

Chichester District Council

Planning Committee

Wednesday 18 July 2018

Report of the Head of Planning Services

Schedule of Planning Appeals, Court and Policy Matters

This report updates Planning Committee members on current appeals and other matters. It would be of assistance if specific questions on individual cases could be directed to officers in advance of the meeting.

Note for public viewing via Chichester District Council web site To read each file in detail, including the full appeal decision when it is issued, click on the reference number (NB certain enforcement cases are not open for public inspection, but you will be able to see the key papers via the automatic link to the Planning Inspectorate).

* - Committee level decision.

1. NEW APPEALS

Reference/Procedure	Proposal
<u>17/03629/DOM</u> Southbourne Parish Case Officer: Maria Tomlinson Householder Appeal	2 Fairview Cottages Prinsted Lane Prinsted Emsworth Hampshire PO10 8HR - Change use of loft space to habitable accommodation to include rear dormer.

2. DECISIONS MADE

Reference/Procedure	Proposal
<u>15/00375/CONCOU</u> North Mundham Parish Case Officer: Reg Hawks	Land North Of Fisher Common Nursery Fisher Lane North Mundham West Sussex - Change of use of barn to residential.
Public Inquiry	
Appeal Decision: APPEAL ALLOWED - NOTICE QUASHED	
<p>Appeals A&B Refs: APP/L3815/C/16/3158273 & 74 - The breach of planning control as alleged in the notice is without planning permission the change of use of a building (in the approximate position shown on the attached plan) to use as a dwellinghouse....</p> <p>Appeals C&D Refs: APP/L3815/C/16/3158288 & 89 - The breach of planning control as alleged in the notice is without planning permission, the erection of a dwelling...</p> <p>Appeal E Ref: APP/L3815/X/17/3174953 - The development for which a certificate of lawful use or development is sought is the continuous occupation for in excess of 4 years of barn style building erected under planning permission 10/00517/FUL granted on 28 April 2010.</p>	
<p>Decisions</p> <p>Appeals A & B</p> <ol style="list-style-type: none"> 1. The appeals are allowed and the enforcement notice is quashed. <p>Appeals C & D</p> <ol style="list-style-type: none"> 2. The enforcement notice is quashed. <p>Appeal E</p> <ol style="list-style-type: none"> 3. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful. No Statement of Common Ground was produced and all of the oral evidence was heard under oath or by sworn affirmation. ... The Council have chosen to serve enforcement notices in the alternative....because they maintain the appellants' position has changed over time...the appellants set out that the original purpose of the barn, when constructed in 2010, changed during the building process and from 6 February 2011 became the residential home to the appellants. If that were the case then the Council would argue that the appellants set out to deliberately conceal any residential use of the building... In that light the appellants would have acted fraudulently and that would disqualify them from acquiring immunity under the four-year rule. However the appellants... maintain... that the barn was originally constructed as a tractor shed and hay barn and was then used for such purposes. The building was then converted for residential purposes such that there is in their view no need for the enforcement notice subject of Appeals C&D.... 	

From all that I have heard, seen and read it is apparent that the appellants' case is centred upon the building changing uses. I see no reason to disagree for the reasons set out under the appeals on ground (d). In that light I find the material change of use notice to be correct and I will quash the operational development notice in any event, since there is a risk of uncertainty and injustice if the two notices subsist. I am satisfied to do so will not lead to prejudice to either party. Therefore my deliberations will focus solely on Appeals A, B and E.... In this case the onus is upon the appellants to demonstrate, on the balance of probabilities, that the change of use, to a single dwellinghouse, occurred 4 years or more at or before the time the enforcement notice was served, the relevant date being 3 August 2012.... At the Inquiry the appellants called a number of witnesses who all, on oath, gave oral evidence that supported the appellants' case.... When questioned about living conditions in the barn the appellants set out that the barn could be adequately ventilated and lit with natural daylight by opening the doors. Whilst I understand the Council's suggestion that would not have been an ideal situation. There is nothing before me to corroborate what living conditions would have been like or if opening the barn doors would have been sufficient for light and ventilation.... when questioned about the lack of refuse collection during the disputed period the appellants were both clear. Disposing of rubbish not by way of public refuse collection was simply a way of life for them borne out of their gypsy and traveller roots. Mr Chatfield was also paying Council Tax at Jimmy's Yard and rightly or wrongly assumed he should only pay that once given he was not living at Jimmy's Yard. As well as those witnesses called, there are three signed witness statements.... The Parish Council maintain that local residents only became aware of the barn being used in 2015. The Parish Council also set out that the gates to the site were mainly locked prior to 2015, the bins were only collected after 2015, and the retrospective Council Tax bill spanning back to six years is not credible evidence of continuous occupation. The Council point to the evidence that the Chatfiled family were still living in the mobile home at Tommy's Yard. That is as evidenced by the information given on a Planning Contravention Notice, a planning application and statement and a report by Henry Adams concerning a planning proposal dated August 2013 at 10 Acres.... The fact that local residents only reported the residential use when the rooflights were inserted and the garage area glazed is not a surprise given the distance of the Right of Way to the barn.... the Council has no direct evidence, such as eye witnesses, to say that that the appellants were still living in the mobile home at Tommy's Yard. ... Considering all these matters together it seems to me that, unless all of the appellants' witnesses were lying on oath, which seems in itself untenable, that the appeals on ground (d) are bound to succeed.... I consider this oral evidence to be plausible and sufficiently precise and unambiguous on the balance of probability. For these reasons I am satisfied, on the evidence before me, that the material change of use of the building from agriculture to use as a dwellinghouse took place more than 4 years before the Notice was issued and the appeals on this ground should succeed in respect of those matters which, are stated in it as constituting the breach of planning control. In view of the success on legal grounds, the appeals under the various grounds (f) and (g) as set out in section 174(2) of the 1990 Act as amended do not fall to be considered.... I do not find that the appellants have been deliberate in making misleading false statements such that they should not be able to rely on the period for immunity.... Accordingly both enforcement notices will be quashed.

In these circumstances the appeal under grounds (f) and (g) set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered. Furthermore I find for the reasons set out above, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the barn as a single dwellinghouse was not well-founded and that appeal should succeed also."

<u>16/00424/ELD</u> North Mundham Parish Case Officer: Reg Hawks	10 Acres Land North Of Fisher Common Nursery Fisher Lane North Mundham West Sussex PO20 1YU - Continuous occupation for in excess of 4 years of barn building erected under planning permission 10/00517/FUL granted on 28 April 2010.
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Public Inquiry

Appeal Decision: APPEAL ALLOWED - NOTICE QUASHED

As above

<u>16/03997/OUT</u> Selsey Parish Case Officer: Steve Harris Informal Hearing	Land On The South Side Of Warners Lane Selsey West Sussex - Outline application for the construction of 68 no. residential units with primary access off Old Farm Road.
Appeal Decision: APPEAL DISMISSED	
<p>Policy 23 establishes a strategic development approach for Selsey where new development to meet identified local needs will be supported. This is set out as 150 homes. Accompanying text to this policy indicates that this modest allocation reflects the town's physical, environmental and accessibility constraints. To my mind, the figure of 150 was an appropriate broad target for acceptable development in this part of the Manhood Peninsula. Against such a target, with permissions for 249 houses recently approved, the additional 68 houses would represent a very significant increase. The proposed housing would therefore conflict with the strategic approach set out in the Local Plan under Policies 2 and 23. At the Hearing, the appellant raised the issue of a recent position as regards the part of the district covered by the South Downs National Park. It was reported that the National Park would be unable to meet its OAN, representing a shortfall of 44 homes per annum for Chichester. To my mind this cannot be taken further within this appeal. Such matters must be left for consideration as part of the formal Local Plan process under the Duty to Cooperate. Flood Risk - I have considered the submitted evidence. Any Sequential Test (ST) must respond to the specific issues of the district or the agreed area for the ST. While I accept that there is a good standard of flood alleviation offered; flood risk remains higher than land across the majority of the district. As such, I consider that the possibility of building out part of a larger site, or combining two or more smaller sites should not have been rejected out of hand, and this may include land that has not been identified through the SHLAA process. Similarly, land that is allocated or has permission, but is not being brought forward could also have been considered as a sequentially preferable option. On balance, while I accept that the Council are likely to need to seek additional land for housing, in light of my findings above there is insufficient evidence to show that all options to meet the development's needs have been fully assessed in the ST. Consequently, the proposal has not properly addressed the ST and so conflicts with the Framework and Policy 42 of the Local Plan, which references the Framework requirements in this regard. To set against these conflicts, I find moderate weight in favour of the scheme with regard to the provision of affordable housing and open market housing, the provision of public open space. Nonetheless, these benefits do not amount to material considerations which would justify making a decision other than in accordance with the development plan.</p>	

<p><u>17/00074/CONENF</u> Oving Parish Case Officer: Shona Archer</p> <p>Written Representation</p>	<p>Decoy Farm Decoy Lane Oving Chichester West Sussex PO20 3TR - Appeal against non-compliance with Enforcement Notice O/11 - O/12.</p>
<p>Appeals A – Notice 1 - Refs: APP/L3815/C/17/3180340 & 3180341 Land to the north west of Decoy Farmhouse, Decoy Lane, Aldingbourne, Chichester PO20 3TR The enforcement notice, numbered O/27, was issued on 14 June 2017. The breach of planning control as alleged in the notice is as follows: Change of use of the land to a general storage use...</p> <p>Appeals B – Notice 2 - Refs: APP/L3815/C/17/ 3189998 & 3190006 Land to the north west of Decoy Farmhouse, Decoy Lane, Aldingbourne, Chichester PO20 3TR The enforcement notice, numbered O/28, was issued on 14 June 2017. The breach of planning control as alleged in the notice is the erection of a wooden building on raised concrete blocks... The appeals are dismissed. It is stated that any matters relating to the earlier notices are irrelevant for the purposes of the present enforcement notices. I agree that this is generally the case, but they are material considerations with regard to the planning history of the site... In this case the Council had to take direct action to clear the site of the matters which had earlier been enforced against. I note that there is an on-going legal dispute between the Council and the appellants relating to what exactly was removed from the site. However, these matters are not relevant to the two notices the subject of these appeals and are not for me to consider. In this case the Council had to take direct action to clear the site of the matters which had earlier been enforced against. I note that there is an on-going legal dispute between the Council and the appellants relating to what exactly was removed from the site. However, these matters are not relevant to the two notices the subject of these appeals and are not for me to consider... On the basis of their investigations the Council considered that further enforcement action was expedient with regard to what is now alleged in the two notices... Under the provisions of the Act a named officer of the LPA was entitled to enter the land to establish whether further breaches of control had occurred... I consider, therefore, that the validity/legality of the notices cannot be challenged on the basis of the officer entry on to the land...I consider that the enforcement action taken by the LPA was a proportionate response to the alleged breaches of planning control... The consequences of any actions taken as a result of the previous notices and the subsequent legal cases are matters between the LPA and the appellants and are not before me...</p>	

The authorized use of the appeal land is agricultural and the appellants still contend that this is its current use and that a general storage use has not occurred... The items on site appeared to be a mix of old agricultural machinery and tools; domestic items; building materials and rubble and what can only be described as general rubbish (including old shopping trolleys)... Considering the plethora of items; the overgrown nature of the land and the variety of materials it seems likely that there are non-agricultural items dating back to before 2005, as well as those alleged to have been introduced since 2016... Even if the requirement to remove all items which were not ancillary or incidental to the agricultural use had been completed, that requirement was on-going. To bring back other non-agricultural items on to the land for storage purposes constituted a breach of the notice...

Notice 1

Appeals A on ground (b)

In this case the allegation lists a number of items allegedly being stored on the land... The list was not exclusive in any case and not every item has to be accounted for in order for a breach to have taken place as a matter of fact... I consider, that what is alleged in Notice 1 has occurred as a matter of fact... the appeals fail, therefore, on ground (b).

Appeals A on ground (c)

On the basis of what I have read and seen it is my view that, as a matter of fact and degree, a change of use of the appeal land from agricultural use to a mixed use of agriculture and general

storage has taken place... The overall impression is that the site is perceived as an overgrown

junk or scrapyard, albeit one which contains some agricultural items and the dilapidated 'pigsty'... It follows that there has been a breach of planning control in addition to the continuing breach of the earlier notices. The appeals, therefore, also fail on ground (c).

Appeals A on ground (d)

For the alleged change of use (set out in notice 0/27) to be immune from enforcement action and for the appeal to be successful on ground (d), the onus is upon the appellant to conclusively show that the mixed use of agriculture and general storage, has been occurring continuously for a 10 year period commencing on 14 June 2007. This cannot possibly have been the case... There is no evidence to indicate that what is alleged in notice 0/27 (in relation to all or indeed any of the items stored) have been in place for the necessary 10 year period... I consider, therefore, that ground (d) has not been conclusively proven and the appeals also fail on this ground... Appeals A on ground (f) I have concluded above that the items are not ancillary to any agricultural use of the land; that it has not been conclusively shown that all of the items enforced against have been on the land for the required 10 year period and that any items removed must still form part of the requirements of the notice. The appellants have not provided any conclusive evidence relating to what is, or is not, ancillary or incidental to any agricultural use of the land. No attempt has been made to make an inventory of the items on the land and the seemingly haphazard method of storage simply confuses or blurs any distinction between agricultural and nonagricultural items (to whichever notices they refer). Overall I do not consider that the requirements of the notice are excessive and the appeal fails on ground (f).

Appeals A on ground (g)

Having considered the overall circumstances and taking into account the fact that some items have already been removed I consider that a three month compliance period to remove the rest of the items is more than adequate. The items are relatively small and can all be easily transported. I do not consider, therefore that the compliance period is too short and the appeals also fail on ground (g).

Notice 2

Appeals B on ground (b)

Irrespective of its planning status, or what it is used for, the shed is there, as a matter of fact. It follows that the appeals must fail on ground (b).

Appeals B on ground (c)

During my visit I was able to see the domestic items stored in the shed. As far as I could see there were no agricultural items being stored inside the shed. It is claimed that it was only built as a direct result of the Council's actions.

The previous Inspector had concluded that there was no agricultural justification for the incomplete brick and flint building, whether as a barn or for some other function. He also concluded that no agricultural business was taking place on the land. Since 2006 it is the LPA's case that the situation has not changed and that there is no firm evidence of agricultural activity having been carried out on the land since that time. On the basis of the submissions before me and from my site inspection I see no reason to disagree with the LPA. There is no evidence before me of any recent or current agricultural activity... The land was not in any obvious agricultural use at the time of my site visit... There are no agricultural business records before me and whilst accepting that the lawful use of the land is agricultural there does not appear to be any such uses (other than some agricultural items being stored) currently taking place... By the appellants' own admission the wooden shed had been erected in 2017 to house materials and the personal chattels of their mother. I conclude, therefore, that it cannot be permitted development for agricultural purposes. The shed is not being used for agricultural purposes. There is no planning permission in place and with no permitted developments right either, the development is unauthorized and a breach of planning control as alleged in notice 0/28. It follows that the appeals cannot succeed on ground (c).

Appeals B on ground (d)

the appeals cannot possibly succeed on ground (d). The building was only brought to the Council's attention in 2017 and in the appellants' joint statement it is indicated that it was purchased after the previous partially completed building had been demolished in 2016. It could not possibly meet the 4 year rule requirement and the Council was not precluded from taking enforcement action. The appeals must also fail, therefore on ground (d). Appeals B on ground (f)

Having considered all of the representations I agree with the Council that lesser steps would not overcome the visual harm caused by shed in its isolated position. Again, the appellants have not put forward any suggested lesser steps... I do not consider that the requirements of the notice are excessive and the appeals fail on ground (f).

Appeals B on ground (g)

The shed is not very large and considering that it is storing domestic items it should not take too long to empty... I do not consider, therefore, that the compliance period is excessive and the appeals also fail on ground (g)...

Formal Decisions

Appeals A – Notice A

The appeals are dismissed and the enforcement notice (No 0/27) is upheld.

Appeals B – Notice B

The appeals are dismissed and the enforcement notice (No 0/28) is upheld.

3. CURRENT APPEALS

Reference/Procedure	Proposal
16/00933/OUT Birdham Parish Case Officer: Jeremy Bushell	Koolbergen, Kelly's Nurseries And Bellfield Nurseries Bell Lane Birdham Chichester West Sussex PO20 7HY - Erection of 77 houses B1 floorspace, retail and open space with retention of 1 dwelling.
Public Inquiry 2/10/18 - 5/10/18 Vicars Hall, The Royal Chantry, Cathedral Cloisters, Chichester PO19 1PX	
SDNP/17/02952/FUL Bury Parish Case Officer: Derek Price	Hadworth Barn Hadworth Lane Bury RH20 1PG - Proposed agricultural storage building.
Written Representation	
15/00064/CONLB Chichester Parish Case Officer: Sue Payne	13 Parchment Street Chichester West Sussex PO19 3DA - Appeal against removal of x 3 wooden casements and fitting of x 3 UPVC casements in Grade II listed building in Conservation Area.
Public Inquiry 20/09/2018 Edes House West Street Chichester West Sussex PO19 1RQ	

<u>17/01073/FUL</u> Chichester Parish Case Officer: Caitlin Boddy Written Representation	22A Lavant Road Chichester West Sussex PO19 5RG - Demolition of existing dwelling and erection of 2 no. 4 bed detached properties with shared garage, 3 no. 3 bed link detached properties with integral garages, parking and new access drive.
* <u>17/01712/FUL</u> Chichester Parish Case Officer: Rob Sims Written Representation	Whyke Lodge Residential Care Home 115 Whyke Road Chichester West Sussex PO19 8JG - 6 no. dwellings.
<u>17/03126/FUL</u> Chichester Parish Case Officer: Summer Sharpe Written Representation	Rose Court St Cyriacs Chichester PO19 1AW - Replacement windows and doors.
<u>17/02138/FUL</u> East Wittering And Bracklesham Parish Case Officer: Naomi Langford Informal Hearing	Royal Oak Stocks Lane East Wittering Chichester West Sussex PO20 8BS - Demolition of the former public house and erection of a two storey terrace of 9 no. dwellings (consisting of 7 no. 3 bedroom units and 2 no. 4 bedroom units) with undercroft and parking to the rear and the erection of 1 no. 2 bedroom bungalow.
<u>SDNP/17/02266/FUL</u> Fernhurst Parish Case Officer: Bev Stubbington Written Representation	October House Marley Heights Fernhurst Haslemere West Sussex GU27 3LU - Change use of land to garden land and construction of tennis court with 2.75m high surrounding fence.

<u>17/03572/DOM</u> Fishbourne Parish Case Officer: Summer Sharpe Householder Appeal	Tambelup 127 Salthill Road Fishbourne PO19 3PZ - Detached garage.
<u>SDNP/17/00949/FUL</u> Funtington Parish Case Officer: Derek Price Informal Hearing	Land South of Braefoot, Southbrook Road, West Ashling West Sussex - Retention and continued use of mobile home for gypsy family occupation including existing timber shed and refuse enclosure. Linked to SDNP/16/00496/OPDEV
<u>SDNP/16/00496/OPDEV</u> Funtington Parish Case Officer: Shona Archer Informal Hearing	Land South of Braefoot, Southbrook Road, West Ashling West Sussex – Mobile home inc installation of a cesspit and engineering works - appeal against enforcement notice. Linked to <u>SDNP/17/00949/FUL</u>
<u>17/02162/FUL</u> Loxwood Parish Case Officer: Caitlin Boddy Written Representation	Beech Farm Roundstreet Common Loxwood RH14 0AN - Proposed mixed use live work development - conversion of commercial equestrian buildings and barns into flexible B1 offices and light industrial workshops/B8 commercial storage uses and 9 no. residential dwellings together with re-routing of internal access and removal of outdoor menage and enclosed horsewalker.
<u>15/00202/CONAGR</u> Oving Parish Case Officer: Reg Hawks Written Representation	Ham Farm Church Lane Oving West Sussex PO20 2BT - Appeal against new agricultural building, earth bund and access track.

<u>16/00359/CONTRV</u> Sidlesham Parish Case Officer: Emma Kierans Informal Hearing	Land Adj To Ham Road Sidlesham West Sussex - Appeal against Enforcement Notice SI/69
<u>16/00359/CONTRV</u> Sidlesham Parish Case Officer: Emma Kierans Informal Hearing	Land Adj To Ham Road Sidlesham West Sussex - Appeal against the Stationing of a mobile home
<u>16/03383/FUL</u> Sidlesham Parish Case Officer: Emma Kierans Informal Hearing	Land Adjacent To Ham Road Sidlesham West Sussex - Use of land as a travellers caravan site consisting of 2 no. touring caravans, 1 no. amenity structure and associated development.
<u>17/00031/CONMHC</u> Southbourne Parish Case Officer: Shona Archer Informal Hearing	Land North Of Marina Farm Thorney Road Southbourne Hampshire - Without planning permission, change of use of the land to a mixed or dual use for the grazing of horses and the stationing of a mobile home for the purposes of human habitation
<u>17/03629/DOM</u> Southbourne Parish Case Officer: Maria Tomlinson Householder Appeal	2 Fairview Cottages Prinsted Lane Prinsted Emsworth Hampshire PO10 8HR - Change use of loft space to habitable accommodation to include rear dormer.

<u>16/00191/CONCOU</u> Westbourne Parish Case Officer: Shona Archer Written Representation	The Old Army Camp Cemetery Lane Woodmancote Westbourne West Sussex - Appeal against change of use to tarmac contractor.
<u>17/00378/FUL</u> Westbourne Parish Case Officer: Caitlin Boddy Written Representation	The Old Army Camp Cemetery Lane Woodmancote Westbourne PO10 8RZ - Retrospective application for change of use of land as open storage for vehicles and use as HGV Operating Centre, with ancillary office and stores.
<u>17/01644/FUL</u> Westhampnett Parish Case Officer: Claire Coles Written Representation	Land North Of Junction With Old Arundel Road Stane Street Maudlin Westhampnett West Sussex - Proposed construction of 5 no. dwellings.

4. VARIATIONS TO SECTION 106 AGREEMENTS

None

5. CALLED-IN APPLICATIONS

Reference	Proposal	Stage

6. COURT AND OTHER MATTERS

Injunctions		
Site	Breach	Stage
Court Hearings		
Site	Matter	Stage
Decoy Farm Oving	Claim for clearance costs	Council to serve defence to counterclaim and trial to be fixed between September and December 2018

Prosecutions		
Site	Breach	Stage
Elms Lane, West Wittering	Breach of Enforcement Notice	Summons issued. Court date on 30 July at Worthing Magistrates' Court

7. POLICY MATTERS

None