



Appeal Decisions

Hearing held on 6 October 2011
Site visit made on 6 October 2011

by **Claire Sherratt DipURP MRTPI**

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

Decision date: 1 December 2011

Appeal A: Reference **APP/N1350/C/11/2151199**

Land on the west side of Aycliffe Lane, Darlington, Durham DL1 3LA

- 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 Mr Billy Cairney against an enforcement notice issued by Darlington Borough Council.
 - The Council's reference is E/11/01.
 - The notice was issued on 5 April 2011.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission the development of the Land:
 - For the mixed use of equestrian activities and private gypsy site including the stationing of touring caravans, and a portable building.
 - By creation on the Land of hard standing(s).
 - The requirements of the notice are:
 - (a) Cease using the Land for the mixed use of equestrian activities and private gypsy site.
 - (b) Remove from the Land all caravans, portable buildings, vehicles and hard standings.
 - (c) Reinstate the Land to its condition immediately before the above breaches of planning control took place (including without prejudice to the generality of this requirement, the removal of all rubbish, debris other occupational paraphernalia).
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
 - An application for planning permission is deemed to have been made under S177(5) of the Act as amended.
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Appeal B: Reference **APP/N1350/A/11/2151190**

Land off Aycliffe Lane, Brafferton, Darlington, Durham DL1 3LA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Billy Cairney against the decision of Darlington Borough Council.
 - The application Ref 10/00840/FUL, dated 15 December 2010, was refused by notice dated 2 March 2011.
 - The development proposed is change of use of land to a mixed use equestrian /private gypsy site including the siting of three touring caravans for a single family, erection of stable block, tackroom and amenity block with associated hard standing.
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The Notice

1. The alleged breach of planning control does not specify that the caravans are being used for residential purposes. It was agreed at the hearing that the allegation could be corrected to specify residential purposes without causing

any injustice to the parties. Accordingly, the requirements of the notice should also require the use of the land for residential purposes to cease. Requirement (a) requires the 'mixed use' to cease. However, it is intended that only the residential use of the site is to cease. The Council accepted at the hearing that the appellant could still keep horses on the land and agreed that the requirement to cease the use of the land for equestrian purposes could be deleted. The notice relates to a material change of use of land. As such, the reasons for serving the notice should refer to the alleged breach of planning control occurring in the past 10 years rather than 4 years.

2. Notwithstanding the views advanced by the appellant, I consider the enforcement plan correctly identifies the planning unit to include both the area of hardstanding and residential area together with the adjoining fields in the appellant's ownership. Both are interlinked functionally and physically and share the access and hardstanding area. I am satisfied that the plan attached to the notice correctly identifies the planning unit comprising the alleged mixed use of the site.
3. It was established at the hearing that the notice is not intended to require the removal of the long established track, once forming a road way prior to the existence of the A1 (M) and by-pass that runs along the southern boundary of the site and is annotated track on the enforcement notice plan. For clarity the precise wording of requirement 5 (b), in terms of its reference to 'hardstandings' should be corrected to reflect this. On this basis, the appellant withdrew the appeals lodged under grounds (b) and (d).

Decisions

Appeal A: Reference APP/N1350/C/11/2151199

4. The enforcement notice is corrected by:
 - the inclusion of the word 'residential' between private and gypsy in the alleged breach of planning control;
 - the deletion of the words "the mixed use of equestrian activities and private gypsy site" and the substitution of the words "residential purposes" in requirement 5(a) of the notice;
 - by the addition of the words "with the exception of the track, once forming a road way prior to the existence of the A1(M) and by-pass that runs along the southern boundary of the site and is annotated track on the enforcement notice plan" in requirement 5(b).
 - by the deletion of the number "4" and the substitution of the number "10" in the Reasons for issuing the notice.
5. Subject to these corrections the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the use of the land on the west side of Aycliffe Lane, Darlington, Durham DL1 3LA, as shown on the plan attached to the notice, for the mixed use of equestrian activities and private residential gypsy site, subject to the conditions set out in the attached Schedule of Conditions.

Appeal B: Reference APP/N1350/A/11/2151190

6. The appeal is dismissed insofar as it relates to the erection of a stable block, tackroom and amenity block. The appeal is allowed insofar as it relates to the change of use of land to a mixed use equestrian /private gypsy site for a single family and planning permission is granted for the change of use of land to a mixed use equestrian /private gypsy site including the siting of three touring caravans for a single family with associated hard standing at Land on the west side of Aycliffe Lane, Darlington, Durham DL1 3LA in accordance with the terms of the application, Ref 10/00840/FUL, dated 15 December 2010 so far as relevant to that part of the development hereby permitted and subject to the conditions set out in the attached schedule of conditions.

Reasons

Ground (a), the deemed application & Appeal B

7. The main issue in both appeals is the effect of the development on the character and appearance of the surrounding area, having regard to the development plan and any other material considerations.
8. I turn first to consider the material change of use of the site to a mixed use for equestrian purposes and a residential gypsy site. At the time that the application was determined and then the notice was served, saved Policy H21 of the Borough of Darlington Local Plan, which related specifically to additional private gypsy sites, was relevant. It set out a number of criteria that should be satisfied if development is to be permitted. These included that the site should not encroach on open countryside and that the site is not prominent and the occupied part of the development can be adequately screened. It has since been superseded by Core Strategy Policy CS13 'Accommodating Travelling Groups'. Policy CS13 is permissive of additional sites, where required, including windfall sites, subject to a number of criteria.
9. There was no dispute between the main parties that an unmet need exists for additional pitches to accommodate gypsies and travellers. Having established that additional sites are required, a number of criteria set out in Policy CS13 need to be satisfied. These include, amongst other criteria, that sites are designed so as not to have an unacceptable negative impact on existing landscape character and are located and designed so as not to have a significant negative impact on the natural, archaeological or historic environment. LP policies E2 and E4 seek to resist new development outside the development limits. However, whilst sites should be in a sustainable location, Policy CS13 does not prevent development in the countryside per se; although preference will be given first to locations within and then adjacent to existing settlements, and then to the re-use of brownfield land in other locations.
10. Furthermore, Circular 01/2006 accepts that gypsy sites may be acceptable in principle in rural locations. Whilst it is the government's intention to revoke this Circular, it remains in place for the time being and is a material consideration relevant to the determination of this appeal. A draft Planning Policy Statement 'Planning for Traveller Sites' has been issued for consultation purposes. The consultation period has now expired. Given the consultation process, amendments may still be made to the document. As such it can only be afforded limited weight at this stage.

11. The caravans and residential paraphernalia associated with the use of the site for residential purposes would inevitably have some impact on the character and appearance of the surrounding countryside. Against the above policy background, the key consideration is whether the development would have an unacceptable negative impact. The site is situated in an area of open countryside, to the west of Aycliffe Lane. It is well screened from this road due to the lower level of the site and a well vegetated embankment along the eastern boundary of the site. Lime Lane to the north of the site occupies an elevated position. From here, the site is relatively well screened by existing vegetation with the exception of clear views that are gained from the fly-over bridge across the A1 (M). In addition, open views are gained from the A1(M), that bounds the western boundary of the site, although any public views from here are fleeting glimpses given the general speed of traffic travelling along it.
12. Some planting has been carried out along the fence line that separates the area of hardstanding and the fields used for the grazing of the appellant's horses. Over time, once established, this would soften the impact of the development from Lime Lane and the A1 (M).
13. I saw that there were other residential caravan sites nearby. However, given the unauthorised status of these sites, I give little weight to the cumulative impact of the appeal site in addition to these.
14. In my view, subject to the residential element of the development being contained to the area of hardstanding and the siting and number of caravans being restricted, the impact of the use of the site for equestrian activities and a private residential gypsy site for one family would not result in an unacceptable negative impact on the surrounding countryside. I find no conflict with CS Policy CS13 in this respect.

Other considerations

Sustainability

15. Policy CS13 requires sites to be in sustainable locations. I was informed that from January 2012 the Council will no longer subsidise the bus service through Brafferton. As a result, the proximity of the site to the nearest bus stops will be greater; in all probability being in excess of 1km. A shop associated with a service station is a similar distance. There are footpaths for only part of the route. Paragraph 54 of Circular 01/06 confirms that local authorities should be realistic about the availability or likely availability of alternatives to the car in assessing local services. Given the limited nature of facilities in Brafferton village, the appellant and his family are likely to rely on the use of a private vehicle for most day to day activities. The site is reasonably well located for a good range of services and facilities in the centre of Darlington, some 7km away.
16. In any event, Circular 01/2006 is clear that issues of sustainability should not only be considered in terms of transport mode and distances from services. Authorised sites assist the promotion of peaceful and integrated co-existence between the site and the local community. A settled base ensures easier access to a GP and other health services and that any children are able to attend school on a regular basis. It is widely recognised that gypsies and travellers are believed to experience the worst health and education status of any disadvantaged group in England, linked with the lack of good quality sites

for gypsies and travellers¹. In addition a settled base can result in a reduction in the need for long distance travelling and the possible environmental damage caused by unauthorised encampment. Furthermore, the appeal site is not located in an area at high risk of flooding. These are all benefits to be considered in the round when considering issues of sustainability. In this context, I do not find the site is so removed from services to be unsustainable.

Provision of and need for sites

17. The North East of England Plan Regional Spatial Strategy (RSS) identified a requirement to provide 13 additional pitches in Darlington by 2010 and an additional 18 by 2015. Notwithstanding the Government's intention to revoke Regional Strategies, the RSS remains part of the development plan for the time being. The Tees Valley Gypsy and Traveller Accommodation Assessment (GTAA) was completed in 2009. It is more recent than the RSS evidence base and therefore provides the most up to date assessment of need at this time. It identifies a requirement for 71 additional pitches across the Tees Valley between 2007 and 2012, of which 61 are required in Darlington. This is based on a need where it arises methodology. The specific number of pitches to be provided in Darlington is not included in the Core Strategy. I heard that the Council would prefer and is working towards agreeing numbers based on a redistribution of site provision between authorities. An accommodation needs assessment is to be carried out with other Tees Valley authorities and Durham. Sites will be identified in the 'Accommodating Growth Development Plan Document' (DPD). It is anticipated that this will be adopted in July 2013. An initial call for sites has progressed but to date no preferred sites have been publicised. As yet, it is therefore unclear if any deliverable sites will be forthcoming that are situated in the sequentially preferable locations set out in Policy CS13. The grant of planning permission at this early stage would not prejudice the development of any 'unknown' sites that may be preferred.
18. Notwithstanding the pitches that have been permitted to date, there remains a substantial unmet need for additional gypsy and traveller sites. Even the unsubstantiated figure of 14 pitches needed by 2012 that was referred to by the Council's Officer leaves a shortfall that will not be satisfied by 2012. Circular 01/2006 advises local planning authorities that where there is an urgent need to make provision, they should consider preparing Site Allocations Development Plan Documents (DPD) in parallel with, or in advance of the Core Strategy². This was not a course of action this authority pursued and it has failed to identify sites within the 3-5 years anticipated in the Circular (i.e. before February 2009 - 2011) and will not provide sites in the timescales identified in the GTAA (by 2012). It is still a good way off adopting a DPD. There has been a failure of the Council to make suitable provision to meet identified need over a number of years. This is a material consideration that can be afforded considerable weight.

Availability of alternative accommodation

19. The appellant's wife owns a dwelling elsewhere where she has in the past returned with her children over the winter. However, the appellant has an aversion to living in bricks and mortar accommodation and this arrangement results in the family unit being separated. I note that the appellant's wife told

¹ Paragraph 5 of Circular 01/2006.

² Paragraph 43 of Circular 01/2006.