

**PLANNING SERVICES**

**TOWN & COUNTRY PLANNING (DETERMINATION BY INSPECTORS)  
(INQUIRIES) RULES 2000**

**John Sheehy**

**PROOF OF EVIDENCE  
FOR PUBLIC INQUIRY COMMENCING ON 2<sup>nd</sup> of April 2019**

---

**APPEAL SITE**

South Fairground Site, Vale Of Health, London NW3 1AU

**APPELLANT**

Jita Lukka

---

**SUBJECT OF APPEAL**

- Construction of a one-storey dwellinghouse.

---

**COUNCIL REFERENCES:**

EN17/1284

**PLANNING INSPECTORATE REFERENCE:**

APP/X5210/C/18/3193167

## **PROOF OF EVIDENCE OF JOHN SHEEHY**

### **QUALIFICATIONS**

- i. I have a Bachelor of Arts Degree in History from Trinity College Dublin, Ireland and a Masters Degree in Regional and Urban Planning from University College Dublin, Ireland. I am eligible for membership of the Royal Town Planning Institute. I have worked in the Council's Planning Service since October 2005. I am a Senior Planning Officer in the Enforcement Team. I also worked in Camden's Planning Site Development Team for over 2 years and Development Management Team for 4 years.
- ii. Prior to my employment with the London Borough of Camden I worked for Slough Borough Council as a Planning Policy Officer for 6 months.
- iii. During the period in which I worked as in the Development Management team I dealt with a number of applications for sites in the Hampstead Conservation Area. I have also dealt with sites in the Hampstead Conservation Area in my current role as a Planning Enforcement Officer.

## **STRUCTURE OF THIS PROOF**

- i. In my evidence I provide a summary of the enforcement case which is the subject of this appeal.
  
- ii. My evidence will be divided into five sections:

In Section 1 (Relevant Planning History) I shall provide a summary of the planning history relevant to the appeal scheme.

In Section 2 (Planning policy and guidance) I shall highlight national, regional and local planning policies and guidance pertinent to the issues raised in my assessment.

In Section 3 (Site and Surroundings) I will describe the appeal site and surrounding area.

In Section 4 (Submissions) I will explain the Council's decision to issue the Enforcement Notice with reference to the Planning Act. In this section I will also outline the Council's response to the appellant's grounds of appeal.

## 1.0 RELEVANT PLANNING HISTORY

### Enforcement Notice which this appeal relates to

1.1 The Appeal relates to an Enforcement Notice issued under Delegated Powers on 20th of December 2017. In the Notice, the breach was identified as:

*Construction of a one-storey dwellinghouse.*

1.2 The requirements of the Notice are as follows:

Within four months of the Notice taking effect:

1. Completely remove the one-storey dwellinghouse from the site;
2. Make good the site following the completion of the above works.

1.3 The reasons for issuing the Notice are as follows:

i) It appears to the Council that the breach has occurred within the last 4 years.

ii) The dwellinghouse that has been built, by reason of its scale, location and use as permanent residential accommodation undermines the openness and character of the land and represents inappropriate development on Metropolitan Open Land. As such, the works are contrary to Policy A2 Open Space Camden Local Plan 2017.

iii) The dwellinghouse that has been constructed, by reason of its location, bulk, footprint, layout, detailed design and materials, forms a discordant and incongruous development that causes harm to the

appearance and character and surrounding Hampstead Conservation Area and Hampstead Heath. As such, the works are contrary to Policy D1 (Design), D2 (Heritage) and A2 (Open Space) of the Camden Local Plan 2017.

\*\*\*\*\*

#### Planning Application decided in 2004

- 1.4 In April 2004, planning permission was refused for the erection at the site of a three storey single dwelling house with parking for 2 cars plus hard landscaping adjoining the pond, ref. 2004/0387/P.

There were five reasons for refusal:

1. “The proposal involves inappropriate development on Other Green Open Land, contrary to policy EN50 of the London Borough of Camden Unitary Development Plan 2000;
2. The proposal involves inappropriate development on a site designated entirely as Private Open Space and Metropolitan Open Land, and thus is contrary to policies N1 and N2 of the London Borough of Camden Replacement Unitary Development Plan Deposit Draft June 2003;
3. The proposed development, by reason of its location, bulk and form, would be detrimental to the character and setting of the adjoining open spaces, particularly the north fairground site, classified as Private Open Space and Metropolitan Open Land, and of the surrounding Hampstead Heath Area of Special Character; this would be contrary to policies EN52 and HR1,2,3,4 of the London Borough of Camden Unitary Development Plan 2000, and to policy N2 of the London Borough of Camden Replacement Unitary Development Plan Deposit Draft June 2003;

4. The proposed new house, by reason of its proportions, bulk, form, footprint, layout, detailed design and use of materials, would be detrimental to the character and appearance of the local townscape and conservation area in the Vale of Health and to the setting of the adjoining open spaces, contrary to policies EN1,13,14,16,18,31 and 52 of the London Borough of Camden Unitary Development Plan 2000 and to supporting advice in the Hampstead Conservation Area Statement;
  
5. The proposed landscape design of the site, by reason of its extensive hard surfaces, planting species, changed levels, boundary treatment, and loss of trees, would be detrimental to the character and appearance of the conservation area and the setting of the adjoining Heath and pond, contrary to policies EN1,9,14,15,16,31 and 35 of the London Borough of Camden Unitary Development Plan 2000.”

## 2.0 PLANNING POLICY AND GUIDANCE

2.1 The grounds of appeal are B, C and D. The site owner has not appealed Ground A nor has the fee been paid in respect of the deemed application. As a result, the planning merits of the works cannot be considered as part of this appeal.

2.2 As the planning merits cannot be considered in this appeal, it is not necessary to provide a commentary on the planning policies. The text of the policies has been submitted with the questionnaire and the merits of the case have been considered in detail and assessed in the officer's delegated report which was submitted with the questionnaire and is appended at **JS5**. Nevertheless, the Local Plan policies that the works were assessed against in the delegated report are listed below for completeness.

- G1 Delivery and location of growth
- H1 Maximising Housing Supply
- A1 Managing the impact of development
- A2 Open Space
- D1 Design
- D2 Heritage

### *Supplementary Planning Guidance*

2.3 For completeness, the following is the list of SPGs that the works were assessed against in the delegated report:

- CPG6 – Amenity (2011) – Section 12 Planning for Healthy Communities

2.4 This Supplementary Planning Document was adopted following extensive public consultation.

2.5 The full text of the guidance document has been sent with the questionnaire.

#### Other policy documents

2.6 For completeness, the following is the list of other policy documents that were considered prior to service of the enforcement notice:

- National Planning Policy Framework (2012) – this was superseded by the NPPF adopted in February 2019
- London Plan (2016)
- Draft New London Plan (2017)
- Hampstead Conservation Area Statement (2001)



### 3.0 SITE AND SURROUNDINGS

- 3.1 The appeal relates to a site located in The Vale of Health, an enclave of houses located within Hampstead Heath. The South Fairground Site is situated at the end of the Vale of Health where the made road becomes a dirt surface leading onto Hampstead Heath. It is a rectangular plot of land with a number of trees and high fences which appear to have been recently installed around the edges. The ground level of the site is flat but drops vertically where it meets the water of the Hampstead Pond.
- 3.2 The entire Vale of Health is within the Hampstead Conservation Area: this includes the South Fairground Site and the larger North Fairground Site opposite.
- 3.3 There is a low shed located in the southwest corner of the site; this lean-to brick structure has a corrugated metal roof. The unauthorised timber dwellinghouse, which the appeal relates to, is located at the centre of the site. Previously a caravan and a trailer were linked to the house but they were removed in late 2017/ early 2018. Photos in **Lukka L** indicate that further works have been carried out at the site since the Enforcement Notice was issued. These include what appear to be a permanent timber structure attached to a trailer and a long lean-to enclosure which runs around the northern and eastern sides of the site, just inside the fence. There is no record of a planning application having been submitted for these works.
- 3.4 The surrounding properties in the Vale of Health are mainly period villas and cottages dating from the 19th century, most of which are built of brick with timber windows and traditional details. Many of these are listed. There are also a number of twentieth-century apartment buildings nearby including the six storey Spencer House, the tall side wall of which forms the eastern boundary of the appeal site.

- 3.5 The appeal site is designated Metropolitan Open Land as “Gardens Adjacent to Hampstead Ponds”.
- 3.6 The pond and the flank wall of Spencer House are key local features in the photographic evidence presented as part of this appeal.

## 4.0 SUBMISSIONS

4.1 The appellant has appealed against the Enforcement Notice on the following grounds:

- Ground B, that the breach of control alleged in the notice has not occurred as a matter of fact;
- Ground C, that there has not been a breach of planning control;
- Ground D, that at the time the notice was issued it was too late to take enforcement action against the matters stated in the notice.

4.2 The grounds that have been appealed are evidential in nature and relate to the layout of the site over the period of time before the Notice was issued. In addressing the Grounds, the Council relies on a wide range of material including photographs, statutory declarations, correspondence and evidence provided by the Appellant.

4.3 In summary, the key evidence that goes to the heart of the issues raised in the grounds of appeal is as follows;

- Photographs dated February 2017 **Lukka J**;
- Officer photographs from site visit in July 2017 attached at **JS1**;
- Officer photographs from site visit in September 2017 attached at **JS2**;
- Reports of building works taking place at site received by the Council between May and July 2017 **JS3**;
- Aerial Photography Survey by Christine Diane Cox dated July 2018 **Lukka D**;
- Video and photo evidence of an object located on the land, dated December 2016 **Lukka E**;
- Report by Tony Covey dated September 2017, including Topographical Map by Cadmap March 2017 **Lukka F**;

- Second Statutory Declaration by Robert Litvai , dated 19<sup>th</sup> of July 2018 **H+H/VoH Tab 2**;
- Statutory Declaration by Alicia Logan dated 19<sup>th</sup> of July 2018 **H+H/VoH Tab 3**;
- Statutory Declaration by Ellen Solomons dated 19<sup>th</sup> of July 2018 **H+H/VoH Tab 4**;
- Photographs of site in September 2018 **Lukka L**.

4.4 Between 2004 until 2017 there were no planning applications for this site and no complaints of a breach of planning control were made. As a result, a limited amount of planning officer evidence was gathered on the condition and use of the site during this period. Nevertheless a wide range of other evidence is available which helps establish the facts in relation to the key issues under consideration.

4.5 A report of works taking place at the site was received from a local resident on 16<sup>th</sup> of May 2017. Further reports were received on 26<sup>th</sup> of May, 31<sup>st</sup> of May, 5<sup>th</sup> of July and 25<sup>th</sup> of July. These are appended (**JS3**). Following these reports requests for access to the site were made by officers on the 6<sup>th</sup>, 13<sup>th</sup> and 19<sup>th</sup> of July 2017.

4.6 When access to the site was not provided voluntarily, officers served a Notice of Intended Entry on the 20<sup>th</sup> of July 2017. The owner was advised that access was required on Friday 21<sup>st</sup> of July at 3pm.

4.7 On that date the officer emailed the site owner at 14:01 to say that he was leaving the office to come on site to carry out the visit. The officer arrived at the property before 15:00 and waited at the front. No representative of the owner appeared. The officer knocked on the gate and called out to say that he had arrived to carry out the visit. The officer waited until 15:20. No representative of the owner appeared and access to the site was not provided.

4.8 On the 21<sup>st</sup> of July 2017 the enforcement officer took photos of the site from the public realm and nearby properties. These are appended at **JS2**.

### **Grounds of Appeal**

Ground B that the breach of control alleged in the notice has not occurred as a matter of fact;

- 4.9 The photographs at Lukka J show the site in February 2017.
- 4.10 These are supplemented by a topographical survey appended to **Lukka F** which is by Cadmap and dated March 2017.
- 4.11 The photographs at **JS2** show the site in September 2017, after the breach identified in the Notice had taken place.
- 4.12 The Enforcement Notice was issued in December 2017.
- 4.13 There is no evidence of the unauthorised works in the photographic survey carried out in February 2017 (**Lukka J**). There is instead a collection of ramshackle objects made of temporary materials such as timber, tarpaulin, rope and wooden pallets located at the site. Many of these were lean-to items attached to caravans. In my opinion the appellant has failed to prove that the building the subject of the Notice was present in February 2017 or earlier.
- 4.14 The evidence relevant to this ground provides a clear, consistent pattern of what happened at the site during Spring/ Summer 2017. The photographs in **Lukka J** show the site before the works were carried out with no recognisable structures. The photographs in **JS1** show building works under way. The photographs in **JS2** show the built dwellinghouse which the Notice relates to. The reports of works from nearby occupiers in **JS3** provide contemporary evidence of noisy building works being carried out. The Statutory declarations of Robert Litvai, Alicia Logan and

Ellen Solomons in **H+H/VoH Tab 2, H+H/VoH Tab 3 and H+H/VoH Tab 4** are consistent in verifying that building works were carried out in Spring/ Summer 2017. These resulted in the dwellinghouse shown in **JS2**. There was no planning permission in place for the construction of the dwellinghouse and no application was made.

4.15 The construction of the dwellinghouse constitutes development under section 55 of the Town and Country Planning Act 1990 and requires planning permission. The need for planning permission is further discussed in relation to the Ground C appeal (see the following section).

4.16 Based on the evidence referred to in 4.9-4.16 above as a matter of fact, a breach of planning control took place in Spring/ Summer 2017 by the carrying out of construction works at the site without permission.

#### **Response to Appellant's comments**

4.17 I could not find anything in the appellant's evidence that specifically addresses this Ground so no further comments are made under this ground in addition to those set out above.

\*\*\*\*\*

#### Ground C: that there has not been a breach of planning control;

4.18 Section 55 (1) of the Town and Country Planning Act 1990 defines development as follows:

The carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

Section 55 (1A) clarifies that building operations include the following:

- (a) demolition of buildings;
- (b) rebuilding;
- (c) structural alterations of or additions to buildings; and
- (d) other operations normally undertaken by a person carrying on business as a builder.

4.19 Sub section (2) provides that:

“The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

(a) the carrying out for the maintenance, improvement or other alteration of any building of works which—

- (i) affect only the interior of the building, or
- (ii) do not materially affect the external appearance of the building, ...”

\*\*\*

4.20 The key evidence in relation to the Ground C appeal is as follows:

4.21 The photographs at **Lukka J** showing the condition and layout of the site before the construction works in Spring/ Summer 2017.

4.22 These are supplemented by the Topographical survey dated March 2017 by Cadmap **Lukka F** showing the site layout in plan form in March 2017.

4.23 The photographs at **JS1** show the site on 21<sup>st</sup> of July 2017. These were taken during the period when works were under way and were taken by the enforcement officer. The photographs at **JS2** show the site in September 2017, after the works identified in the notice had taken place.

A later set of photographs, dated September 2018, is provided at **Lukka L**.

- 4.24 A report of works taking place at the site was received by Camden Planning Department from a local resident Ellen Solomons (Chair of the Vale of Health Society) on 16<sup>th</sup> of May 2017. Further reports were received on 26<sup>th</sup> of May, 31<sup>st</sup> of May, 5<sup>th</sup> of July and 25<sup>th</sup> of July. These are appended at **JS3**. Among the works reported to be going ahead, these emails stated that drainage was being installed at the site.
- 4.25 Statutory Declarations have been provided by people who were living on or near the site at the time of the works, or shortly before they were carried out. A second Statutory Declaration by Robert Litvai (**H+H/VoH Tab 2**) dated 19<sup>th</sup> of July 2018 has been submitted by the Heath and Hampstead / Vale of Heath Societies. On page 4 of the Statutory Declaration, in reference to the report by Tony Covey (**Lukka F**), Robert Litvai comments: "I inspected the exterior of Bren Cottage on 17 July 2018 and took some photos of it, appended to this statutory declaration marked E. I did not recognise any exterior part of the building that could be said to have been "repaired". So far as I could see, everything had been replaced or newly built".
- 4.26 A Statutory Declaration by Alicia Logan (**H+H/VoH Tab 3**), former resident of the site, dated 19<sup>th</sup> of July 2018 has been submitted by the Heath and Hampstead / Vale of Heath Societies. Paragraph 6 states "I confirm the correctness of everything stated by RL (Robert Litvai) in that paragraph concerning the appearance of the current exterior of the house... I was not aware of, and did not use, any "drainage" when I lived there".
- 4.27 Statutory Declaration by Ellen Solomons (**H+H/VoH Tab 4**) dated 19<sup>th</sup> of July 2018 states in paragraph 13 that "In about April 2017 building works started on the site" The remainder of paragraph 13 and paragraph 14 state that a number of workmen carried out the works. The works



sounded extensive. A number of residents complained to Ellen Solomons about the works in her capacity as chair of the VOHS.

4.28 A series of aerial photographs is provided at **Lukka D**. These photographs are part of a report by Christine Diane Cox. For the purposes of the Ground C appeal the relevant photos are Figure 8 (p. 17) dated 8 April 2017 and Figure 9 (p. 18) dated 16 February 2018 as they show the site just before and just after works took place in Spring / Summer 2017.

4.29 The Enforcement Notice was issued in December 2017.

4.30 This evidence set out in paragraphs 4.21-4.28 demonstrates the following:

- Before March 2017 there was a scattered pattern of small items at the site. These were constructed of tarpaulin, salvaged timber and rope. Many were of a lean-to nature, connected to caravans. These objects were temporary in character with no drainage, as stated in **H+H/VoH Tab 2** (p.4. 2.10) and **H+H/VoH Tab 3** (para. 6) and demonstrated in **Lukka J**.
- The photographs in **Lukka J** dated February 2017 provide evidence of a ramshackle collection of objects on the site but no evidence of a recognisable structure. There is no clear evidence of any object in a similar location, or with an appearance similar to the dwelling house that was later built and which is shown in **JS2**.
- There was no degree of permanence to any of the items on the site. There are no surviving traces of any foundations or masonry elements. These lightweight temporary shelters had no permanent connection to the land. This is demonstrated in **Lukka J** and **H+H/VoH Tab 2** (p.3. para. 6 and 9).

- On acquiring the site, the owner was quickly able to clear the land and no elements of the previous temporary shelters were visible during officer site visits in July 2017 (**JS1**) and September 2017 (**JS2**).
- It is noted in the Topographical Map which is part of the report by Tony Covey (**J Lukka H**) that the layout is in accordance with the description above with objects of a lean-to nature, connected to caravans and other items which were temporary in character.
- In terms of the works carried out in Spring/ Summer 2017, the officer photographs in **JS1**, taken on 21<sup>st</sup> of July 2017 show the north flank of the object on the site in an openwork condition with no windows, doors or walls in place (photos taken at 15:04). There is, however, a framework in place, ready for further works.
- Photos from **JS1** taken at 15:25 and 15:26 show the western side of the item on the site. Here one can see a wall and part of a roof-type structure. There is a door opening in the wall with a temporary white panel over the opening. This side of the item is finished in what appears to be plastic floor-covering, brown in colour. The floor-covering material continues from the elevation over the roof-type structure.
- The photos at **JS1**, taken at 15:26, show, on the ground located near the flank wall of Spencer House, a stack of windows or glazed doors with white frames and glazing intact. Also visible nearby are piles of timber slats.
- Turning to the photos in **JS2** dated 5<sup>th</sup> of September 2017, the northern flank wall of the unauthorised dwellinghouse is shown on the photos timed at 10:50. A white-framed glass door and a white-framed window have been fitted. There is a window opening with two white-framed windows on the ground nearby. These appear to be the correct size to fit

the opening as a double-window. Photos in **Lukka K** show such a double window in this opening. The outer wall is finished in a timber-slat type treatment. The openwork object that was visible on the site on the 21<sup>st</sup> of July had, by 5<sup>th</sup> of September, been altered to become an enclosed building.

- The photos at **JS2** taken at 10:43 and 10:46 show that the outer wall on the western side of the house is finished in a timber-slat type treatment. This finish has the same appearance as that on the north flank. The roof is finished in green felt. At the lowest point of the roof there is a cornice with a build-up at the eaves. The build-up has a thickness of approximately 0.25m. The felt finish from the roof comes over the corner of the eaves and covers the upper part of the fascia to a vertical distance of ca. 0.1m. This timber slats that make up the soffit and fascia appear to be nailed into place, into a rafter or framework structure hidden within the roof.
- As the later photos in **JS2** show, the southern and eastern sides of the unauthorised dwellinghouse have the same timber slatted finish as the north and west sides. The felt finish continues over the entire roof of the dwellinghouse.

4.31 The works that have been carried out involve building operations and fall within the definition of development set out in the Town and Country Planning Act 1990, Section 55 (1A) a, b, c and d. The evidence demonstrates that the works are development under three categories, namely (b) rebuilding; c) structural alterations of or additions to buildings; and (d) other operations normally undertaken by a person carrying on business as a builder.

4.32 The works do not fall into the definition of development under category (a) as there were no items on the site which could be described as “Buildings” that have been demolished.

- 4.33 The Sui Generis use class does not have any permitted development rights. Any external changes to a property in this use class need planning permission, provided that the works are material. Based on the evidence of the photographs in **Lukka J, JS1** and **JS2** the works in question are physical alterations of a very significant scale which are material in planning terms.
- 4.34 The works require planning permission and in the absence of this they are in breach of planning control.

### **Response to the appellant's Ground C comments**

- 4.35 In **Lukka G** the owner has claimed that the works carried out constitute repairs and maintenance rather than development. It is understood that the object which the appellant claims to have been repairing is the one labelled as "Rob's Wood House" in **Lukka J** (sheet 7).
- 4.36 Section 55 (2)(a)(ii) of the 1990 Act provides that maintenance, improvement or other alteration of any building or works that do not materially affect the external appearance of the building do not need planning permission.
- 4.37 I consider that the works the subject of the enforcement notice constitute development under Section 55 (1A). I do not agree with the appellant's contention that the works the subject of the enforcement notice comprise the maintenance, improvement or other alteration of a building which affected only the interior of the building or did not materially affect the external appearance of the building. Firstly, as I have stated, I do not accept that there was a building to which Section 55 (2) (a) could apply.
- 4.38 Secondly, while evidence on the works to objects at the site is limited due to the inability of officers to access the site during the construction

works, nevertheless the material changes in appearance between the object labelled as “Rob’s Wood House” in **Lukka J** (sheet 7) and the dwellinghouse shown in **JS2** comprise significant physical alterations which are material in nature. Nor do the changes relate solely to the interior.

4.39 The appellant’s evidence to support the claim that the works are section 55 (2) (a) works is limited. The photographs in **Lukka J** showing “Rob’s Wood House” are partial and do not show all sides or roof of the object. The dwellinghouse shown in **JS2** is very different in appearance to “Rob’s Wood House”. It is enclosed with continuous timber walls all sides and has a roughly rectangular footprint. Previously, it had a linoleum roof and parts of it had a canvas wall as evidenced by **H+H/VoH Tab 2**, page 3 paragraph 9 and appended Photo D. As a result of the above and given the scale, extent and appearance of the works, they cannot be considered as repairs and maintenance under Section 55 (2) (a) (ii).

\*\*\*\*\*

Ground D: that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice;

4.40 The breach identified in the Notice is:

*Construction of a one-storey dwellinghouse*

4.41 Under this Ground, the owner needs to demonstrate that the dwellinghouse was substantially complete 4 years before the issuing of the notice in December 2017.

4.42 The officer site visits in July and September 2017 demonstrate that the dwellinghouse on the site dates from Spring/ Summer 2017 and had not been in place for 4 years continuously as it would need to be in order for the appeal to succeed on Ground D.

4.43 In order to succeed with the Ground D appeal the onus is on the appellant to prove her case on the balance of probabilities. I have examined the evidence put forward by the appellant and, for the reasons I have said, I do not consider that it established a Ground D defence but I shall comment further in writing or in oral evidence on any further information which might be forthcoming. In particular, I note the absence of contemporaneous documentation concerning the works.

### **Appellant's evidence**

#### Statutory Declaration by Robert Andrew Litvai

4.44 The appellant has submitted a Statutory Declaration dated 31/3/2017, (**Lukka A**) by a former resident of the site named Robert Andrew Litvai of Riverside Inn, 20 Wye Street, Ross-On-Wye, HR9 7BT. In his declaration, Mr Litvai states the following:

4.45 He lived in two caravans at the site in 2003-2004 and that he had a key to the site until 2016. He states that he vacated the site in 2016.

4.46 The owner of the site retained Mr Litvai as a caretaker of the site from around 2004. There were eight caravans at the site, the majority for in excess of 10 years.

4.47 Robert Litvai has withdrawn his Statutory Declaration dated 31/3/2017 so minimal weight should be given to it. This Declaration has been replaced by a new Statutory Declaration, dated 19<sup>th</sup> of July 2018, **H+H/VoH Tab 2**.

#### Report on Aerial Imagery by Christine Cox of Airphoto Services

4.48 The appellant has submitted an Expert Witness Statement dated September 2017, by Christine Diane Cox BA MA MCIfA FSA.

4.49 This report is based on photographic evidence from surveys carried out on the dates from 2006 to 2018.

4.50 The following images fall outside of the relevant period for the Ground D Appeal, which is December 2013 to December 2017:

- *Figure 1, 29 January 2006; this shows a red object in the southeast corner, a white object to north of this;*
- *Figure 2, February 2007; red object in southeast corner, two or three other caravan-sized objects visible through tree cover;*
- *Figure 3 February 2007; red object in southeast corner, two other caravan-sized objects visible through tree cover.*
- *Figure 4, 15 April 2008; red object in southeast corner, white caravan-shaped object to the north of this;*
- *Figure 5, August 2011; brown object in southeast corner visible through trees, no other objects visible through heavy tree cover;*
- *Figure 6, April and July 2013; 5 objects on the site, three in south-east corner two in the centre, various shapes. Three items are caravan-shaped, two have no clear shape. It is not possible to say what these items may be.*

4.51 The following images cover the period relevant to the Ground D Appeal:

- Figure 7, 1 February 2014; approximately 6 objects on the site. Two green objects in centre. Three items in the southeast corner, one caravan-shaped, visible through trees. The other two items in this corner are unclear. One brown object marked “House” with two arrows pointing to it. This is identified by Robbie Litvai in **H+H/VoH Tab 2**, page 4 Figure 7 as a “Music Box”, a small sound-proofed music space and described on Page 3 Paragraph 6 of **H+H/VoH Tab 2** as a wooden box built on pallets. This was not inhabited as Robbie Litvai lived in a caravan nearby;
- Figure 8, 8 April 2017; 8 items on the site, three white objects on the left which are shaped like caravans. Two items in the centre of the site, both brown in

colour. Three caravans on the eastern side – these are not clear as hidden by trees;

4.52 The following image falls outside of the relevant period for the Ground D appeal:

- *Figure 9, 16 February 2018; the photograph is not clear enough to be able to identify any objects on the site*

4.53 Officer findings on this evidence:

- There are only two aerial photographs that cover the period relevant to the Ground D appeal, December 2013 to December 2017. These are Figure 7 and Figure 8. However, they do not clearly show any item on the site which could be said to be the same structure as the dwellinghouse which the notice relates to;
- The photographs are taken from a significant height. Figure 8 is noted as being taken from a height of 214m above the site. In addition, thick tree cover obscures the objects on the ground;
- Because of the height above ground and the tree cover it is not possible to establish the true nature of the objects shown on the photographs. It is not possible to establish for example:
  - what materials the objects are made of;
  - what is the exact footprint of the objects;
  - what height the items are;
  - whether they have wheels; and
  - whether they are temporary or permanent structures.
- It is not disputed that the site contained various objects over the 13 year period from 2006 to 2018 covered by the report by Christine Diane Cox. While it is difficult to draw firm conclusions from the aerial imagery for the above reasons, the images in the report would appear to confirm that the site contained caravans with



associated lean-to shelters as well as temporary items made of rope and tarpaulin built on pallets.

### Other evidence

4.54 The most relevant other evidence on the Ground D appeal is:

- Video and photo evidence of Robbie Litvai living in the house **Lukka E**;
- Report and Statutory Declaration by Tony Covey and map by Cadmap **Lukka F**;
- Council Tax records **Lukka H**;
- Photographs dated February 2017 **Lukka J**;
- Photographs of site today **Lukka L**;
- Officer photographs **JS1** and **JS2**.

4.55 These items of evidence are discussed below:

4.56 Video and photo evidence of Robbie Litvai living in the house **Lukka E**: this evidence is dated December 2016 and provides a range of images and footage. It is noted that many of these are interior photographs and it is difficult to verify their location. This evidence covers a single month of the relevant period, December 2013 to December 2017.

4.57 Report and Statutory Declaration by Tony Covey and map by Cadmap **Lukka F**: this evidence dates from 2017 and 2018 and relates mainly to works and operations carried out in 2017. The report states that Tony Covey visited the site for the first time on 7<sup>th</sup> of February 2017. As a result, his evidence does not cover the entirety of the relevant period, December 2013 to December 2017.

- 4.58 Council Tax records **Lukka H**: these records cover the end of the 2016-17 financial year and the entire financial year 2017-18. They do not cover the entirety of the relevant period, December 2013 to December 2017.
- 4.59 Officer photos **JS1** and **JS2** as well as **Lukka J** and **Lukka L**: these show the extensive and material nature of the works that have been carried out at the site and which have resulted in the dwellinghouse that the Notice relates to. In order to avoid repetition, the Inspector is directed to the comments in paragraphs 4.30 and 4.31 above. In these paragraphs the material nature of the works that took place in Spring/ Summer 2017 is demonstrated.

### **Ground D Conclusion**

- 4.60 The evidence presented by the owner as part of the Ground D appeal is notadequate; the Aerial Photography Report (**Lukka D**) contains two photographs from the relevant period and these do not demonstrate the presence on the site of the dwellinghouse for the relevant period of time. Similarly, the videos and photographs in **Lukka E** provide a snapshot of the site in December 2016 but not a continuous picture of the site over the relevant 4-year period. The Report and Statutory Declaration from Tony Covey (**Lukka F**), with topographical map, are based on evidence gathered at the site in 2017; the appellant's evidence does not relate to the entirety of the relevant 4-year period.
- 4.61 In addition, the appellant's case is not supported by the kind of documentary evidence that I would normally expect to be provided to demonstrate the existence of a permanent dwellinghouse for a 4-year period. There is an absence of utility bills, tenancy agreement and invoices for any works carried out at the property.
- 4.63 The appellant's evidence is not complete and is not sufficient for a decision maker to be able to decide "On the balance of probabilities" that the dwellinghouse was in place for 4 years continuously before December 2017.
- 4.64 In addition to the lack of clarity and continuity in the appellant's evidence, there is a significant amount of evidence available that undermines their version of events. The photographs at **JS1**, **JS2** and **Lukka J**, as well as the reports in **JS3** provide a clear

picture of significant building works at the site to construct a dwellinghouse at the site which was not in existence before Spring 2017.

4.65 This evidence relevant to the Ground D appeal points to a different sequence of events from the one the appellant is proposing, namely that there was no dwellinghouse at the site when the appellant acquired the site in early 2017, and that it is following the purchase of the site by the appellant that clearance and construction works began. When the appellant acquired the site in February 2017, there was nothing more than a poorly constructed shelter and a number of other items on the site. Most of the shelter was then replaced. Adopting a holistic approach, the building operation, the subject of the enforcement notice, was substantially completed only when the appellant's works were completed.

4.66 Taken as a whole the Ground D evidence demonstrates that the dwellinghouse at the site has been in place since Summer 2017. It has not been in place for 4 years and therefore is not immune from enforcement action. As a result, the Inspector is respectfully requested to find that the appeal on Ground D is not established.

## **6.0 CONCLUSION**

6.1 For the reasons set out above, the Inspector is respectfully invited to dismiss the appeal.

## APPENDICES

JS1	Photos taken by enforcement officer on site visit dated 21 July 2017
JS2	Photos taken by enforcement officer on site visit dated 5 September 2017
JS3	Emails from neighbours reporting works at the site, May-July 2017
JS4	Enforcement Notice for EN17/1284
JS5	Delegated Report for EN17/1284