellant.

- 5.5 The third party representations all note that the original mobile home was in a dilapidated state of repair, with brambles growing over it and allegedly was completely uninhabitable. But no photographs of this original mobile home or structure have been submitted at all to prove either way whether it was in a habitable state or not. Similarly no evidence has been submitted by the appellant as to when the former old mobile home was replaced, but third party letters indicate that this took place between March and May 2015. According to third party representations it is only then that the residential occupation commenced of the new, replacement mobile home.
- 5.6 It is also noteworthy that the occupiers from June 2015 were a Mr Leslie Smith and Mrs Karen Tracey Smith. At a site visit on 17th August 2015, 2 officers of the LPA met Mr & Mrs Smith on site who advised that they had ended up living in the mobile home after they returned from Devon unexpectedly due to family circumstances and needed somewhere to stable their 2 horses. Their own house in Hayling Island was being temporarily lived in by their son so the appellant Mr Butcher also invited them to live in the mobile home until they could return to it. Therefore it is the opinion of the LPA that the occupation of the mobile home by Mr & Mrs Smith was not out of necessity to manage the horses on the land, but was rather one of convenience. Their occupation of the mobile home was in effect independent of the keeping of the horses on the land; they are not employed as grooms or for the management of the horses on the site and when their own house is again vacant will leave the site. Therefore there is considered to be no current link between the occupation of the mobile home and the use of the land for equestrian purposes.
- 5.7 The onus is on the appellant to prove, on the balance of probabilities, that the occupation of the mobile home is linked to the use of the land. However, no evidence whatsoever has been submitted to demonstrate that the occupation of the mobile home by Mr & Mrs Smith, or any previous occupiers, is dependent on their employment or management of the keeping of horses on the site. No tenancy agreement or employment contract has been submitted to prove this essential link. Just because the current occupiers of the mobile have a horse on the land is not the same as their occupation being essentially linked to the use of the site.
- 5.8 Whilst third party evidence supports the claim that Mr & Mrs Smith have occupied the current mobile home from about May 2015 there is no such support for the claim that the original mobile home was ever occupied. The submitted evidence does not demonstrate occupation at all. The electric bills and water bill simply prove a connection of these services to the site as a whole, not the purpose of the usage. As stables then both water and electricity would be required and the bills do not differentiate between these supplies to the stables or any mobile home. Similarly the invoices for the structures simply prove the presence of the various wooden stables and garage, not the occupation of the mobile at all.
- 5.9 Reliance seems to be made on the pre-scripted signed statements that are not considered to be precise. They are generic in that they simply state that the mobile home has been used as a residence continuously for the past 12 years. There is no further detail provided or copy of a rental/tenancy agreement. The statement of Kelly Ann Campbell states that the mobile home was her residence for 12 years prior to May 2015. If she really did live there for a full 12 years then there would be associated evidence eg domestic bills, postal evidence, photographs of the inside etc. In this modern day of so many photographs being taken on mobile phones and devices then it is considered unusual for there to be no photos of the inside of the mobile home showing it as Kelly Ann Campbell's home. Photos and other such documents could have been submitted but were not. Furthermore local residents would have been aware of her comings and goings, light emission from windows in the dark, visitors, deliveries etc. None recall any occupation of the original mobile home at all.
- 5.10 Much has also been made in the signed statements of the alleged presence of the cesspit serving the mobile home. If the mobile home was occupied continuously for the claimed 12 years, then this cesspit would have needed emptying regularly. An appropriate specialist waste removal company would have been needed to undertake this task throughout the 12 year period. The invoices for such a service should have been submitted to prove the regular use of the cesspit. The LPA are of the opinion that the lack of such evidence puts further doubt on the likely occupation of the original mobile home.

- 5.11 As noted at paragraph 3 above the appellants own agent in 2012 prepared a site appraisal report with a view to discussing potential future developments for the site. At no point in this document was a mobile home and its occupation by any groom or persons stated. If some residential occupation had already commenced on the site then this should have to come to light at that time. The fact that no mention of any occupied mobile home or employed groom was made in 2012 further indicates the improbability of the current appeal case.

6.0 CONCLUSIONS

- 6.1 The onus of proof lies with the appellant to provide sufficiently precise and unambiguous evidence to justify the granting of a certificate of lawfulness on the balance of probabilities. In this instance the submitted signed statements are not witnessed by a solicitor and made under oath and therefore are not considered to be legally binding affidavits. Their content cannot therefore be guaranteed to be true. Since the numerous third party representations contradict the submitted evidence that claims that the original mobile home was occupied for 12 years to May 2015, then on the balance of probabilities it is considered less than probable that the mobile home was occupied for human habitation prior to May 2015.
- 6.2 Having taken all the relevant information and evidence into account the LPA concedes that the keeping of horses on the site has occurred for in excess of 10 years and that a structure akin to a mobile home has been sited on the land for over 10 years. However the LPA remains of the view that, on the balance of probabilities, the mobile home has not been occupied for purposes of human habitation for a continuous 10 year period.
- 6.3 For the reasons set out above the Inspector is respectfully requested to uphold the Local Planning Authority's decision and dismiss this appeal.

APPENDICES

**APPEAL – Stables and Land
Croft Lane
Hayling Island**

**LPA REF:-APP/15/01372
Planning Inspectorate Reference:-
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APPENDIX I - Officer's Delegated report APP/15/01372

APPENDIX II – Decision Notice and Officer's Delegated report for APP/16/00027

APPENDIX III - Constraints Map

APPENDIX IV - 2012 Pre-Application Site Assessment Report and LPA's
Response dated 26/04/2012

APPENDIX V – Copies of Third Party Representations Received

APPENDIX VI - Council's Aerial Photographs