
Appeal Decisions

Inquiry held on 19 October 2016

Site visit made on 20 October 2016

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS DipTP MRTPI

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

Decision date: 21 November 2016

Appeal A: APP/Y9507/X/15/3127806

Land to the north of 8 Woolmer Cottages, Petersfield Road, Greatham, Liss, Hampshire GU33 6BH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr M Marney against the decision of South Downs National Park Authority.
 - The application Ref SDNP/14/05571/LDE, dated 29 October 2014, was refused by notice dated 25 February 2015.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is use of the land for the stationing of a mobile home for residential use.
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Appeal B: APP/Y9507/C/16/3151266

Land to the rear of 8 Woolmer Cottages, Petersfield Road, Greatham, Liss, Hampshire GU33 6BH

- 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 M Marney against an enforcement notice issued by South Downs National Park Authority.
 - The Authority's reference is SDNP/16/00157/COU.
 - The notice was issued on 30 March 2016.
 - The breach of planning control as alleged in the notice is the change of use of the land to the siting of a caravan used for residential purposes.
 - The requirements of the notice are to cease the use of the land for residential purposes and to remove the caravan and all associated residential paraphernalia from the land.
 - 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.
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Appeal C: APP/Y9507/W/16/3157090

Land to the rear of 8 Woolmer Cottages, Petersfield Road, Greatham, Liss, Hampshire GU33 6BH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr M Marney against South Downs National Park Authority.
- The application Ref SDNP/16/02674/FUL, is dated 3 June 2016.
- The development proposed is following demolition of existing garage the replacement

with a double garage for use ancillary to the lawful use of the land.

Procedural Matters

1. The relevant dates to consider are any 10 year period prior to 29 October 2014 for the LDC and 30 March 2016 for the ground (d) appeal.

Decisions

Appeal A

2. The appeal is dismissed.

Appeal B

3. The appeal is dismissed and the enforcement notice is upheld.

Appeal C

4. The appeal is dismissed and planning permission for demolition of the existing garage and its replacement with a double garage for use ancillary to the lawful use of the land is refused.

Reasons

Appeals A and B

5. The appellant was not the owner of the land until about 2008; prior to that it was owned by Mr Shea.
6. There was a temporary planning permission for residential use of a caravan associated with building works in about 1989. Another application for siting of a mobile home was made in 1991. During the process the actual use of the caravan on the site was explained to the council. The council then confirmed by letter in September 1991 that the use described, for overflow sleeping accommodation, did not require planning permission.
7. There was some form of investigation in 2002; again the use was not found to require planning permission and this was confirmed in a letter in 2005. It was also the case in 2005 that Mr Shea indicated that his son was occupying the site. This was at a time when the appellant recalls that his son Mark Marney Junior had moved in and lived there for about 18 months. At the time of the 2007 investigation, information provided by Mr Shea indicated that either no one was living there or Mr Shea was living there, either on a temporary or more permanent basis. There is clearly confusion and conflict between the accounts of the then owner with that currently put forward. I accept that the reliance on Mr Shea should be considered carefully in the light of the evidence, but he was the owner at the time and would be expected to be in a good position to know the use.
8. The council identifies that the appellant's former agent, in a proof of evidence for the appeal in 2012, noted that the occupation was only intermittent by the two sons, Mark and Jamie. Mr Marney (snr) indicated that the agent was responsible for the evidence and states that what was said was wrong. However, an agent would not be able to make this up

without having discussed the matter with someone that had knowledge of the site. Mrs Wells visited the site in 2008 and her impression was that the caravan was not in use, with the door open (appearing to hang off). I accept that there is no written record of this in a file note, so the weight it gets by itself is limited, but in this case the neighbours at 8 Woolmer Cottage noted in a letter in 2013 that a mobile home arrived in 2009 and had subsequently been moved around the site, but no one lived in it and that the door was open for about a year. To my mind this provides some support for the contention of intermittent use and open door observed by Mrs Wells.

9. I accept that the appellant may have left the door open during the day for airing the caravan, but the neighbour noted that this was for a year. This also appears to be backed up by the proof of evidence of Carole Stellman at a previous inquiry who was acting for the appellant. She notes that there was a static caravan stored adjacent to the access and that there had also been a touring caravan there occupied intermittently. While I accept the mobile home was not a particular issue for that appeal, the identification of the use was relevant to show that the current use was not as a builder's yard, and this was accepted by the inspector who visited the site, as he modified the plan area for the enforcement notice. There is consistency in noting the mobile home was stored on the site and not used for part of the period where continuous occupancy needs to be shown.
10. Mr Mark Marney's (snr) statutory declaration of October 2014, Mr Mark Marney's (jnr) statutory declaration of October 2014 and Mr Jamie Marney's statutory declaration of October 2014 indicates that Mr Jamie Marney lived in the mobile home permanently for a period of about 2 years from 2000. Mr Mark Marney (jnr) also noted in that declaration that after the 2 year period occupation was intermittent and also that his father and brother 'often' used the mobile home when working late at the yard. That does not suggest the same occupation described for Jamie in 2000/2001.
11. Similarly, Mr Jamie Marney in the October statement notes after the period of occupation by Mr Mark Marney (jnr) that, 'I regularly stay at the mobile home, sometimes with my father and sometimes on my own, especially during the summer months and have to work late'. This is a different description from the use noted in 2000 which was straightforward, 'I lived in it for about 2 years', and more akin to the intermittent use described by Mr Mark Marney (jnr).
12. At this inquiry, Mr Mark Marney (snr) and Mr Jamie Marney changed this evidence and indicated that Mr Jamie Marney was living in the mobile home from about 2000 until around 2004.
13. Mr Mark Marney (snr) noted that his previous declarations were produced by the agent and he relied on them, as Mr Marney is more of a practical man, not familiar with paperwork. While the agent may have read it to him, after the first few paragraphs Mr Marney would not have been taking much in. While I accept that the paperwork side is difficult for Mr Marney, these are sworn statements, indicating that what was said were the facts of the situation to the best of his knowledge. To my mind, this approach towards

the statements and what they contain reduces the weight that I can place on the statutory declarations, even noting that Mr Mark Marney (snr) now says that what is said in this inquiry is correct.

14. The appellant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the authority has 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". I do not consider that the appellant's own evidence is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability and the council has evidence that makes the appellant's version of events less than probable.
15. It was put that Mr Jamie Marney has been living at the appeal site since 2000, with only a period of 1 year when he was staying, during the week, in Portsmouth to be near his job that was located there, but coming back at the weekends. However, there is little paper evidence to show the long occupation claimed in the form of letters or bills, which is surprising given the long period involved. I accept that some correspondence such as banking papers were sent to his parents' home, for other reasons, but some other correspondence could reasonably be expected. I note the fire in the building at the back, but the correspondence would be to Mr Jamie Marney and likely to be in his home. There is little physical evidence to back up the appellant's version of events.
16. A number of witnesses have visited the site on regular occasions and been into the mobile home and had a cup of tea with the appellant. They say that the site has been residentially occupied for the relevant 10 year periods. However, while I accept that the visits occurred, visiting the mobile home, the evidence provided does not conclusively indicate that the use is residential, but could easily reflect an intermittent use as described in the 2014 declarations. The fact that it appeared untidy does not show residential use. So while I attach considerable weight to these declarations, the evidence needs to be balanced against the contra evidence.
17. At the inquiry there were various questions on the lines of whether someone was lying. To my mind this is not a matter of lying, but about balancing and assessing the genuine recollections of the parties providing the evidence where some of the events were some time ago. It is for the appellant to prove on the balance of probability his case. Taking into account the conflicting evidence and precision of some of that evidence, I conclude overall that the case has not been proven on the balance of probability.
18. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of the land for the stationing of a mobile home for residential use was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended. It also has not been demonstrated

that there has been a 10 year continuous use of the land for the stationing of a caravan, so the appeal on ground (d) also fails.

Appeal C - Section 78

19. The development plan includes the East Hampshire District Joint Core Strategy [CS]. CS Policy CP19 notes that the countryside needs to be protected for the sake of its intrinsic character and beauty. It is recognised that some development can take place which is beneficial to the countryside and the people that live and work there. It allows development in the countryside where it can be demonstrated that there is a genuine and proven need for a countryside location.
20. 8 Woolmer Cottages was sold off separately from the land on which its 'domestic' garage was located. A lawful development certificate has been granted for the maintenance and repair of this existing garage on the site. The proposed garage would replace the existing garage and, although with the same floor area, would be much taller and bulkier. The mobile home is on land immediately behind 8 Woolmer Cottages and has physical separation from it, although there is a shared drive, which also provides access to the commercial unit to the side and behind. This unit is also physically separated from the land with the garage by a 2m high fence and very tall gates.
21. The severance of the planning unit from the main residence, 8 Woolmer Cottages, has created separate planning units and the one with the dwelling remains in residential use. The unit with the garage cannot survive in residential use as it is used separately from the residential property and it clearly is not now an ancillary use to that residential property. The use cannot be ancillary to a use on a separate planning unit. I conclude that the land and garage has a nil use.
22. The appeal site currently has an unauthorised use for the siting of a mobile home and at the hearing it was noted that cars have been parked in the garage. This is not an authorised use and the appellant has not put forward anything that would constitute a genuine and proven need for the enlarged garage in this countryside location and this conflicts with CS Policy CP19.
23. The proposed garage would be much larger in terms of its bulk and would be plainly visible from the road, causing greater harm to the character and appearance of the countryside than the existing building which, because of its height, is not a prominent feature. CS Policy CP29 relates to design and requires that development makes a positive contribution to the overall appearance of the area by the use of good quality materials of appropriate scale. I accept that the proposed building would be better than the existing building in detail design terms, but because of its increased height and bulk, I do not consider it would make a positive contribution to the area in terms of its overall design. In addition, the existing building, while in need of repair and maintenance, is not unattractive and replacement would not be a significant benefit, such as to justify the additional harm of the increased prominence and bulk of the proposal. The proposal does not accord with CS Policy CP29. I conclude overall that the proposal would cause unacceptable harm to the surrounding area and the benefits put forward would not outweigh that harm.

Ground (f)

24. The appellant suggests that the mobile home should be allowed to remain for the use ancillary to the lawful use of the land. However, I have found above that, since separation from the residential unit, the land has a nil use. I also consider that there is not reasonable justification for such a large unit ancillary to other uses at the location. Therefore, it is reasonable that the mobile home should be removed from the land to remedy the breach that has occurred. The appeal on ground (f) fails.

Ground (g)

25. The appellant indicated that it would take more than 3 months for Mr Jamie Marney to find alternative accommodation. Removing the mobile home itself would take very little time and would be readily achieved in the time allowed. There is little evidence to show that there would be a problem finding suitable accommodation and the council indicated that there would be some available in the area. Overall, I do not consider that it has been shown on the balance of probability that 3 months would be insufficient to find alternative accommodation.

Graham Dudley

Inspector

APPEARANCES

FOR THE APPELLANT:

Isabella Tafur	Of Counsel
She called	
Mr G Lea	Managing Director of Town and Country Planning Partnership Ltd
Mr M Marney	
Mr J Marney	
Mr J Foot-Forster	
Mr J Breeds	
Mr S Hobart	

FOR THE LOCAL PLANNING AUTHORITY:

Dilpreet Dhanoa	Of Counsel
She called	
Lesley Wells	

INTERESTED PARTIES:

Mr J Trodden

DOCUMENTS

Document	1	Notification letter
	2	Appellant's opening statement
	3	Declaration of M Marney from 2011
	4	LDC application and certificate dated 7 January 2016 re domestic garage
	5	Email Graham Lea to Katherine Pang December 2015
	6	Existing garage plans and photographs
	7	Delegated decision 6 January 2016 LDC app
	8	Letter from Heine Planning dated 17 January 2016
	9	Planning Enforcement file note
	10	Letter from Mr and Mrs Hall dated 2 July 2009
	11	Part Drg 4190B with photographs of a mobile home