



Appeal Decisions

Site visit made on 10 April 2018

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

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

Decision date: 24 April 2018

Appeal A: APP/J4525/C/17/3181112

The Mill House (public house and restaurant), Springwell Road, Springwell, Gateshead, DH3 1RE

- 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 Ms Kathryn Howe against an enforcement notice issued by Sunderland City Council.
 - The enforcement notice was issued on 5 July 2017.
 - The breach of planning control as alleged in the notice is without planning permission, the siting of tepee style events tents, timber decking, shipping containers, wooden lighting poles and seating areas (to the north and north east of the public house within the red line area of the Enforcement Notice Plan) and the formation of a new additional vehicular access (approximate location marked by arrow on the Enforcement Notice Plan).
 - The requirements of the notice are:
 - i. Dismantle and remove from the land the tepee style events tents, related flooring and ancillary equipment, timber decking, shipping containers (including those clad in timber and modified for use as open-fronted catering units), wooden lighting poles and seating areas. Reinstate the overflow car park in accord with the attached "Reinstatement Plan" and reinstate bare and uneven grassed areas with top soil, as necessary, level with the surrounding ground.
 - ii. Remove the new vehicular access and reinstate as follows:
 - a. Permanently secure the metal double gates in the closed position.
 - b. Remove granular material laid on the grass verge between the highway and the gates and leading into the site, reinstate the land to its former levels and reinstate top soil level with the surrounding ground.
 - c. Reinstate the gap in the hedgerow by re-planting a Hawthorn hedge (*Crataegus Monogyna*) in front of the gates in the same alignment as the existing hedge. Plants to be 60 to 90 cm high whips set in a staggered double row, at 4 plants per linear metre.
 - iii. Sow grass seed over all bare areas of soil.
 - The period for compliance with the requirements is:
 - (i) Requirements i), ii).a and ii).b no later than three months after this notice takes effect.
 - (ii) Requirements ii).c and iii). no later than 9 months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/J4525/W/17/3181049

The Mill House, Springwell Road, Springwell, Gateshead, DH3 1RE

- 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 Ms Kathryn Howe against the decision of Sunderland City Council.

- The application Ref 17/00878/SUB, dated 28 April 2017, was refused by notice dated 23 June 2017.
 - The development proposed is the erection of a Teepee events tent, timber decking, new vehicular access, re-arrangement of existing car parking and retention of storage containers, erection of wooden poles and ancillary outdoor seating areas (Resubmission of application 17/00116/FUL).
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Decisions

Appeal A

1. It is directed that the enforcement notice be varied in section 6(i) by extending the period for compliance from three months to five months. Subject to this variation the appeal is dismissed and 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

2. The appeal is dismissed.

Appeal A - ground (a)/the deemed application for planning permission and Appeal B

Main Issues

3. Although the enforcement notice refers to "tepee style events tents" and the application refers to "a Teepee events tent", both relate to 2 conjoined tepee huts. I shall just refer to the overall structure as "the Tepee." The main issues in relation to both appeals A and B are:
 - whether the development constitutes inappropriate development in the Green Belt (GB), having regard to the development plan and the National Planning Policy Framework (the Framework);
 - the effect of the development on the openness of the GB and the purposes of including land within it;
 - the effect of the development on the character and appearance of the countryside and the visual amenities of the GB; and
 - if the development constitutes inappropriate development in the GB, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the development.

Reasons

Inappropriate development

4. Saved Policy CN3 of the City of Sunderland Unitary Development Plan (UDP), adopted 1998, states that the construction of new buildings in the GB is inappropriate unless for specified purposes or in specified circumstances. None of those purposes or circumstances is relevant to the Tepee, timber decking, shipping containers, wooden lighting poles and seating areas in this case.

5. However, the exceptions set out in CN3 are more restrictive than those in paragraph 89 of the Framework, which is an important material consideration. The 6th bullet point of that paragraph potentially allows for the infilling or partial or complete redevelopment of previously developed sites (brownfield land), whereas CN3 only exempts such infilling or redevelopment on "major developed sites." This is not a major developed site, but it is within the curtilage of The Mill House pub and restaurant building, which included hardstanding for car parking. I am satisfied that the appeal site is previously developed land.
6. Nevertheless, the exception in the 6th bullet point of paragraph 89 only applies if the development would not have a greater impact than the existing development on the openness of the GB and the purposes of including land within it. Similarly, in so far as the formation of the hard surfaces and access constitute engineering operations, saved UDP Policy CN4 says this will be inappropriate unless it maintains openness and does not conflict with the purposes of including land within the GB. This is consistent with paragraph 90 of the Framework.
7. The appellant's appeal statement acknowledges that the development does have a greater impact on openness; the car parking would encroach onto a formerly undeveloped grass area, the Tepee and decking spills over from the former car park and a larger part of the former field, now enclosed by a new rough-sawn fence, is now covered by some form of development. This is plainly the case, such that the 6th bullet point of paragraph 89 cannot apply and neither can the exceptions in paragraph 90 of the Framework and UDP Policy CN4.
8. I conclude on this issue that the development is inappropriate development in the GB in terms of both the development plan and the Framework. The Framework indicates that inappropriate development is, by definition, harmful to the GB and that substantial weight should be given to any such harm. Inappropriate development should not be approved except in very special circumstances and very special circumstances will not exist unless the potential harm to the GB by reason of inappropriateness and any other harm is clearly outweighed by other considerations. It is therefore necessary to consider whether there is any other harm.

Openness and GB purposes

9. I have already concluded that the appeal development has a greater impact on openness than the pre-existing development, but I need to further consider the degree of impact.
10. There was previously an area of hard surfacing close to the pub building, which was used as an overflow car park. The appeal development pushes the hard surfaced car parking area further to the northeast. Openness also has a visual dimension and whilst the hard surfacing is substantially screened from the road and footway by a native boundary hedge, it is apparent from the new access point and will be more so when heavily parked with cars. The decking similarly results in northward encroachment of development. It will also encourage and facilitate greater use of this area and will be more apparent when in use.
11. The Tepee structure itself covers a substantial footprint, similar to that of the main pub building. Though it is not as tall as that building and its massing is

reduced, it is clearly visible from the road and footway. From the footway near the roundabout to the southwest, views of the tops of the Tepee are framed by the more imposing presence of the pub and the large agricultural building to the west of that. However, public footpaths run across the fields to the north and northwest of the site. I regard these as important public vantage points and from here the Tepee has a more obvious impact on openness and the encroachment on the countryside resulting from the development as a whole is evident. This can be seen in photographs in the appellant's appendix 4.

12. Given the scale and extent of the development and the degree to which it is visible in the public domain, I conclude that it results in a moderate reduction in openness and moderate conflict with one of the purposes of including land within the GB, namely to assist in safeguarding the countryside from encroachment. This purpose is enshrined in saved UDP Policies CN2 and CN4, as well as the Framework.

Character and appearance

13. The Mill House is an attractive building of traditional brick, render and tile construction. Although the B1288 Springwell Road is quite a busy highway, a short distance from the A1, the site is in a countryside setting, with fields on both sides of the road and agricultural buildings to the west.
14. I accept that large, white marquees are often seen in the grounds of buildings such as hotels, restaurants and pubs. However, notwithstanding the muted light brown colour and soft texture of the Tepee and the scope to keep exterior lighting to a minimum, as a permanent or semi-permanent structure, the Tepee is an incongruous feature in this rural landscape. Furthermore, its design does not harmonise with the traditional appearance of the pub. I note the appellant's willingness to remove the Tepee from January to March each year, but it would still be in place for the great majority of the time.
15. Despite existing boundary screening, the extended car parking area and decking, with associated activity, will further detract from the rural setting. I have already noted the extent to which the development can be seen from public vantage points and the overall harm caused to the character and appearance of the area conflicts with saved UDP Policies CN1, CN5 and B2. Together, these policies seek to safeguard the character and appearance of the area and the visual amenities of the GB, all in conformity with the Framework.

Very special circumstances

16. The appellant says that ad hoc cargo crates and other structures were previously sited on the land and that the appeal development has tidied up the site. An undated aerial photograph is submitted in support of that contention, but the evidence is insufficient to show that the scheme has resulted in a net improvement, so as to constitute a benefit weighing in favour of the appeals.
17. The earlier concerns of the Highway Authority regarding the number and proximity of vehicular access points to the site have been addressed by the appellant's agreement to close the existing access just to the northeast of the pub. The existing access, to what was the overflow car park, is close to the building and visibility to the south is somewhat restricted. The opportunity to close and effectively move that access provides some benefit in terms of

highway safety, but on the evidence before me, this factor carries limited weight.

18. In my view, the principal consideration advanced by the appellant is that without the appeal development, The Mill House pub and restaurant is likely to close. Furthermore, she says that the closure of The Mill House would result in the loss of a community asset, as it provides a venue and facilities for numerous local community groups in the day time, including for charity and benefit functions.
19. Dealing with the second point first, although there is no guarantee that The Mill House would remain open to use by community groups, I accept the appellant's evidence that it has been used in this way for many years and that this would be likely to continue.
20. I note that the current tenants/operators of The Mill House have been running it for over 20 years. They have refurbished and improved it and, in the appellant's words, it has "evolved from an old 'truck-stop' style dilapidated and forgotten building to the vibrant and popular destination that people know and love today." Clearly, my site inspection can provide no more than a snap shot, but even at mid-afternoon on a Tuesday, the pub and restaurant were quite busy and I gained the impression of a smart and well-maintained establishment. I do not doubt that, during the recession, the appellant has struggled and I am well aware that many bars and restaurants have closed down in recent years.
21. The appellant describes the Tepee development as a "last-ditch attempt to increase revenue to a sustainable level" and to avoid terminating her tenancy. I have been provided with unaudited accounts for the years ending 30 September 2014, 2015 and 2016. I also have the accountant's projection, as at 11 May 2017, for the year ending 30 September 2017, based on scenarios with and without the Tepee. The accounts for 2014 and 2015 show modest profits in each of those years, but a small loss is recorded for 2016. The projections for 2017 suggest another modest loss without the Tepee income, but a healthy profit with it.
22. The Council does not provide evidence or any detailed analysis to show why the submitted financial information is inadequate. However, the accounts are not audited and there must be room for doubt over the outturn for 2017, given that the projections were made just over half way through that year. I am not persuaded, on the appellant's evidence, that The Mill House will probably close if the appeals fail, but I accept that there is a real risk of this.
23. Given the potential impact on the appellant, her staff and those who use this facility, this risk must carry significant weight in these appeals. However, even when this is added to the limited additional weight attributed to the highway safety improvement, these other considerations are not sufficient to clearly outweigh the substantial weight which attaches to the harm by reason of inappropriateness, together with that carried by the additional harm by reason of impact on openness, encroachment on the countryside and impact on the character and appearance of the area and the visual amenities of the GB. According, very special circumstances do not exist.

Other matters

24. Local residents have been very concerned about noise associated with events in the Tepee. However, in discussions with The Mill House management, the Council's Public Protection and Regulatory Services Team has identified a maximum noise level for the premises which would result in music from the Tepee being inaudible at residential properties. Subject to conditions concerning this and operating hours, the Council maintains no noise related objection and this issue has not weighed against the appeals.

Conclusion on Appeal A ground (a)/the deemed application for planning permission and Appeal B

25. The development constitutes inappropriate development in the GB. It reduces openness, conflicts with the purposes of the GB by encroaching on the countryside and harms the character and appearance of the area and the visual amenities of the GB. Whilst other considerations weigh in favour of the development, they are not sufficient to clearly outweigh the harm identified, so as to constitute very special circumstances. The development conflicts with the development plan, being contrary to saved UDP Policies CN1, CN2, CN3, CN4, CN5 and B2. It also conflicts with the Framework. Material considerations do not indicate that planning permission should be granted despite the conflict with the development plan. I am not persuaded that reasonable conditions could overcome the harm, even having regard to the appellant's offer to remove the Tepee from January to March each year.

Appeal A – ground (g)

26. This ground is that the period for compliance with the notice falls short of what should reasonably be allowed.
27. The appellant contends that the period of three months specified for requirements 5(i) and 5(ii)(a) and (b) should be extended to five months. I accept the Council's contention that the dismantling of the Tepee and removal of other structures and physical works could be undertaken within three months. However, given the level of disruption to the business and the fact that these works will have to be undertaken during the busy summer period, I consider five months a reasonable and proportionate. I will vary the notice accordingly.

J A Murray

INSPECTOR