



Appeal Decision

Hearing held on 30 April 2013

Site visit made on the same day

by David M H Rose BA (Hons) MRTPI

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

Decision date: 24 July 2013

Appeal Ref: APP/N1350/A/12/2189534

Meadow Stables, 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 Reference 12/00617/FUL, dated 24 September 2012, was refused by notice dated 26 November 2012.
 - The development proposed is described as 'retention of use of land as a residential caravan site for one extended gypsy family with 3 caravans, including no more than one static caravan/mobile home, together with retention of hardstanding and earth mounding, and erection of amenity block'.¹
-

Decision

1. The appeal is allowed and planning permission is granted for the retention of use of land as a residential caravan site for one extended gypsy family with 3 caravans, including no more than one static caravan/mobile home, together with retention of hardstanding and earth mounding, and erection of amenity block at Meadow Stables, Aycliffe Lane, Brafferton, Darlington, DL1 3LA in accordance with the terms of the application, Reference 12/00617/FUL, dated 24 September 2012, subject to the conditions set out in the Schedule to this decision.

Preliminary Matter

2. The positioning of the mobile home within the site and the location of the earth mounding and hardstanding does not accord with the details shown on the application site layout plan. I have therefore taken the plan to be 'illustrative' and I have based my assessment generally on the basis of the development already carried out in so far as it relates to these elements.

Main Issues

3. The main issues are:- the effect of the proposal on the character and appearance of the area; and, whether any resultant harm would be outweighed by other considerations.

Reasons

The development plan

4. The development plan comprises the Darlington Local Development Framework Core Strategy (the Core Strategy) and the Saved Policies of the Borough of Darlington Local Plan (the Local Plan).

¹ The description of development is taken from the Application for Planning Permission. The reference to '3 No. touring caravans, 1 No. static caravan' in the Notice of Refusal of Planning Permission and in the Planning Appeal Form is incorrect.

5. Looking first at the Core Strategy, Policy CS13 sets out criteria for the consideration of windfall gypsy and traveller sites. Those at issue are the impact on landscape character and the natural environment in the overall context that preference will be given firstly to locations within and then adjacent to existing settlements followed by brownfield land in other locations. These environmental objectives are supported by Policy CS14 and CS17 in promoting local character and distinctiveness and safeguarding the open countryside. Policy CS2 also seeks high quality and sustainable design.
6. As to the Local Plan, Policy H20 states that continued provision for gypsies will be made at 2 existing sites (Honeypot Lane and Neasham Road). Policy E2 aims to restrict new development to existing development limits with provision for limited exceptions where unacceptable harm to the character and appearance of the area is avoided. In those situations, Policy E4 indicates that new buildings in the countryside should wherever possible be located with, and be visually related to, existing buildings.

Planning history

7. The appeal site has an extensive, recent, planning history. In short, 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 unauthorised development, including the siting of a static caravan and related works; and the notice took effect in February 2011.
8. A further planning application was made in May 2011 for the change of use of the land to a mixed use for a private gypsy site which was refused in August 2011. The issue of a second enforcement notice followed a few days later related to the siting of 2 static caravans and associated development.
9. In the subsequent appeals, determined in January 2012, planning permission was refused due to the unacceptable impact of the development on visual amenity and landscape character, even when balanced against other material considerations. The enforcement notice was varied by extending the compliance period from 3 months to 12 months to allow the family to investigate what other possible options might be open to them to secure alternative accommodation.
10. The extended period for compliance expired on 31 January 2013 and separate legal proceedings were in process for non-compliance with the enforcement notice at the time of the hearing.

Character and appearance

11. The appeal site is located to the north of, and outside the development limits of, Brafferton in open countryside which forms part of the Tees Lowlands Landscape Character Area. Key characteristics of the Landscape Character Area, with particular reference to the appeal site, include a broad lowland plain of gently undulating, predominantly arable, farmland with wide views to distant hills; and a marked contrast between the quiet rural area with extensive urban and industrial development concentrated along the lower reaches of the Tees, the estuary and the coast.
12. The Inspector who determined the appeals in January 2012 identified Brafferton as having a relatively tight linear form, with development outside the settlement restricted to small pockets towards the western end of Brafferton Lane. Its wider setting was of gently undulating farmland with little other sporadic development. Views of distant hills to the south-east emphasised the rural nature of the locality; but views to the north-west indicated the increased influence of urban development.

13. It was found that the encroachment of a residential caravan site on to farmland, outside the traditional settlement pattern and in a piecemeal fashion, had detracted from the rural agricultural landscape character. However, she recorded that the encroachment into the countryside did not on its own amount to an unacceptable negative impact on landscape character, particularly given the retention of several positive landscape features and the small scale of the caravan site. I agree with this assessment.
14. Turning to the impact of the proposal on the appearance of the area, the previous Inspector identified the principal public viewpoints of the site as being from Aycliffe Lane and from Lime Lane at the bridge over the A1(M). Although I was referred to views from within Brafferton itself, these appeared to relate to 'private' views from a limited number of residential properties.
15. The Inspector's assessment of the impact of the development on views along Aycliffe Lane remains generally relevant. However, the development before me differs in that the mobile home has been re-sited within the plot and turned through 90 degrees; and the 2 touring caravans are proposed to be sited parallel to the main unit.
16. In this regard, approaching the site from the south, the ability to see the narrow elevation of the mobile home, as opposed to its long face, and similarly the caravans, through the boundary hedgerow would be less than recorded previously. However, it is of note that the Inspector found that in the summer months, when vegetation is in full leaf, the hedgerow would be a more effective screen, especially due to its height. For my part, gaps at a lower level could be infilled as part of a landscaping scheme for the site; and this would have the advantage of providing added low level tracery in winter months and a more effective year round screen.
17. Within the vicinity of the site, a view of the close boarded fence continues to appear out of place; but this could be remedied by requiring the submission and implementation of a more natural boundary treatment. From the site access, the roof line of the now principal elevation of the mobile home is apparent beyond the break in slope within the site; and the same would be true arising from the intended siting of the touring caravans. However, this is very much a glimpsed view and appropriate indigenous planting on the eastern edge of the hardstanding would soften their outline and further restrict their already limited presence.
18. Looking back from the entrance to the approved Cairney gypsy site, the previous Inspector found the appeal site to be quite prominent. However, the reorientation of the mobile home, and the proposed siting of the touring caravans, renders the structures less conspicuous and with a foreground of vegetation and a mature rising backdrop, the development is neither unduly conspicuous nor intrusive.
19. Taking all of these factors into consideration, and the conclusion of the earlier Inspector that the development before her had a moderate adverse impact, or a neutral effect, on the appearance of Aycliffe Lane and the setting of the village, I reach a similar conclusion that the proposal would not markedly impair the appearance of the area from the vicinity of Brafferton or along Aycliffe Lane.

20. The main area of concern in the 2012 appeal decision was the particular prominence of the mobile home when viewed from Lime Lane against the backdrop of the expansive view of the rural landscape across to the Cleveland Hills. Although the repositioning of the mobile home has had the effect of lessening the impact of the structure in the rural scene, and the same would follow for the proposed re-siting for the touring caravans, the development would remain intrusive in the wider view of the countryside.
21. The existing mounding and fencing along the northern boundary of the site is alien in form and treatment. However, it does serve to illustrate that the implementation of a professionally designed scheme of landscaping and boundary treatment, following the approval of the local planning authority, could provide a reasonable degree of screening, without creating an impression of undue isolation, to minimise the adverse impact of the development on the rural landscape.
22. The design of the amenity block, to replicate a small wooden stable building, would reflect its countryside setting and mirror other small stables in the locality; and its positioning would offer some screening of the mobile home from Lime Lane. Whilst it would assist in making the residential use of the site less evident, it would, nonetheless, compound the adverse effect of development in attractive open countryside.
23. As to the current construction of the amenity block for the Cairney site, in the immediate foreground and effectively one field away from the appeal site, this structure is on notably lower ground and less central in the view from the Lime Lane bridge. The grant of permission to develop that site was known to the previous Inspector and whilst the development is a material consideration in the current appeal, it does not merit direct comparison or provide any real support for the project before me.
24. Drawing together these threads, although the development would be apparent in the broad countryside vista, against the backdrop of distant hills, the reconfiguration of the site and appropriate landscaping would lessen the degree of harm identified by the previous Inspector. These factors lead me away from her conclusion of a substantial adverse impact to one of moderate visual harm.

The need for gypsy and traveller accommodation

25. The starting point is that the local planning authority accepts that there is a general unmet need for additional gypsy and traveller pitches within its area. It is common ground that the Tees Valley Gypsy and Traveller Accommodation Needs Assessment (the Needs Assessment), published in January 2009, identified a need for 76 additional pitches in Darlington in the period 2007 – 2016. At the date of the Hearing only 8 additional pitches had been approved; and a 5 years supply of pitches is absent.
26. The Council is currently preparing the Making Places and Accommodating Growth Development Plan Document (the Development Plan Document). The intention, based on the Potential Gypsy and Traveller and Travelling Showpeople Sites Consultation (March 2012) is to secure a more even distribution of pitches across the Tees Valley authorities given the claimed disproportionate burden placed on Darlington arising from the methodology of the Needs Assessment and the gulf between need and the ability to provide sites in the Borough.

27. Although the Needs Assessment indicates that some 98 pitches should be provided in Darlington between 2007 and 2021, the authority is working on the assumption that about 35 – 64 new pitches would be the appropriate level of provision in the 15 year plan period to 2026. However, there is no agreement with the other constituent local authorities; and the Development Plan Document: Preferred Options is not due to be published until July/August 2013. The target for adoption is December 2014. The local planning authority acknowledges that its untested approach attracts very little weight.

Other material considerations

28. The site would accommodate an extended Romany Gypsy family comprising Mr R and Mrs J Rogers and their daughter, Sentilina; Mr J and Mrs L Rogers; and Mrs V Knight. Mrs J Rogers has health issues which require periodic monitoring. Sentilina receives home tuition and has 'minor' health needs. Mr J Rogers works with his father and his wife is due to give birth in August 2013. Mrs Knight (Mrs J Rogers' mother) is in poor health and requires continuity of care. The extended family's gypsy status is not in dispute; nor is their need for a settled base in the borough given longstanding local connections; the appellant's keeping of horses nearby; and Mrs Knight's medical circumstances. Living together as an extended family is of particular importance.
29. Following on from the previous appeal decision, the appellant has investigated the possibility of finding another site within the locality, using the services of local estate agents, without success. Although it was asked whether lawful sites in Durham had been explored, the public sites there are undergoing progressive modernisation; and, in order to achieve that, the occupancy of some pitches is being doubled on a temporary basis and some occupants have moved onto the roadside.
30. In terms of provision within Darlington, it is accepted that the family could not live on either of the 2 public sites, at Honeypt Lane or Neasham Road; and the family's unauthorised presence on the appeal site is explained by having had to leave Honeypt Lane. It is notable that in terms of future additional public provision, the local planning authority is focusing on the extension of both of these sites. Although the Potential Gypsy and Traveller and Travelling Showpeople Sites Consultation anticipates the extension of a small existing private site (Oakwood Farm) for 3 – 5 pitches, this is likely to be related to the landowner's family needs.
31. It is evident that there is currently no other site available in the locality for the appellant and his family; and the prospect of future suitable provision relies on an appropriate 'windfall' site receiving planning permission; it being available for the gypsy and traveller community in general; and the family having the resources to purchase it. However, 'windfall' approvals have been few and far between and there is nothing to suggest that other sites are likely to materialise, even if the family had the necessary funds.
32. In the absence of an alternative site, the family could be faced with eviction and an uncertain prospect at the roadside. It is clear that this would have a significant adverse effect on the welfare, educational and social needs of the family as a whole; and it would be seriously at odds with securing the best interests of the appellant's daughter and a grandchild yet to be born.

33. It is also of particular relevance that should the family be forced to move in this way, and to leave the mobile home behind, the touring caravans would not provide sufficient accommodation to meet the family's needs and this would become untenable during the times that the appellant and his son were away with one of the caravans.
34. The loss of the extended family's home would be a serious interference with their human rights under Article 8 of the European Convention on Human Rights: The Right to Respect for Private and Family Life and for the Home. Under Article 8 there is also a positive obligation to facilitate the gypsy way of life. However, it should be noted that the obligation on public authorities to act compatibly with Convention rights does not give gypsies and travellers a right to establish sites in contravention of planning control.

The planning balance

35. Starting with the previous appeal decision, and the Inspector's conclusion that the proposal before her would have had an unacceptable impact on visual amenity and landscape character, the current scheme has notable differences, particularly in the siting and orientation of the structures on the land.
36. Our respective positions on the impact of the development on landscape character are as one; in that the development has resulted in localised change to the character of the rural agricultural landscape.
37. In terms of the visual impact, the proposal would result in harm to the appearance of the landscape arising from additional development in the open countryside contrary to the aims of Policy CS13 of the Core Strategy and paragraph 23 of Planning Policy for traveller sites. However, it is apparent that the reconfiguration of the site would result in less harm than identified by the previous Inspector; and the visual impact of the development could be reduced by the early implementation and appropriate maintenance of a well-designed scheme of soft landscaping.
38. Significant weight attaches to the undisputed need for additional gypsy and traveller sites in the locality, the failure of current policy to meet that need and the hiatus in securing future provision through the plan-making process. However, it is not sufficient to outweigh the identified harm to the character and appearance of the landscape.
39. The previous Inspector acknowledged the appellant's need for a settled base, and the related consequences of removal from the site, in her overall planning balance. These circumstances are, effectively, largely unchanged although the later judgement in *AZ v Secretary of State for Communities and Local Government and South Gloucestershire District Council* clarifies that the Article 8 rights of the family as a whole have to be taken into consideration and that the best interests of a child should be a primary consideration.
40. In this case, the extended family currently comprises 3 generations with interdependencies for employment and care. In the near future there is likely to be an additional 'layer' to the family. The family has nowhere else to go; there is no prospect of a base elsewhere in Darlington or indeed nearby; and the implications of removal from the site for each member individually and the family as a whole are severe. It is also telling that the extended period of compliance, providing a 12 month period to search for an alternative site, has not been fruitful. The combination of these factors is sufficient to outweigh the harm to the character and appearance of the landscape and the conflict with the development plan.

Planning conditions

41. On this basis planning permission should be granted on a personal basis for the proposed development. A temporary planning permission would meet the immediate needs of the family; but this would impose continuing uncertainty and restrict investment in the site and the provision of appropriate landscaping works. In addition, even if the Development Plan Document were to be adopted in the manner and time period envisaged by the Council, it would not offer the family any greater prospect of an alternative site.
42. As to other conditions to be imposed, it is necessary to define the extent of the permission in terms of the number of units that may be sited on the land as that forms the basis on which the proposal has been assessed. Commercial activities and the parking of large vehicles on the site are to be precluded so as to safeguard the character and appearance of the area.
43. A comprehensive condition relating to the layout of the site, means of enclosure, ground modelling and landscaping, drainage and lighting is justified to address outstanding matters in the interests of visual amenity, safety and for environmental reasons. The consequences of not fulfilling any one of the requirements of the condition could result in the cessation of the use and the removal of all of the development from the site.
44. Given the rural setting of the site, it is necessary to ensure that the intentions of the above condition, in relation to landscaping and lighting are not frustrated by additional 'ad hoc' enclosure or illumination.
45. The Council's Traffic Manager has confirmed that visibility from the site access conforms to current standards; but, in his opinion further surfacing works are required to the verge crossing and measures are needed to ensure that water does not flow on to the public highway. The site access is not in a notably poor condition and a road gulley is located on the lower side of the access which would capture any water flowing from the access. Overall, further works secured by condition would be unnecessary.
46. The materials for the amenity building, as set on the application form, are acceptable, subject to agreement on the colouring of the timberwork. In terms of the mobile home, although its light walls stand out within a landscape of muted tones, the implementation of an appropriate scheme of landscaping and site boundary treatment would be capable of ensuring that it would be assimilated to a reasonable and acceptable degree taking particular account of the predominance of buff coloured facing materials on the buildings within Brafferton.

Conclusion

47. In reaching my decision I have taken full account of the letters opposing the development having particular regard to the history of planning refusals on the site; the impact on the landscape; and concerns that the development has already been undertaken. None of these, or any other matters raised, are of sufficient weight to change my conclusion to allow the appeal subject to conditions.

David MH Rose

Inspector

Schedule of conditions

- 1) The occupation of the site hereby permitted shall be carried on only by the following:- Mr Reuben Rogers and Mrs Julie Rogers and their resident dependents; Mr Jimmy Rogers and Mrs Laura Rogers and their resident dependents; and Mrs Vera Knight.
- 2) When the land ceases to be occupied by those named in condition 1 above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.
- 3) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days, or such longer period as considered reasonable, of the date of failure to meet any one the requirements set out in (i) to (iv) below:
 - i) Notwithstanding the details shown on the site layout plan (scale 1:500) within 3 months of the date of this decision a Site Development Scheme shall have been submitted for the written approval of the local planning authority. The scheme shall include details of:-
 - (a) the internal layout of the site, including the siting of caravans, hardstandings, the amenity building, parking, turning and amenity areas;
 - (b) all means of enclosure including the removal of the existing close-boarded timber fence;
 - (c) hedgerow and trees to be retained;
 - (d) tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities;
 - (e) earthworks and ground modelling including the modification of the existing bund;
 - (f) any external lighting on the boundaries and within the site;
 - (g) the means of foul and surface water drainage of the site; and
 - (h) a timetable for the implementation of the scheme.
 - ii) Within 11 months of the date of this decision the above site development scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.

- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.
- 4) No more than 3 caravans (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968) shall be stationed on the site at any time, of which no more than one shall be a static caravan/mobile home.
- 5) No commercial activities shall take place on the site, including the storage of materials.
- 6) No vehicles over 3.5 tonnes shall be stationed, parked or stored on the site.
- 7) The amenity building hereby permitted shall be constructed entirely of the materials specified in the details forming part of the application. The colour treatment of the timber shall be submitted to and approved in writing by the local planning authority before works on the construction of the building begin; and the development shall be undertaken in accordance with the approved details.
- 8) All earthworks and ground modelling, tree, hedge and shrub planting, comprised in the approved details of landscaping shall be carried out in the first planting season following the approval of these elements of the site development scheme required by condition 3 above; and any trees or plants which within a period of 5 years die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no fences, gates, walls or other means of enclosure shall be erected on the land other than as approved in accordance with condition 3 above.
- 10) No means of external illumination other than as approved in accordance with condition 3 above shall be installed or constructed on the site.

0-0-0-0-0-0-0-0

APPEARANCES

FOR MR REUBEN ROGERS

Philip Brown	Philip Brown Associates
Reuben Rogers	Appellant
Julie Rogers	Appellant's spouse
Vera Knight	Appellant's mother-in-law
Rachel Francis-Ingham	Programme Manager UK Association of Gypsy Women (Inclusion Office)

FOR DARLINGTON BOROUGH COUNCIL

Lisa Hutchinson	Planning Officer (Development Management)
Emma Williams	Planning Officer (Policy and Strategy)

INTERESTED PERSONS

Councillor Brian Jones	Ward Councillor Darlington Borough Council
Stewart Hodgson	Local Resident
Janet Cox	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Statement submitted by Rachel Francis-Ingham
- 2 Letters in support of the proposal
- 3 Extract from Borough of Darlington Local Plan (Policy E4)
- 4 Schedule of conditions – Appeal Decision: APP/F4410/C/12/2177807