



Appeal Decisions

Site visit made on 7 November 2019

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 20 January 2020

Appeal Ref: APP/X1355/C/18/3211113 (Appeal A)

Land to the south of 27 Weardale Park, Wheatley Hill DH6 3QQ

- 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 Alex Dobbing against an enforcement notice issued by Durham County Council.
 - The enforcement notice was issued on 10 August 2018.
 - The breach of planning control as alleged in the notice is: without planning permission the operational development consisting of unauthorised creation of hardstanding and enclosures.
 - The requirements of the notice are: a. Remove completely and permanently from the land all of the hardstanding area and associated materials within the area edged in red on the plan attached to the enforcement notice. b. Replace all areas with top soil and re-seed with grass.
 - The period for compliance with the requirements is 56 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) & (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Appeal Refs: APP/X1355/C/18/3211114 (Appeal B) &

APP/X1355/C/18/3211115 (Appeal C)

Land to the south of 27 Weardale Park, Wheatley Hill DH6 3QQ

- 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 Mrs Lisa Allen (Appeal B) and Mr Graham Lowther (Appeal C) against an enforcement notice issued by Durham County Council.
 - The enforcement notice was issued on 10 August 2018.
 - The breach of planning control as alleged in the notice is: without planning permission the operational development consisting of unauthorised creation of hardstanding and enclosures.
 - The requirements of the notice are: a. Remove completely and permanently from the land all of the hardstanding area and associated materials within the area edged in red on the plan attached to the enforcement notice. b. Replace all areas with top soil and re-seed with grass.
 - The period for compliance with the requirements is 56 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decisions

1. Appeals A, B and C are dismissed, the deemed planning application is refused, and the enforcement notice is upheld.

Appeal A - ground (a) and the deemed planning application

Main issue

2. The main issue is the effect of the development on the character and appearance of the surrounding area.

Reasons

3. The appeal site is located just outside the settlement boundary of Wheatley Hill, and so is in the open countryside for planning purposes. Policy 1 of the District of Easington Local Plan (LP) requires development to be located within defined settlement boundaries, unless a proposal in the countryside would be allowed by other policies in the plan. Similarly, LP Policy 3 resists development in the countryside, unless it is specifically allowed for by other policies.
4. Although the site lies outside the development boundary, it is immediately adjacent to an area of housing. To the south is agricultural land with an open, rural character. The appeal site was formerly in use as allotments. When the allotment use ceased, most of the associated structures and paraphernalia were removed, leaving an open area. The site has since been subdivided into smaller plots which have been enclosed by fencing and field gates. Furthermore, the land has been resurfaced with hardstanding, which is described by the Council as being composed mainly of loose aggregate. The Council estimate that the hardstanding covers an area of around 5865sqm, which is undisputed by the appellant.
5. I note that the appellant objects to the Council's use of the term 'hardstanding' in relation to the crushed stone. However, I consider it to be a satisfactory general term to describe the unauthorised covering, and one which is readily understood in this context. I therefore see no pressing reason to correct this particular wording within the enforcement notice.
6. I have been provided with an undated aerial photograph of the site which shows the predominantly green plots and numerous small buildings that previously characterised the allotments. An aerial photograph from 2017 of the site (Council's Appendix A) shows the site cleared of the structures and plot divisions. Whilst I accept that the site was not lawned, as such, it is clear from this photograph that it was still largely green in character, and not dissimilar to the adjacent fields in terms of its surface appearance.
7. As a result, there was a strong degree of visual compatibility between the appeal site and the open countryside beyond. Although the site had previously been developed as allotments, its verdant, open appearance provided an appropriate transition between the built-up housing areas and the rural landscape.
8. The aerial photograph of the site from 2018 (Council's Appendix B) shows the majority of the surface laid with the greyish crushed stone, and subdivided with fencing. By contrast to the situation shown in the 2017 image, the fencing and hardstanding have produced a much harder visual edge to the settlement. The

appellant contends that any greenery on the site, prior to the unauthorised development, comprised weeds and some poorly nourished plants that survived from the use of the allotments.

9. Nevertheless, it is clear from the photographs that the land was significantly more verdant than it is now. With the loss of this greenery, the sense of transition into the countryside has diminished. Also, the fencing off of the site has significantly reduced the previous openness that was a positive part of its character.
10. Drawing these elements together, I conclude that the development has unacceptably harmed the character and appearance of the surrounding area. It thus conflicts with LP Policies 1 and 3, and also LP Policy 35, insofar as it requires development to reflect the character of the area generally, in terms of site coverage, and to provide adequate open space and appropriate landscape features.
11. The appellant argues that the works were necessary to improve the condition of the appeal site, which had become a target for fly tipping and anti-social behaviour whilst unfenced. However, there is little detailed or quantitative evidence before me of these problems, which limits the weight I can afford them. The appellant contends that the hardstanding was needed to keep the area tidy, following the removal of the weeds and dangerous materials that had accumulated. It was intended to suppress the growth of new weeds and prevent the spread of mud onto the highway. Nevertheless, it may be that these outcomes could have been achieved independently of the appeal scheme, and so they do not outweigh the harm I have identified.
12. Furthermore, the appellant states that the hardstanding is intended to provide better drainage in preparation for the proposed residential redevelopment of the site. I have taken into account that a pre-application enquiry (ref PRE28/16/01182) was made to the Council, whose response indicated that housing would be acceptable in principle on the site. However, this pre-application enquiry was made some years ago, in 2016, and there is little evidence of such a scheme being progressed since then. Therefore, the harm arising from the unauthorised development could potentially persist for some considerable time, if not indefinitely. The possibility of a housing scheme coming forward at some point in the future would therefore not justify the on-going harm arising from the appeal scheme.
13. The appeal on ground (a), and the deemed application for planning permission, must therefore fail.

Appeals A, B & C – ground (f)

14. The appeals on ground (f) are that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control.
15. The appellants suggest that lesser steps to overcome the Council's objection would be for the land owners to continue to maintain the land until it is developed into housing at some unspecified future time. However, there is no obvious mechanism by which the owners could be compelled to keep the land maintained on a regular basis. This would be a voluntary action which could not easily be enforced. Moreover, such a measure would not remove the

Council's fundamental objection to the development, which is the harm to the character and appearance of the area.

16. The appellants take issue with the requirement to re-seed the appeal site with grass. The purpose of the notice is to remedy the breach and restore the land to its condition before the breach took place. Whilst the land may not have been lawned, the 2018 photograph shows that it was covered in some form of greenery, in contrast to the previous use of growing produce on the allotments. In the absence of any sufficiently detailed evidence as to the species of plants that were present prior to the breach, I am satisfied that re-seeding with grass is the most appropriate and straightforward remedy in this instance.
17. It may be the case that some level of disturbance, including noise and dust, would occur to neighbouring residents from the works to remedy the breach. However, this would be temporary, and would not justify any lesser steps.
18. Taking these factors into account, I am satisfied that the requirements are commensurate with the aims of the enforcement notice. Thus, the appeals on ground (f) fail.

Conclusion

19. For the reasons above, all three appeals are dismissed, and the enforcement notice is upheld.

Elaine Gray

INSPECTOR