
Appeal Decisions

Inquiry held on 13 June 2017

Site visit made on 13 June 2017

by Wendy McKay LLB Solicitor (Non-practising)

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

Decision date: 08 August 2017

Appeal A, Notice A Ref: APP/R3325/C/16/3153642

Land adjoining Windmill Acres Farm, Windmill Lane, Pibsbury, Langport, Somerset, TA10 9EP

- 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 Andrew Parker against an enforcement notice issued by South Somerset District Council.
- The enforcement notice was issued on 25 May 2016.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from agriculture to residential use by means of the occupation of the land for residential purposes and human habitation.
- The requirements of the notice are: (i) Cease the use of any part of the land or buildings upon the land for residential purposes; (ii) Remove all domestic paraphernalia associated with the unauthorised use of the land (You may continue to use the land for agricultural purposes including the storage of agricultural equipment, machinery and items on the land used solely for the purposes of agriculture); (iii) Restore the land to its condition before the breach took place (you may continue to use the land for agricultural purposes).
- The period for compliance with the requirements is (i) 9 months; (ii) 12 months; (iii) 15 months.
- The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended. Since no appeal has been made on ground (a) 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 as amended does not fall to be considered.

Summary of Decision: The appeal is allowed, and the enforcement notice is quashed.

Appeal B, Notice B Ref: APP/R3325/C/16/3153643

Land adjoining Windmill Acres Farm, Windmill Lane, Pibsbury, Langport, Somerset, TA10 9EP

- 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 Andrew Parker against an enforcement notice issued by South Somerset District Council.
- The enforcement notice was issued on 25 May 2016.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a two storey timber clad building ("the building"). The building is in the approximate position shown marked with a red cross on the plan attached to the notice. The building is identified in photograph A attached to the notice.
- The requirements of the notice are: (i) Remove the entire building described in paragraph 3 of the notice from the land (you are not required to remove hardstanding

or other buildings on the land and may continue to use these for agricultural purposes); (ii) Remove all building materials and rubble arising from compliance with requirement (i) from the land including the removal of any domestic paraphernalia associated with the unauthorised development of the land (you may keep any equipment, machinery or items that you use solely for the purposes of agriculture on the land); (iii) restore the land to its condition before the breach took place (you may continue to use the land for agricultural purposes).

- The period for compliance with the requirements is: (i) 9 months; (ii) 12 months; (iii) 15 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Preliminary Matters

1. The oral evidence at the Inquiry was taken on oath.
2. At the Inquiry, the parties submitted a Statement of Common Ground (SCG). This sets out a number of areas of common ground including the description of the site and the area, the planning history of the site and relevant Development Plan policies.

The appeals on ground (d)

Appeal A – the change of use of the land

Background matters

3. On ground (d), the relevant immunity period for the material change of use alleged by Notice A by virtue of s.171B(3) is the period of 10 years beginning with the date of the breach. It is therefore for the Appellant to demonstrate, on the balance of probabilities, that the alleged material change of use has existed for a period in excess of 10 years prior to the date of issue of the notice and continued actively throughout the following 10 year period. There can be no 'dormant' periods in the 10 year period. The Appellant must show when the change of use first occurred and demonstrate that it had continued actively throughout the relevant period, to the extent that enforcement action could have been taken against it at any time. The relevant date for the purposes of this appeal is the 25 May 2006.
4. The Appellant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted (*FW Gabbitas v SSE and Newham LBC [1985] JPL 630*). If the local planning authority has no evidence of its own, or from others, to contradict or otherwise make the Appellant's version of events less than probable, there is no good reason to refuse the appeal, provided his evidence alone is sufficiently precise and unambiguous to show the existence of a lawful use through the passage of time "on the balance of probability."

The Appellant's case in summary on ground (d)

5. The Appellant asserts that the change of use of the land first occurred in 2003 and has continued since that time so as to become lawful prior to the issue of the notice. He submits that there were no material periods during the initial 10

years when enforcement proceedings could not have been taken and there has been no abandonment of that lawful use since the initial 10 year period ended.

The evidence of Andrew Mark Parker

6. At the Inquiry, the Appellant gave oral evidence in confirmation and support of his statutory declaration dated 24 June 2016. He also put forward in evidence his statutory declarations dated 18 August 1995, and 17 February 2011. The latter had been originally submitted in connection with an application for a Certificate of Lawfulness of Use or Development (CLEUD) for the use of the building now known as Windmill Acres¹ as a dwelling.
7. His evidence is that in October 2004 he moved from Windmill Acres for personal reasons and moved into another building on the site which had become known as "The Retreat".² That building had been erected for farm storage purposes at the end of 2001. In 2003, he converted it into living accommodation and created a combined living/sleeping/cooking area together with a separate bathroom. He asserts that this building was fully self-contained with heating, mains water supply, septic tank and electricity from wind/solar sources plus a back-up generator. There was no water bill as the mains supply came via Windmill Acres.
8. The first occupant of this building was Jason North who occupied it for about three months in 2003. He was followed by Gerald Bingham until October 2004, when Gerald moved into Windmill Acres and the Appellant moved into The Retreat. The Appellant claims that he lived in The Retreat from October 2004 until July 2005. From July 2005, Anthony Bishop moved into The Retreat until July 2007, when he moved into Windmill Acres and the Appellant moved back into The Retreat. The Appellant continued to live at The Retreat until September 2009, when he moved back into Windmill Acres with his new partner. In late 2010 and early 2011, he erected a wall as a replacement for a fence separating The Retreat from Windmill Acres and altered the access gate to The Retreat to make it easier for vehicles to turn in.
9. His evidence is that from September 2009 he rented The Retreat to Ian Macey until August 2012. Mr Macey lived there throughout that time. During 2012, the Appellant moved back into The Retreat, again for personal reasons, as soon as the tenant left in September 2012 and he has been living there ever since. In 2014, various extensions were added to the original building. Since 2003, the land immediately adjoining the building has been used for the parking of residents' and visitors' cars with areas used as vegetable gardens and for relaxing outdoors. The other buildings on the site have been used to accommodate the diesel tank, generator, batteries and the like.

The evidence of Susan Ann Parker

10. The oral evidence of Susan Ann Parker confirmed that she was living in the original cabin on the site in early 2014 and was in occupation throughout the period that the works were carried out to that building. She has continued to live at the site with her partner since that time.

¹ Alternatively described in some of the documentation and statutory declarations as Windmill Acres Farm or Windmill Farm

² Alternatively described as "the cabin".

The evidence of Iain Edward Macey

11. The oral evidence of Iain Macey confirmed the contents of his statutory declaration dated 1 July 2016. He claims that he lived in The Retreat from September 2009 until August 2012. He did not meet the person who had occupied the property before him but there were some personal items left in the building. As far as he was aware, the Appellant moved into the property straight after him. In relation to the surrounding land, there were three or four raised beds that were used for growing vegetables and flowers. There was also a grassed area, a turning area, hardstanding, compost heaps and an open shed for wood storage. He was able to live independently and kept himself to himself. He paid rent but not Council Tax during his stay. At that time, the post usually went to Windmill Acres.

The evidence of Clive John Millar

12. In his oral evidence to the Inquiry, Clive Millar explained the extent of his own personal knowledge of the site. He had first visited the property in connection with the submission of a CLEUD application for the adjoining Windmill Acres premises on 23 February 2011. He attended a site visit with an officer of the Council, Mr Walton, who saw inside Windmill Acres and inspected the adjoining garden and outbuildings associated with it. However, he did not ask to see the appeal building and associated land which were separated from that CLEUD application site by a wall and field gate.
13. Following that site visit, he was invited by the Appellant to see the remainder of the land in his ownership to the east. He observed that the outbuildings contained a generator, fuel tank, solar energy system and a battery bank. These were not connected with Windmill Acres but served only a timber cabin building. At that time, the cabin was tenanted by Mr Iain Macey whom he met. He viewed the accommodation and could see that there was a kitchen/sitting bedroom area including a Rayburn stove, a sink, a gas hob, and bed together with a bathroom. He saw that the remainder of space within the outbuildings was being used for the storage of Mr Macey's possessions. He also had a vehicle parked outside and there was a vegetable patch.
14. Mr Millar did not visit the appeal site again until February 2012 when he was invited to inspect The Retreat and give advice as to its planning status. He noticed that further lean-to outbuildings had been constructed and were in use as garaging and domestic storage. Mr Macey was still in occupation. His subsequent e-mail dated 23 February 2012 notes that he had inspected The Retreat and sets out his view that it was fully self-contained and habitable as a dwelling.
15. Mr Millar next visited the appeal site on 26 September 2012. At that time, Mr Parker had separated from his former partner who remained in Windmill Acres whilst he was then living on his own in The Retreat. He did not visit the premises again until 2016 when he observed that the original dwelling had been much altered and extended. He considered that the area the subject of Notice A coincided with the area which has changed use to residential occupation. He rejected the Council's position that in the absence of the lawful dwelling there could be no lawful curtilage and did not regard the concept of 'curtilage' as being the same as that of a 'use' of land.

The aerial and other photographic evidence

16. The Appellant places reliance upon the 2006 aerial photograph as showing the green roof of the original building in situ. That photograph has been verified as having been taken in June 2006. The Appellant's evidence highlights the presence of vehicles and a chicken run on the adjacent land.
17. The Appellant has submitted all available Google Earth images since 2001. He refers to the Google Earth screen shots from 14 March 2013 as showing the outbuildings having been extended.
18. The Appellant has also submitted a number of photographs showing the interior of the building in 2014 and a photograph of the exterior showing the building works in progress. At the Inquiry, he confirmed that the latter photograph was also taken in 2014.

The statutory declarations and other documentary evidence

19. The statutory declaration of Anthony Bishop dated 23 June 2016 refers to his earlier 2011 declaration which states that he rented and lived in Windmill Farmhouse between July 2007 and September 2009. He confirms that prior to that he lived in The Retreat from July 2005 until July 2007.
20. The statutory declaration of Gerald Bingham dated 1 July 2016 refers to his earlier 2011 declaration which states that he rented and lived in Windmill Farmhouse between October 2004 and July 2007. He confirms that prior to that he lived in The Retreat between June 2003 and October 2004.
21. The statutory declaration of Jason Baker dated 13 May 2016 confirms that he lived in The Retreat from October 2015 until the date of the declaration.
22. The Appellant has submitted a letter in support from Mark Lister dated 4 May 2016 which states that: "*Since 2003 I have assisted Mark Parker to install both a solar/generator electrical system and the heating and plumbing systems to both the cabin and when he extended it to provide more living space.*"
23. There is also a letter in support from Kevin Greenwood dated 3 May 2016 who has lived at "Hacienda" on Windmill Lane for some 15 years. He states that: "*.. The Retreat has been habited by someone for well over 10 years*". He first moved into his property in December 2006 and he indicates that: "*...the cabin/retreat was lived in well before that.*"
24. Insofar as other documentary evidence is concerned, the Appellant has submitted a vehicle tax renewal form dated July 2012 addressed to him at The Retreat; an envelope similarly addressed dated May 2012 and a Council Tax demand dated 23 December 2012. The correspondence from the Nationwide Building Society dated 9 June 2015 states that his address has been at The Retreat since August 1996. The Appellant asserts that the information in that letter is incorrect and he has since clarified this with the building society. Their subsequent letter of 9 May 2017 confirms states that his address has been registered as The Retreat since May 2012 and his previous address was Windmill Acres Farm.

The Council's case in summary on ground (d)

25. The Council takes the view that the Appellant's evidence is not "*sufficiently precise and unambiguous*" to support the ground (d) claim. The Council also

places reliance upon the use of The Retreat having been of an ancillary nature to the occupation of Windmill Farm and/or any continuous use having been broken through such an ancillary use as Mr Parker moved between the main house and The Retreat.

26. By way of an alternative argument, the Council submitted in opening that the Appellant has not provided sufficient unambiguous evidence that the cabin was a "building" for the purposes of the 1990 Act. It identified the characteristics of a building as being its size, permanence and attachment to the ground³. It contended that the removal and replacement of the cabin in around 2012 meant that it never had a lawful use as a residential unit and the erection of the current building was then a new chapter in the planning history of the site. In the light of the Appellant's evidence to the Inquiry as to the date of the building works to the cabin, the Council's witness, Mr Noon, agreed that there had been a 10 year residential use of that structure but did not accept that it had been occupied as a separate unit of accommodation.

The evidence of Mr Noon

27. Mr Noon's position is that in the absence of a lawful dwelling there could be no lawful curtilage. He drew attention to the lack of evidence, in the form of photographs or statements from the Appellant, of the wider use of the land as garden or for any other domestic purpose and did not therefore consider that, on the balance of probabilities, such a use had continued uninterrupted for at least 10 years.
28. He drew support from the Google Earth photographs taken between 2001 and 2016. He contended that they do not show evidence of domestic use of the land over the requisite ten year period. He also referred to two photographs of the cabin and the site taken at the time of a site visit made by an officer of the Council in 2011.
29. The Council placed reliance upon the absence of Council Tax records for the cabin and those for Windmill Acres which reveal that the owner was recorded as living next door at that property until June 2012. A Land Registry search showed that Windmill Acres was sold by the Appellant on 12 June 2012. This would corroborate the contention that he only occupied the appeal premises from August 2012.
30. Mr Noon submitted that whilst the cabin might have been residentially occupied there was no evidence as to what accommodation was provided and occupiers were switching regularly between 'The Retreat' and Windmill Acres. He contended that such a pattern might be regarded as being indicative of an ancillary relationship between the two properties. He accepted in cross-examination that there had been a residential use of the cabin for 10 years or more but did not agree that it had been used independently of Windmill Acres as a separate unit of accommodation. He pointed to the existing wall between the two properties as only having been put in place in 2009. When taken together factors such as the shared access, postage and water bill indicated an ancillary relationship.

³ See Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co. Ltd [1945] 1KB 385 and Skerritts of Nottingham Ltd v SSETR (No 2) [2000] 2 PLR 102

Overall assessment – Appeal A

31. The unauthorised use alleged by Notice A does not make reference to the 'lawful curtilage' of a particular building or use as a single dwellinghouse. It specifically alleges a material change of use of the land to: "*residential use by means of the occupation of the Land for residential purposes and human habitation*". It is the lawfulness or otherwise of that activity which falls to be assessed.
32. The Appellant and his witnesses have given evidence as to the residential use of the land the subject of Notice A since 2003. The scope of that evidence covers not only the human habitation of The Retreat but also the associated residential use of the remainder of the land. The Appellant provided detailed evidence on oath in relation to the individuals who had lived on the land and their period of occupation. That evidence was supported by and consistent with the oral evidence of his other witnesses at the Inquiry.
33. There are also statutory declarations made by various individuals submitted in support of the Appellant's case. This evidence does not attract the same weight as the oral evidence given by witnesses to the Inquiry, as it has not been tested by cross-examination. Nonetheless, they must be given weight as solemn declarations under the Statutory Declarations Act 1835 with all that that implies. Although somewhat sparse in terms of their detail, these statutory declarations are consistent with and support the Appellant's case.
34. The letters submitted in support of the Appellant's case are also consistent with his evidence, although they do not have similar status and authority. Whilst I have had regard to them as material considerations, I attribute little weight to this unsworn evidence. The documentary evidence, such as it is, does not cover the entire period under consideration and is limited in scope and content. It provides little additional support for the Appellant's case.
35. The Council points out that whilst the Appellant's statutory declarations are unambiguous in that they contain dates there is criticism of their lack of detail. Although it acknowledges that further oral evidence was given by Mr Macey that testimony did not cover the full 10 year period. That also applies to the documentary evidence which only covered the period 2012 to 2016. The Council also draws attention to the absence of evidence from those who had previously provided statutory declarations in support of the Windmill Acres CLEUD.
36. Nevertheless, the Appellant and his witnesses have given evidence on oath that was tested by cross-examination. Notwithstanding the Council's criticism as to the level of detail provided, the Appellant's evidence taken as a whole displays a high degree of consistency. It covers the entire period under consideration with no material breaks in the continuity of the use. The available evidence as to the condition of the cabin combined with the evidence as to its actual use and that of the remainder of the land supports the view that the site was in fact occupied for residential purposes and human habitation during the relevant period.
37. In the absence of contradictory evidence, there is no reason to suppose that the evidence of the Appellant and his witnesses was given other than in an impartial and conscientious manner or that their recollections should be disbelieved. I consider that the Appellant's evidence on its own is sufficiently

- precise and unambiguous to show the existence of a lawful use through the passage of time “*on the balance of probability*” unless there is contradictory evidence to make that version of events less than probable.
38. In contradiction of the Appellant’s case, the Council’s only witness had no personal knowledge of the pertinent factual issues. He was unable, as a matter of fact, to assert from his own personal knowledge that the land had not been used as alleged by the notice during the relevant 10 year period. In cross-examination, he did not seek to dispute the existence of a residential use of the cabin during that time but sought to argue that any such use was ancillary to the residential use of Windmill Acres from which the land had since been severed.
39. The Appellant has given reasonable and plausible explanations for the switch in occupancy by himself and others between Windmill Acres and The Retreat and the part that his own personal circumstances had played in that chain of events. Notwithstanding the features of the occupation to which the Council has drawn attention, such as the sharing of mains water, the route between the two properties and delivery of post, I consider that the balance of the evidence strongly supports the residential use of the notice land separately and independently from Windmill Acres throughout the 10 year immunity period with no intervening ancillary occupation or change in the planning unit.
40. In conclusion, the Appellant has provided cogent and consistent evidence setting out when the change of use first took place and the continuation of the use thereafter for a period in excess of 10 years. That evidence was precise, robust and comprehensive and has not been materially undermined or contradicted by the Council’s evidence which does not render the Appellant’s version of events less than probable. The evidence demonstrates that, on the balance of probabilities, the unauthorised change of use alleged by Notice A first took place in 2003 and has continued actively throughout the relevant period, such that enforcement action could have been taken against it at any time. That lawful use of the site continued thereafter and was not subsequently abandoned notwithstanding the building works which took place in 2014. The use of the land as alleged by Notice A is immune from enforcement action through the passage of time and thereby lawful. The appeal succeeds on ground (d) and the notice will be quashed.

Appeal B – the erection of a two storey timber clad building

Background matters

41. The relevant immunity period for the erection of a building by virtue of s.171B(1) is the period of four years beginning with the date on which the operations were substantially completed. The relevant date for the purposes of this appeal is therefore 25 May 2012.

The Appellant’s case in summary on ground (d)

42. The Appellant does not seek to suggest that the new elements of the building are immune from enforcement. However, he contends that part of the pre-existing building still on the site was erected and became immune from enforcement action before those works took place. He submits that the cabin was and is a “building”. He claims that it was occupied throughout the extension works and significant parts of it have been incorporated in the

existing structure. Since the un-extended part of the building has been in place for more than four years, he contends that it is immune from enforcement action and can remain on the site.

The evidence of Andrew Mark Parker

43. Mr Parker accepts that the extensions and alterations to the dwelling were carried out without the benefit of planning permission in 2014. However, he and his partner managed to live in The Retreat throughout the building process. The works were completed in 2014 and are shown by the 2015 Google Earth photographs.
44. Mr Parker gave oral evidence to the effect that the cabin was not a flimsy structure; each section took two people to lift it up and bolt it down. The bolts went through the timber frame to the concrete base and about 30-36 bolts were used to secure the whole structure. He acknowledged that none were still visible or in existence in the building as it is at the moment.
45. He stated that the photograph showing the works in progress that is referred to in Mr Noon's proof of evidence as having been taken on 4 July 2012 was in fact taken in 2014. He identified the cabin as still being in place at that time and he confirmed that parts of it still remained. For example, in addition to the concrete floor, the far end wall in the location of the bathroom and part of another wall by the French doors were retained. However, those original walls were moved from their original position, albeit by a short distance, once the bolts holding them in place had been removed. When the new roof was constructed, the roof of the cabin was removed from the inside.

The evidence of Susan Ann Parker

46. The oral evidence of Susan Parker was that the works to the cabin were carried out in the period of a few months prior to the date of her marriage to the Appellant in 2014. The last bit of the work was carried out on the morning of their wedding. The photograph of the works in progress could therefore be dated as being taken in early 2014 by reference to their wedding date.

The evidence of Mr Millar

47. Mr Millar identifies the various recent extensions to the dwelling by way of the current survey drawings of the dwelling which are included in Appendix 5 to his proof of evidence. He states, at paragraph 4 of his proof of evidence, that: "... the original dwelling has been almost totally surrounded by the most recent additions, with extensions on three sides and also above." He visited the property following the service of the Planning Contravention Notice (PCN) in 2016 and observed how the premises had changed insofar as the original dwelling had been much altered and extended.

The Council's case in summary on ground (d)

48. The Council contends that the new construction works cannot be regarded as the mere extension and alteration of the cabin. It submits that the cabin is no longer discernible, either as a structure in its own right or as part of the existing building and since the current building was not substantially complete more than four years prior to the issue of the notice, it is unlawful. If it is concluded that the cabin acquired immunity under either the four or ten year rule by the relevant date, then as that shed was removed and replaced, a new

chapter in the planning history began and the current building is unauthorised as it was not substantially completed within the four year immunity period.

The evidence of Mr Noon

49. For the Council, Mr Noon does not have any personal knowledge as to the timing or extent of the building works. He refers to the response to the PCN served on the Appellant on 12 February 2016. In response to the question: *"Please state the date on which the erection of the dwelling was commenced and the date on which it was completed?"* it is stated *"Over the years various extensions to the dwelling have been created, the most recent of which were around 2 years ago."*
50. The Council submits that the dwelling that currently sits on the land was not substantially completed by May 2012. The statement of Mr Millar makes reference to an e-mail of 23 February 2012. That email makes it plain that the shed was still in place at that time and no evidence has been put forward to suggest that the existing structure was substantially complete within three months from that email.
51. The Council also draws support from the Google Earth photographs and the absence of Council Tax records for the property. In addition, the Appellant's 2014 photograph shows the early stage of construction of the building now on the site and confirms that it was not substantially complete by the relevant date. The Council contends that there is no evidence of the incorporation of the cabin within the current building and it was simply removed after that photograph was taken. The building had comprised four sections. The Appellant in his evidence confirmed that during the building works all the original bolts and two wall sections of that structure were removed.

Overall assessment – Appeal B, ground (d)

52. The Appellant admits that the works of partial demolition and the construction of the new elements of the building were undertaken within the relevant four year immunity period. He erected a new frame over and around the original building which was then largely demolished. He stated that the cabin had been bolted to the floor by about 30-36 bolts. All of these bolts had been removed and two wall sections and the roof were removed. The two remaining walls were moved from their original position. The structure has a new roof and has been constructed of timber cladding.
53. The Council submits that Mr Parker's description of the initial erection and subsequent removal of parts of the cabin does not suggest the necessary levels of permanence and attachment to the ground for it to be regarded as a building. However, it is clear that the cabin was securely and physically attached to its concrete base. That together with the fact that it remained in place for over 10 years reveals that it enjoyed a high degree of permanence. At the Inquiry, the Appellant gave new evidence in relation to the size of the cabin based upon his personal knowledge of its construction and occupation. I find no reason to doubt that evidence and also have the benefit of the aerial photographs which show it in place. Given its size, permanence and means of attachment, I am satisfied, as a matter of fact and degree, that the cabin was a 'building' for planning purposes.

54. Having regard to the Appellant's survey drawings and his own evidence on this topic, it is clear that the height and footprint of the new structure has been significantly increased compared to the original building. Although parts of the original building have remained, there can be no doubt that the combined structure is substantially different from that which previously existed on the site and what remains of the old structure forms an integral part of the new building.
55. It is necessary to adopt a holistic approach to the development which has taken place. Having regard to the substantial part of the original structure which has been removed, and the additional building works which have been undertaken, I find, as a matter of fact and degree, that the building operations, considered as a whole, do not merely amount to the alteration and extension of the old structure. They have, in effect, together resulted in the erection of a new building on the site with the remaining parts of the old structure incorporated within it. The four year period did not start to run for the purposes of establishing the immunity of the new structure, as a single entity, from the present enforcement action until it was substantially completed. The remaining part of the original building is not saved by virtue of its former immunity.
56. I conclude that the existing building was not substantially completed and the four year period did not begin until the 2014 building works had been undertaken. This means that no part of the resultant structure is immune from enforcement action under s.171(B)(1) of the 1990 Act. The appeal on ground (d) fails.

The appeal on ground (a) and the deemed application for planning permission – Appeal B

The Main Issue

57. The main issue is the effect that the development would have on the character and appearance of the site and the surrounding rural area.

The Development Plan and other policies

58. The Development Plan includes the adopted South Somerset Local Plan 2006-28. Relevant Local Plan policies are Policies SD1 – Sustainable Development, SS1- Settlement Strategy, SS2 – Rural Settlements, HG8- Replacement Dwellings in the Countryside and EQ2 – General Development.
59. Turning to national policy, the Government issued the National Planning Policy Framework, "*the Framework*", in March 2012. It explains that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.⁴ The core principles of the Framework require a high standard of design and state that planning should recognise the intrinsic character and beauty of the countryside and always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. The Framework, paragraph 55, states that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances. I find the relevant Development Plan policies in this case to be

⁴ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

consistent with the Framework, and full weight in accordance with their statutory status should be afforded to them.

Reasons

60. This new dwelling is sited at the end of a long unmade lane within open countryside and outside the boundary of any settlement. Windmill Lane extends north-eastwards from its junction with the A372 at Pibsbury to the site which is some 950m away. The facilities at Huish Episcopi and the settlement of Langport are a further 1,000m away along the A372 from the junction. There is sporadic development along Windmill Lane including the dwellings at Windmill Acres and Longacres and a travelling showman's site to the rear of Longacres. The unsurfaced part of the lane is also a public footpath.
61. The Development Plan strictly controls development within the countryside and rural settlements. Policy SS1 explains that the latter fall to be considered as part of the countryside to which national countryside protection policies apply, subject to the exceptions identified in Policy SS2.
62. Whilst the Appellant accepts that the site falls within the countryside, he contends that it is not a remote location. In terms of locational sustainability, the plot is located within 2km of the facilities in Huish Episcopi. The Appellant therefore contends that the site is well-located to and within safe and easy walking/cycling distances of local services and communities. He draws support from an appeal decision relating to the residential development of Land at Gold Well Farm, Yeovil Road, Crewkerne, Somerset⁵. That Inspector stated: "*With reference to documents such as Manual for Streets, the appellants considered that 800m is a 'comfortable' distance to walk and that 2km is a 'reasonable' walking distance, although not a maximum*". Nonetheless, he went on to conclude that: "*... in reality, future residents of this site would be likely to be reliant upon the use of private cars and that therefore, the development would fail to satisfy the sustainable transport objectives of the Framework...*".
63. Having observed the condition and nature of the route that would be used by pedestrians and cyclists to and from the site, the realities of this case inevitably lead me to a similar conclusion in terms of locational sustainability and likely reliance by site occupants upon the use of private motor vehicles. In reaching that conclusion, I have also had regard to the planning permission granted in 2012 for the traveller site at the point where the unsurfaced part of Windmill Lane joins the tarmacked road. Likewise, the site at Highfield Farm, Windmill Lane⁶ to which my attention was drawn during the Inquiry. That particular site is at the other end of Windmill Lane and closer to the footway along the A372 leading to Huish Episcopi. I do not find the considerations applicable to these other sites and developments to be directly comparable to this case.
64. In my view, the development would not meet the criteria of Policy SS2; it would not provide for one or more of the types of development identified nor would it increase the sustainability of a settlement in general. I concur with the Council that the small group of buildings along the lane would be too far from other settlements for it to be reasonably argued that the clustering provision of paragraph 5.41 of the accompanying text to Policy SS2 applies.

⁵ APP/R3325/A/13/2210545

⁶ APP/R3325/W/17/3167811 and 3167816

65. As indicated above, in my considerations on ground (d), I do not believe that the building now on the site can reasonably be regarded as an extension of the former cabin. The existing structure represents the erection of a new building on the land and it falls to be considered in the light of Local Plan Policy HG8 relating to the replacement of dwellings in the countryside.
66. The 2014 building works have resulted in dramatic changes to the original structure as shown by the Appellant's survey drawings. He asserts that the new building remains modest in size with a floorspace of some 100m². However, he admits that the new building is about four times the floor area of the previous structure when the roofspace is taken into account. At some 5.5m in height the new property is also substantially taller than the 3m high cabin.
67. Given the size, height and design of the new structure, I consider that it appears obviously domestic in character and out of keeping with the rural landscape character of the surrounding area. Neither the particular individual design nor the materials used dissuade me from that view. Indeed, I consider that the atypical design only adds to its prominence. Whilst there is already a small amount of other residential development along the lane, I believe that the extension of this sporadic development to the north in this way only serves to exacerbate the adverse impact that such development has upon the character and appearance of this part of the countryside.
68. The Appellant puts forward by way of a fall-back position, the prospect of either the ancillary buildings on the site being occupied or a mobile home being sited on the land to be used for the purposes of human habitation. He submits that in visual and environmental terms the retention of the dwelling as it exists would be preferable to that scenario. However, I am unable to agree with that conclusion. The outbuildings are already on the site and their physical presence is not the subject of the current enforcement action. The prospect of them being used as suggested by the Appellant does not justify the retention of the existing dwelling.
69. As regards the option of a mobile home being sited on the land, I do not find the potential presence on the land of a moveable structure ancillary to the lawful use to be directly comparable to the adverse effect of the permanent built structure the subject of the notice. I have borne in mind the planning conditions that could be imposed should planning permission be granted for the building and the permitted physical dimensions for a mobile home. Nonetheless, those dimensions would have to be complied with and the mobile home could not be extended or altered so that it fell outside the statutory definition of a caravan. In my judgment, the existing dwelling as built is particularly intrusive in the landscape and would be likely to have a far greater impact upon the character and appearance of the rural area than that which would result from reliance upon the fall-back position.
70. I conclude that the scale of the existing building in comparison to the former cabin has resulted in an unacceptably large increase in the height and size of that original structure. Furthermore, it is incompatible with and unsympathetic in scale, design, layout and siting to the landscape character of the location. Even if it were to be regarded as an extended structure, those 'extensions' are quite obviously disproportionate to the scale of the original cabin. The development would have a significant adverse impact on the character and

appearance of the site and the surrounding rural area. It would not be in accordance with Local Plan Policies SD1, SS1, SS2, HG8 and EQ2.

71. Although not “isolated” in the dictionary sense of the word, it does not represent a sustainable form of development when considered against the policies of the Framework as a whole. The interference with the private rights of occupants of the property that the refusal of planning permission and dismissal of the appeal would entail would be proportionate and necessary and strike a fair balance. The appeal fails on ground (a) and planning permission will not be granted on the deemed application.

Formal Conclusions

Appeal A

72. For the reasons given above, I conclude that the appeal should succeed on ground (d). Accordingly, the enforcement notice will be quashed.

Appeal B

73. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decisions

Appeal A Ref: APP/R3325/C/16/3153642

74. The appeal is allowed and the enforcement notice is quashed.

Appeal B Ref: APP/R3325/C/16/3153643

75. 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 1990 Act as amended.

Wendy McKay

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Stephens Solicitor

He called

Mr Andrew Parker
Mrs Sue Parker
Mr Clive Millar

FOR THE LOCAL PLANNING AUTHORITY:

Mr Robson of Counsel

He called

Mr Adrian Noon

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Attendance List
- 2 Statement of Common Ground
- 2 Appellant's Opening Statement
- 3 Council's Opening Statement
- 4 Appellant's Closing Statement