

10 February 2016

**Planning Applications Committee
Update**

Item No.	App no. and site address	Report Recommendation
4 Page 13	15/0884 – Land north of Beldam Bridge Road	Grant

UPDATE

Correction: The comments of the County Highway Authority have now been received. No objections are raised.

Six further objections have been received via Mr Gove MP, which raise issues already considered in the officer report but raised concern about the lack of challenge to the appeal decision for SU/14/0532 (Land south of Kings Road et al).

An objection has been received from the Windlesham Heathpark Wood Group, which is appended along with further comments (in objection) from the West End Action Group. These letters were also separately forwarded by Mr Gove MP.

Additional representations have been received from an objection making the following further comments:

- The nursery land has not been used for over 20 years;
- Concern about the reporting of the County Highway Comments [Officer comment: see correction above];
- Disagree with the report's indication that the land is in a poor condition;
- There is a minimum of 6.28 years supply of housing;
- Rate of build is governed by developers (marketing/demand) and that developers (as in an appended Fareham BC report) will hold back delivery to suit the market/demand. The recent new builds in West End are struggling to be sold;
- Wider view of housing demand (to include SHMA partners and other neighbouring Boroughs) should be taken; and
- A request to defer this application.

The Planning Policy Manager has provided an updated position in relation to housing land supply for the Borough, and has been appended to this update.

The applicant has requested an extension to complete the required legal agreement for SANG delivery and retention to 10 March 2016, with any required further extensions agreed by the Executive Head of Regulatory.

The applicant has confirmed that they also wish to provide a unilateral undertaking to provide affordable housing and a SAMM payment in line with adopted policy/SPD. The Council considers that these matters can be considered at the reserved matters stage (when the number/size of units is known)

CHANGE TO RECOMMENDATION:

To extend the time period to complete the legal agreement for SANG delivery and retention to 10 March 2016, with any required extensions to be agreed by the Executive Head of Regulatory.

UPDATE

1. The text at para 7.5.7 of the Committee Report is to be replaced by that below:

The representations that the applicant has made in relation to this matter have been carefully considered in compliance with the Human Rights Act 1998 and on balance it is considered that although Article 8 may be engaged this is necessary in a democratic society. Further, the same issues were considered by the HHJ Seymour when granting the Injunction in the High Court.

2. In response to the Committee Report the applicant has circulated a 9 page written response to Members. From this it is clear that the applicant wishes the application to include planning permission for the porch and lounge extension. The matter is therefore presented to planning committee as an application for the change of use of the former field shelter and the extensions erected. Accordingly para 4.2 of the Committee Report is deleted.

The material considerations against which the planning application is assessed does not however change and the principal considerations remain as detailed below:

- a. Whether the development can reasonably be consider works of conversion?
- b. Whether the new build development is appropriate development in the Green Belt?
- c. Whether any form of SPA mitigation should be secured (in the event planning permission is to be granted)?
- d. Whether there are very special circumstances present?

Officers conclude that the assessments undertaken in the Committee Report remain valid, the development cannot reasonably be considered works of conversion, the new build does not meet any of the tests in the NPPF to not be inappropriate development in the Green Belt. There was no lawful residential occupation of the site prior to the SPA designation and there are no very special circumstances present to clearly outweigh the harm to the Green Belt which would otherwise arise.

The inclusion of the extensions in the application does, however, mean that the first reason for refusal in the Committee Report must be amended and as such this is revised below:

The Local Planning Authority is not satisfied that the former field shelter was of permanent and substantial construction as required by paragraph 90 of the NPPF and as such, the authority cannot reasonably conclude that the building was suitable for conversion to a dwellinghouse. Moreover the application is not supported by any evidence or plans demonstrating how substantive structural or other elements of the former field shelter were utilised or retained in the works undertaken in the creation of the dwellinghouse. It is not therefore considered the applicant has sufficiently and robustly demonstrated that works do not comprise the erection of a new dwellinghouse as alleged in the extant enforcement notices or addressed by the Appeal Inspector at paragraph 2 of the appeal decision letter (ref: APP/D3640/C/09/2117978 dated 24 May 2010). This element of the proposal is therefore inappropriate development in the Green Belt which is, by definition, harmful and by its very nature causes harm to the openness of the Green Belt. Moreover, the creation of the residential curtilage to serve as garden land to the unauthorised dwellinghouse and the extensions undertaken to form the porch and the lounge causes further harm to the open and undeveloped character of the area and results in an enclosed and domesticated area of land, while the extensions increase the scale and mass of the unauthorised dwellinghouse. The resulting countryside

encroachment is contrary to the purposes of including land in the Green Belt and reduces Green Belt openness. As such the development is contrary to the the aims and objectives of the Core Strategy and Development Management Policies 2012 and the National Planning Policy Framework.

3. For the sake of completeness a copy of the enforcement appeal decision is provided - Members attention is drawn to paragraph 2 wherein the Inspector concludes that the works undertaken were not works of conversion but the erection of a freestanding structure.
4. The LPA has been copied into correspondence between the applicant and Natural England (NE). This correspondence relates to the need to mitigate the application's impact on the Thames Basin Heaths SPA. The applicant considers that mitigation is not required as she was in residence on the site prior to the SPA designation in March 2005. NE has advised that if the applicant can prove her occupation of the land occurred prior to this date mitigation is not required. However, it is noted that the applicant's appeal against the enforcement notice on the grounds the works were lawful by the passage of time was dismissed and as such there has been no lawful residential occupation of the land. In similar cases the LPA has rejected claims that periods of unlawful residential occupation of sites justifies setting aside the requirement for SPA mitigation to be secured. This approach has accepted by appeal inspectors and contributions towards SPA mitigation secured.
5. A response of no objection has been received from the Environment Agency and as such no objection on flood risk grounds is raised.
6. One further letter of support bringing the number to 24 has been revived. This raises the following matters:
 - a. Precedence – others have been allowed
 - b. This is a residential use in a residential area
 - c. The delay in validation is unacceptable
 - d. The application would not set a precedence
 - e. The applicant has simply turned a field shelter into a habitable dwelling as she had nowhere to go
7. An objection has been received on behalf of the Chobham Society. This raises the following matters:
 - a. Inappropriate development in the Green Belt
 - b. The site is in the flood plain
 - c. Precedent
 - d. The applicant has flouted the enforcement notices
8. The applicant has responded to the letter of objection and comments:
 - a. It is too late for the comments to be considered as relevant
 - b. There are cases of precedence having being set
 - c. Every application is decided on its own merits; i.e. the fear of setting a precedent is not a reason for refusal nor is the existence of any enforcement notices
 - d. Questions whether the author '*is part of and represents The Chobham Society*'

6 Page 87	158/1047 – The Castle Grove Inn, Scotts Grove Road, Chobham	Grant
No updates.		

Five Year Housing land Supply February 2016

Following the outcome of the recent planning appeal decision on land at Kings Road/Rose Meadow the starting point for undertaken five year housing land supply has to be based on the Objectively Assessed Housing Number (oahn) figure set out in the Council's Strategic Housing Market Assessment (SHMA) of 340 dwellings per annum (DPA). A 5% buffer has to be added to this figure. Therefore the housing requirement based on the 340 per annum figure plus 5 % buffer is 1785 dwellings. The five year housing land supply has to also take into account any under or over delivery of housing over the period.

Officers have looked at five year housing land supply. In determining the supply officers have taken into account both completions and housing land supply up to the 10th Feb 2016. These figures are taken from the Council's database of housing commitments. Supply is based on:

- Sites with Planning permission not yet started;
- Sites with Planning permission under construction; and,
- Sites set out in the Strategic Housing Land Availability Assessment (SHLAA) as deliverable over a five year period and allocated sites.

These sites include C2 uses and prior notifications as well as C3 uses.

Based on the best case scenario of only taking any under-delivery back to 2014 (the date of publication of the SHMA) then the Council can demonstrate a **4.37** year housing land (see figure 1 below).

However Counsel's opinion (January 2016) is that under delivery should be taken back to 2011 as the SHMA assesses housing need from 2011 and any under delivery should be from this date. In this scenario the Council can demonstrate a **3.6** year housing land supply (see figure 2 below).

Table 1 sets out the five year housing land supply:

Table 1: Total 5 year housing land supply

Source	Total net allowance
Existing Commitments(under construction and not started)	533
Site Allocations	592
Other "Deliverable"	141
C2 uses	312
Prior Notifications	214
Windfall Allowance	42
Total land supply	1834

Sites which have been completed have to be taken out of the supply. Completions are based on site visits and information from building control and the NHBC.

Therefore, as set out in Mr Carty's report to Committee, the Council has undertaken recent review of the 5 year housing land supply and cannot even on the best case scenario currently demonstrate a 5 year housing land supply.

Figure 1 2016-2021 Housing Land Supply (Under delivery based on 340 from 2014)

DPA base: 340 dwellings
DPA x 5 years: 1,700 dwellings
Plus 5% Buffer: 1,785 (5% of 1,700 = 85 dwellings)
Plus Backlog (2014-Feb2016 1225-908): 317
Revised DPA: dwellings (1,785 + 317 / 5 = 420)
Land Supply: 1834/420
Years Supply: 4.37

(1834/420= 4.37)

Requirement		delivered
2011-2012	191	179
2012-2013	191	217
2013-2014	191	127
2014-2015	340	187
March 2015-Feb 2016	312	198
Total	1225	908

Figure 2 2016-2021 Housing Land Supply (Under delivery based on 340 from 2011 -2016)

DPA base: 340 dwellings
DPA x 5 years: 1,700 dwellings
Plus 5% Buffer: 1,785 (5% of 1,700 = 85 dwellings)
Plus Backlog against 340 from 2011 Feb-2016 (1672-908) 764
Revised DPA: 509 dwellings (1,785 + 764 / 5 =)
Land Supply: 1834/509
Years Supply: 3.6

(1834/509=3.6)

Requirement		delivered
2011-2012	340	179
2012-2013	340	217
2013-2014	340	127
2014-2015	340	187
March 2015-Feb 2016	312	198
Total	1672	908

Windlesham Heathpark Wood Group

Mrs J. Rickard
Executive Head - Regulatory
Surrey Heath Borough Council
Surrey Heath House
Knoll Road
Camberley
Surrey
GU15 3HD

30th January 2016

(Sent via email)

Dear Jenny,

Re: Planning Applications Committee, 10 February 2016, Application 15/0884

LOCATION: LAND NORTH OF, BELDAM BRIDGE ROAD, WEST END, WOKING, GU24 9LP
PROPOSAL: Outline planning application for the erection of up to 85 dwellings with new access and change of use of land to publicly accessible recreation space (SANG), car parking, landscaping and open space. (Details of access only to be agreed). TYPE: Outline APPLICANT: Taylor Wimpey UK Ltd. OFFICER: Duncan Carty

We are concerned at the decision by the officer to recommend acceptance of the above application bearing in mind recent correspondence between us. The recommendation under this agenda item again pre-empts a resolution of unresolved matters. Specifically we would ask:-

1 Why is the Case Officer for 15/0590 (Heathpark Wood) telling us that the appeal decision is still under consideration when the West End Case Officer (In the PAC Agenda for 10 February 2016) says that the Council has reached a conclusion?

2 If what the West End Case Officer reports is correct, who has made this decision on behalf of the Council when Cllr. Gibson thought she was discussing it this week with the Director?

3 Can we please immediately have a copy of Counsel's advice? It seems to us that the result of the recent appeal being so fundamental to the deciding of this application (and others) that the Counsels advice should be visible for all to see and should be immediately included in the agenda papers as an issue of strong public interest. In addition the Council's reliance on this advice may have a prejudicial influence on the matter of the Heathpark Wood application, an issue on which our group has a primary interest.

4 If and when we see this advice, we will no doubt discover that the provisions of paragraphs 14.4, 85.3 & 4 and 215 of the National Planning Policy Framework were neither brought to Counsel's attention nor raised by Counsel in their advice?

These provisions seem to have been ignored by the West End Case Officer and are a failure to uphold relevant planning policy in the eastern part of the Borough. The context here is really very simple. West End & Windlesham are villages in the Metropolitan Green Belt. Land set aside on the edge of the villages is to meet local development needs to relieve pressure on the Green Belt should it be required: it is not reserved to meet the generic housing demand of the growing conurbation.

We note in particular that the Officer says that the West End land has been a housing reserve site (para.7.1). He thinks that the Framework's presumption in favour of sustainable development applies (para.7.6.3 etc.), seemingly unaware that it does not because of the very survival of Policy

H8. We also note that he says the Site Allocations SPD is “at an early stage” (paragraph. 7.6.6). It is really important that the Council becomes more transparent about the progress of the Site Allocations SPD. This is the “Local Plan review”; in national policy terminology, that should be the means of deciding whether to build on these sites, rather than the piecemeal planning applications & appeals process that is being foisted upon us at present.

At the beginning of this week we had an expectation that the whole issue of the appeal decision was in abeyance pending your discussing our earlier concerns with Cllr Moira Gibson. (She had indicated in an email of 22nd January that she would discuss with you). It was therefore disappointing to find that the case officer in the West End application 15/0884 was still relying on the inspector’s decision to make a recommendation on what we believe is a fundamentally flawed argument.

I look forward to your early response and in the meantime would suggest this item be removed from the agenda until the outstanding matters have been resolved.

In addition we would ask that this correspondence be admitted as an *additional objection* in the matter of application 15/0590 based on a matter of principle & precedent that concerns our long-standing objection in this earlier case.

Yours sincerely

Ann M. Fenton

Chair

Windlesham Heathpark Wood Group

01276 471234 07836 549826

Copies to: Karen Whelan, Emma Pearman, Duncan Carty, Councillor Moira Gibson, Councillor Edward Hawkins (Chairman of Planning Application Committee)
West End Action Group: Diane Doney, Beulah Kingston, Guy Consterdine

West End Action Group

1 Bergenia Court
West End
Woking
GU24 9PH

01483 480242
e-mail: contact@weag.info

26 January 2016

To: Surrey Heath Borough Council
Knoll Road
Camberley GU15 3HD

For the attention of:

Ms Karen Whelan, Chief Executive
Mrs Jenny Rickard, Executive Head, Regulatory
Ms Emma Pearman, Senior Planning Officer
Ms Jane Ireland, Planning Policy Manager
Mr Duncan Carty, Planning Officer

Appeal Decision on Planning Application 14/0532:
Land south of Kings Road, West End -
Appeal ref. APP/D3640/W/15/3028247

I am writing on behalf of the West End Action Group (WEAG) to express our dismay that Surrey Heath Borough Council (SHBC) has decided not to challenge in the courts the Planning Inspector's decision to approve the building of 84 homes on land south of Kings Road, West End.

The need to register a challenge

The decision of the Inspectorate undermines the planning policy created by SHBC and weakens its ability to enforce its policies for this and future developments. We regard it as imperative for the Council to challenge the Inspectorate's verdict.

I was about to write to you last Friday to urge you to register a challenge, when we received the news about your decision not to do so, given in your response to the petition mounted by Mrs Diane Doney.

The grounds for registering a challenge, as we see them, are set out in our intended letter of last Friday - whose text is shown on the final pages of this letter. We urge you to reconsider your decision.

This is reinforced by Mrs Doney's petition which attracted more than 626 signatures in just a few days.

West End feels SHBC has let us down badly

The general feeling here in West End is that SHBC has let us down badly. This was very clear in WEAG's well-attended public meeting yesterday evening, 25 January, planned several weeks ago to discuss the Inspector's report and the steps we should take as a result of it. Indeed, a motion was proposed as follows:

"This meeting agrees that Surrey Heath Borough Council has failed to protect sufficiently robustly its own planning policies and the interests of the residents of West End:

- (1) Its opposition to developers' plans to build on the reserve sites has been inadequate;
- (2) It has failed to ensure that Surrey County Council investigated sufficiently closely the specific material conditions in West End regarding traffic, flooding, education, healthcare and other aspects for which SCC is responsible;
- (3) It has declined to challenge the Planning Inspectorate's decision to approve development of the Kings Road reserve site, despite having strong grounds for doing so."

This motion was passed unanimously by the meeting.

We again urge you to register a formal challenge to the Inspector's decision while there is still time, protecting the role of local authorities in making local decisions. This was another point on which last night's public meeting was unanimous.

West End's two other reserve sites

Regarding the two other reserve sites in West End, off Beldam Bridge Road and by Malthouse Farm, we believe that more can be done to defend these sites against the impending appeals, by better marshalling of the facts, and providing adequate information. Too often the Inspector's report on the Kings Road appeal makes statements such as "I received no information on this point". He should have received the relevant information. In some cases this is a failure by the County Council to investigate the situation properly, and we believe they should be asked to look again.

Finally, regarding the re-application by Taylor Wimpey for building 85 houses on land north of Beldam Bridge Road, we assume that the Planning Officers are preparing a Recommendation for the Planning Application Committee's meeting on 10 February. We very much hope that the recommendation will be to refuse the re-application, and not simply give way because of the Inspector's verdict on the Kings Road application. The unsound housing data regarding Kings Road (as set out below) is not an adequate basis for allowing the Taylor Wimpey re-application. Moreover there are reasons for rejection which did not apply to the Kings Road site: for example, the access road on a bend would create a very dangerous situation, an accident waiting to happen; and the site is far more visible and will have a major impact on the rural character of this part of the village.

Yours sincerely,

Beulah Kingston
Chair, West End Action Group

Text of letter intended to be sent to SHBC on 22 January 2016

I am writing on behalf of the West End Action Group (WEAG) to urge Surrey Heath Borough Council (SHBC) to challenge the Inspector's decision to permit the development of 84 houses on land south of Kings Road, West End.

The decision of the Inspectorate undermines the planning policy created by SHBC and weakens its ability to enforce its policies for this and future developments. For this reason, we regard it as imperative for the Council to challenge the Inspectorate's verdict.

We believe the grounds for a challenge are:

- In the Borough's Core Strategy, Saved Policy H8 is in force, and its effect is to state that the reserve sites should not be developed yet. See Note 1 in the Appendix below.
- The Borough has complied with paragraphs 47 & 49 of the NPPF, and Saved Policy H8 is consistent with the NPPF. See Note 2 in the Appendix below.
- Yet the Inspector's decision in effect ignores policy H8.
- NPPF paragraphs 85.3 and 85.4 say safeguarded land (which includes the West End reserve sites) should not be allocated for development at present. It is very explicit on this. See Note 3 in the Appendix below.
- NPPF paragraph 14.4 states that planning permission should not be granted where "specific policies in this Framework indicate development should be restricted" – which is the case in this instance, regarding paragraph 85 as shown above.
- This is reinforced by NPPF paragraph 215, which indicates that great weight should be given to existing policies such as H8. See note 4 in the Appendix below.
- It is clear from the above that the presumption in favour of sustainable development should not apply to the West End reserve sites.
- Yet the Inspector's decision contravenes the NPPF on all these points.
- The Inspector's decision also ignores the advice from the Housing & Planning Minister Brandon Lewis who wrote on 27 March 2015 to the Chief Executive of the Planning Inspectorate (PINS) to stress the importance of considering landscape character when determining appeals.
- The Inspector's view that the Borough will not meet its 5 year housing supply target in accordance with NPPF Paragraph 47 is based on an unsupported presumption about the rate of build at the Princess Royal Barracks site at Deepcut (see note 5), and the application of an untested OAHN figure from the SHMA.

We therefore urge you to apply to the High Court to register a challenge to the Inspector's decision by the due date of 28 January.

Yours sincerely,

Beulah Kingston
Chair, West End Action Group

Appendix

Note 1:

Policy H8 of the 2000 Local Plan was 'saved' in the 2012 Core Strategy, and is in force. It states that the "Reserve Housing Sites... are reserved to meet possible long-term development needs... they will remain subject to the restrictions set out in Policy RE3". Policy RE3 was superseded in the Core Strategy by Policy CP1 (and DM1 which is not directly relevant to this case). CP1 states "The smaller villages of West End and Windlesham have limited capacity to accommodate development and this will be achieved primarily through redevelopment of existing sites." The number of new houses allocated under this policy (20 for the whole of West End) will be easily met and indeed surpassed during the plan period. CP1 continues "Any changes to the boundaries of the major developed sites will be considered through the site allocations DPD." SHBC had a site allocation DPD in progress and it is premature to allow development on any of the reserve sites before that is completed.

Note 2:

Relevant to this, the NPPF states in paragraphs 47 and 49 that the local authority should identify a five year supply of housing land. This has been achieved without requiring additional housing in West End. It is therefore clear that Saved Policy H8 is consistent with the NPPF.

Note 3:

NPPF paragraph 85 states "Local planning authorities should... identify in their plans areas of 'safeguarded land' between the urban area and the Green Belt [such as the West End reserve sites], in order to meet longer-term development needs stretching well beyond the plan period... and make clear that the safeguarded land is not allocated for development at the present time. Planning permission for the permanent development of safeguarded land should only be granted following a Local Plan review which proposes the development." This is very explicit that West End's reserve sites should not be developed at present.

Note 4:

NPPF's 'Annex 1: Implementation' states that it "aims to strengthen local decision making" (paragraph 209) and goes on to say (paragraph 215) "due weight should be given to relevant policies in existing plans [i.e. the Core Strategy] according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)." As demonstrated above, the relevant Core Strategy policies are indeed closely consistent with the Framework, and should therefore be given very great weight, and not be ignored.

Note 5:

The Inspector's conclusion is based entirely on his view that the Borough's Core Strategy is invalidated as it cannot demonstrate a five year housing supply in accordance with paragraph 47 of the NPPF. In which case the presumption in favour of sustainable development applies. This view rests on his presumption that the rate of build at the former Princess Royal Barracks site in Deepcut will be less than the Borough's figure of 125 per year. He concludes that a rate of build of new housing would be at most 100 per year which would reduce the housing supply to 4.85 years. This is

entirely conjecture on his part and is not evidence based. In effect he is saying that there is likely to be a 3% deficit in housing supply over the period. Given the difficulty of providing a precise estimate of the rate of build of new housing, to build a case on such a fine margin is untenable. In effect this whole judgement boils down to a difference of opinion between the Borough and the Inspector over the expected rate of build at Deepcut.



Appeal Decisions

Inquiry held on 27 April 2010

Site visit made on 27 April 2010

by **P N Jarratt BA (Hons) DipTP MRTPI**

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

The Planning Inspectorate
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Decision date:
24 May 2010

Notice A: Appeal Ref: APP/D3640/C/09/2117971

Hook Meadow, Philpot Lane, Chobham, Woking, GU24 8HD

- 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 Miss Alison Hook against an enforcement notice issued by Surrey Heath Borough Council.
- The Council's reference is 07/362.
- The notice was issued on 29 October 2009.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of areas of land shown in green and yellow on the attached plan from grazing land to ancillary residential land.
- The requirements of the notice are:
 - I. Cease the unauthorised use of the land for ancillary residential purposes
 - II. Remove all ornamental planting, flower beds and ornamental features from the areas shown green and yellow on the plan attached to this notice and reinstate the land to its former condition
- The period for compliance with the requirements is:
 - (i) 6 months
 - (ii) 9 months
- The appeal is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended. Since 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 dismissed.**

Notice B: Appeal Ref: APP/D3640/C/09/2117978

Hook Meadow, Philpot Lane, Chobham, Woking, GU24 8HD

- 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 Miss Alison Hook against an enforcement notice issued by Surrey Heath Borough Council.
- The Council's reference is 07/362.
- The notice was issued on 29 October 2009.
- The breach of planning control as alleged in the notice is without planning permission the erection of a single storey dwellinghouse within a field shelter, the erection of a single storey extension to the unauthorised dwellinghouse to form a porch, the formation of hard surfaced/patio areas and the siting of raised planters and an ornamental water feature on the hard surfaced/patio areas.
- The requirements of the notice are:
 - I. Demolish the remaining elements of the field shelter (coloured pink on the attached plan) and remove from site all spoil, debris and materials associated with, or arising from, its demolition
 - II. Demolish the unauthorised extension to the dwellinghouse (the porch coloured blue

- on the attached plan) and remove from site all spoil, debris and materials associated with, or arising from, its demolition
- III. Demolish the unauthorised dwellinghouse (outlined in black on the attached plan) contained within the field shelter (coloured pink on the attached plan) and remove from site all spoil, debris and materials associated with, or arising from, its demolition (for the avoidance of doubt the works of demolition are to include the removal of the foundations and concrete base of the dwellinghouse)
 - IV. Remove the hard surfaced/patio areas indicated yellow on the attached plan and remove from site all spoil, debris and materials associated with, or arising from, its removal and reinstate the land to its former condition
 - V. Remove from the land indicated yellow on the attached plan all raised planters and ornamental water features and reinstate the land to its former condition
- The period for compliance with the requirements is 9 months for each of I-V above.
 - The appeal is proceeding on the grounds set out in section 174(2) (d), and (g) of the Town and Country Planning Act 1990 as amended. Since 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: subject to a variation in the requirements of the notice, the appeal is dismissed.**
-

Preliminary Matters

1. Prior to the inquiry the Council withdrew Requirement I of Notice B relating to the demolition of the field shelter. Consequently the appellant withdrew her appeal under ground (f). I have therefore varied the requirements of Notice B accordingly.
2. Although the appellant has not challenged the wording of the allegation in Notice B, she refers to having converted the field shelter to a dwelling. The Council submitted that the works undertaken cannot reasonably be considered works for conversion. From my observations on site and from the evidence at the inquiry, I find that the dwelling is not a conversion of the shelter but a freestanding building constructed within the field shelter. I am therefore satisfied that the wording of the allegation is correct.
3. All oral evidence to the inquiry was given on oath.

The Site

4. The site is within a countryside location outside a defined settlement. It is set back from Philpot Lane and screened from the highway with established vegetation. It is about 2ha in area with the majority being used as grazing land. A number of stables and sheds and an area of hardstanding occupy part of the site.
5. A small single storey dwelling is concealed in a field shelter although its porch is clearly visible as it projects forward at one end of the shelter. The dwelling consists of a kitchen/living area, a bedroom, a bathroom and a separate WC. It appears to have been well constructed, largely of timber, and there are a number of small windows, some of which could be opened for ventilation. The dwelling appears to be freestanding as it does not rely on the field shelter for its structural integrity. The appellant agreed this to be the case at the inquiry

although pointed out that the corrugated metal roof of the shelter provides some weather protection to the dwelling.

6. The field shelter is a dilapidated timber and metal structure with much of it covered in vegetation although the vegetation has been kept clear of some of the windows. It has been modified through the removal or alteration of some wall panels and the raising of part of the roof to facilitate the concealed dwelling. Wooden slats in front of some of the windows have been removed at one time or another and have been loosely replaced to allow some light to penetrate the dwelling or for ease of removal completely. A panel at one end of the shelter had a post box shaped cut-out to allow light to enter the bedroom. There is a gas bottle lean-to shelter on one side of the dwelling.
7. A hard standing/patio area containing a number of ornamental features has been constructed adjacent to the field shelter and a domestic garden has been created. A further area of land adjacent to the field shelter has been laid out with raised wooden beds and a pond although this area is not the subject of the current enforcement action.
8. A lawful development certificate was granted in June 2003 for the use of the land for leisure grazing for up to three horses and for the laying of scalplings to form an area of hardstanding and the erection of a field shelter and a shed.
9. In April 2004 planning permission was refused for a dwelling and an appeal was subsequently dismissed in April 2005.
10. Planning permission was granted retrospectively in September 2004 for two barns used as stables, feed room and hay store.
11. In October 2005 planning permission was refused for a building to be used as groom's quarters.
12. There have been a number of enforcement investigations following allegations regarding the unlawful use of a caravan in 2003; the erection of a stable block in 2004; and, the unauthorised residential occupation of the site in 2007 and 2008. The 2008 complaint led to the Council becoming aware of a concealed dwelling in the field shelter. However, enforcement action was not pursued until after further inspections by Council officers on 16th and 26th October 2009.

Reasons

Notice B

The appeal under ground (d)

13. The appellant stated that she began converting the field shelter at the beginning of August 2005 with the help of her brother and that she moved in on 1st September 2005. She has lived in the building continuously since then. As more than 4 years has elapsed she claims that the Council is too late to take enforcement action.
14. Section 171B states that in respect of operational development, "no enforcement action may be taken after the end of a period of four years beginning with the date on which the operations were substantially completed".

Paragraph 2.80 of Circular 10/97¹ advises that what is 'substantially complete' must always be decided as a matter of fact and degree.

15. I consider that the facts that have a bearing on the case relate to evidence supporting the occupation of the dwelling for a period of 4 years before the serving of the notice and whether at that time the dwelling was substantially complete.
16. Prior to constructing the dwelling the appellant lived in a horse box on the site but her living conditions became increasingly unacceptable to her. She tried to secure planning permission for a dwelling but concluded that the planning system had no sympathy for the needs of someone in her position. She said that because of this she sought to achieve a residence using the 4 year rule. The appellant acknowledges that she deliberately concealed the dwelling to avoid enforcement action and misled the Council regarding a critical date when an enforcement officer discovered the existence of the shelter at a site inspection in February 2008. She told the Council officer that the four years would be reached on 1st April 2010. Her explanation for giving this date was that she wanted to give herself a chance of reaching the 1st September 2009 date.
17. The appellant has explained in some detail the way in which she constructed the dwelling on concrete foundations and how her brother assisted her with the gas, electrical and plumbing work. The Council doubts whether the building could have been ready for occupation within the 3 weeks or so that the appellant claims. I am also surprised at the speed of construction but the appellant says that she is a practical person able to handle projects of this type without difficulty. In August 2006 as a result of the flooding of her property, she altered the dwelling and raised part of the roof of the field shelter to accommodate these alterations.
18. Invoices and other the paperwork relating to the acquisition of materials for the construction of the dwelling were disposed of following the flood and I do not consider the appellant's evidence regarding gas purchases to be conclusive about the date of occupation of the dwelling. Indeed, an apparent increase in the use of propane gas appears to be consistent with a 4 year expiry date of April 2010 and not September 2009. Additionally, the appellant's photographs of the dwelling under construction were not dated.
19. The planning application for groom's quarters was not determined until 28th October 2005, yet the appellant submits that she started to construct the concealed dwelling in August 2005 on the basis that in July a Council officer advised her that there were no criteria supporting groom's quarters. I would have expected that a person in similar circumstances would normally have waited for the outcome of a planning application before proceeding with a project that would leave them vulnerable to enforcement action for at least 4 years.
20. In the light of the above I do not consider that the appellant's evidence is sufficiently compelling to demonstrate on the balance of probabilities that work commenced on the concealed dwelling in August 2005 and that she has

¹ Circular 10/97 Enforcing Planning Control: Legislative Provisions and Procedural Requirements

occupied it since September 2005. However, even had she been able to prove her case, it is still necessary to consider whether the dwelling was substantially complete 4 years prior to the issue of the enforcement notice.

21. At a site inspection in October 2009, the Council's Development Control Manager observed that significant alterations to the cladding of the field shelter had taken place since the inspection in February 2008. In particular, some panels in the field shelter around window openings had either been removed or broken away to fully expose the windows behind. The appellant advised the officer that following the February 2008 site visit she accepted that "the game was up" and that there was no longer any point in hiding the structure. Consequently she opened the structure to natural light as she was fed up living by artificial light. The officer also observed that a porch had been constructed since the previous site visit and that there was now a patio and garden area.
22. The appellant said that it was not her intention eventually to remove the field shelter and her brother in evidence said he did not know what her intentions were. The dilapidated and overgrown nature of the field shelter made the concealed dwelling difficult to detect and this helped the security of the premises. She justified the windows on the basis of aesthetic reasons as she was constructing a home for herself and the windows would provide some light and ventilation. She stated that gaps in the dilapidated field shelter walls allowed some light to penetrate the dwelling through the windows.
23. The appellant claimed that the subsequent openings in the field shelter were to facilitate repair work such as the sealing of windows and resolving a damp problem. She referred to an appeal in Lancaster² to support her case. That appeal involved a concealed dwelling where corrugated metal sheeting was removed to allow ventilation and light. The inspector accepted that works of repair or improvement could take place after the building was substantially complete although he concluded that the building had not been substantially completed 4 years before the enforcement notice in the meaning of *Sage v SSETR and another [2003] 1WLR*.
24. She also considered that some of the facts as presented by the Council to be inaccurate. Whilst she is correct in referring to a date error in the Council's enforcement record of the site I regard this as nothing more than a careless administrative error having no bearing on the appeal.
25. The Council drew my attention to an appeal decision in Dorking³ relating to a dwelling concealed in a barn. The inspector concluded that the only credible explanation why doors and windows were put into the walls of a bungalow was that at some time they could provide their proper function and this required the removal in full or in part of the barn walls and that the building was not substantially complete until this was done. The Council also cited *Fidler v SSCLG and Reigate and Banstead BC [2010] EWHC 143* where the intention of the appellant in that case was to remove straw bales concealing a dwelling once he thought lawfulness had been secured and that the erection and removal of straw bales formed part of the totality of the building operation.

² APP/A2335/C/09/2093443

³ APP/C3620/C/04/1165042

26. The purpose of windows is to provide natural light and ventilation and in some cases an outlook. Following the site visit in February 2008, parts of the cladding of the shelter were removed to provide natural light, ventilation or an outlook. Prior to that there would have been very limited light and ventilation. The only credible explanation for the construction of the windows in the concealed dwelling is that they could not perform their proper functions unless openings in the walls of the shelter were made or the walls removed. I am not persuaded by the appellant's evidence that her intentions were not to create openings in order to permit the windows to perform their normal functions. Had that been the case then I can see no reason why the windows were opened up after the February 2008 site visit. The claim by the appellant that this was for the purposes of repair appears to be no more than an attempt to argue immunity under the 4 year rule. The removal of parts of the shelter's cladding in order to allow light to the windows must have been the appellant's original intention and formed part of the totality of the building operation.
27. Whilst I note the letters of support for the appellant, taking the above factors into account I consider that the development was not substantially complete until the gaps in the walls of the field shelter were created and that occurred less than four years before the issue of the notice.
28. The appellant offers no evidence to indicate that the other elements of the allegation were substantially complete more than 4 years before the issue of the notice, ie the erection of a single storey extension to the unauthorised dwellinghouse to form a porch, the formation of hard surfaced/patio areas and the siting of raised planters and an ornamental water feature on the hard surfaced/patio areas.
29. In conclusion the appellant has not discharged the burden of proof to the requisite standard which rests with her. For the reasons given I consider that the appeal on ground (d) should not succeed.

The appeal under ground (g)

30. The appellant considers that the time to comply with the requirements of the notice is too short and that 24 months would give her a chance to improve her financial situation and in finding an affordable home.
31. The site is in the Green Belt and in a functional flood plain. The Council state that the continued use of the site for residential purposes would be likely to have a detrimental impact on the Thames Basin Heath Special Protection Area. It is appropriate to secure the cessation of the breach in as timely a manner as possible.
32. The effect of this decision will result in the appellant losing her home and I do not underestimate the difficulties that this may cause her. However the concealed dwelling, porch, patio, planter and water feature should be removed within a reasonable period in the public interest and I consider that the compliance period is adequate to carry out the requirements of the notice. The appeal under this ground fails.

Notice A

The appeal under ground (g)

33. The appellant seeks an extension of the compliance period to 24 months such that it is the same period for compliance she has sought in the ground (g) appeal in Notice B.

34. However as I consider the compliance period in Notice B to be reasonable, for the same reasons I also consider the compliance period in Notice A to be reasonable and the appeal under ground (g) therefore fails.

Formal Decisions

Notice A: Appeal Ref: APP/D3640/C/09/2117971

35. I dismiss the appeal and uphold the enforcement notice.

Notice B: Appeal Ref: APP/D3640/C/09/2117978

36. I direct that the enforcement notice be varied by the deletion of Requirement I in paragraph 5 and the deletion of line I relating to the time for compliance in paragraph 6. Subject to this variation I dismiss the appeal and uphold the enforcement notice.

P N Jarratt

Inspector

APPEARANCES

FOR THE APPELLANT

The appellant, Miss Alison Hook represented herself

She called
Mr David Hook

FOR THE LOCAL PLANNING AUTHORITY:

Mr Richard Wald of Counsel, instructed by the Assistant Solicitor to the Council

He called	
Mr A Badosz,	Development Control Manager, Surrey Heath
	Borough Council
Ms M Fielder	Principal Planning Officer, Surrey Heath Borough
	Council

INTERESTED PERSONS:

None

DOCUMENTS

- 1 Confidential Enforcement Record (LPA)
- 2 Email from Natural England of 13 February 2010 (Appellant)