



Appeal Decision

Inquiry opened on 22 November 2022

Site visit made on 16 December 2022

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 14 February 2023

Appeal Ref: APP/N0410/C/22/3291809

Pyebush Lane, Beaconsfield, Buckinghamshire, HP9 2RX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Sommer Property Holdings Ltd against an enforcement notice issued by Buckinghamshire Council.
 - The notice, numbered 18/10083/ENCU/EN/2, was issued on 16 December 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, a material change of use of the Land to residential, by reason of the stationing of two mobile homes (in the approximate position shown cross hatched in black on the Plan), and the carrying out of operational development to facilitate the aforesaid unauthorised material change of use comprising the construction of a concrete block plinth and installation of wooden decking between the mobile homes and erection of a wooden covered area.
 - The requirements of the notice are: 1. Cease the residential use of the Land; 2. Remove the two mobile homes (shown in the approximate position shown cross hatched in black on the Plan); 3. Demolish or dismantle the concrete block plinth; 4. Demolish or dismantle the wooden decking and wooden covered area / shed (shown in the approximate position shown striped in black on the Plan); 5. Remove from the Land all paraphernalia that has been brought onto the Land in connection with the unauthorised material change of use; and 6. Remove from the Land all debris and materials resulting from compliance with steps 1 to 5 of this Notice.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by the substitution of the Plan attached to the notice by the Plan attached to this decision. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The Inquiry also dealt with appeals¹ relating to an adjoining parcel of land to the north. Those appeals are the subject of a separate decision letter.
3. The enforcement notice plan requires amendment to exclude an electricity sub-station.

¹ Appeal Refs: APP/N0410/C/21/3272389, APP/N0410/X/21/3268510 & APP/N0410/X/21/3286932

Ground (d)

4. The appeal site is a 0.56ha field alongside Pyebush Lane, from which it has vehicular access. Close to the access is an area of hardstanding apparently laid in the 1960s when the site was in temporary use as a depot/compound for the construction of the A40. The site is enclosed by close-boarded fencing. The 2 mobile homes the subject of the notice are stationed a short distance apart on this hardstanding, the area between comprising timber decking and a toolshed. One of the mobile homes was brought onto the site in 2016 and the other in 2018. Mr Robaszewski, a manager at Timberstore, whose premises are on the opposite side of Pyebush Lane, lives in the mobile homes, occupying one as his primary residence and using the other for ancillary purposes, as a gym and for storage and visitor accommodation. The appellant company owns the land, but it is occupied by Timberstore. Mr Caldwell is a shareholder of both companies and a director of Timberstore Ltd.
5. Mr Caldwell's evidence is that he brought a small touring caravan onto the land, siting it on the hardstanding, in early 2010 to use as overnight accommodation when he needed to be at the Timberstore site in the mornings, his permanent residence being about an hours drive away. He claims he stayed in the caravan most weeks for 2-3 nights, and that other people, his business partner Mr Metcalf and others connected to the Timberstore business, would occasionally stay in the caravan for a night or two. Mr Metcalf confirmed in evidence that he regularly stayed overnight in the caravan on Tuesdays for directors meetings on Wednesday mornings. Mr Caldwell says the touring caravan remained on the site, in that use, continuously until 2016, being removed shortly after the first of the current mobile homes was moved on, the same use having been made of that mobile home.
6. It is the appellant's case that the appeal site has been used continuously for a period in excess of 10 years for the stationing of a caravan for residential purposes, such that on the date the notice was issued it was immune from enforcement action in accordance with the the time limits set out in section 171B(3) of the 1990 Act. That is the basis of a ground (d) appeal. The burden of proof is on the appellant, and what must be demonstrated, on the balance of probabilities, is that a caravan was on the site at all times and being used for residential purposes, such that enforcement action could have been taken at any time in that period.
7. The presence of the caravan on the site is evident in aerial imagery captured on various dates in 2010, 2011, 2012, 2013, 2014 and 2015. However, an officer's report concerning an application for development on the site in 2012 made no mention of a caravan. The application claimed the site was vacant, its previous use being unknown. The report, which evidently followed a site visit, described the site as currently unused and fairly overgrown, and noted that the proposal would introduce a building on a site where there were currently no structures. It was proposed by the appellant that the officer had not actually gone onto the site, but there is no cogent evidence to support this view, whereas the description of the hardstanding upon which the caravan had been stationed as being partially covered by vegetation suggests that the officer did in fact go onto the site. But in any case, had the caravan been on the site at that time it would have been visible from outside the site on the approach along Pyebush Lane, as evident in StreetView imagery from 2010.

8. Had the caravan been on the site when the 2012 site visit took place, I consider that its presence would almost certainly have been specifically noted, so I consider it more likely than not that it was not there in November 2012. Contrary to the appellant's assertions, I consider it far from implausible that a small touring caravan would have been moved off the site while an application for planning permission for a vacant site was under consideration. The basis of a claim of lawfulness due to the passing of time is that at any time in the relevant period enforcement action could have been taken against the use. On the balance of probabilities there was no caravan on the land in November 2012 when the planning officer carried out the site visit, and so no enforcement action could have been taken at that time. For the purposes of immunity from enforcement therefore, the clock could not start running until after November 2012, so 10 years could not have elapsed by 16 December 2021 when the notice was issued. The appeal on this ground cannot therefore succeed.
9. But even if the planning officer had somehow failed to notice a caravan on the site, or simply failed to record the fact, on the evidence before me I could not conclude, on the balance of probability, that the touring caravan, and the mobile home that replaced it, had been in residential use continuously prior to Mr Robaszewski's occupancy. Mr Caldwell's description of his and others overnight stays in the caravan, taken at face value, is more akin to camping out than a proper residential use of the land. Though Mr Caldwell apparently kept some personal items in the caravan, and recalls sitting out and eating there on occasion, Mr Metcalf only used an overnight bag, his previous practice being to sleep in his car or in a portacabin that had been there at one stage prior to previous enforcement action. The caravan's purpose was as a facility for occasional overnight stays in preference to staying in a hotel, and that appears to have been how it was used, that is as occasional, albeit regular, sleeping accommodation. At all times both Mr Caldwell and Mr Metcalf were residing elsewhere. No details are provided of others who stayed there, but it appears to have been on a similar basis to Mr Metcalf's, that is primarily for sleeping only. That Mr Caldwell kept personal items in the caravan and ate or sat outside occasionally does not, in my view, take the use beyond camping out. While the touring caravan was stationed on the site I consider that it was not being used as an independent dwelling, as a matter of fact and degree.
10. Continuity aside, on the evidence available I am unable to conclude that the use of the land which subsisted at the time that the enforcement notice was issued was the same use which subsisted at the beginning of the ten year period.

Ground (f)

11. An appeal on this ground is that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity which has been caused by the breach. The purpose of the notice in this case is to remedy the breach of planning control by ceasing the unauthorised use and restoring the land to its condition before the breach took place. The requirement at issue is the requirement to demolish or dismantle the concrete block plinth, which was erected more than 4 years before the notice was issued and so, considered as operational development, would be immune from enforcement action by virtue of section 171B(1) of the Act.

12. However, it is well established that works that are carried out in association with an unauthorised material change of use can, in certain circumstances, be required to be removed, notwithstanding that they may otherwise have achieved immunity as operational development. Here it is argued that because the works to erect the plinth were carried out long after the change of use took place they cannot be said to be part and parcel of, or integral to that use. However, the proposition as put relied on the change of use having taken place some 6 years beforehand, which I have found not to be the case. In any case, I consider it unarguable that the mobile home plinth is part and parcel of, and integral to, the unauthorised use, it can serve no other purpose. So far as it was suggested in evidence that it can only be required to be removed if it is integral to the making of the material change of use, it is sufficient that it is integral to the unauthorised use rather than the act of making the material change of use.

13. The appeal on this ground is therefore dismissed.

Paul Dignan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:
Douglas Edwards KC

He called	
Ian Caldwell	Appellant
Peter Kedge	Landscaping Contractor
Daniel Grodecki	Goose House Occupant (Site 1)
Piotr Robaszewski	Mobile Home Occupant (Site 2)
Michael Metcalf	Timberstore Director
Aleksandra Sieradz	Timberstore Employee
Robert Harrison	Planning Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Alex Shattock
of Counsel

He called	
Billy Johal	Enforcement Officer
Ingrid Smith	Ivy Legal

INTERESTED PERSONS

Cllr Alison Wheelhouse on behalf of Pyebush Lane Residents Association

DOCUMENTS

- 1 Appearance list - Appellants
- 2 Statement of Common Ground – Site 1 Goose House
- 3 Statement of Common Ground – Site 2 Mobile Home Site
- 4 Site visit photographs - Council
- 5 Supplementary note regarding 2010 Google Earth image - Appellant
- 6 Opening submissions - Appellant
- 7 Opening submissions - Council
- 8 Planning statement submitted with application ref. 12/01626/FUL - Appellant
- 9 Aerial photograph November 2013 - Appellant
- 10 Aerial photograph July 2014 - Appellant
- 11 Google Streetmaps image 2010 - Council
- 12 Speaking notes – Cllr Whilehouse
- 13 Agreed distances to services from Goose House
- 14 Written Ministerial Statement on Green Belt and intentional unauthorised development 2015 - Council
- 15 Council's closing submissions, plus attachments
- 16 Appellant's closing submissions, plus attachments

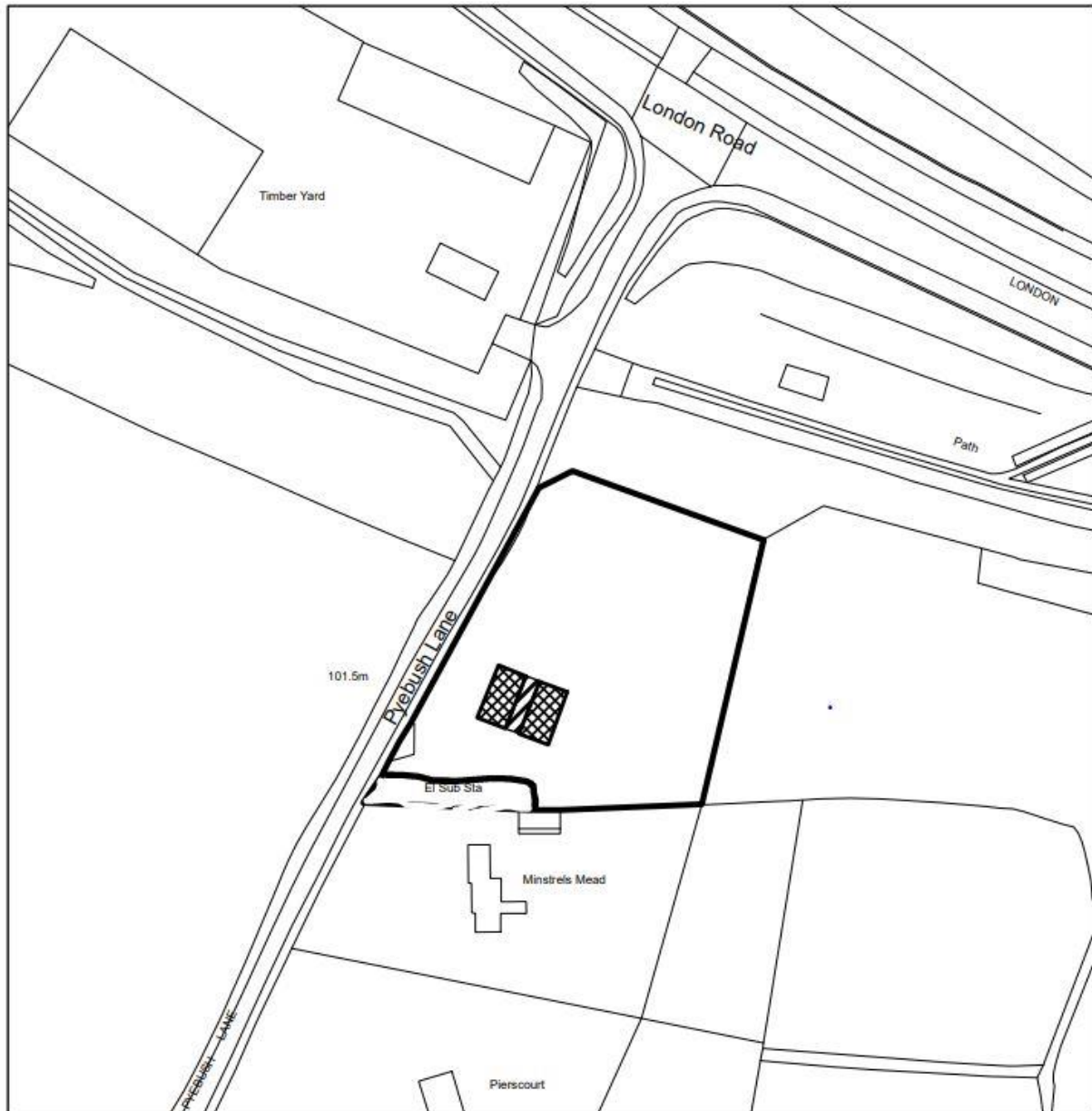


The Planning Inspectorate



This is the plan referred to in my decision dated: 14 February 2023

by Paul Dignan MSc PhD

Appeal Ref. APP/N0410/C/22/3291809



1:1500

-  Unauthorised development (wooden decking and wooden covered area)
-  Unauthorised development (2x mobile homes and concrete block plinths)