The Planning Inspectorate

Appeal Decisions

Site visit made on 13 March 2017

by Martin Joyce DipTP MRTPI

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

Decision date: 22 March 2017

Appeal A: APP/V0728/C/16/3152988
Land at the Scrapyard, 2 Old Station Road, South Bank TS6 6AD

- 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 Robert Foster against an enforcement notice (Notice 1) issued by the Redcar & Cleveland Borough Council.
- The enforcement notice, LPA Ref: E0028/2016/CW, was issued on 23 May 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the change of use of the land from industrial use to use as a site for a residential caravan on the land.
- The requirements of the notice are to:
  (1) Ceases (*sic*) using the industrial land as a site for residential use with the removal of the residential caravan from the land in its entirety as indicated in red are (*sic*) exhibited at Appendix 2; and
  (2) Return the land back to industrial use in its entirety as indicated in red are (*sic*) exhibited at Appendix 1.
- The period for compliance with the requirements is 180 days.
- The appeal is proceeding on the grounds set out in Section 174(2)(a), (b) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice, as corrected, is upheld.

Appeal B: APP/V0728/C/16/3152993
Land at the Scrapyard, 2 Old Station Road, South Bank TS6 6AD

- 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 Robert Foster against an enforcement notice (Notice 2) issued by the Redcar & Cleveland Borough Council.
- The enforcement notice, LPA Ref: E0028/2016/CW, was issued on 23 May 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the construction of a concrete base, breeze block structure on industrial land to facilitate a static caravan as a site for residential purpose.
- The requirements of the notice are to:
  (1) Remove the hardstanding area and breeze block structure which facilitates the residential compound where the caravan is situated in their entirety as indicated in are (*sic*) exhibited at Appendix 1; and,
  (2) Remove the residential caravan from the land in its entirety as indicated in red are (*sic*) exhibited at Appendix 2.
- The period for compliance with the requirements is 180 days.
- The appeal is proceeding on the grounds set out in Section 174(2)((a), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The enforcement notice is quashed, as set out in the Formal Decision.

Matters Concerning the Notices

1. There are a number of matters concerning the wording of the notices that require consideration with a view to determining whether correction could or should be made, using the powers available to me under Section 176(1) of the Town and Country Planning Act 1990 (The Act). In this context, I am mindful that it has been found, in pertinent case law[1], that I have a duty to get a notice into order if that is possible.

2. Both notices contain a number of typographical and grammatical errors, as indicated, in part, above, and refer to Appendices that are not replicated in the plans attached to the notices, as neither of the two plans attached to each is labelled as either Appendix 1 or Appendix 2, if that is what was intended. In addition, the wording of the requirements of both notices does not entirely match the wording of the respective allegations, particularly in the case of Notice 2, which requires the removal of the caravan from the land notwithstanding that the notice is aimed solely at the alleged unauthorised construction of a concrete base and a breeze block structure to facilitate a static caravan "as a site for residential purpose".

3. Furthermore, in respect of Notice 1, a material change of use from industrial use to use as a site for a residential caravan on the land is alleged, although it is clear that an industrial use, as part of a scrapyard and a site for the repair of pallets, is continuing, which suggests that the change of use that has occurred is to that of a mixed use of industrial and use for the siting of a caravan used for residential purposes. Additionally, requirement 2, to return the land back to industrial use in its entirety, is *ultra vires*, having regard to the judgement in *Lipson*[2], which found that an enforcement notice cannot require a former use to be resumed.

4. With regard to the description of the alleged unauthorised operational development, contained in Notice 2, I saw, at my inspection that a concrete base has not, as a matter of fact, been constructed on the land to support the caravan, rather it is surrounded on all sides by a concrete path of about 1m in width, a matter accepted by the representatives of both main parties at the inspection. The caravan itself is sited on a gravel base, within this pathway, and is supported by metal struts. Additionally, I clarified that the reference to a "breeze block structure" is, in fact, a section of walling, made of breeze blocks of about 1m in height, which runs across the site parallel to the caravan. The Council's officer confirmed that the notice was not aimed at other breeze block constructions which have been erected on the site, and which form various bays for the storage of a variety of goods including scrap material.

5. As a general starting point, in relation to the above matters, I consider that it would be beneficial if the two notices were to be combined into a single notice alleging both a material use of the land, as defined above, and also the facilitating operational development. This is entirely legitimate as a general principle, having regard to the judgement in *Murfitt*[3], and would be possible through the correction of Notice 1 to include the allegation from Notice 2, and the consequent quashing of the second notice. I am satisfied that this would

[1] *Hammersmith and Fulham LBC v Secretary of State for the Environment & Sandral* [1975] 30 P&CR 19.
[2] *Lipson & Lipson v Secretary of State for the Environment & Salford MBC* [1976] 33 P&CR 95.
[3] *Murfitt v Secretary of State for the Environment & East Cambridgeshire CC* [1980] JPL 598

not cause injustice to the appellant as his grounds of appeal will still be considered in this context.

6. I also do not consider that such correction would be prejudicial to the Council, as the combined notice would have the same effect as the two that have been issued, subject to the corrections aimed at getting them into order. This would also include the substitution of a revised plan which shows the boundary of the appeal site, and the location of the caravan, concrete pathway and breeze block wall within it.

7. On a final matter, I noted, at the site inspection that the notice does not relate to the whole of the land owned and occupied by the appellant, as the scrapyard activities also take place on land to the north-west. It seems to me, therefore, that the planning unit may be the whole of this parcel of land, rather than that identified on one of the plans attached to each notice, which shows about half that area. The appellant explained to me that the land was bought as two parcels and it would appear that the Council have based their plan on that which contains the caravan, which is the main focus of the notices. I do not consider that it is necessary for the notices to show the whole of the planning unit, particularly where the alleged unauthorised activity is taking place within only a part of the site and, whilst it has been found that an area shown on a notice can be extended where no injustice would result[4], I do not think that this is necessary in this case.

8. Drawing all of these matters together, therefore, I shall use the powers of correction available to correct the notices so as to remove typographical and grammatical errors, combine the notices into a single notice dealing with an allegation of a material change of use of the land and facilitating operational development, and to clarify the requirements to match the revised allegation, without the inclusion of a requirement to resume a specified use of land.

9. My consequent deliberations will therefore relate to the combined notice, dealing as necessary with arguments that only relate to the alleged material change of use or operational development as appropriate. I also confirm that the notice will refer to the operational development as the construction of a concrete pathway, and a breeze block wall. I shall include a plan with the corrected notice to show the approximate position of these features, albeit that there is little doubt as to their location on the site.

Background

10. The appeal site lies on the north-eastern side of Old Station Road, on a corner plot formed by its junction with Tilbury Road, within a general industrial area to the north of a major road (the A66) that separates such uses from residential areas to the south. The residential caravan, a mobile home, measuring about 13.7m in length and 4.25m in width, is sited close to the south-eastern boundary of the overall site, which is formed by a concrete panel wall of about 3m in height. Other boundaries are lower and formed of breeze block walling, and, within the site, there are various bays and unroofed enclosures formed also of breeze block walling. Access is obtained through a wide gateway from Old Station Road.

[4] *Howells v Secretary of State for Communities and Local Government* [2009] EWHC 2757 (Admin).

11. Within the site, the appellant undertakes a pallet repair and sale business (R & R Pallets) and a scrap recovery operation also takes place on the land. I noted stacks of metal, white goods, wires and vehicle components, including redundant fork-lift trucks. A container on the north-eastern boundary is used for the storage of traps and gigs in connection with the appellant's residential occupation of the site.

THE APPEAL ON GROUND (b)

12. The appeal on ground (b) relates to a claim that the caravan is not solely used for residential purposes, as it also functions as a site office and provides welfare facilities for workers, therefore it is in a mixed use. Whilst accepting that the notice could be corrected in this respect, it is contended that such correction could cause injustice as it would involve a radical reassessment by the Council of consideration of the loss of employment land and would require that the appellant would need to comment further. This could have been avoided have the Planning Contravention Notice (PCN) served by the Council asked the correct questions about the use, but it did not and failed to establish what activities were taking place on the land.

13. The Council dispute that the caravan is used for purposes other than residential and draw attention to the fact that they have been unable to gain access to check such facts. They suggest that the appellant could have provided this information in response to the PCN, but has only made this claim at a late stage in the context of the current appeal. They also suggest that the appellant would have the opportunity to comment on any revision to the notice, albeit that they do not consider it to be necessary.

14. As with any "legal" ground of appeal, such as grounds (b) and (c), the burden of proof lies with the appellant, having regard to national procedural guidance[5], as referred to in the Planning Practice Guidance, and pertinent case law[6], with the relevant test being on the balance of probabilities[7]. He needs to show that the matters alleged in the notice have not occurred or, as the case may be, that planning permission is not required for those matters. In the context of ground (b), the appellant claims that the caravan has a mixed use, functioning as an office and providing welfare facilities for workers on the overall site. However, this claim is not supported by any documentary or other evidence and, indeed, I saw nothing at my site inspection to confirm any material use of the caravan other than residential. It is of conventional layout, with three bedrooms, a small kitchen, a lounge and a bathroom. I saw no evidence of an office, or that it was used as a mess hut for other workers on the site, albeit that no information has been provided as to numbers of such workers. Indeed, none were present at the time of my inspection.

15. I have no doubt that any employee on the site could make use of the toilet and kitchen facilities in the caravan if necessary but that is not the same as a use in association with the primary industrial use of the site and I do not consider that the appellant has met the required burden of proof in this respect. The appeal on ground (b) therefore fails.

[5] Annexe E of Procedural Guide "Enforcement Notice Appeals – England", 23 March 2016, Planning Inspectorate.
[6] *Nelsovil v Minister of Housing and Local Government* [1962] 1 WLR 404.
[7] *Thrasyvoulou v Secretary of State for the Environment No 1* [1984] JPL a732.

THE APPEAL ON GROUND (c)

16. On this ground it is contended that as the breeze block structure in question is a wall and, as it is less than 1m in height, it is permitted development by virtue of Class A of Part 2 of Schedule 2 to The Town and Country Planning (General Permitted Development (England) Order 2015 as amended (GPDO). As for the concrete path, it also is permitted development by virtue of Class J of Part 7 of Schedule 2 to the GPDO, which permits hard surfaces for industrial and warehouse premises.

17. The appellant is, however, misguided in his appeal on this ground as it is clear from the enforcement notice that the Council are alleging operational development that has facilitated the alleged material change of use of the land. The appellant has not shown that the development in question was constructed in association with any industrial use of the land, rather it has been provided to provide a walkway around the caravan and to ensure separation of the residential use from the industrial use of the remainder of the site. Neither element of this operational development is, therefore, permitted under the claimed provisions of the GPDO and the appeal on ground (c) fails.

THE APPEAL ON GROUND (a)

Planning Policy

18. The Development Plan for this area includes the Redcar and Cleveland Local Development Framework Core Strategy (CS) and Development Policies DPDs (DP), adopted in July 2007. A Draft Local Plan was published in May 2016 but is at an early stage in the adoption process and carries little weight.

19. The appeal site lies within the South Tees Employment Area on land allocated under Policy CS9 of the CS. Various other policies from the CS and the DP are pertinent including Policy CS1: Securing a Better Quality of Life; Policy CS2: Locational Strategy; Policy CS4: Spatial Strategy for South Tees Employment Area; Policy CS13: Meeting the Housing Requirement; Policy CS15: Delivering Mixed and Balanced Communities and Quality Homes; Policy CS20: Promoting Good Design; Policy DP1: Development Limits; Policy DP2: Location of Development; Policy DP3: Sustainable Design; and, Policy DP7: Potentially Contaminated and Unstable Land.

20. Although the CS and DP pre-date the National Planning Policy Framework (The Framework), the policies contained therein are broadly in conformity with it, thus they attract significant weight in the context of these appeals.

Main Issues

21. The main issue in this appeal is the suitability of the site for residential use, including the adequacy of the living conditions provided for occupiers.

Reasoning

22. The appellant's case is, essentially, that the siting of a caravan used for residential purposes is acceptable having regard to the appellant's own circumstances and the fact that he operates the industrial use on the remainder of the land. It is akin to a "live/work" unit and is sustainable development having regard to the location of the site in respect of retail and transport facilities, and the avoidance of any need to commute to work. It also

provides security for the scrapyard, which contains valuable goods. Moreover, whilst not allocated for housing in the Development Plan, reliance is placed upon the fact that The Haven residential caravan site was built within this area, and therefore presumably met Council objectives relating to the standard required for residential accommodation.

23. The Council appear to accept that the site is in a sustainable location, having regard to the proximity of shopping and transport facilities, including a large supermarket on Tilbury Road, but raise concerns about the adequacy of the living conditions when tested against basic amenity standards given that there is no defined curtilage for the caravan. They also raise environmental concerns as the site is classified as "potentially contaminated land", having regard to previous uses of the land, and that adjoining, as a brick and tile works, a mineral wool works and for areas of unknown filled ground. In addition, the scrapyard itself is a potentially contaminating land use. Therefore there is the potential for unacceptable levels of contaminants already present in the ground, as well as ongoing contamination resulting from the scrapyard operations, which may be damaging to long-term human health.

24. The caravan is sited in a confined area surrounded by high walls and within a potentially noisy and dusty industrial use – the scrapyard. Therefore, whilst it is largely screened from views from outside the site, this in itself results in poor living conditions for any residential occupiers though loss of outlook, restricted daylight and sunlight and, in particular, a lack of outdoor amenity space. There is a conflict therefore with criteria (c) and (g) of Policy DP2 and criterion (b) of Policy DP3 of the DP and the continuation of the use would perpetuate an unsatisfactory standard of residential accommodation and poor living conditions for occupiers of the caravan.

25. With regard to the industrial use on the reminder of the appeal site, no details of any planning permission for that use have been supplied, neither have any copies of any environmental permits been produced that would, for example, show restrictions on the types of material processed at the site, and the manner of such processes themselves. However, the past history of the site, and its surroundings, is not disputed and it indicates that there is a clear potential for contaminating substances to be present either on the site itself or in close proximity. Policy DP7 of the DP would not permit development that poses an unacceptable risk to occupiers of dwellings close to potentially contaminated land thus the onus is on the appellant to show that contaminants either do not exist, or that their effect can be mitigated. In the case of proposals for residential development this would involve appropriate investigations to assess the type and extent of any contamination and any remediation options, as set out in paragraph 2.19 of the DP. However, no such work, including discussions with Environmental Health Officers or the Environment Agency, appears to have taken place, contrary to the guidance provided in that document.

26. I accept that the appellant may be prepared to live in sub-standard accommodation but that does not mean that it is acceptable in planning terms. The sanctioning of a development that could cause damage to the health of a residential occupier would not meet the particular policies of the Development Plan referred to above, or the aims of The Framework, particularly in respect of promoting healthy communities. I also accept that a residential presence may increase security at the site, but that does not outweigh the harm I have

identified. In any event, other security measures are available for sites such as this, and a permanent residential use would not mean that the site was constantly occupied as the appellant or other residents would have to travel away from it for work, shopping or recreational purposes.

27. Having come to the conclusion that the continued use of the site for residential purposes would be harmful, I turn to the question of the acceptability or otherwise of the facilitating operational development. The wall and the concrete pathway have been built to serve the caravan and no case has been made for any current use in connection with the industrial use of the overall site other than a claim that the wall could provide a demarcation between operational areas and any site office. However, the appeal does not relate to use of the caravan as a site office, having regard to my findings in respect of the appeal on ground (b). Indeed, once the caravan is removed, the wall and the concrete pathway may well impede operations on the site, as it would result in a barrier and a sunken area being left adjacent to the south-eastern boundary of the site. Notwithstanding that there are other enclosures within the site, the retention of the operational development would appear to serve no useful purpose and could be considered to be detrimental to the efficient use of the land for industrial purposes, contrary to Policy DP3 of the DP.

28. My conclusion on the main issue is that the continuation of the use of the site for the siting of a caravan used for residential purposes, and the associated operational development, would be materially harmful to the living conditions of occupiers, and would impede efficient use of the site for its lawful industrial purposes, contrary to the DP and The Framework. The appeal on ground (a) therefore fails and planning permission will not be granted.

THE APPEAL ON GROUND (f)

29. The appeal on this ground relates to the concrete footpath within the site, as it is claimed that there could be no possible objection to its retention within a waste recovery site given that it has no adverse impact on the use of the site and is completely invisible from outside the premises. However, I have already considered this matter in relation to the appeal on ground (a) and concluded that the footpath would be likely to impede efficient use of the site for industrial purposes. The appeal on ground (f) therefore fails.

THE APPEAL ON GROUND (g)

30. The appeal on ground (g) contends that the period for compliance with the notice should be extended to give the appellant enough time to resume occupation of The Haven gypsy and traveller site, once a place becomes available for him, as he is a part of that community and formerly lived on that site.

31. I begin by confirming my understanding that it is no part of the appellant's case that particular account should be taken of his status as a gypsy/traveller although the Council accept that he is a part of the travelling community. They draw attention to the fact that their records do not confirm previous occupation of a caravan at The Haven, and also that he owns two residential properties within walking distance of the site, which they suggest he could occupy until a place at The Haven becomes available. However, they state that vacancies at that site are very rare and that no waiting time can be given.

32. The period for compliance would allow the appellant approximately six months in which to make arrangements for alternative residential accommodation. In circumstances where there can be no certainty about the availability of a place at The Haven either within that time, or at all, this seems to me to be entirely reasonable as an extension of the compliance period would perpetuate the unsatisfactory living standards being experienced and, potentially, lead to harmful effects on the health of occupiers of the caravan. In this context, I am mindful of the fact that the Council has the power to extend the period for compliance with the notice[8] and it could be that they would choose to use those powers should the situation at The Haven change. In all these circumstances, however, the appeal on ground (g) fails.

Other Matters

33. I have taken account of all other matters raised in the written representations, including arguments about the inadequacy of housing land supply. I note that recent appeal decisions have concluded that the Council cannot currently meet the required five-year supply, but the retention of a single residential unit would not make a material difference to that situation and, in any event, would not justify the retention of a use that is likely to cause material harm to the living conditions of occupiers. This, and the other matters raised, does not, therefore, outweigh the conclusions I have reached in respect of the main grounds and issues of these appeals.

Conclusions

34. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notices with corrections as indicated above, and refuse to grant planning permission on the deemed applications.

FORMAL DECISIONS

Appeal A: APP/V0728/C/16/3152988

35. The enforcement notice is corrected by:

(a) the deletion of Section 3 in its entirety and the substitution therefor of the following allegation:

"3. THE BREACH OF PLANNING CONTROL ALLEGED

Without planning permission:

1. The change of use of the Land from industrial use to a mixed use of industrial use and use for the siting of a caravan used for residential purposes, in the approximate position shown hatched in black on the plan attached to this decision; and,

2. The construction of a breeze block wall, of approximately 1m in height, and a concrete pathway, to facilitate the change of use of the land, in the approximate positions shown between points A and B (wall) and coloured in blue (pathway) on the plan attached to this decision."

[8] Section 173A(1)(b) of the Town and Country Planning Act 1990.

(b) The deletion of Section 5 in its entirety and the substitution therefor of the following requirements:

"5. WHAT YOU ARE REQUIRED TO DO

1. Cease the use of the Land for the siting of a caravan used for residential purposes;

2. Remove the caravan from the Land;

3. Remove the breeze block wall, of approximately 1m in height, and the concrete pathway from the Land."

(c) The substitution of the plan attached to this decision for the two plans attached to the notice.

36. Subject to these corrections, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under Section 177(5) of the 1990 Act as amended.

Appeal B: APP/V0728/C/16/3152993

37. The enforcement notice is quashed.

Martin Joyce

INSPECTOR

The Planning Inspectorate

Plan

This is the plan referred to in my decision dated: 22 March 2017

by Martin Joyce DipTP MRTPI

Land at The Scrapyard , 2 Old Station Road, South Bank TS6 6AD

Reference: APP/V0728/C/16/3152988 & 3152993

Scale: Not to scale