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## Appeal Decision

Site visit made on 12 February 2018

**by Thomas Shields MA DipURP MRTPI**

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

**Decision date: 19 April 2018**

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**Appeal Ref: APP/B9506/C/17/3180795**

**Meadow View, Stuckton, Fordingbridge, SP6 2HG**

- 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 Act).
  - The appeal is made by Mr Paul Mawson against an enforcement notice issued by the New Forest National Park Authority.
  - The enforcement notice was issued on 30 June 2017.
  - The breach of planning control as alleged in the notice is:
    - 3.1 Without planning permission, the stationing of a mobile home as an independent unit of residential accommodation shown in the approximate position coloured blue on the plan attached to this Notice.
    - 3.2 Without planning permission the erection of decking around the mobile home shown in the approximate positions coloured green on the plan attached to this Notice.
  - The requirements of the notice are:
    - (1) Cease the use of the land affected for the stationing of a mobile home as an independent unit of residential accommodation.
    - (2) Permanently remove the mobile home shown in the approximate position coloured blue on the plan attached to this Notice from the land affected.
    - (3) Permanently remove the decking shown in the approximate positions coloured green on the plan attached to this Notice from the land affected.
    - (4) Remove any residential paraphernalia, debris or materials arising from compliance with the above requirements from the land affected.
  - The period for compliance with the requirements is 4 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (b),(c),(f) with regard to the stationing of a mobile home as an independent unit of residential accommodation. The appeal also proceeds on ground (a) with regard to the erection of decking around the mobile home.
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### Decision

1. It is directed that the notice be varied in Section 5(4) by deleting the words "residential paraphernalia".
2. Subject to the variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

### Application for costs

3. An application for an award of costs was made by the New Forest National Park Authority (NPA) against Mr Paul Mawson. This application is the subject of a separate decision.

### **Procedural matter**

4. The parties refer to previous appeal and Court decisions. However, each case turns on its own facts and circumstances. I have therefore determined the appeal on its own merit while taking account of the cases to which reference has been made.

### **Appeals on grounds (b) and (c)**

5. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact.
6. An appeal on ground (c) is a claim that the matters alleged in the notice, if they did occur, do not constitute a breach of planning control. In demonstrating that there has not been a breach of planning control the burden of proof falls on the appellant, and the relevant test of the evidence is on the balance of probabilities.
7. It is clear that a mobile home (MH) has been placed on the land and thus the appeal on ground (b) must fail.
8. The key argument advanced for the appellant is one which falls within ground (c); that the stationing and use of the MH is ancillary or incidental to the primary use of the whole site (C3 dwellinghouse) such that it does not constitute a material change of use (development within section 55 of the Act), and hence that there has not been a breach of planning control.
9. In support of this argument it is contended that the MH is not used as an independent unit of residential accommodation, as alleged, but instead is used to accommodate up to 4 people as part of larger parties who want to occupy the main house and the MH together.
10. The generously sized appeal site contains the main bungalow, Meadow View, which has been extended to include an annexe. Both the bungalow and the annexe are let for holiday purposes. To the south of the bungalow the MH sits a little way back from the hedgerow boundary with the highway.
11. The MH has a lounge/living area, a fitted kitchen area with sink, fridge, kettle, storage cupboards and worktops, bedrooms, and toilet and washing facilities. The full width decking to the rear of the MH provides a raised patio area with a hot tub and a gas barbecue. Two small sheds contain a washing machine and a dryer. The decking to the front provides a level veranda entrance into the MH.
12. It is stated that the MH was not provided with cooking facilities and does not therefore provide all the facilities for day to day living. I disagree. I consider that the gas barbecue does provide a cooking facility. Moreover, along with all the other facilities I have described I consider, as a matter of fact and degree, that there are sufficient facilities necessary for day to day living.
13. The appellant states that the location of the MH was chosen for convenience, so as to prevent any loss of outlook from the main bungalow windows and to avoid intrusion into the main garden areas. However, to my mind these factors equally point towards the MH being a separate entity. Other factors which point towards separateness are that the MH and its rear garden are separated from the rest of the site by partly tall solid fencing, and partly low picket fencing,

and it has its own front parking area off a shared access. Overall, the MH appears as a separate dwelling within its own curtilage.

14. The appellant's evidence<sup>1</sup> includes a list of booking dates with party numbers. However, the list does not provide evidence of how the MH was being occupied.
15. The NPA point to the website booking availability and to posted reviews of the accommodation. Individual comments, for example relating to lack of cooking facilities, appear supportive on their face. However, the entry titled "description from owner" lists *a BBQ with gas ring, 2 electric hob unit, microwave, and modern halogen oven*. That is clearly at odds with the appellant's submissions to this appeal regarding facilities, notwithstanding I have found that there are cooking facilities by way of the gas barbecue. Moreover, bookings and comments which refer to sharing the main dwelling as part of a larger party are limited to that individual letting, they do not demonstrate that the MH was not being occupied as a separate independent dwelling at other times and, most critically, at the date the notice was issued.
16. The appellant's evidence<sup>2</sup> also seeks to explain shortcomings with the functionality of the website booking system, such that he can only advise people that the MH is only available in conjunction with the main dwelling when he receives enquires. Reference is made to the webpage description for Main House Forest Meadow (the main bungalow) which itself refers to the MH as additional accommodation being "available upon request". However, I do not know when that description was published. In any event, it is marketing information posted on a particular date describing "availability"; it does not provide any direct evidence of *how* the MH has actually been used since its arrival on site.
17. In respect of the two booking dates referred to by the NPA, the appellant states he can evidence that the MH was not let on those dates by way of trade invoices. Additionally, that supporting statements from previous guests, cleaning operatives, and other companies could be provided to demonstrate the manner in which the MH is occupied and used. That would indeed provide direct evidence that could carry weight in support of the appeal. However, no such evidence is before me.
18. While I do not dispute that there may be shortcomings with the website functionality and booking and marketing information, it remains the case that the appellant's evidence lacks clarity and is disputed by the NPA with contradictory evidence. Having regard to the all of the information before me in respect of website booking information and reviews, I find on balance that it contradicts rather than supports the appellant's case as to how the MH functions.
19. Given the size of accommodation provided, its physical separation from the main house, its facilities which allow for independent day to day living, and all the documentary evidence before me, I find on the balance of probabilities that the use of the MH is not subordinate to the main use of the bungalow such that it can properly be regarded as ancillary or incidental. Rather, its introduction onto the land as a holiday dwelling in addition to the existing dwellinghouse

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<sup>1</sup> Appendix KHP3

<sup>2</sup> Appellant's statement attached to Ken Parke letter, 10 November 2017

and annexe was for a primary residential use which resulted in a material change of use.

20. To conclude; the appellant has failed to discharge the duty upon him to demonstrate with sufficiently precise and unambiguous evidence, that the MH was not sited as an independent unit of residential accommodation and, therefore, that there has not been a material change of use amounting to a breach of planning control.

21. The appeals on grounds (b) and (c) therefore fail.

### **Appeal on ground (f)**

22. This ground of appeal is a claim that the requirements in Section 5 of the notice exceed what is necessary.

23. In the event I determine, as I have done so, that the use of the MH is not ancillary, the appellant argues that requirement (2) is excessive; that the MH should be allowed to remain on site and limited to ancillary purposes. Additionally, that requirement (4) in respect of "residential paraphernalia" is unreasonable and unenforceable.

24. When a ground (f) appeal is made it is essential to understand the purpose of the notice. Section 173(4) (a) and (b) of the Act provide that the purpose is (a) to remedy the breach of planning control that has occurred, or (b) to remedy any injury to amenity which has been caused by the breach.

25. The breach of planning control is the *stationing of a mobile home as an independent unit of residential accommodation*. Since the requirements in Section 5 of the notice require the cessation of the use and removal of the MH from the land, the purpose of the notice clearly falls within section 173(4)(a); to remedy the breach of planning control that has occurred.

26. The breach includes not just the MH's use, but also its *stationing* on the land. In other words bringing and siting the MH onto the land formed an integral part of the breach. Therefore, given that requirements (1) and (2) go no further than requiring the appellant to undo what has been done, by ceasing the use and removing the MH from the land, the requirements clearly cannot exceed what is necessary to fully remedy the breach of planning control. Allowing the MH to remain, as argued, would not fully remedy the breach.

27. The circumstances above differ to those referred to in the Forest Corner<sup>3</sup> decision, where the MH in that case was already lawfully on the land prior to the breach occurring. Thus, in that case, it would have been excessive in remedying the breach to require its removal.

28. With regard to requirement (4), the phrase "residential paraphernalia" is somewhat imprecise. Also, it (arguably) serves little purpose, given that following compliance with all other notice requirements, the land could then be used for residential purposes associated with the main dwellinghouse. For the sake of clarity I will remove this phrase from requirement (4).

29. To this extent the appeal succeeds, but in all other respects the appeal on ground (f) fails.

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<sup>3</sup> Appeal APP/B9506/C/13/2204169

### **Appeal on ground (a)**

30. The ground of appeal is that planning permission should be granted for the decking.
31. As previously set out, the appeals on grounds (b), (c) and (f) have failed. In these circumstances, all that would be left if planning permission were to be granted, as sought, are the two areas of timber decking.
32. As such, I consider the main issue in this ground of appeal to be the effect of the decking, were it to remain, on the character and appearance of the area, with particular regard to the Western Escarpment Conservation Area (WECA), a designated heritage asset.
33. The two remaining areas of timber decking would clearly not serve the purpose for which they were intended. Instead they would appear as separate curious timber structures some distance away from the main dwelling house and close to the highway from where they would be visible in passing. As such, their design would be inappropriate, not relating well to the form and layout of the main dwelling and spacious open garden, typical of residential plots along Stuckton Hill. They would also result in an unjustified suburbanising intrusion into the wider landscape context of the New Forest National Park (NFNP), and would fail to preserve or enhance the character and appearance of the WECA. With regard to the WECA the harm to the designated heritage asset as a whole would be less than substantial, but the harm would not be outweighed by public benefits.
34. For all these reasons, I conclude that the development would result in significant harm which could not be overcome by the imposition of planning conditions attached to the grant of planning permission. As such, it conflicts with the requirements of Policies DP1, DP6 and CP8 of the NFNP Core Strategy and Development Management Policies DPD (2010).

### *Other matters*

35. Reference is made to correspondence<sup>4</sup> in 2013 with the NPA regarding whether it was expedient for the NPA to enforce against decking at another site. However, that correspondence related to the Forest Corner site with different facts and circumstances to this appeal. In any event, long established case law sets out that there is no jurisdiction for an Inspector to determine whether or not a local planning authority has complied with its obligation in terms of exercising expediency when issuing an enforcement notice. That is a matter which can only be challenged by way of judicial review.
36. The appeal on ground (a) therefore fails.

*Thomas Shields*

INSPECTOR

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<sup>4</sup> Appendix KHP2