
Appeal Decisions

Hearing held on 17 December 2013 and 18 February 2014

Site visit made on 17 December 2013 and 18 February 2014

by Keith Turner LLB(Hons) DipArch(Dist) RIBA MRTPI

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

Decision date: 7 March 2014

2 Appeals relating to The Old School House, Gotham Road, Kingston on Soar, Nottingham NG11 0DE

- The appeals are made by Mr Douglas Williams.
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Appeal 1: APP/P3040/X/13/2198486

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is against the decision of Rushcliffe Borough Council.
 - The application Ref 13/00075/CLUEXD, dated 11 January 2013, was refused by notice dated 19 April 2013.
 - The application was made under section 191(1)(a) or (b) of the Town and Country Planning Act 1990 as amended.
 - The use or development for which a certificate of lawful use or development is sought is a temporary mobile portacabin on land at rear of The Old School House.
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Appeal 2: APP/P3040/C/13/2199762

- 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 against an enforcement notice issued by Rushcliffe Borough Council.
 - The Council's reference is 13/00017/MOBILE.
 - The notice was issued on 20 May 2013.
 - The breach of planning control as alleged in the notice is carrying out a building, engineering or other operation on the Land by placing a 'portacabin' type structure (approximate dimensions 20 feet x 10 feet) on the Land in the approximate position marked blue on the attached plan. By virtue of its size, weight, connections to services, use and degree of permanence, the placing of the portacabin type structure constitutes a building or other operation amounting to development on the Land.
 - The requirements of the notice are to remove the 'portacabin' type structure from the land.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) 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.
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Decisions

Appeal 1: APP/P3040/X/13/2198486

1. The appeal is dismissed.
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Appeal 2: APP/P3040/C/13/2199762

2. The enforcement notice is corrected by deleting from paragraph 2 the post code "NG11 0ED" of the land affected, and substituting therefor "NG11 0DE". Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

Formal Complaints

3. During the course of the hearing on 17 December 2013 it became apparent that I and the Council did not have copies of some plans to which the Appellant wished to refer. I arranged for those held by the Appellant to be copied and the hearing continued. I indicated during the hearing that I would lodge a formal complaint to the Planning Inspectorate about this matter. This I did by e-mail on 23 December 2013. The Appellant also made a formal complaint in a letter dated 20 December 2013.
4. In addition, an alleged discrepancy relating to the plan attached to the enforcement notice to which Appeal 2 relates was more clearly revealed during the site visit. Having reflected upon this matter subsequently, I considered that further information from the parties would be required.
5. In response to the complaint by the Appellant, and at my instigation, it was decided that the most efficient and effective way of overcoming any issues which might have arisen through defective documentation, would be to reconvene the Hearing on 18 February 2014. Prior to that event both parties were asked to provide to the Planning Inspectorate and to each other all the documents upon which they would wish to rely at the Hearing in hard copy, bound and tabbed. They were also requested to agree an accurate location of the portacabin structure on a plan.
6. It was hoped that this process would resolve the matter satisfactorily. However, during the Hearing on 18 February 2014, reference was made to a communication from the Appellant to the Planning Inspectorate, dated 16 January 2014. This called into question a number of procedural matters which were discussed and which are fundamental to the validity of the Hearing process.

Fairness of the Hearing

7. First, the fairness of the Hearing was called into question. This arose from my reading some of my preliminary "*Observations and Comments*" during the opening of the Hearing. This is a normal and accepted practice for Inspectors. Copies of these were provided to both parties in writing and they were prefaced by the following:

"I make the following comments based upon the information submitted. Any view I express is a preliminary one and is raised to provide the parties with a full opportunity to address it in the presentation of their case."
8. The Appellant indicated that he had been told that I was not supplied with his full submissions prior to the Hearing. Consequently, he considered any preliminary decision made by me must be questionable. Whilst I may not have

had some 9 plans of the 11 referred to in the Appellant's documentation prior to the Hearing I was in possession of all the remaining documents which the Appellant had submitted. This is demonstrated by the content of my formal complaint to the Planning Inspectorate, dated 23 December 2013, which stated:

"First the Appellant's documents were on the file as a bundle held together with an elastic band. This comprised a statement, further statement and hearing statement together with in excess of 50 documents. The bundle of papers was printed both sides, which meant that some documents were backed on to others rendering them incapable of being tabbed without photocopying, which I did. I also inserted tabs and put the papers into a ring binder. This took about 1.5hrs including checking the documents as far as practicable for completeness."

9. This, together with the entire content of my formal complaint was read out to the parties at the Hearing on 18 February 2014. In addition, I also had with me the documents to which I had referred at the earlier Hearing and in the form described above. These were shown to the Appellant. I also pointed out to him that, if I had not had documentation from him at the first Hearing I would have requested an explanation from him. Furthermore, he must have seen me referring to his documentation during the Hearing. In the light of this evidence the Appellant accepted that I did have the necessary documents upon which to form a balanced and fair preliminary view.

10. The letter also stated:

"As the Inspector has already reached a decision, it would seem impossible for the appellant now to have a fair hearing at the further date set. The only fair way to proceed is for a new Inspector to be appointed..."

It is clear from the comments above that a decision had not already been reached, and this was factually incorrect. Preliminary comments and observations had been expressed for the benefit of the parties. Nevertheless, I asked the Appellant whether, in the light of the information he now had, he still considered that a new Inspector ought to be appointed. He indicated that he was willing to continue the Hearing under my jurisdiction. I also asked him again at the end of the Hearing if he was still content for me to determine the appeals and he stated that he was. I take those responses as indicating that he was satisfied that the process had provided him with a fair hearing.

Appellant's Illness

11. During the Hearing on 18 February 2014, at about 1245hrs, it became evident that the Appellant was feeling unwell and needed to leave the room. I adjourned the Hearing for 45 minutes and went to enquire about the matter. I asked whether he considered that he would be well enough to proceed with the Hearing or whether he wished me to adjourn to another date. He indicated that he thought he would be able to continue after the short adjournment.
12. The Hearing reconvened at 1330hrs and I again asked if the Appellant felt able to continue and he elected to do so. Given that response, and the fact that he was professionally represented, I agreed to continue. The Hearing concluded at about 1445hrs and the site visit took place at about 1530hrs.

Complaints about the Council

13. The Appellant's representations contained a number of complaints about the manner in which the Council dealt with his application for a Lawful Development Certificate [LDC]. He made requests that it determined the

extent of the curtilage of his dwellinghouse, and other properties in the vicinity. However, there is no provision in the Planning Acts for a formal determination of curtilage as a function separate from an application which depends upon that matter being established.

14. He also complained that the Council did not invite him to submit a retrospective planning application prior to taking enforcement action, nor did it have discussions with him. Having heard the evidence in this case I consider that such an invitation could have been regarded as disingenuous, since it is evident that the Council considered it would have had no real prospect of success. In any event, the Appellant has not been prejudiced by that decision because he elected not to pursue an appeal under S174(2)(a) of the Act which would have enabled the planning merits to be considered. That decision was made notwithstanding the deadline for fee payment being extended by the Planning Inspectorate.
15. The Appellant has also complained that the Council has failed to disclose information to him which he regards as necessary to his case. He has not explained clearly and specifically what information was required or in what way any lack of information might have affected his case. In the absence of this detail, I have no basis upon which to conclude that the Council have withheld anything relevant to my consideration of the matter, and any other consequences of such action are beyond my powers.

Costs Application

16. The Appellant indicated that he wished to make an application for costs against the Planning Inspectorate in relation to wasted time and expenditure arising from matters raised in his formal complaint. I advised him that this should be done through the formal complaints procedure to the Planning Inspectorate and that it was not within my jurisdiction.

Appeal 1: APP/P3040/X/13/2198486

17. The application is for "*Temporary mobile portacabin on land at rear of The Old School House*". It does not elaborate on whether that is to be regarded as a use of land or operational development. A fuller description is referred to in the Council's decision based upon information provided in a letter from the Appellant's agent dated 12 February 2013. I shall determine the appeal on the basis of the Appellant's description but having regard to all of the information before me. The land to which the application relates is only that physically occupied by the portacabin.
18. Since the type of development is not specified in the application, the Council considered both use of land and whether the matter constituted operational development. This is evident from the reasons given for refusing a Certificate. It was a prudent approach which I shall follow.
19. The Appellant's property comprises several parcels of land, which adjoin each other, and, prior to 1966, were part of the large estate belonging to Lord Baron Belper. The building and a small parcel of land upon which it stood was purchased from the Estate in 1966. That is illustrated in Plan 8 of the Appellant's evidence and confirmed in documents relating to planning applications made to the Council in 1974 and 1977 and contained in its

Document E. The Appellant acquired land immediately north of the house in 2001 and a planning application and listed building consent application made to the Council by the Appellant in 2003 also confirm that was in the same ownership as the house and original plot. That land has been used as part of the garden to The Old School House since its purchase. That is more than 10 years ago and consequently that use is lawful through the provisions of S171B(3) of the Act.

20. A further and larger parcel of land to the south and east of the house and its extended garden was acquired by the Appellant in 2004, and this was registered in 2005. The portacabin is located on this area of land. Whilst he has not owned this land for 10 years or more, the Appellant contends that he did use it under license from the Estate for some time prior his final purchase.
21. The Appellant contends that the portacabin is immune from enforcement action because it is within the curtilage of a dwellinghouse. The only dwelling which can be realistically considered in that context is The Old School House. Based upon the planning history, I consider that the curtilage of that dwelling can be defined, having regard to the relevant case law, as comprising the areas of land acquired from the Estate in 1966 and 2001. That is because those parcels of land have been used as a dwellinghouse and its immediate garden either by virtue of planning permissions or by the passage of time have become lawful in that use. In addition, those parcels of land are not too expansive to fail the test of curtilage set out in case law¹.
22. The Appellant contends that the planning unit in this case comprises all of the land occupied and owned by him. Whilst that may be correct, it does not follow that the planning unit and curtilage are one and the same, even in the case of a dwellinghouse. Indeed, it is not uncommon in my professional experience, for ownership or occupation to exceed what can be regarded as the curtilage of a dwelling when the tests set out in case law are applied.
23. The Old School House is a grade II listed building. I note that the building was listed in 2001 and the Appellant has suggested that its curtilage should be defined by what existed at that time. I agree that to be a normal approach and, I have defined that curtilage above having regard to that, amongst other things. However, that excludes the land on which the portacabin stands.
24. By virtue of the exclusions contained in Classes A and E in Part 1 of Schedule 2 to the GPDO² the provision of any building larger than 10cu.m³, which the portacabin is, or a building or enclosure for a purpose incidental to the enjoyment of the dwellinghouse as such does not constitute permitted development if within the curtilage of a listed building and it requires express planning permission. However, I accept that this conclusion depends on whether the portacabin is found to be a building.
25. The Appellant contends that the portacabin is a "*temporary structure not a building*". S336 of the Act states that "building" includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building. It also confirms that "*building operations*" has the meaning given in S55(1A) of the Act. That includes

¹ Brutus and Cozens [1973] AC 845; Dyer v Dorset CC [1988] 3WLR 213; McAlpine v SSE [1995] JPL B43

² Town and Country Planning (General Permitted Development) Order 1995, as amended

³ The size of the portacabin is referred to in the Appellant's Document 7 as being 10ft x 20ft (3.04m x 6.08m) and it is at least 2m high

demolition of building, rebuilding, structural alterations or additions to buildings and other operations normally undertaken by a person carrying on business as a builder. That can include the placing of a building on a site.

26. Case law⁴ indicates that three factors are to be considered in this context. First is size. It suggests that buildings are normally constructed on the site which this portacabin was not. However, buildings may be small scale, which the portacabin is. Second, is the degree of permanence. The Appellant contends the portacabin is temporary. It had been on the appeal site for about a year prior to the Council seeking to initiate any action. It has remained since. It was moved once during those periods, but there is nothing to indicate that it would be moved again, only the Appellant's assertion that it could or might be. The circumstances do not equate, therefore, with, for example, a marquee erected on site for a short or set period and then removed. That would be less permanent than a prefabricated structure put on land for an indeterminate period. Permanent does not necessarily equate with an indefinite installation.
27. The third factor is physical attachment. In this case the portacabin is supported by four steel posts resting on pads on the ground. Essentially it remains there by virtue of its own weight. The structure is also connected to water and electricity supplies. Whilst I accept that those are non-rigid connections reasonably capable of removal, they nevertheless, indicate a degree of permanence for the structure and its location. Furthermore, case law⁵ has indicated that placement of a portacabin on land can constitute operational development. That case follows an established way of dealing with such development and cites the cases supporting it. Taken overall, I find that upon its own facts, the portacabin in this instance does constitute a building within the terms of the Planning Act.
28. S55(1) of the Act defines development as the carrying out of building engineering, mining or other operations in, on, over or under land, or the making of any material change of use of any buildings or other land. The Council contend that in this instance an "*other operation*" has occurred. It has been held⁶ that "operations" comprise activities which result in some physical alteration to the land, which has some degree of permanence to the land itself.
29. Physical alteration to the land does not necessarily imply excavation, or construction works associated with the prefabricated structure. It can relate to the physical character of the land. The portacabin does have a material effect upon the appearance of the land as any permanent or other building would.
30. Clearly the structure is capable of being moved because it has been, and that is not disputed. However, according to the Appellant special lifting apparatus was used for that purpose. Whilst the structure might be capable of being dragged to another location on the land, without skids or some form of runners, this would very probably lead to some consequent damage. Attaching a bogey or other wheels as suggested by the Appellant would also require some form of lifting gear as well. It is, therefore, relatively more permanent than temporary. It also has a physical impact upon the character of the land. Its form, bulk and general design are not particularly in keeping with the pastoral context.

⁴ Skerritts of Nottingham v SSETR (No.2) [2000] 2PLR 102

⁵ R J Scott v SSE & Bracknell DC [1983] JPL 108

⁶ Parkes v SSE [1979] 1 All ER 211

31. For the reasons set out above I conclude that the installation of the portacabin on the appeal site constitutes a “building...or *other operation*” and is, therefore development even if it were not regarded as a building which, in my judgement, it is. It is not within the curtilage of The Old School House and therefore it does not benefit from permitted development rights. Furthermore, were it to be within that curtilage and being “a structure or erection” and therefore a building, it would require express planning permission by reason of the limitations in the GPDO⁷ to permitted development rights⁸.
32. The Appellant claims that the portacabin is situated on land which has the benefit of residential planning permission and is, therefore, ancillary to the enjoyment of the dwellinghouse. This contention is based upon the suggestion that there is an error in the boundary drawn on the planning application relating to the conversion of Kingston Hall into 12 dwellings and garages which was granted in 1978. The boundary shown on the outline planning permission is different from that shown on the approval of reserved matters which is more expansive. However, given that the reserved matters involve greater detail and more information I consider that it is that boundary to which the approval for the development, now completed, relates.
33. That development provided each dwelling with private outdoor amenity space which, together with the Hall, was set in a wider context of open landscaped grounds which were formerly part of the larger Estate. Those grounds contain lawns, planting beds, paths and walks together with a tennis court, pitch and put course and possibly other amenities for outdoor recreation. Whilst they are part and parcel of the residential development arising from conversion of the Hall, their character, size and extent indicate that they are not merely a residential garden to which the normal permitted development rights within a curtilage would apply.
34. In my judgement, the whole of the development contained within the 1978 planning permissions, both outline and reserved matters, comprises a composite or mixed use including the elements described above, and cannot be considered simply as residential. At the Hearing I indicated a precedent for this conclusion in a previous appeal decision⁹ where a similar mix of uses subsisted in a rural estate within the green belt. Consequently, whilst the evidence relating to a probable error in the boundary is persuasive and the portacabin is situated on land for which planning permission was granted, that does not necessarily confer a residential use on that land.
35. Even if this conclusion is incorrect, and the portacabin was within the residential curtilage of the adjacent development, it is not used in association with that development, but is associated with the use of the Appellant’s dwellinghouse. Furthermore, it is probable that any planning permission relating to the strip of land within the Appellant’s ownership could be regarded as expired since the development was never implemented on it, but only on the remainder of the land. Consequently, even if a residential use had been conferred, it may be deemed to have lapsed.
36. Turning to the second element of the Appellant’s case, he contends that there has been no material change of use of any buildings or other land and there is

⁷ Town and Country Planning (General Permitted Development) Order 1995, as amended

⁸ Paragraph E.1(f) in Class E of Part 1 in Schedule 2

⁹ Appeal reference APP/N0410/C13/2196288, 89, 90, 91 issued 19 December 2013

no development. The use of the land was originally part and parcel of the Estate. It was therefore, either pleasure garden as described by the Appellant in response to Planning Contravention Notices, or possibly occasional grazing land similar to that further east. The Appellant has indicated that he used the land even prior to his acquisition of it for purposes associated with his occupation of The Old School House.

37. There are records of items within the wider land including some outdoor play equipment and other items usually associated with outdoor leisure. In relation to the specific area covered by the portacabin, he claims that this was occupied at various times before by a touring caravan, a lightweight car port structure and a parked Land Rover. There is evidence to substantiate this, but the frequency and extent of those uses is unclear.
38. The wider land is also now used for growing some plants under a poly tunnel, as recreational space by the occupants of The Old School House and for the keeping of a small number of rare breed pigs. The primary purpose of the portacabin is related to the latter since it is where the meat from those animals is processed and stored for use by the Appellant following slaughter elsewhere. However, it is apparently also used occasionally for other purposes associated with the house.
39. The information given to the Council in the past about the use of this land was that it was pleasure garden. It was expressly not initially integrated with the garden land associated with The Old School House prior to 2001 and which I have found to be within the curtilage of that building. It seems to me probable that the use of the land on which the portacabin is situated was in association with the dwellinghouse in various ways for some time. However, there is not sufficient evidence to persuade me that such a use was continuous rather than sporadic. And, even if it were continuous, it does not, in my judgement, lie within the curtilage of the dwellinghouse because it is expansive, not part and parcel of the original dwellinghouse, and cannot simply be incorporated into it by acquisition or an absence of boundary features¹⁰.
40. Any development, as described in S55(1) of the Act, on that land would, therefore, require express planning permission. I have concluded above that the portacabin does constitute a building or other operation and is development under the terms of S55(1) of the Act. The Appellant also suggested that the portacabin came within the definition of a caravan¹¹. That is "*Any structure designed and adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted...*". Whilst I accept that the portacabin is adapted for human occupation, I consider the absence of any lavatory or bathing facilities renders it deficient in terms of habitation, particularly when connected to a water and electricity supply. Consequently, I am satisfied that the portacabin is operational development and since express planning permission has not been granted for it the development is not lawful.
41. The wider area of land is used, at times for the keeping of rare breed pigs. The portacabin is used primarily to prepare the meat from these animals after slaughter for freezing, and it also contains the freezers. It is also used from

¹⁰ Appeal decision reference APP/B9506/C/05/2001736 and 7

¹¹ Caravan Sites and Control of Development Act 1960

time to time for other purposes related to the enjoyment of the dwellinghouse or ancillary to it. However, the lawful use of that land, even if it were garden associated with the house, would not convey permitted development rights since it lies outside the curtilage of the dwelling. The permitted development rights referred to by the Appellant are contained in Part 1 of Schedule 2 and are specifically related to "Development within the Curtilage of a Dwellinghouse".

42. If the lawful use of the land were considered to be agriculture, then use associated with the keeping of animals might be regarded as ancillary. However, the preparation and storage of meat products for domestic use after slaughter is not ancillary to that use, and even the occasional storage of feed for those animals is not the sole use or even a continuous use of the portacabin.
43. I find that the portacabin is operational development and for the reasons set out above it requires express planning permission, which it does not have. I also find that the stationing of the portacabin is not, in this particular case, a use of land and, even if it were, it is not associated with or ancillary to any lawful use of the land. Consequently, I find the Council's decision to refuse a Certificate of Lawful Development was justified and, accordingly the appeal fails.

Appeal 2: APP/P3040/C/13/2199762

44. The appeal is made under 174(2)(c) only of the Act. Consequently, it is confined to matters of fact and law. The planning policy context and merits do not fall to be considered, notwithstanding that they were contained in the Council's reasons for issuing the enforcement notice. Only when an appeal is made under S174(2)(a) do those matters fall to be fully considered.
45. The Appellant raised concerns about the accuracy of the plan attached to the enforcement notice. I have accepted that the fence adjacent to the portacabin may not be correctly placed in terms of the planning history. However, it was established by the parties at my request that the plan attached to the Notice does reasonably accurately locate the portacabin. What is alleged to be inaccurate is parts of the boundary of the land affected by the Notice, namely the red line on the plan.
46. Referring to the Appellant's submitted Plan 20, there is no dispute about the accuracy of the line between points A, B and C. The line from C to D follows the existing fence within reasonable limits. However, there is no physical feature on the ground to indicate where points E, F, G and H actually are. The Appellant considers, therefore, that it is unclear where he cannot move the portacabin in order to comply with the notice should the need arise. Consequently, he considers the Notice to be defective and invalid.
47. An Appellant is entitled to know what he must do to comply with an enforcement notice. In this case the requirement is to remove the portacabin from the Land. The Land affected is delineated on the attached plan by the red line. The Line between points D and H was intended by the Council to follow the boundary of the land previously acquired by the Appellant. It is an unfortunate fact that this is neither identifiable on the ground, nor, apparently,

capable of precise definition on a plan. That is because plans attached to the registered titles contain some discrepancies. Whilst not important for land ownership since all the land affected by those lines is owned by the Appellant, it may appear to be important in planning terms.

48. However, in my judgement it is not, because the terms of the enforcement notice clearly address operational development and not use of land. All of the land within the red line is owned by the Appellant and any land beyond that which he owns I have found to be within the curtilage of The Old School House. Since that is a listed building express planning permission would be required for a building or other operation for a purpose incidental to the enjoyment of the dwellinghouse as such¹² and for any other purpose which would lie outside permitted development rights. Beyond that the Notice is entitled to preclude the placing of the portacabin because it lies outside the residential curtilage and, whatever the use it was put to, the portacabin, as a building or other operation, would require express planning permission. For these reasons I find that any inaccuracy in the plan attached to the Notice would not materially prejudice the Appellants interests. Accordingly, I find it to be valid.
49. The Appellant pointed out during the Hearing that the postcode used in paragraph 2 of the Notice was incorrect. It should in fact read NG11 0DE. This is no more than a typographical slip and cannot have affected the Appellant's interests since he took the opportunity to appeal against the Notice. Consequently, correction is within my powers and I shall exercise them to rectify the error.
50. For the reasons set out above in relation to Appeal 1 I conclude that the carrying out of operational development on the Land by putting a portacabin on to it does constitute a breach of planning control as alleged in the Notice. Accordingly, the appeal fails.

Keith Turner

¹² Paragraph E.1(f) in Class e of Part 1 in Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, as amended

Appearances

FOR THE APPELLANT:

Mr Richard Ling
Mr Douglas Williams
Mrs Caroline Williams

Richard Ling & Associates, West Bridgford
Appellant
The Old School House

FOR THE LOCAL PLANNING AUTHORITY:

Mr Matthew Marshal BA(Hons) MRTPI
Mr Ian Norman

Principal Area Planning Officer Rushcliffe BC
Solicitor Rushcliffe BC

INTERESTED PERSONS:

Mr Mark Johnson
Ms Marion Shaw

Documents

- 1 Bundle of Plans 3 to 11 not within Inspector's and Council's original bundles of documents
- 2 Extract from Rent Officer Handbook relating to definition of a caravan
- 3 Letter to Planning Inspectorate, dated 20 December 2013 from Mr Ling, with attachments
- 4 Agreed plan showing location of the portacabin on the appeal site
- 5 Further representations made by the Appellant – e mail dated 16 January 2014
- 6 Extract from Land Registry dated 6 March 2006
- 7 Copy of Title no. NT406817 date stamped 23 January 2014 by the Council