

## PROOF OF EVIDENCE

Prepared by: Yvonne Dunn of Rochford District Council

Appeal against Enforcement Notice (s.174 of the Town Country Planning Act 1990 as (amended))

APPEAL REFERENCE APP/B1550/C/19/3237992

**Site:** The Yard, Murrels Lane, Hockley, Essex SS5 6AB

Appeal by **Mr Aaron Archer** against Enforcement Notice dated and 28 August 2019 issued and served by Rochford District Council stating the following breaches of planning control had occurred:

*Without planning permission,*

- 1. the material change of land and buildings from a general industrial use (Class B2) to a missed used of general industrial (Class B2) use and the siting of a mobile home and its use for human habitation.*
- 2. The erection of a steel palisade fence and double gates with a barbed and razor wire top trim.*

The appeal is made under grounds (a) (d) and (g).

**RDC planning enforcement case reference:** 18/000151/COU\_C

## **1. Evidence of Yvonne Dunn**

1.1 My name is Yvonne Dunn, and I am employed by Rochford District Council as Planning Manager a position I have held since January 2020. My responsibilities include the operational management of the Council's Strategic Planning and Regeneration team, the Development Management team and the Planning Enforcement team.

1.2 Prior to this, I was the Team Leader of the Planning Enforcement team a position I held from May 2015 to January 2020. I hold an MSc in Town Planning obtained from Anglia Ruskin University in Chelmsford and I am a Licentiate Member of the Royal Town Planning Institute.

## **2. Response to ground (d) appeal**

2.1 The appellant's submitted the appeal on the basis that a mixed use of general industrial (class B2) use and the siting of a mobile home for residential use had been occurring continuously for a period in excess of 10 years and the use was lawful as per section 171B(3) of the Town and Country Planning Act 1990 and no enforcement action could be taken. The appellant asserted in their Statement of Case, dated August 2020, that evidence in the form of documentation, aerial images and witness statements would be provided to demonstrate this use. At the time of writing this proof, the Council has not seen this evidence. On the 20 November 2020 the appellant wrote to the LPA and the Inspectorate advising that without prejudice to their ground (d) appeal their

case in relation to ground (a) has changed stating the mobile home can be sited in connection with the existing lawful use.

- 2.2 Notwithstanding the appellant's changed approach to the ground (a) appeal, it is the Council's case that what is alleged in the notice has not been occurring continuously for a period in excess of 10 years. The evidence I provide below in my proof supports the Council's position.
- 2.3 The starting point is to establish the relevant dates. The enforcement notice was issued on the 28 August 2019. The relevant 10 years period therefore commenced on 28 August 2009.
- 2.4 My first involvement with the appeal site dates to 30th September 2009. In September 2009 my role was as Assistant Planner and part of my duties were to share the responsibility of providing a daily duty planning officer service, dealing with enquiries from the public. On this day I received a phone call from Innis Martin of Plan-It Architectural Design Consultants Ltd. The enquiry related to the appeal site and a proposal to remove the vehicles and scrap from the yard and develop the site for residential. I researched the planning history to ascertain the lawful use of the site and found a Certificate of Lawful Existing Development for the use of land and buildings for auto recovery, salvage, repairs, servicing and painting had been issued in 2002. The certificate stated on the 18<sup>th</sup> October 2000 the use, as described, would have been lawful.

- 2.5 I can recall the conversation with Mr Martin, he was trying to make the case that residential properties on the site would be better than the existing use of the yard and we discussed a site elsewhere in the district where a house reclamation yard in the Green Belt had received approval for housing. During this conversation there was no mention of there being an existing residential use on the appeal site. Had there been this would have been considered in my response to him.
- 2.6 Following the phone call with Mr Martin and my research, Mr Martin emailed a sketch of the style of property being proposed. I responded to Mr Martin advising the introduction of a residential use in the Green Belt would be considered inappropriate development. A copy of my email response is appended at RDC7(2).
- 2.7 My next involvement with the appeal site was not until October 2018. When the Council received a report from, a gentleman who wished to remain anonymous, but who said he lived on Murrels Lane. The caller appeared to know a lot of detail about the new owner, the appellant, and the activity occurring. The gentleman provided the Council with the name of the owner and occupier of a caravan on the site as Mr Aaron Archer.
- 2.8 I carried out a search of the Land Registry records on the 12<sup>th</sup> October 2018 which revealed title number EX622506 being The Yard, Murrels Lane, Hockley SS5 6AB had been purchased by Mr Aarun Archer (the appellant) on the 30<sup>th</sup>

June 2017 for the sum of £300,000. The Land Registry title document is appended at RDC2.

2.9 I attempted to access the site on an unannounced visit on 23 October 2018 however, upon arrival the site was locked. There was a gap at the point where the gates were locked and I could see a woman on the other side of the gate in the yard area. I called out and the woman began to approach the gates, taking 4 or 5 steps, and then was called back and disappeared out of view. I took the details from the gate which stated “all enquiries and deliveries please call Aarun (mobile number) or Deanna (mobile number)”. I called both these numbers, and both went through to voicemail. Also written on the sign was “24hr security and CCTV” there was also a separate sign that said, “Beware of the Dog”. A card was left on the gate advising of our visit and asking for someone to call me. Mr Archer did call, and a visit was arranged for the 5th November 2018. Unfortunately, due to unforeseen officer absence the visit was not undertaken.

2.10 On the 30 November 2018 the same anonymous caller rang me asking for an update on our investigation. The gentleman provided further information about, the appellant, advising Mr Archer had been living elsewhere on land to the rear of 3 Murrels Lane until January 2016 (3 Murrels Lane is located further along Murrels Lane at the junction with Blountswood Road). The caller said Mr Archer had fallen out with the owner of 3 Murrels Lane, Mr Bond, and had moved from behind 3 Murrels Lane to appeal site. The caller said “you need to be quick because it must be 3 years now since they have lived there”. The time period

from January 2016 to the date of issuing the Enforcement Notice is 3 years and 7 months. Telephone log is appended at RDC5.

2.11 Shortly after this I sent a letter to the appellant advising a new date for the site visit of the 17 December 2018 at 10.00am. A few days before the 17 December, the appellant's partner, Deanna Macmanus called to advise no one would be at the site that day and could the site meeting be postponed until the 17<sup>th</sup> January 2019 when the appellant's planning agent, Mr Matthew Green of Green Planning Studios Ltd, would also be in attendance.

2.12 On the 17 January 2019 I went to the site accompanied by Mr Peter Miles, the Council's Compliance Officer in our Revenues and Benefits team. It was often the case Mr Miles would assist the planning team on accompanied visits. Upon arrival the appellant and Mr Green were standing in the middle of the yard. I introduced myself to Mr Green and the appellant, and immediately Mr Green cut in and told me I was not to speak to his client. Mr Green also challenged my colleague's presence on site, stating he had no legal right to be on the site. I obliged Mr Green's request and directed my questions to Mr Green and asked about the occupation of the caravan. Mr Green would not answer any of my questions, he claimed the details of the occupation were not relevant. Mr Green then gestured with his hand, towards the caravan stating "You are investigating a residential use. There has been a caravan on the site used for a residential use in excess of 10 years". I found Mr Green's manner to be obstructive and it prevented the appellant from the opportunity to explain his position. However, I understand Mr Green was protecting his client's position, in preventing the

appellant providing the Council with details that may undermine his case. Due to the manner of Mr Green and the fact the appellant had been instructed not to speak, I decided to end the meeting. I asked Mr Green if there were any other residential uses on the site and Mr Green answered this question, replying “No”. The whole meeting lasted no longer 5 minutes, most of that time was spent by Mr Green challenging the presence of my colleague on the site. I am unable to produce a copy of my site visit notes from this date for this appeal, they may have been incorrectly indexed to another case by our scanning team. However, I can recall the detail of this visit clearly in my memory.

2.13 Due to the unproductive nature of the visit, upon returning to the office and reviewing the case, I decided it would be of little value to issue a Planning Contravention Notice seeking information from the appellant. Instead, I further reviewed the planning history we held for the site over the past 10 years.

2.14 Mr Green had stated at the site meeting there had been a caravan on the site, used for a residential use in excess of 10 years. Based on this statement from Mr Green, this would mean such as use had been in existence since and before 17 January 2009. I therefore, researched the planning history further back than 2009.

2.15 The relevant planning history revealed:

**Prior to 2009**

- a. Application 00/00750/LDC - A Certificate of Lawful Existing Development for the use of land and buildings (units 1 -4 & 6) for auto

recovery, salvage, repairs, servicing and painting had been issued in 2002. As previously mentioned, at paragraph 2.4 of this proof, the certificate stated “on the 18th October 2000 (the date of the application submission) the use, as described, would have been lawful”. Being a use which had been occurring for 10 years or more.

- b. Application 00/00751/LDC Unit 5 Lawfulness of Use of Building as a Fencing Business – Granted.
- c. Application 06/00260/OUT - Demolish Vehicle Salvage Facility and Construct Two Detached Houses. – Refused 2<sup>nd</sup> June 2006. Application form stated existing use to be” Auto Salvage Recovery Yard” There is no mention of a caravan being used for residential purposes on the site within the planning documents for this application or consultation and neighbour responses.

#### **From 2009**

- d. 1<sup>st</sup> April 2010 - planning application 10/00203/OUT submitted to Demolish and Remove Existing Commercial Premises and Construct Four Detached Properties. The planning application form stated at Q.15 the existing use of the site was “Industrial Scrap Yard and Motor Vehicle Maintenance”. Q.18 stated, “total existing residential units as zero”. Submitted with the application was a supporting statement prepared by a company named Plan-it. The supporting statement described the site and the proposal and included photographs of the site; there is no mention within this statement of there being any caravan used for a residential use on the site. Upon receipt, this application could not be formerly registered as it required a full tree survey, ecological survey,



and contamination report and section drawings for the proposed development. The additional details were not submitted, and the application was returned. It is the Council's view there was no residential use on the site at the time of submitting this application. Details of this application are appended at RDC7 (3) & (4).

- e. Appendix RDC7(1) contains aerial images from 2008 to 2014. Images from 2008 to 2009 (pages 1 to 4) show no evidence of a caravan on the site. An aerial image dated 9<sup>th</sup> July 2013 shows the site to be less congested with vehicles and there appears to be two caravans on the site. One is sited by the site entrance and the other within the yard on the Western boundary. There is no evidence on how these caravans are being used.
  
- f. Appendix RDC7(1) page 6 shows a 2014 aerial photograph obtained from get mapping.com and shows the site has been cleared of all vehicles. This could be synonymous with a change in occupation.
  
- g. The Council planning enforcement records show a reported alleged breach of planning relating to a man and woman living at the site was investigated in June 2016, case reference 16/00052/COU\_C refers. The matter was investigated by a colleague and it was found the caravan on the site was being stored, whilst up for sale but no one was living in it.

h. A wider search of the Council's records revealed on 29 April 2019 – Deanna Macmanus, partner of the appellant, called the Council's Customer Services team to provide information relating to the payment of Council Tax. Deanna Macmanus advised the appellant, had been living on the site since Christmas Day 2014 and she, Ms Macmanus had moved onto the site on Christmas Day 2018. This information would appear to dovetail with the aerial image date 2014 at RDC7(1) page 6, which shows the site during the summer months clear of vehicles. A note of this conversation is appended at RDC3.

2.16 At the request of the planning agent, GPS Planning Studios Ltd, the Council provided the appellant with copies of the evidence it held relating to the period 2009 to 2019. This included a covering letter dated 3 October 2019, which explained the evidence in more detail. See letter appended at RDC7(0). In this letter the Council asked for the appellant's evidence to be supplied, by return, however, the appellant and his agent failed to furnish the Council with their counter evidence and the Council has not seen any evidence submitted with the Statement of Case to support the appellant's ground (d) appeal. In the Council's view this casts doubt on the credibility of any evidence the appellant now seeks to rely on. It is however accepted the appellant's evidence will be heard at the Inquiry and witnesses will be cross-examined by the Council's appointed barrister.

2.17 It is disappointing that an early review of the appellant's evidence has not been possible. This could have been addressed outside of the appeal process by

invitation to submit an application for a Certificate of Lawful Existing Use Development. However, the lack of cooperation from the appellant and his planning agent has forced the Council's hand in pursuing formal enforcement action and responding to the appeal. The Council give notice that it will be submitting an application for a full award of costs for the appellant's unreasonable behaviour of failing to co-operate with the Council by holding back information which may have eliminated time spent preparing for this appeal and public inquiry.

2.18 It is noted that the appellant has not included the erection of the fence and gates within their ground (d) appeal. However, to assist the Inspector and the appeal proceedings I will set out the Council's position in relation to the operational development involving the erection of the steel palisade fence and double gates with a barbed and razor wire top trim.

2.19 The High Court case of *Murfitt v Secretary of State for the Environment and East Cambridgeshire DC* (1980) established the principle that where operational development is "part and parcel" of the material change of use "or integral to it," then the four year rule will not necessarily apply and the works would be subject to the ten year enforcement time limit.

2.20 This established case law has been applied and upheld in subsequent appeal decisions and High Court cases, and it is the Council's case that the principles applied in *Murfitt* are relevant in this current appeal. In the Council's opinion

the erection of the steel palisade security fencing and gates were erected when the use of the land for the stationing of the caravan for residential purposes commenced. The operational development was therefore integral to the unauthorised use.

2.21 As a matter of fact and degree, it is the Council' case that on the balance of probabilities the use alleged in the notice has not occurred continuously for a period of 10 years or more and the ground d) appeal should fail.

2.22 I confirm that I understand and have complied with my duty to the Inquiry as set out in the procedural guidance updated June 2022. I confirm that this evidence identifies facts which I regard as being relevant to the opinion that I have expressed, and that the Inquiry's attention has been drawn to any matter which would affect the validity of that opinion. I believe that the facts stated within this proof are true and the opinions expressed are correct.

**The evidence which I have prepared and provide for this appeal is true and confirm that the opinions expressed are my true and professional opinion.**

Signed.....  .....

Dated.....06 October 2022.....