
Appeal Decisions

Hearing held on 13 December 2011

Site visit made on 13 December 2011

by **Diane Lewis BA(Hons) MCD MA LLM MRTPI**

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

Decision date: 31 January 2012

Appeals A and B Refs: **APP/N1350/C/11/2159610, 2159611**

Land at Aycliffe Lane, Brafferton, Darlington DL1 3LA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Reuben Rogers and Mrs Julie Rogers against an enforcement notice issued by Darlington Borough Council.
 - The Council's reference is E/11/02.
 - The notice was issued on 17 August 2011.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission the siting on the Land of two static caravans for residential purposes and the construction of a hardstanding and roadway (the unauthorised development) in connection with the change of use of agricultural land to a mixed use of the Land for a private gypsy site and agricultural purposes.
 - The requirements of the notice are:
 1. Cease the use of the Land for residential purposes.
 2. Remove from the Land all caravans, portable buildings, vehicles and the hardcore material used for the hardstanding and roadway.
 3. Reinstate the land to its condition immediately before the above breaches of planning control (including, without prejudice to the generality of this requirement, the removal of all rubbish, debris and other occupational paraphernalia).
 - The period for compliance with the requirements is three months from the date the notice takes effect.
 - The appeal by Mr Rogers (Appeal A) is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. The appeal by Mrs Rogers (Appeal B) is proceeding on ground (g) only. 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 because the prescribed fees have not been paid within the specified period.
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Appeal C Ref: **APP/N1350/A/11/2159621**

Land at Aycliffe Lane, Brafferton, Darlington 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 Reuben Rogers against the decision of Darlington Borough Council.
 - The application Ref 11/00279/FUL, dated 3 May 2011, was refused by notice dated 10 August 2011.
 - The development proposed is change of use to a mixed use for private gypsy site and stationing of caravans for residential occupation with associated development (hardstanding, utility block and cesspit or package treatment plant).
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DECISIONS

Appeals A and B Refs: APP/N1350/C/11/2159610, 2159611

1. The enforcement notice is corrected in paragraph 3 by the deletion of the words "for a private gypsy site and agricultural purposes" and substitution of the words "for a residential gypsy caravan site and the keeping of horses" and in paragraph 4 by the deletion of the words "within the last four years" and the substitution of the words "within the last ten years". Appeals A and B are allowed on ground (g) and the enforcement notice is varied in paragraph 6 by the substitution of 12 months as the time for compliance. Appeal A is otherwise dismissed. Subject to these corrections and variation, the enforcement notice is upheld and in Appeal A planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C Ref: APP/N1350/A/11/2159621

2. The appeal is dismissed.

REASONS

The enforcement notice

3. At the hearing the Council confirmed that the notice is directed at a material change of use of the land, with the operational development being integral to the change of use. Therefore the reasons for serving the notice should state that the alleged breach of planning control occurred within the last 10 years, not 4 years. It was also agreed that it was open to me to correct the description of the mixed use in the alleged breach of planning control because the land is used for the keeping of horses, rather than for agricultural purposes. In addition I consider the other element of the mixed use should be described as use for a residential gypsy caravan site. I am satisfied that these matters are able to be corrected without injustice.
4. Local residents described the mobile home on the site as a house. However, the site inspection confirmed that the mobile home falls within the statutory definition of a caravan, taking into account its size and its capability of being moved as single structure.

Appeal site

5. The parcel of land is located to the west of Aycliffe Lane, a short distance from Brafferton village. The site has a narrow frontage but it broadens out as the land rises gently from the lane. The land then falls towards the western boundary, along the railway cutting to the East Coast main line.
6. The appellants acquired the land in 2009/2010. Planning permission was refused for a residential caravan site in October 2010 and in April 2011. An enforcement notice was issued in January 2011 against the siting of a static caravan and the construction of a hardstanding and roadway, in connection with a change of use of the land to a mixed use for agricultural and residential purposes. No appeal was lodged and the notice took effect on 22 February 2011. It was around that time when the site was first occupied. Mr and Mrs Rogers now live there with their two children, together with Mrs Knight, the mother of Mrs Rogers. They are a Romany family. Mr Rogers travels to seek a livelihood by carrying out uPVC fascia work and most of his work is in Scotland.

He also is a horse breeder. The family have gypsy status for the purposes of planning policy. They are seeking a permanent permission for their caravan site and do not rely on their personal circumstances to justify permission.

7. A track along the southern boundary leads to the caravan site on the central, part of the land, whilst the western part is used for keeping horses. The existing layout of the caravan site is not the same as that shown on the plan submitted with the planning application and refused permission by the Council. The appellants confirmed that they wished the development to be assessed on the basis of the existing layout, rather than the one originally proposed. I consider this approach is acceptable. It would not cause any injustice because appeal statements and the discussion at the hearing were informed by the development that has taken place.
8. Two gypsy sites have been developed in the vicinity of the appeal site. By a decision dated 1 December 2011 planning permission was granted on appeal for a mixed use of equestrian activities and private residential gypsy site, comprising one pitch and no more than three caravans (the Cairney site). This appeal decision is a material consideration, particularly as the site in question is also located to the west of Aycliffe Lane, to the north of the land owned by Mr and Mrs Rogers. At the time of the hearing the Council had not determined the planning application for a site at Shalter's Bridge, off Lime Lane.

Appeal A deemed application and Appeal C

Background on need and policy

9. ODPM Circular 01/2006 *Planning for Gypsy and Traveller Caravan Sites* aimed to increase significantly the number of sites in appropriate locations by 2011 in order to address under provision and to ensure identified need was dealt with fairly and effectively. In Darlington, the Tees Valley GTAA¹ estimated 61 additional pitches were required over the period 2007 to 2012, based on providing for need where it arises. Sites have not been identified within this timescale through the development plan process. There is a substantial unmet need for pitches, a consideration which is not disputed by the Council.
10. The current position is that Policy CS13 of the Core Strategy, adopted in May 2011, states that provision for travelling groups will be made at existing public sites at Honey Pot Lane and Neasham Road and at other small sites in the borough. The policy identifies the locational criteria for the provision of pitches, by land allocation and through proposals for windfall sites. Preference will be given to locations within and then adjacent to settlements and then to the re-use of brownfield land in other locations. This preference does not necessarily mean that sites in the countryside will be unacceptable.
11. The next stage is to quantify the level of need and identify the number of pitches required in the borough over the next five years in order to inform the allocation of sites in the Making Places and Accommodating Growth Development Plan Document (the DPD). This approach was endorsed through the examination of the Core Strategy and allows for need to be apportioned across the sub-region. The expectation is that consultation will take place on preferred options in 2012, followed by adoption of the DPD in July 2013.

¹ The Tees Valley Gypsy and Traveller Accommodation Assessment (GTAA) was published in January 2009.

12. As part of the Government's reform of the planning system, planning policy on traveller sites is being reviewed. The intention is to incorporate the new policy in the final National Planning Policy Framework. In the interim, Circular 01/2006 has not been withdrawn and is a very relevant consideration.

Main issue

13. The main issue is whether the residential caravan site is appropriately located, taking particular account of the effect of the development on the character and appearance of the surrounding area and the clear and immediate need for additional gypsy and traveller pitches in the borough.

Character and appearance

14. The appeal site is located outside the development limits of Brafferton in the countryside of the Tees Lowlands. Policy CS13 aims to ensure that sites for gypsies and travellers are located and designed so as not to have an unacceptable negative impact on landscape character. Policy CS17 is also relevant in so far as it aims to protect the visual amenity of the countryside as part of the borough's green infrastructure.
15. Landscape character is what makes a place unique. The Tees Lowlands is one of the national character areas and as such it covers quite an extensive area. Therefore at the hearing there was discussion about what makes the local area around Brafferton distinctive and what, if any, harm the development has caused.
16. The village of Brafferton has developed in a relatively tight linear form along a ridge. Outside the settlement, built form is restricted to small pockets of housing, a hotel and pub towards the western end of Brafferton Lane. The wider setting is predominantly of gently undulating farmland, a mix of arable and grazing land. There is little other sporadic development. Vegetation and woodland cover is generally sparse and confined to field boundaries, watercourses and roads. There are wide views south east towards the distant hills, which emphasise the rural nature of the environment. To the north west, towards Newton Aycliffe, industrial buildings and infrastructure are prominent features, indicating the increased influence of urban development and the importance of communication on the landscape character of the lowlands. The corridor of the A1 motorway divides these two distinctive and contrasting areas.
17. The appeal site lies in the quiet rural area, where change has been limited and agriculture remains the dominant land use. The site is divorced from the settlement, although it is directly off Aycliffe Lane and utilises an existing gateway and access. The development has taken place on short grazed grassland and there is no evidence of loss of important habitat or nature conservation interest. A short length of hedgerow may have been removed by the gateway but there has been no significant loss of trees or hedgerows. The existing field pattern has been retained, so that the caravan site is bounded by a track to the north and a hedgerow to the south. However, the establishment of a residential caravan site has involved physical change to the land itself through the deposit of hard core to provide a yard area for siting the caravans and a hardstanding and track for vehicles. Close boarded fencing has been erected along the frontage and part of the northern boundary to provide privacy and for practical reasons. The change in the primary land use has