



Appeal Decision

Hearing Held on 21 May 2019

Site visit made on 21 May 2019

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 July 2019

Appeal Ref: APP/V0728/W/18/3198734
2 Old Station Road, South Bank TS6 6AD

- 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 R Foster against the decision of Redcar & Cleveland Borough Council.
 - The application Ref R/2017/0643/FF, dated 11 September 2017, was refused by notice dated 23 February 2018.
 - The development proposed is change of use of land to private gypsy site.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. This appeal must be determined on the basis of the development plan as it exists at the time of my decision. Subsequent to determining the planning application, the Council adopted the Redcar and Cleveland Local Plan (LP) in May 2018. The LP supersedes the adopted and emerging policies referred to by the Council in its reason for refusal. Whilst the LP was adopted subsequent to the appeal being submitted, the appellant has had the opportunity to comment on the LP and has done so within his final comments. I have therefore considered the appeal against the relevant adopted policies of the LP and make no further reference to the previous development plan.
3. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. Both main parties were given the opportunity to comment on any relevant implications for the appeal. I have had regard to the comments and the Framework in reaching my decision.

Main Issues

4. The main issues in this appeal are:
 - Whether the proposal will provide suitable living conditions for residents of the appeal site with regard to outlook, light and noise & disturbance; and
 - If any harm arises, whether it outweighs any other material considerations, including any identified need for sites for gypsies and travellers in the area, the alternatives for the appellant and any personal circumstances.

Reasons

Background

5. The appeal site is located within a general industrial area. At my site visit I saw that a static caravan and container storage were in place. Construction had also commenced on the domestic storage building indicated on the submitted plans.
6. The appeal site is part of a compound which is also used for commercial purposes. Previous appeal decisions in respect of the site refer to "Land at the Scrapyard". However, the appellant states that adjacent land within the compound is used for a business specialising in the buying and selling of wooden pallets. This reflects my observations on my site visit, and I have proceeded to determine this appeal on the basis of the business operations as described by the appellant.
7. To the north west of the appeal site on the opposite side of Old Station Road is The Haven traveller site, which is the main site providing accommodation to meet local traveller and gypsy needs.

Living Conditions

8. The appeal site is located within a compound surrounded by a high boundary wall. I saw that the compound contains an area to the north west which is used for the buying and selling of pallets, and that the appeal site consists of the south east area which is in use as a private gypsy pitch including a static caravan, storage facilities and associated paraphernalia.
9. It is proposed to provide a garden between the static caravan and the business use. The garden has been proposed to provide a degree of separation between the static caravan and the business use, as well as providing an amenity area. Based on what I have seen and read, the garden would provide an acceptable outlook from the front of the static caravan and would compare favourably with the pitch sizes provided at The Haven as well as typical residential gardens.
10. However, the static caravan is located in close proximity to the boundary wall around the site as well as the storage container and building. Due to this arrangement, I saw that the outlook from windows on three sides of the caravan was very restricted, including windows serving bedrooms. This included two bedrooms each of which had a single window on the rear elevation which would look directly onto the rear wall of the site resulting in an oppressive outlook for occupants of those rooms.
11. The proximity to the rear wall and storage features would also reduce the amount of daylight and sunlight reaching the windows on three sides of the caravan. I saw that a bedroom and the living area would have a window which looks out onto the proposed garden, but this would not mitigate the harm arising to rooms served solely by windows on the rear elevation. The appellant contends that the static caravan is only 4m in depth and would provide good sunlight for all of the rooms. However, this does not represent my own observations where I saw that rooms with a single outlook to the rear of the caravan did not receive an acceptable degree of light from the front due to an access corridor. Even allowing for the level of light which may reach the windows via the gap to the adjacent wall, I consider that the proposal would

lead to gloomy and oppressive living conditions for residents of the static caravan.

12. I note that the appellant is content with the living conditions provided by the site and that his health and wellbeing have improved considerably since moving onto the site. Whilst a personal occupancy condition has been suggested, I am mindful that this would include dependants potentially including children, and I do not consider that the outlook and light provided by the static caravan would provide suitable living conditions for such residents. Moreover, I do not consider that the personal circumstances of the appellant are of such a special nature to justify such a condition. I acknowledge that the height of the surrounding walls may increase the sense of security at the site. However, this matter would not outweigh my concerns with regard to the effect of the enclosure on the light and outlook of the static caravan.
13. I acknowledge that the internal layout of static caravans may vary. I also note that the appellant is willing to agree the siting of the mobile home within the site through appropriate conditions. However, based on what I have seen and read, I am not persuaded that there is a reasonable possibility that an alternative siting for a static caravan within this constrained site would be able to provide suitable living conditions for residents, with regards to both outlook and light.
14. With regards to noise and disturbance, the appellant emphasises that the pallet business is on a separate site. However, whilst the appeal site and the business use may be shown as being separate on the submitted plans, I saw that they are located within the same compound and the evidence suggests that they are within the same ownership. Even with the provision of the garden, the residential and business uses would have the characteristics of being a mixed use live/work unit within a self-contained plot.
15. A central tenet of the Council's concerns on noise and disturbance is that the adjacent pallet business could be put to a different use which may be detrimental to the living conditions of residents of the appeal site. An unneighbourly use could also harm the outlook from the appeal site e.g. through the unsightly storage of materials or waste. After some discussion at the Hearing it was subsequently agreed that, on a working assumption that the commercial use is *sui generis*, suitable controls would remain on this land to prevent use for other unsuitable business purposes. I am also mindful that it would not be in the appellant's best interests to permit an unneighbourly use on this land. I therefore consider that there are appropriate controls in respect of the use of the adjacent commercial land. Within that context, I conclude that the adjacent commercial use would not be detrimental to the living conditions of residents as a result of noise, disturbance or outlook.
16. Notwithstanding my comments in relation to noise and disturbance, I conclude that the proposal would not provide suitable living conditions for residents of the site with regard to outlook and light. The proposal would therefore be contrary to Policies SD4 and H7 of the LP with regard to the adverse impact on the amenity of occupiers of land and the adequacy of accommodation.

Other Material Considerations

17. The appellant contends that there is a need for more gypsy/traveller sites within the Borough. The Council accepts that there is a need, but considers

that this is met through development plan policy, including a proposed extension to the existing site known as 'The Haven'. This extension would provide a further 9 pitches (increasing the total to at least 22 pitches) which would meet the need identified in the Traveller Accommodation Assessment 2015 for the period up to 2032.

18. The appellant has questioned whether the provision of such a large number of pitches on a single site would be best practice. However, the Council state that the site is operated by an experienced owner and is monitored by Council staff. I am also mindful that the Councils approach to gypsy and traveller needs and the site selection process was considered to be sound as part of the recent adoption of the LP. The evidence therefore suggests that the proposed extension to The Haven would not raise operational issues of such a degree which would undermine its suitability.
19. The appellant has questioned the deliverability of the extension to The Haven site. However, I saw that the site of the extension was no longer in use as a motorsports facility and the Council confirms that it is within their ownership. Based on what I have seen and read, there is no substantive evidence that the extension to The Haven cannot be delivered.
20. The appellant emphasises that the Planning Policy for Traveller Sites 2015 (PPTS) aims to promote private traveller site provision. I acknowledge that the proposal would meet this aim and that this should carry some weight. That said, having regard to the available spaces at the nearby Haven site, I only give this matter limited weight in favour of the proposal. The proposal would also enable the provision of a mixed planning use live/work site which the PPTS states can contribute to sustainability through omitting many travel to work journeys. However, due to the proximity and ease of access of The Haven to the appellant's business this should carry only limited weight in favour of the appeal.
21. Whilst there was a short discussion at the Hearing about the gypsy status of the appellant, I note that both parties agree this status in the Statement of Common Ground and no substantive evidence has been provided to contradict this.
22. I have had regard to the personal circumstances of the appellant, including the contents of the letter from the South Grange Medical Group Practice. I also acknowledge that the appellant does not wish to live at The Haven and would prefer to live on a private site in the vicinity due to the support available from family and friends at The Haven. However, this is essentially a matter of personal preference, and I give this limited weight in favour of the appeal.
23. The Council also confirmed at the Hearing that there were currently 2 vacant pitches at The Haven which would be available as alternative accommodation for the appellant. Policy H7 of the LP states that other travelling community sites will only be permitted if the demand for pitches is such that they cannot be provide at The Haven or if there are operational reasons. Based on the evidence before me, neither of these circumstances apply in this appeal.
24. Throughout my consideration of this appeal I have been mindful of the rights under the Human Rights Act 1998, which are qualified and interference with them may be justified where in the public interest. The concept of proportionality is crucial. In this case such interference would be in accordance

with the law and in pursuit of a well-established and legitimate aim, the prevention of harm to living conditions. The harm to the living conditions of occupants of the site outweighs the human rights of the appellant and his dependants with regard to his wish to live on the site. The availability of pitches at The Haven would also mean that the appellant would be unlikely to be homeless. The appellant is a gypsy who are a protected group for the purposes of the Equality Act 2010. The requirements of the Public Sector Equality Duty are to eliminate discrimination and to promote equality and good relations between those with protected characteristics and those without. However, in dismissing the appeal, none of these duties would be breached.

25. I acknowledge that the proposal would be located on brownfield land and it is common ground between the parties that it is in a sustainable location with regard to access to services. However, this can be said of many sites in the area and would carry limited weight in favour of the proposal. The appellant also emphasises that there would be no effect on matters including character and appearance, highways safety, living conditions of nearby occupiers, flooding and contamination. However, a lack of harm is not a benefit and is neutral in the overall planning balance.
26. Drawing the above together, I have given limited weight in favour of the proposal with regards to the provision of a private live/work pitch, the location on brownfield land in a sustainable location, and the personal circumstances of the appellant. However, cumulatively these benefits would not outweigh the substantial harm that would arise to the living conditions of occupants of the site. Furthermore, mindful of the vacant pitches available at The Haven and the potential provision of further pitches, material considerations do not indicate that the decision should be made otherwise than in accordance with the development plan.

Conclusion

27. For the reasons given above, and taking account of all material planning considerations, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR

Appearances

FOR THE APPELLANT:

Bradley Stovell
David Stovell
Robert Foster

Stovell and Millwater Ltd
Stovell and Millwater Ltd

FOR THE COUNCIL

Adrian Miller BA Hons DipTP MRTPI
Clive Watts
Donna Cotterill

Redcar & Cleveland Borough Council
Redcar & Cleveland Borough Council
Redcar & Cleveland Borough Council

Documents Submitted at the Hearing

1. Letter from the South Grange Medical Group Practice, 22 January 2019.

2. Extract from LP Policies Map showing extent of Policy ED6 designation.
3. LP Policies Map document.
4. Copies of LP Policies SD3 and LS4 and supporting text.

Documents Received Following the Hearing (by request of the Inspector)

1. Correspondence in respect of the necessity of a condition re. the ownership and use of land adjacent to the appeal site.