The Planning Inspectorate

Appeal Decision

Site visit made on 7 November 2016

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

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

Decision date: 9 November 2016

Appeal Ref: APP/R3325/C/16/3152176
Land at Wooden Top Farm, West Coker Hill, West Coker, Yeovil, Somerset BA22 9DG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Paul Richards against an enforcement notice issued by South Somerset District Council.
- The notice was issued on 4 May 2016.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the land from an agricultural use to a residential use by the siting on the land of six mobile homes used for residential purposes (whose approximate location is shown cross-hatched red on the [plan attached to the notice]).
- The requirements of the notice are: (i) cease the use of the land for the siting and residential occupation of the six mobile homes; and (ii) remove the said mobile homes from the land including in such removal all structures, works and domestic paraphernalia connected with such use.
- The period for compliance with these requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (d) and (f) of the Act. Since no ground (a) appeal has been lodged and the prescribed fees have not been paid within the specified period, the application for planning permission, deemed to have been made under section 177(5) of the Act, does not fall to be considered.

Formal Decision

1. It is directed that the enforcement notice is corrected by the deletion of the words in paragraph 3 of the enforcement notice and their replacement with the words: "*Without planning permission, the change of use of the land from an agricultural use to a mixed use for residential, by the siting on the land of six mobile homes used for residential purposes (whose approximate location is shown cross-hatched red on the plan attached to the notice), and agriculture*". Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Preliminary matters

2. In advance of the accompanied site visit The Planning Inspectorate [PINS] wrote to the parties to advise that I had previously inspected the site on 31 August 2011 in connection with an appeal [Ref. APP/R3325/X/11/2153001]. As the Council's appeal statement records, at paragraph 2.1 thereof, that appeal related to a prospective Lawful Development Certificate [LDC] under section 192 of the Act for the erection of a circular hay barn. As a matter of record it was also a different Appellant[1]. The focus of my inspection in 2011 was on buildings, in particular whether the proposed building was necessary, rather than mobile homes. Accordingly I have absolutely no recollection of

[1] The Appellant's Agent, in advising PINS by email dated 3 November 2016 at 11:40 hours that he has "No objection" to my appointment, tells me the Appellant was Mr Richards' business partner at the time.

whether there were, or were not, mobile homes on the site in August 2011. In the circumstances I see no reason why this should bar me from dealing with this appeal and my view in this matter is confirmed by the fact that neither main party has taken issue with my appointment. I shall instead focus on the submitted evidence that has been put before me.

3. At the accompanied site inspection on 7 November 2016 the Council did not dispute that there was an agricultural use subsisting. This is not reflected in the allegation in the enforcement notice, which alleges a change of use from agriculture to, in short, a residential use. Accordingly the allegation needs to be corrected to refer to the mixed use of the land for agriculture and residential. I am satisfied that this correction can be made without causing injustice to either main party. I should also make clear that the correction that I intend to make is without prejudice to the grounds of appeal examined below.

4. During the course of the site inspection on 7 November 2016 it was stated that the Appellant owns other land to the east and west of that edged red on the plan attached to the notice. In this regard I had already noted the claim in paragraph 1.2 of the Council's statement that a large part of the holding had recently been sold, which was denied in the Appellant's final comments. Whilst I have considered whether it might be appropriate to correct the notice so that the notice plan related to the whole of the land ownership this is not a course of action that I intend to take for a number of reasons. First I do not know the full extent of the land owned. Second it is clear that the Council have identified the residential use to be subsisting within the land edged red on the notice plan. Third there might be injustice to the Appellant if I were to extend the geographical ambit of the notice. For these reasons I intend to deal with this appeal on the basis of notice issued insofar as it relates to the land edged red.

5. The Council's statement identifies, in paragraph 4.6 thereof, a main issue to be whether the units benefit from permitted development rights. However this is pursuant to a ground (c) appeal and no such ground has been lodged. The Appellant is professionally represented and I have no doubt that this ground would have been lodged if it were considered that a case could be made. In the circumstances this is not a matter that I shall deal with in this appeal.

Ground (b)

6. Under the ground (b) appeal the onus of proof falls on the Appellant to show on the balance of probability that the "*breach of control alleged in the enforcement notice has not occurred as a matter of fact*" [as per section E(b) of the appeal form]. However the only material to support this claim is the ground of appeal on the appeal form that says: "*There is not and never has been a mobile home on the site, let alone six*". The appeal statement adds nothing to this ground: "*In the interests of brevity…*". Although the Appellant's final comments assert: "*…that the Authority has noted our ground "b" appeal and dropped reference to mobile homes, as well as the number six*", I do not understand the basis for that claim. The Council's statement, e.g. paragraph 4.2 thereof, continues to refer to the breach as originally alleged in the notice, and whilst elsewhere it refers to "*units*" without reference to quantum that is because paragraph 4.5 says that approach will be adopted by way of shorthand[2]. In the circumstances I entirely reject the Appellant's claim that it is "*agreed*" that the allegation should be corrected in some way, e.g. to refer to a "*caravan site*".

[2] It says: "…mobile homes/caravans (*hereon termed the units)…*".

7. It is common ground that the Council has issued 2 Planning Contravention Notices [PCNs] in relation to this matter. The written responses appear to have been completed by the Agent who has submitted the grounds of appeal, quoted previously. In the response dated 21 May 2015 the following question is asked: "*4.1 There are five caravans on site; on what basis are they sited?*". The answer given to this question is: "*Currently six – on the basis that this site has continuously been used for the parking of caravans since 1999*" [*my emphasis*]. Although the second limb of the answer refers to parking it is clear from the remaining answers to that PCN that those caravans have been used for residential purposes, whether by volunteers or by the Appellant. The PCN is a formal document and both the Local Planning Authority [LPA] and I am entitled to attach significant weight to the answers given in response to a PCN.

8. It is unclear but in case the claim is being made that the allegation should be to 6 caravans, distinct from mobile homes, it is worth saying that I would not regard the difference to be material because the terms are interchangeable. The Council's statement refers to "*mobile homes/caravans*" and a similar approach is taken in some of the letters that have been submitted on behalf of the Appellant. For example the letter dated 12 July 2017 from DJ Smith[3] says: "…*there has been caravans and mobile homes on site since I have been going there*…". A further letter dated 5 April 2016 from Mr Howe says: "*I've seen caravans* [and] *mobile homes there*…". The Appellant's Agent has also described them as mobile homes in his letter to the Council dated 27 October 2014. The substantive issue is whether those chattels, irrespective of whether they are described as caravans or mobile homes, have been used for residential purposes because the first reason for issue of the notice refers to a period of 10-years. So, fundamentally, I am concerned with the residential use rather than the descriptor of the vessels within which that use has subsisted.

9. At the time of my site inspection on 7 November 2016 there were only 4 such vessels that were sited broadly in the position cross-hatched red on the plan attached to the notice, within the land edged red. However the Appellant's statutory declaration says that the number has fluctuated between one and six and so it is not significant that there were less than 6 mobile homes at the time of my visit. In the light of the aforementioned answer to the PCN, that does not support the ground (b) appeal or cause me to correct the allegation.

10. For the reasons given the Appellant has not discharged the burden of proof to show that the breach of control alleged in the enforcement notice, as I propose to correct it, has not occurred as a matter of fact. To the contrary, the PCN admits that there were 6 caravans that were used for residential purposes and I have explained why the description as mobile homes is not inappropriate. Accordingly the ground (b) appeal must fail on the basis on which it was made.

Ground (d)

11. The Planning Practice Guidance ['the Guidance'] advises that the Applicant is responsible for providing sufficient information to support an application for a LDC, which is the equivalent of ground (d) in an enforcement appeal. It states: "*In the case of applications for existing use, if a local planning authority has no evidence itself, nor any 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*

[3] Presumably this should be 2016.

precise and unambiguous to justify the grant of a certificate on the balance of probability"[4]. This applies equally to an Inspector at appeal stage.

12. Under this ground of appeal the onus of proof falls on the Appellant to show that: "…*at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice*" [as per section E(d) of the appeal form]. The relevant date for this purpose is 10-years before the date of issue of the enforcement notice, i.e. 4 May 2006, hereinafter referred to as '*the material date*'. In order to succeed under this ground of appeal the Appellant needs to show, on the balance of probability, that the use alleged in the notice commenced prior to the material date and continued.

13. I propose to start my analysis with the various statutory declarations that have been submitted by third parties, then turn to consider the Appellant's statutory declaration before dealing with the miscellaneous supporting documentation.

An examination of the statutory declarations of third parties

14. Dealing in turn with each statutory declaration in Appendix 2 to the Appellant's statement, the first is from Mr Chubb who says that there have been caravans parked to the right of the approach to the farm buildings during the period he has visited the farm shop since 2011. He says he "*understood*" that the units are occupied by farm helpers because he has seen them at the farm and his impression is that they are largely from abroad. It follows that Mr Chubb is unable to categorically state that the farm helpers have resided in the caravans but in any event Mr Chubb is unable to give evidence about the period from 2006 to 2011, presumably because he did not visit the farm at that time. In these circumstances I am only able to attach his statutory declaration limited weight. It does not show that the use alleged in the notice commenced prior to the material date and has continued throughout the requisite period.

15. The second statutory declaration is that of Mr Rendell who says that to his certain knowledge there have continuously been several caravans at the farm since at least 2003. There is no elaboration as to how Mr Rendell knows that caravans have been there at all material times but, crucially, because Mr Rendell's statutory declaration is silent as to what the caravans have been used for his statutory declaration is of no assistance in showing that the residential use alleged in the enforcement notice commenced prior to the material date and has continued. Whilst it is evidence caravans have been stationed on the land since before the material date, the term "*several*" is imprecise and so I am only able to attach this aspect of his statutory declaration very limited weight.

16. The third statutory declaration is that of Mr Llewellyn-Woodward who states that he has lived at the farm "*from time to time*". Again this term is imprecise and gives no indication of duration: whether periods of 10 days, 10 months or 10 years. It is therefore wholly unfit for purpose and does not show that the use alleged in the notice commenced prior to the material date and continued.

17. Mr Llewellyn-Woodward continues by stating: "*I can confirm that Paul Richards has <u>for the most part also been living there</u> as have many foreign farm helpers who come and go throughout the year both then and up to and including the present day*" [*<u>my emphasis</u>*]. I deal with the Appellant below but note here that Mr Llewellyn-Woodward casts doubt on whether the Appellant has lived on the farm continuously. The more significant point is that whilst I shall assume

[4] Source of quote: paragraph ID: 17c-006-20140306.

that the present day is as at 11 August 2016, being the date the statutory declaration was sworn, which tends to corroborate my ground (b) finding, there is no indication when "*then*" is. This crucial term is ambiguous and means that I am only able to attach limited weight to Mr Llewellyn-Woodward's evidence.

18. The fourth statutory declaration is that of Mr Sawtell who states that he was working on the farm in 2010 and noticed casual workers and up to 3 caravans and that prior to that date he "*was aware of a number of mobile homes in different positions from 2007*". Again, at its highest, this does not show that the use alleged in the notice commenced prior to the material date. Whilst there might be an inference, it also fails to show that any caravans or mobile homes that might have existed were in residential use. For these reasons I am only able to attach limited weight to Mr Sawtell's evidence.

19. The fifth statutory declaration is that of Mr Roadnight who states that he has lived at the farm: "…*at various periods since 2005*". I acknowledge this date is before the material date but my problem is that the term "*various periods*" is ambiguous and again could be periods of 10 days or 10 months. Moreover there is no elaboration as to where he lived at the farm and whether it was in a mobile home, building or tent. For these reasons it does not show that the use alleged in the notice commenced prior to the material date and has continued.

20. The Council's final comments draw attention to previous correspondence with the Appellant's Agent with regard to Mr Roadnight and, in particular, whether he resided at the site. Whilst I accept that the response, dated 27 October 2014, does not appear to answer that direct question, I am unconvinced this goes anywhere. To some extent the Council is corroborating the statutory declaration of Mr Roadnight in the sense that it appears to have had complaints about him living on the site. However that correspondence is from 2014 and so it does not significantly advance the Appellant's case under this ground.

21. Mr Roadnight continues by stating: "*I can confirm that Paul Richards has <u>for the most part also been living there</u> as have many foreign farm helpers who come and go throughout the year*" [*<u>my emphasis</u>*]. I observe that this turn of phrase is exactly the same as that quoted from the statutory declaration of Mr Llewellyn-Woodward and so my earlier comments apply. However in this case the statutory declaration does not elaborate on a period of time and so there is no indication as to when the Appellant might have been living on the farm.

22. The sixth statutory declaration is that of Mr Bartlett who says that there have been caravans at the farm since 2002. To this extent it is similar to the statutory declaration of Mr Rendell and my earlier comments apply insofar as it is of no assistance in showing that the residential use alleged in the notice commenced prior to the material date and has continued. Whilst it is evidence caravans, plural, have been stationed on the land since before the material date, there is no indication of quantum and so I am only able to attach this aspect of his statutory declaration very limited weight because it is imprecise.

23. The seventh statutory declaration appears to be from a gentleman called Mr Barnes, but I apologise if I have got that name wrong because it is unclear from the handwriting. This is the first statutory declaration to which I am able to give anything other than limited or very limited weight because it has a degree of precision that contrasts with those that I have reviewed above. It says: "*I can recall Paul Richards moving to Wooden Top Farm in about 2000.*

He initially lived in a caravan at the farm. The number of caravans increased over the years & by 2005 there were at least 4 caravans…".

24. This is good, unchallenged evidence that the Appellant moved into a caravan on the farm in about the year 2000, before the material date, and initially lived in that caravan. However what is not said is that the Appellant continued to live in a caravan/mobile home from 2000 to the date of issue of the notice. So whilst I am able to attach this statutory declaration significant weight, insofar as it says the Appellant resided in a caravan on the farm in 2000, it does not show that the residential use alleged in the notice continued even up to the material date let alone beyond it. The last sentence is precise in quantifying the number of caravans to be at least 4, but again it does not say what those caravans were used for, whether in 2005 or subsequently. It does not show that the residential use alleged in the notice took place at all after the material date. In the circumstances I attach this aspect of his statutory declaration very limited weight.

An examination of the Appellant's statutory declaration

25. In the context of the above I turn to consider the Appellant's statutory declaration. It says that he rented the property from 1999-2002 and during that time: "…*spent most nights there in a small caravan*". The caravan is identified in the exhibits to the statutory declaration to be a small touring caravan that between 20 November 2001 and 22 February 2002, being the unchallenged dates of the respective photographs, appears to have been stationed adjacent to the southern wall of the largest barn on the site, to the east of the entrance. I have not been provided with the planning history for the period up to 22 February 2002[5] and so, applying the advice in the Guidance, there is no evidence to contradict or otherwise make the applicant's version of events less than probable for this period. The statutory declaration of Mr Barnes appears to corroborate the Appellant's claim for this period.

26. In reaching this view I have taken account of the Council's final comments insofar as they say there is no planning history for the caravan at issue but that it could have been sited using permitted development rights. I am, of course, aware of part 5 rights and I assume the category at issue would be paragraph 7[6] of Schedule 1 to the Caravan Sites and Control of Development 1960. However it is by no means clear that this would have permitted use over such a lengthy period between broadly 1999 and 2002 because that is not a particular season[7]. The mere assertion that it might have been permitted development does not clearly contradict the Appellant's version of events. I have also noted the Council's statement that the original farmhouse serving this land was sold off in December 2002, but on the limited information before me it is unclear whether the Appellant ever acquired that dwelling house.

27. If the breach of planning control, comprising residential use of a single touring caravan, took place in 1999, the question is whether that use continued? The Appellant's statutory declaration says that following purchase of the farm in

[5] The Council's statement sets out the planning history from 2002 but the first planning permission is dated November 2002 and in respect of the position before that it merely says: "*Pre 2002 planning history exists*".
[6] It permits: the use as a caravan site of agricultural land for the accommodation during a particular season of a person or persons employed in farming operations on land in the same occupation.
[7] In saying this I have noted the answer to question 4.2 of the second PCN, but even this does not cover the full 12-months, e.g. June, and the Appellant's final comments explain, by reference to judicial authority, why a season is less than a year.

2002 he: "…*continued living in the caravan pending permission for the eco house*" but that it "*never materialised*". I assume that what did not materialise is the eco home because the Council's statement records that planning permission was granted for an "*underground eco dwelling*" in December 2002[8].

28. The Officer's report on application No 06/00918/OUT, at Appendix 3 to the Council's statement, describes the planning history to be "*complex*" even at that stage and I am dealing with it 10-years later with only selected papers. Accordingly I intend to focus on what has been put before me. That Officer's report sheds relevant light on the planning history. It says the temporary dwelling granted planning permission for 3-years in March 2003 took the form of a log cabin. By reference to section 2.1 of the Council's statement that must be application No 02/03450/FUL, given that the eco home is said to have been permitted earlier and has the prefix 'OUT', which presumably stands for outline.

29. The Officer's report continues by saying that the log cabin: "…*has been started but is far from complete regardless of the fact that the applicant stated it could be erected in 2-3days and fitted out in a further 2 weeks. Meanwhile, <u>the applicant appears to be living in a tepee</u>*" [*<u>my emphasis</u>*]. The heading to that report confirms that the now Appellant was the applicant. I do not know the precise date of that report but it is plainly after 23 May 2006 and before 13 August 2007[9]. On the balance of probability it is closer to the latter than the former, but both dates are after the material date. The Appellant had an opportunity to rebut this evidence at final comments stage but did not do so. This is clear evidence to contradict the Appellant's version of events, if indeed that is being said, that he continued to live in the touring caravan after 2002. Whatever form it took a tepee is most unlikely to have been either a caravan or a mobile home. I attach this material consideration significant weight.

30. For completeness the Officer's report further records that the log cabin was significantly larger than what had been permitted. The recent appeal decision summarises the subsequent position in respect of this matter in saying the log cabin: "…*was constructed but not completed by the end of the permitted temporary period. Subsequent applications were made regarding the condition that required its removal, extension of the permission and construction of a permanent dwelling on site, but these were refused or dismissed at appeal*"[10].

31. The subsequent applications in respect of the log cabin are described in terms of being for its retention. It is evident that the building as a structure would have needed to be retained. What is unclear from the information before me is whether the log cabin was ever used for residential purposes, even in its uncompleted state, such that its use was also being retained. Amongst other things I note that reliance was made on the Human Rights Act in respect of that structure, which might suggest it was being lived in[11]. Whilst I have considered the possibility I conclude, on the balance of probability, that this was not the case. There is no silver bullet to substantiate this point one way or the other, but I anticipate that if the Council was aware that the Appellant had resided in the log cabin for any material period that it would have said so.

[8] That may or may not be correct because elsewhere [Officer's report on application No 06/00918/OUT] it is said that the 2002 application was refused but it is not necessary for me to resolve that particular discrepancy.
[9] The date of refusal, taken from the appeal decision [Ref APP/R3325/A/07/2057458].
[10] Source of quote: paragraph 11, appeal Ref APP/R3325/W/15/3005120.
[11] Paragraphs 56 and 57, appeal Ref APP/R3325/W/15/3005120.

32. Following through with the planning history with which I am provided the other key document is the 2011 appeal decision [Ref APP/R3325/A/10/2126982, with a linked appeal], which relates to a proposal to station a mobile home. There is nothing in that decision to suggest that the appeal was retrospective and, whilst not a major point, this tends to contradict the Appellant's version of events. The appeal was considered at a 3-day Public Inquiry and in my experience that means that the proposal would have been given a significant level of scrutiny beyond that which one might expect on a written appeal.

33. Moreover the Inspector plainly did a site inspection at which he would have been actively looking for mobile homes or similar structures because that is what he was dealing with. So whilst I acknowledge the Appellant's final comments[12] this appeal contrasts in this respect with others. This is underlined by paragraph 38 of the decision, which says: "*Mobile buildings on site already cater for office space and a well equipped day room, either of which could support occasional overnight stays*". The first point is that a mobile building is not a mobile home. The Inspector clearly knew the difference because he was dealing with a proposal for a mobile home but he chose to describe what he saw in those terms, which strongly suggests there was no mobile home on the site on 9 June 2011. This appears to conflict with the statutory declarations of Mr Rendell and Mr Bartlett, who have suggested caravans have been on the site continuously. I test it against the Appellant's statutory declaration below.

34. Moreover the Inspector describes the primary use of the mobile buildings to be that of an office and day room. That suggests firstly that there were only 2 mobile buildings but also, crucially, that they were in use for materially different purposes on that date. In my view this is significant and contradicts the Appellant's version of events. I also attach this factor significant weight.

35. The Appellant's statutory declaration does not, in unambiguous terms, state that he has continued to reside in a caravan or mobile home on the farm since 1999. In any event there is evidence to contradict any such argument, if it is being made, including: (i) the statutory declarations of Mr Llewellyn-Woodward and Mr Roadnight; (ii) evidence that the Appellant lived in a tepee; and (iii) evidence that mobile features were in use as an office and day room in 2011.

36. I am also troubled by evidence that the Appellant has a number of other accommodation options available to him. In no particular order, paragraph 47 of the 2011 appeal decision states that he owns 2 dwellings: one in Charmouth and one in West Coker. I have little information before me about either, but it would appear that the latter had been owned since at least 2008[13]. The 2011 decision records that the one in West Coker was the subject of a lease at that time, but it is unclear whether that has always been the case. The Inspector observes a property in West Coker is: "…*close enough to allow quick and easy access and in adverse conditions the farm could be accessed on foot*" [14]. Allied to this paragraph 38 records: "*The appellant points to the difficulty of access to this site during winter months due to its high and exposed position*". This reinforces my view that the scheme was prospective, not retrospective, as the Appellant would not have made such a claim if he had actually lived on the site.

[12] That draw attention to the 2015 appeal decision, which does not record the existence of any mobile homes.
[13] On the balance of probability that is what is being referred to in paragraph 16 of appeal Ref. APP/R3325/A/07/2057458.
[14] Source of quote: paragraph 47, appeal Ref. APP/R3325/A/10/2126982.

37. In addition to the above, question 4.14 of the first PCN asks: "*What is the address of your primary residence?*" to which the answer "*Not relevant, but – 91a East St, Bridport*" is given. I appreciate this is some 4-years later, but on the information before me this is possibly a third accommodation option that is open to the Appellant. Moreover if the dwelling in Bridport is the Appellant's "*primary residence*" that suggests it is a property where he normally resides or calls home. I attach this material consideration significant weight. Amongst other things I note that question 4.17 of that PCN asked about the West Coker property and it was not stated that the property was no longer owned by the Appellant. No question was asked about the Charmouth property[15] and so it remains in prospect that the Appellant owns 3 other dwellings. The Agent's letter dated 27 October 2014 also makes reference to him owning a public house and it is unclear whether this too has accommodation. The Appellant's statutory declaration does not deal with these accommodation options beyond saying that the house in Bridport is: "…*too far distant*", but that does not explain why it was said to be his primary residence. No explanation is given in the final comments as to how the respective properties have been used.

38. The Appellant's statutory declaration says: "*These caravans together with motor homes accommodating myself and helpers have fluctuated in number between one and six and have been replaced from time to time*…". I have given reasons for doubting this, including the lack of reference to mobile homes in the 2011 appeal decision and the fact that those mobile buildings that are recorded were being used for materially different uses at that time. Moreover there is no indication as to the duration during which there has been one as opposed six vessels used for residential purposes. As a matter of fact and degree this passage does not therefore show that the use of the land for the siting of 6 mobile homes for residential purposes, which is the identified breach of planning control, has been continuous since the material date.

39. In any event it is unclear from this generic statement the circumstances in which caravans or mobile homes were replaced. Based on the Appellant's own photographic evidence the touring caravan evident in the photographs from 2001 and 2002 is not evident in the same location in the 2006 image. What are said to be a cluster of caravans in the Google images appear to be different and larger than the touring caravan shown in the original photographs and the circumstances in which the touring caravan might have been replaced is unclear. It has not been shown that the caravan occupied by the Appellant, distinct from others used by helpers, has been continuously on site or used, as is evident from evidence that the Appellant lived in a tepee, probably in 2007.

40. I note that the Council suggest that what are claimed to be mobile homes in the 2006 Google image might be: "…*lorries which have also frequented the site over the years*". Noting the items are close together, the position is unclear. It has also been suggested that if they are mobile homes they are merely stored. As the Council observes the reply to one of the questions on the first PCN does talk about: "…*the parking of caravans since 1999*", which might suggest that if there are mobile homes in the 2006 image they were merely parked or stored. This reinforces my concerns about the statutory declarations of Mr Rendell, Mr Bartlett and the Appellant insofar as they refer to caravans being at the farm. However the evidence does not clearly show that any such caravans have been continuously occupied for residential purposes since the material date.

[15] Charmouth is more than 10 miles from the appeal site, so question 4.18 would not apply.

41. The Appellant's statutory declaration says: "*In the same year I installed a septic tank exclusively to dispose of waste from this caravan and others which I had acquired to house helpers year-round who I recruited from abroad in return for their accommodation*…". The location of the septic tank is identified in Exhibit D to the statutory declaration and was pointed out to me during my recent visit. However by reference to the previous paragraph of the statutory declaration "*In the same year"* must be read to be 2002 and yet the invoice for the septic tank is November 2003; this is ambiguous. Moreover this passage fails to identify with any precision what number of caravans were acquired.

42. The Appellant's statutory declaration continues: "*Over the years they have accommodated some 200 helpers, typically between 3 and 6 year round and at any one time*". I assume that "*they*" are the other caravans, but I do not know how many and the remainder of the sentence makes little sense. It is unclear whether it is being said that there were between 3 and 6 people, 3 and 6 caravans or that the caravans were occupied for between 3 and 6 months. Again this is ambiguous. As the Council observes at final comments stage the upshot of all of this information is that it presents a "*confused picture*"; I agree. Applying the Guidance the Appellant's evidence is far from being sufficiently precise and unambiguous to justify success on ground (d) on the balance of probability, particularly given the Council's evidence that appears to contradict the Appellant's version of events and makes it less than probable.

An examination of the other submitted material, including final comments

43. Appendix 3 to the Appellant's statement comprises a series of letters and I propose to examine each in turn. I do so however against a background that because none of the letters are sworn I attach them little weight.

44. The first is a letter from Mr Laws that says that there was a residential caravan next to the agricultural buildings that was lived in continuously. However the inference that this was between 1998 and 2000 conflicts with the Appellant's statutory declaration that says he only started renting the farm "*from 1999*". If this not being said it is silent as to date. As such I attach it limited weight.

45. The second is a letter from Mr Howe, which says that the Appellant: "…*has lived on and off at Coker Hill land*". Plainly this is imprecise and, amongst other things, does not give any indication of when. Whilst the letter says Mr Howe has known the Appellant for 20 years that again takes me back before the farm was first rented by the Appellant and in any event that is not in the same sentence as that quoted above. In the circumstances I attach it limited weight. Moreover it contradicts the Appellant's case as to continuity, although noting the grounds of appeal say the Appellant lived there: "…*for the greater part of his time*", rather than continuously, this might be closer to the truth.

46. The third is a letter from Captain Berkeley who provides a character reference by saying that the Appellant: "…*has always been an honourable and honest person*". Captain Berkeley continues by saying that he has visited the farm regularly since 2002 and has seen caravans there every year. However he does not say how many caravans or what they have been used for. For these reasons I attach the contents of this letter very limited weight.

47. The fourth is a letter from CA Lag who also provides a character reference by saying that the Appellant is: "…*a pillar of the community*". The letter otherwise fails to offer any evidence in support of this ground of appeal because the merits of the development that has been undertaken are not in issue.

48. The fifth is a letter from DJ Smith, which says that: "…*since 2002 there has been caravans and mobile homes on site…*". However he does not say how many caravans and mobile homes or what they have been used for. For these reasons I attach the contents of this letter very limited weight.

49. Appendix 4 is a print out from the Helpx website, but as the oldest entry is from 1 August 2012 I fail to see how this assists the Appellant's case. To the contrary it suggests that the residential use of other mobile homes at the site started well after the material date. Moreover the Appellant's entry, which is in effect the advertisement, merely refers to 4 persons. The individual entries appear to relate to stays of short duration, typically up to 5 or 6 weeks, and there are big gaps, e.g. between March and October 2013, which indicates that any residential use of any mobile homes was not continuous. It does not support the claim that between 3 and 6 helpers live there year round, if indeed that is what is being said in the Appellant's statutory declaration. Appendix 5 is a print out from the Workaway website, but here the oldest entry appears to be May 2016 and so my earlier comments apply even more. Whilst the Appellant's statement refers to an earlier website, Woofer, no excerpts are provided.

50. Turning to the Appellant's final comments, I acknowledge that the submitted plans with the various applications over the years might not have recorded the mobile homes but that this should not be a conclusive factor. I appreciate that the 2015 appeal decision does not mention the mobile homes which, on the balance of probability existed on the site at that time, but he was dealing with an eco house rather than a mobile home and I regard that to be significant.

51. In the absence of a ground (c) or the deemed application, I do not intend to comment on the issue between the parties with regard to whether the helpers are employees or any other matter that goes to the need for seasonal workers. Neither is the policy framework, cited by the Council in its statement, relevant to this ground of appeal.

Overall conclusion on the ground (d)

52. For the reasons I have discussed above I conclude that the Appellant has not discharged the onus of proof to show that the mixed use of the land for residential, by the siting on the land of six mobile homes used for residential purposes, and agriculture commenced prior to the material date and continued. Although I have found some evidence that a single touring caravan was used for residential purposes by the Appellant prior to the material date there is reason to doubt that this use was continuous. Moreover I have given reasons for finding that even if I take the submitted evidence in combination, it is not sufficiently precise and unambiguous to justify allowing the ground (d) on the balance of probability. There is no clear evidence to show that the additional 5 mobile homes have been continuously stationed on the land since the material date nor to show the residential use thereof has been continuous. In finding that ground (d) should fail I have taken account of all the submitted evidence.

Ground (f)

53. It is unclear from the limited grounds of appeal under this head why occupation by seasonal helpers is being claimed to be legitimate. To the extent that the reasons given for this ground of appeal rely on the ground (d) argument, i.e. the reference to the six being: "…*deemed to be established*", this is not a sound basis to claim that they are legitimate given my findings on that ground of appeal. As the Council's final comments make clear the enforcement notice

does not purport to remove permitted development rights. In the absence of a ground (c), since no claim is even made that the use is permitted development, I do not intend to address the assertion made at final comments stage that the mobile homes could be retained out of season. The requirements of the notice seek to remedy the breach by requiring the residential use to cease and the mobile homes to be removed. That objective falls wholly within section 173(4)(a) of the Act and so the requirements of the notice are not excessive.

54. In reaching this view I have taken account of the reference at final comments stage to a Welsh appeal [Ref APP/M6825/C/12/2176562] and despite the fact that no copy was provided I have been able to identify it on the Planning Portal. That case was concerned with a single caravan where the Inspector was considering a ground (c) appeal. In contrast I am dealing with 6 mobile homes where no ground (c) has been lodged. On this basis alone the appeals do not appear to be comparable. In that case the Inspector found: "*The quantum of evidence thus leads me to conclude, as a matter of fact and degree and on the balance of probability, that the caravan is sited for purposes ancillary to the agricultural use of the land*"[16] [*my emphasis*]. In contrast it is merely asserted here that the 6 mobile homes: "…*could legitimately be retained for non-residential agricultural use out of season – such as for rest room, office or storage purposes*"[17]. However as a matter of fact and degree, in the absence of evidence, I disagree. Moreover such an outcome would not achieve the Council's objective to remedy the breach by, amongst other things, discontinuing the use and restoring the land to its condition before the breach.

55. The Appellant's final comments also suggest in a half-hearted way[18] that the disruption caused by the removal of the mobile homes would outweigh any perceived harm arising from their retention. This argument is however misconceived. The Appellant has not lodged a ground (a) or paid the deemed application fees that would have enabled the planning merits, including any human rights considerations that have been referred to in some of the letters, to be fully assessed. I have also given reasons why the requirements of the notice are within section 173(4)(a) of the Act, not 173(4)(b). This argument cannot therefore succeed in the particular circumstances of this appeal. For all of the above reasons the ground (f) appeal must also fail.

Conclusion

56. For the reasons given, and having regard to all other matters raised, I conclude that the appeal should be dismissed and I shall uphold the corrected notice.

Pete Drew
INSPECTOR

[16] Source of quote: paragraph 7 of the decision dated 19 November 2012.
[17] Source of quote: Appellant's final comments.
[18] It says: "…*verging admittedly on the pragmatic rather than the overtly legal*".