
Appeal Decisions

Site visit made on 13 June 2017

by Paul Dignan MSc PhD

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

Decision date: 19 July 2017

Appeals A and B: APP/F1040/C/16/3161258 & 3161259

Land on the north west side of 149 Woodville Road, Overseal, Swadlincote, Derbyshire, DE12 6LX.

- 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 John Doherty and Mrs Theresa Doherty against an enforcement notice issued by South Derbyshire District Council.
 - The enforcement notice, numbered E/2016/00016, was issued on 23 September 2016.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the Land from vacant garden land to use as a residential caravan site, including the siting and occupation of a residential caravan, the importation of hardcore onto the Land, raising of ground levels and construction of a concrete pad, the siting of 2 wooden sheds, 2 portable toilets, parking of commercial and private vehicles, plant and equipment, and the erection of pole mounted floodlights.
 - The requirements of the notice are : 1) Cease the residential use of any part of the Land; 2) Cease any operations to raise the ground levels of any part of the Land; 3) Remove from the Land the static caravan, 2 wooden sheds, 2 portable toilets, all motor vehicles, all plant and equipment, all pole mounted floodlights, and any and all other commercial and residential chattels; 4) Remove from the Land all hardcore, stone, concrete and all other unauthorised material deposited thereon to an authorised place of disposal.
 - The period for compliance with the requirements is 90 days.
 - The appeals are proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal C: APP/F1040/W/16/3164720

Rear of 137-149 Woodville Road, Overseal, Derbyshire, DE12 6LX.

- 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 John Doherty against the decision of South Derbyshire District Council.
 - The application Ref. 9/2016/1034, dated 30 September 2016, was refused by notice dated 30 November 2016.
 - The development proposed is Change of use of land to Gypsy caravan site comprising of 5 pitches, including an amenity building, installation of pumping station, construction of access and landscaping including walling.
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Decisions

Appeals A and B

1. The appeals are dismissed and the enforcement notice is upheld.

Appeal C

2. The appeal is allowed and planning permission is granted for *Change of use of land to Gypsy caravan site comprising of 5 pitches, including an amenity building, installation of pumping station, construction of access and landscaping including walling* at land at the rear of 137-149 Woodville Road, Overseal, Derbyshire, DE12 6LX in accordance with the terms of the application, Ref. 9/2016/1034, dated 30 September 2016, and the plans and supporting documents submitted with it, subject to the conditions set out in the Schedule to this decision.

Background

3. The appeal site in all of these appeals is a block of land at the rear of 137 to 149 Woodville Road, with access onto Woodville Road running between Nos 147 and 149. Much of the land appears to have been former orchard land, the remainder having been parts of the rear gardens of Nos 147 and 149. Planning permission was granted in December 2014¹ for the erection of 4 detached houses on the site. Prior to that permissions had been granted for a detached bungalow at the rear of No 149 and for 4 houses at the rear of Nos 137-147. The highway access for the 2014 4-house scheme also runs between Nos 147 and 149.

Appeals A and B – Enforcement Notice appeals

Ground (f)

4. The site is currently being used for the stationing of a mobile home for residential purposes. Along with this there has evidently been substantial land-raising and re-profiling using imported materials, and the construction of a large concrete hardstanding and the other items of operational development set out in the notice. The mobile home and the sheds are sited on the concrete hardstanding.
5. This ground is that the steps required exceed what is necessary to remedy the breach, or any harm to amenity, as the case may be. In this case the requirements of the notice are clearly aimed at remedying the breach by the restoration of the land to its former condition. What is sought under this ground is a variation of the requirements to enable the appellant to continue to live on the site while he implements any permission granted on Appeal C. However, Appeal C is for a different development. In the absence of an appeal on ground (a), which would have allowed planning merits to be considered, an appeal on ground (f) in a case such as this is limited to an argument that the steps specified in the Enforcement Notice exceed, as a matter of fact, what is necessary to restore the land to its condition before the breach took place. In short, variation of the requirements to achieve what is sought by the appellant is not within my power under section 176(1)(b) of the 1990 Act. The appeal on this ground cannot succeed.

Ground (g)

6. The time for compliance is 90 days. Under this ground the appellant seeks to extend the period to 9-12 months, but the reason given, again contingent on the success of Appeal C, is in order to enable the appellant to continue to live

¹ Ref. 9/2014/1001

on the site until the Appeal C planning permission is fully implemented. However, the reasons for issuing the notice include harmful off-site environmental impacts arising from the current unauthorised and unregulated use, and it would not be reasonable in my view to allow that to continue while a separate permission for a different development was implemented. The appeal on this ground fails accordingly.

Appeal C – appeal against the refusal of planning permission

7. The Council found the proposed development of the site for 5 gypsy and traveller pitches to be acceptable in all respects, subject to appropriate conditions and a planning obligation, save for one matter. That is the potential harm to the living conditions of neighbours due to the movement of commercial vehicles into and out of the site, having regard to the close proximity of the site access to neighbouring properties.
8. The 4.25m wide access to the site passes directly alongside the side elevation of No 149 and continues between the rear gardens of Nos 147 and 149 to a turning circle just behind the 2 rear gardens, as with that for the approved 4-house scheme. Walls and piers forming part of the access shown on the application plans have already been built. Due to the proximity of the access to these properties and its unmade surface, and on the basis that the appellant would continue to operate his landscaping business from the site using 'larger commercial vehicles', the Council's Senior Environmental Health Officer advised that the development could cause disturbance to neighbours due to 'significant levels of noise'. However, he subsequently advised that a condition precluding commercial activity or outside storage related to any trade of business, and also precluding commercial vehicles or machinery being brought onto, parked or stored on the site would address his concerns regarding noise from vehicle movements. On this basis the Planning Officer's report to Committee recommended approval, subject to the completion of an undertaking under section 106 of the Act to secure mitigation of impacts on the River Mease Special Area of Conservation (SAC).
9. However, the Committee considered that the imposition of a condition restricting commercial activity and vehicles/machinery would not be reasonable having regard to the likelihood of employment of the occupants in the construction/groundworks sector. It noted that a complete ban on commercial vehicles might frustrate the use of the site for the intended occupants, and also that enforceability issues may arise where ostensibly commercial vehicles are used also for day-to-day residential purposes.
10. Having accepted the suitability of what to all intents and purposes is the same access to serve the approved 4-house scheme, I find it difficult to see how it can be argued that a 5-pitch traveller site with restrictions on commercial activity would generate materially more noise and disturbance in the vicinity of the neighbouring properties. The materials used for surfacing the access way can be secured by condition, and it is commonplace to both preclude commercial activities and restrict vehicles using traveller sites by maximum authorised mass, usually 3.5 tonnes. I can see no good reason why such conditions would not satisfactorily address the issue of noise and disturbance arising from the use of the access, nor do I consider the use of such conditions to be unreasonable or in any other way contrary to the government's advice on the use of conditions set out in the Planning Practice Guidance (PPG). A

number of traveller sites in the District are subject to conditions restricting commercial activities and the keeping on site of vehicles over 3.5 tonnes, and the Council has not expressed any concern about the imposition, efficacy or enforceability of those conditions, having regard to the PPG advice. The Council has pointed out that the other sites referred to do not have the same relationship with adjoining occupiers, but whilst I accept that this site may be more sensitive, there is not evidence that the proposed development would be likely to have a materially greater impact in terms of noise and disturbance than the approved housing scheme.

11. I note that the Council has expressed doubt that the 2014 permission could still be implemented, and hence that it remains as a valid fallback. However, it has clearly accepted the principle of such an access, and it has not satisfactorily explained why the use of the access to serve a traveller site would cause materially greater noise and disturbance, to the extent that it would cause unacceptable harm to the amenity of neighbours. I have also noted the Council's concern about highway visibility at the access, which included a sightline across the front corner of No 149, a property which was formerly within the appellant's control, but no longer is. However, there is no particular reason to expect that the visibility splay would not be retained as indicated. Further, the 2.4m x 43m splay shown on the 2014 plans, which is satisfactory, only just crosses the very front of No 149, where planning permission would be required to build the existing low boundary wall above 1m.
12. So far as it concerns the use of the access, I am satisfied that the living conditions of the occupiers of neighbouring properties can be protected by the imposition of conditions to control the use of the site and the surface materials. Policy H22 of the South Derbyshire Local Plan Part 1 2016 (LP1) sets out criteria for traveller sites, including a requirement that the movement of vehicles to and from the site will not cause undue disturbance or be inappropriate for the locality, while Policy SD1 provides that development should not lead to adverse impacts on the amenity of existing or future occupiers within or around proposed developments. On the basis of the evidence before me I am satisfied that the proposed development of the site would accord with these development plan policies, and with the development plan read as a whole. In coming to this view I have accorded weight to the section 106 undertaking provided which I consider is necessary to avoid harm to the River Mease SAC, in accordance with the adopted River Mease Special Area of Conservation Water Quality Management Plan Developer Contribution Scheme.
13. I have considered the conditions suggested by the Council. Since the development proposed is a gypsy and traveller site, and I have had regard to the relevant specific local policy in coming to my conclusions, an occupancy condition, whereby the pitches on the site could only be occupied by a gypsy and traveller meeting the planning definition, is necessary. In the interests of the character and appearance of the site and surrounding area, and to safeguard residential and visual amenity and the environment, I shall also impose conditions requiring the submission of details of landscaping, site levels, the means of foul and surface water drainage, details of materials to be used for hardstanding and for the external surfaces of the amenity building, and I shall remove permitted development rights relating to walls, fences and means of enclosure. For the same reasons I shall limit the number of caravans using the site, and preclude commercial activity. In view of the lack of

appropriate documentation for the considerable quantity of materials brought onto the site, and which must be removed as required by the enforcement notice, I shall require that contamination be investigated and controlled if present. Conditions requiring arrangements for traffic control when static caravans are brought onto the site and ensuring that parking and manoeuvring areas are kept available at all time are necessary in the interests of highway safety. I shall also specify that the development be carried out in accordance with the submitted plans, but since the development has already commenced the suggested commencement condition is not necessary. Where necessary I have reworded the suggested conditions.

Overall conclusion on Appeal C

14. For the reasons given above, and having considered all other matters raised, including the representations of nearby residents, I conclude that the proposed development is acceptable in planning terms and accords with the development plan read as a whole. It follows that the appeal should succeed.

Paul Dignan

INSPECTOR

SCHEDULE OF CONDITIONS: Appeal APP/F1040/W/16/3164720

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 2) The development hereby permitted shall be carried out in accordance with Drawing Nos. PD118/502 Rev A and PD118/503 Rev A, unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).
- 3) There shall be no more than 5 pitches on the site and on each of the 5 pitches hereby approved no more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, shall be stationed at any time, of which no more than 1 caravan shall be a static caravan.
- 4) No commercial activity or outside storage related to any trade or business shall take place on the site, and (other than for construction works in implementing this permission or the bringing of static caravans to or from site) no vehicle over 3.5 tonnes and no commercial machinery or equipment shall be brought to, parked, stationed or stored on the site.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order; no gates, walls, fences or other means of enclosure shall be erected on the site (except as authorised by this permission or required by any condition

- attached thereto) without the prior grant of planning permission on an application made in that regard to the Local Planning Authority.
- 6) There shall be no further development until details of the finished ground levels for the pitches and areas of hardstanding and landscaping have been submitted to and approved in writing by the Local Planning Authority. These details shall be based on a topographical survey of the site carried out following the removal of existing material on the site. Thereafter the development shall be implemented in accordance with the agreed levels.
- 7) Notwithstanding the approved plans, no further development shall take place until details of a scheme for the disposal of surface and foul water have been submitted to and agreed in writing by the Local Planning Authority. This scheme shall include evidence of infiltration testing and details that demonstrate that proposed surface and foul water drainage means are of suitable capacity to accommodate flows, as well as setting out measures to ensure the maintenance and continued efficient operation of the surface and foul water drainage facilities (including alarm systems and mitigation measures in the event of a failure of any pumping stations). The scheme shall be carried out in strict conformity with the approved details before the development is first occupied and the drainage facilities shall be managed in accordance with the approved maintenance plan thereafter.
- 8) a) No further development shall take place until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to and approved in writing by the Local Planning Authority, and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of Section 3.1 of the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the Local Planning Authority dispenses with any such requirement specifically and in writing.
- b) Prior to occupation of the development (or parts thereof) an independent verification report must be submitted, which meets the requirements given in Box 2 of Section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- c) In the event that it is proposed to import soil onto site in connection with the development, this should be done to comply with the specifications given in Box 3 of Section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- d) If required by the conceptual site model, no development shall take place until monitoring at the site for the presence of ground gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the Local Planning Authority, which meets the requirements given in Box 4, Section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- 9) Prior to the construction of the amenity building, precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building shall be submitted to and approved in writing by the Local Planning

Authority. The work shall be carried out in accordance with the approved details.

- 10) Prior to the creation of any hardstanding, details of the surfacing materials shall be submitted to and approved in writing by the Local Planning Authority. The approved materials shall thereafter be used. Where porous materials are used, subsequent repair and maintenance of those surfaces shall be undertaken with an equivalent material.
- 11) Prior to any caravans being brought onto the site, a scheme to provide a banksman or traffic control to control the traffic whenever the static caravans are moved shall be submitted to and approved in writing by the Local Planning Authority. Thereafter movement of caravans on or off the site shall be carried out in accordance with the approved scheme.
- 12) The parking and turning areas between the caravans shall be laid out on each pitch prior to the first occupation of any caravans on that pitch and shall be thereafter maintained throughout the life of the development free from any impediment to its designated use as such.
- 13) Notwithstanding any details shown on the submitted plans, no further development shall take place until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 14) All planting comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the site or the completion of the development, whichever is the sooner; and any trees which within a period of ten years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.