



Appeal Decisions

Hearing Held on 16 March 2021

Site visit made on 18 March 2021

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 7TH JUNE 2021

Appeal A Ref: APP/F1040/C/20/3251536

Land at SK2913 6212, Acresford Road, Netherseal, Swadlincote, South Derbyshire DE12 8AP

- 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 Ellen McDonagh against an enforcement notice issued by South Derbyshire District Council.
 - The enforcement notice was issued on 8 April 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from use for the siting of one gypsy/traveller pitch to two pitches, along with the erection of two amenity buildings, the creation of hard surfacing and alterations to widen the site access.
 - The requirements of the notice are:
 1. Cease the use of the land for the siting of caravans to create a gypsy/traveller site, except for the implementation of planning permission 9/2018/0616.
 2. Permanently remove all caravans from the site, except for those granted planning permission under approval 9/2018/0616.
 3. Dig out and remove the rubble/hardcore material from the land, with the exception of that which can remain in the area approved under 9/2018/0616. (Approved plan attached, dated 12 Jun 2018)
 4. Dismantle and remove the timber amenity building and timber shower block from the land.
 5. Remove the concrete bases that the timber amenity building and timber shower block are sited on from the land.
 6. Deposit the waste and material arising from compliance with steps 3 and 5 at an authorised waste transfer station.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B Ref: APP/F1040/W/20/3248284

Land at SK2913 6212, Acresford Road, Netherseal, Swadlincote, South Derbyshire DE12 8AP

- 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 B and E McDonagh against the decision of South Derbyshire District Council.
- The application Ref DMPA/2019/1408, dated 6 December 2019, was refused by notice dated 27 February 2020.

- The development proposed is extension of existing Traveller pitch to create additional pitch and erection of amenity building and associated parking area.
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Decisions

Appeal A

1. It is directed that the enforcement notice be:
 - corrected by the deletion of the text in section 3 and its substitution with the following text:

Without planning permission, the material change of use of the land to a mixed use as a gypsy/traveller site with two pitches, along with the erection of two amenity buildings, engineering operations comprising the creation of hard surfacing through the deposit and regrading of rubble and hardcore material and alterations to widen the site access to facilitate the use, and agriculture.
 - varied by the deletion of requirement 6 in section 5 and its substitution with the following text:

'Remove from the site any surplus material arising from compliance with steps 3 and 5'.

Subject to these corrections Appeal A 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

Appeal B

2. The appeal is allowed and planning permission is granted for the change of use of land for the siting of two gypsy/traveller pitches in lieu of one pitch previously approved under application ref. 9/2018/0616, along with the erection of two amenity buildings, the creation of a hard surfaced parking area and access drive, engineering operations to amend the site levels, along with alterations to the site access at Land at SK2913 6212, Acresford Road, Netherseal, Swadlincote, South Derbyshire DE12 8AP in accordance with the terms of the application, Ref. DMPA/2019/1408, dated 6 December 2019 and the plans submitted with it, subject to the conditions set out in the attached schedule.

Procedural Matter

3. The local Councillor appeared at the Hearing and there were a number of objections/comments from local residents regarding the unauthorised development. The Councillor expressed concerns that some residents may not have been able to access the virtual event for technical reasons but I have been able to take account of their written submissions and I do not consider that any of the interested parties has been substantially prejudiced by any inability to access the event.

Preliminary matters

4. Following the submission of the planning application, which is the subject of Appeal B, the Council agreed a revision to the description of development with the appellants as follows:

‘Change of use of land for the siting of two gypsy/traveller pitches in lieu of one pitch previously approved under application ref. 9/2018/0616, along with the erection of two amenity buildings, the creation of a hard surfaced parking area and access drive, engineering operations to amend the site levels, along with alterations to the site access.’

The Council determined the application on the basis of the revised description and I have determined the appeal accordingly.

5. The Council confirmed that since the planning decision was issued in relation to Appeal B and the notice was served in relation to Appeal A, it has withdrawn its second reason for the refusal of planning permission which related to the impact of the proposed development on the River Mease Special Area of Conservation (SAC). A copy of the Habitats Regulations Assessment (HRA) which the Council has carried out has also been sent to me.
6. Whilst clarification that the Council is not presenting a case in relation to one of its reasons for refusal would ordinarily result in that matter falling away as a main issue for a subsequent appeal, this case is different. The potential for an adverse impact upon a European Site, which includes a SAC, still needs to be considered under the Habitats Regulations and I am required to carry out an ‘appropriate assessment’ as the decision maker in this regard. For this reason, I have dealt with the issue of impact on the SAC as a main issue.
7. Both parties also agreed that the site would be occupied by people who meet the definition of gypsies and travellers as set out in the Planning Policy for Traveller Sites (PPTS) and that the PPTS is material to the consideration of both appeals. Matters relating to human rights, the public sector equality duty and the best interests of children are integral to my decision and I have concluded on them in my determinations of the appeals.

The Notice

The site plan

8. The site plan which accompanies the notice identifies the land which accommodates the two pitches, amenity buildings, access and parking/turning space but it also includes other land in the appellant’s ownership (the other land). The Council says that it included the other land in the site to ensure that the requirement for the removal of hardcore/rubble set out in the notice applies to this area and that material is not moved onto it. At the Hearing I raised the question of whether the site plan should be amended to align it with the site plan for the planning application.
9. Neither the Council nor the appellant had any objections to the site plan being amended to relate to the pitches, amenity buildings, access, and parking/turning area only, however the Council did not consider this to be necessary. The Council has provided an amended site plan and neither party consider that injustice would arise should I decide to substitute the current enforcement site plan for it.

10. I have given further consideration as to whether the site plan should be amended to exclude the other land. On reflection I have decided that the site plan should include all of the land in the appellant's ownership because there is a service link across the other land towards the A444 and access to the other land from the site. Consequently, I have not substituted the site plan for that which was agreed by the parties.

The breach of planning control

11. During the Hearing the parties agreed that the breach of planning control could be corrected to include reference to 'engineering operations' to more clearly describe the hard surfacing and alterations to widen the site access. A further correction is necessary to align the breach and requirement (3), to provide further clarity. This can be achieved through a correction to include the deposit and regrading of rubble and hardcore material as a descriptor of the creation of the hard surfacing.
12. The breach as set out on the notice relates to a material change of use, and the Council consider the buildings and operations which have been carried out on the site to facilitate the use as opposed to being separate operational development. The breach also refers to a change in the use of land from a use for the siting of one gypsy/traveller pitch. Whilst the appellant says that the approved scheme for the development of one pitch (Council Ref. 9/2018/0616) (the approved planning application) was implemented, it is not necessary for this use to be referred to in the notice. There is a ground (a) appeal in this case, therefore, the planning history of the site is a matter which can be given weight in relation to the merits of the appeal scheme.
13. As I have decided not to amend the site notice, the use of the land beyond the pitches and parking/turning area needs to be described as part of the breach. Such a change widens the terms of the notice to relate to a mixed use. Therefore, I have sought comments from the parties on this point along with the corrections which I have referred to in paragraphs 11 and 12 above.
14. The appellant has no objection to the correction of the breach, and I have not received any comments from the Council.
15. As corrected the breach would read as follows:

Without planning permission, the material change of use of the land to a mixed use as a gypsy/traveller site with two pitches, along with the erection of two amenity buildings, engineering operations comprising the creation of hard surfacing through the deposit and regrading of rubble and hardcore material and alterations to widen the site access to facilitate the use, and agriculture.

The works which have taken place on site

16. Both parties advised at the Hearing that the development which has been carried out on site to date goes beyond that which is the subject of the planning application, but neither specified what the differences are. The appellants confirmed that they are not seeking consent for what is currently on the site and it was accepted that some works would need to be undone. Consequently, I have dealt with Appeal B on the basis that the planning application seeks approval for proposed development and does not seek to

regularise the development which has taken place on site. In that context the planning application which is the subject of Appeal B is not retrospective.

17. At my site visit I saw two amenity buildings, of timber construction, in roughly the locations shown on the plan accompanying the planning application, but the caravans were not in the same configurations to those shown on that plan. Beyond the pitches was an area of land which was open and unused, and vehicles were parked around the caravans.
18. Fences have also been erected around the two pitches and the open area, separating them from the agricultural land within the site, and for a short length adjacent to the A444. The erection of fences is not referred to in the notice either in terms of the allegation or the requirements.
19. I have given consideration as to whether it would be appropriate for me to amend the requirements of the notice to secure the removal of the fences, to bring those matters within the scope of the DPA. However, the inclusion of the fences would increase the scope of the requirements and the effect of the fences on the character and appearance of the area is not a matter which the appellant has had the opportunity to address. Therefore, such amendments would cause injustice.

Ground (a) and the Deemed Planning Application (DPA)

20. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted.
21. The DPA is derived from the breach of planning control as set out in the notice. In this case I have corrected the description of the breach, therefore the DPA is for 'the change of use of the land to a mixed use as a gypsy/traveller site with two pitches, along with the erection of two amenity buildings, engineering operations comprising the creation of hard surfacing through the deposit and regrading of rubble and hardcore material and alterations to widen the site access to facilitate the use, and agriculture'.

Main issues

22. The main issues in this case are:

- The effect of the development on:
 - the landscape character of the surrounding area; and
 - the River Mease Special Area of Conservation (the SAC).
- Whether or not there are any material considerations, including Planning Policy for Travellers Sites (PPTS) which outweigh any harm which arises from the development.

Reasons

Character and Appearance

23. The Council confirmed that the relevant planning policies for the consideration of character and appearance are Policy BNE4 and Policy H22 of the South Derbyshire Local Plan Part 1 2016 and Policy BNE5 of the Local Plan Part 2 2017 (the Local Plan). There is no dispute between the parties that these

- policies are consistent with the National Planning Policy Framework (the Framework). The Council also clarified that the site is not subject to any specific landscape designation and that the designation of the SAC has no direct bearing on the consideration of character and appearance.
24. Policy BNE4 seeks, amongst other things, to protect and enhance the character of South Derbyshire's landscape through careful design and sensitive implementation of new development. It establishes that development which has an unacceptable impact on landscape character and cannot be satisfactorily mitigated will not be permitted. Policy BNE5 also requires that development in rural areas does not unduly impact on landscape character.
 25. Policy H22 deals specifically with sites for gypsies and travellers and travelling show people. It includes a criterion, amongst other criteria, that development does not result in an unacceptable impact on the surrounding landscape, unless capable of sympathetic assimilation.
 26. The appellant did not identify any particular shortcomings in terms of the analysis of the Council's description of the character and appearance of the site context. The key issue between the parties was in relation to the impact of the development in comparison with that which has already been approved on the site (the approved scheme).
 27. The approved scheme is for one pitch on a smaller site and with a limited extent of hardstanding. By comparison the development to which the notice relates occupies a larger site and the nature of the development is more complex, comprising a mixed use which includes two pitches, two amenity buildings and extensive hard surfacing. There has been no change to the appearance of that part of the site which is in agricultural use. Therefore, the assessment of the impact on the character of the landscape needs only to address the effect of the gypsy/traveller site element of the mixed use.
 28. Acresford Road follows a meandering downward slope towards its junction with the A444. The Council's Landscape and Visual Impact Appraisal (LVIA) includes photos which show that the existing built form follows Measham Road off the A444 and that the Cricketts Inn and other buildings are on the opposite side of Acresford Road close to the junction, this gives the appearance of buildings being clustered around the road junction. As Acresford Road rises away from the A444 buildings become sporadic in nature but there is a large detached house on the brow of the hill, Coronation House.
 29. The A444 is subject to a steady stream of traffic whereas Acresford Road is a quiet rural lane bounded by hedges. As described by the Council at the Hearing some of the roadside hedges appear to be managed and have been cut back, which affords views over them. The hedge along the roadside edge of the site is generally higher than the surrounding hedges and when the hedge plants are in leaf it would provide extra screening of the site. In the Winter/early Spring the high fences which surround the site would be very visible through the hedge.
 30. There are partial footpaths on both sides of the A444, however the speed and frequency of traffic mean that it is not a pleasant environment for pedestrians. Nevertheless, as a result of the level of the road as it crosses Hooborough Brook and a gap in low level planting there is a clear view of the site from this

direction which would be experienced by passengers in vehicles and anybody on foot or cycle.

31. The most visually intrusive element of the development at present are the high fences surrounding the pitches and parking/turning area and the fence alongside the A444, which are alien features in the landscape. However, these fences are not before me for consideration.
32. The site is larger than that which has planning permission, consequently, a more extensive area has been subject to the creation of hard surfacing through the deposit and regrading of rubble and hardcore material. Notwithstanding the presence of the fences, the significant difference in the height of the land occupied by the pitches and turning/parking area and the agricultural land on the wider site is very marked. This is apparent in the view of the site from the A444 and has an unacceptable impact on the surrounding landscape.
33. I observed that most of the caravans on the site were set parallel to Acresford Road and that two were positioned adjacent to the access drive in the same alignment. Without the screen effect of the fence the caravans beside Acresford Road would be visible through the hedge when it is not in leaf. They would form a solid visual barrier against the road and the pavement which runs alongside it. Parts of the other two caravans are already visible above the fences in the view from the A444 and their position on the site would be very prominent without the screening effect of the fences. Thus, the layout of the caravans contributes to the unacceptable impact on the landscape.
34. I have given consideration to whether the layout of the site could be subject to a planning condition of the form that would require a layout to be agreed with the Council. However, on its own a revised layout would not overcome the totality of the harm that I have found and I cannot be certain that a satisfactory layout could be secured.
35. Even if some of the hard surfaced area could be lawfully retained in accordance with the planning permission for the single pitch, this would only address part of the site. I have given consideration as to whether I could impose a condition on a grant of permission for the DPA to secure the removal of material from the land and regrading to reduce the impact of the hard surfaced areas but there is no evidence before me that such works would overcome the unacceptable impact which I have identified. In the light of this I am also unconvinced that such a condition would meet the tests of being precise and enforceable.
36. I have also considered whether I could impose a landscaping condition to mitigate the impact of the development in its setting. However, given the significant impact of the hard surfacing works and in the absence of any detailed proposals for landscaping I am not persuaded that even when trees and other planting matured it would successfully mitigate the impact of the development.
37. In order to achieve a satisfactory solution, in combination the layout and hard surfacing would need to be significantly altered and proposals for detailed landscaping brought forward. There is no certainty that the imposition of planning conditions and compliance with them would successfully achieve this.
38. This is not a site which is located in undeveloped, open countryside. However, the development to which the notice relates has led to a change in the

appearance of the land over a larger area than the approved scheme and the introduction of additional caravans, buildings, and hard surfacing. I consider the development has an unacceptable impact on landscape character. This impact cannot be satisfactorily mitigated by the imposition of planning conditions and it follows that the development is not capable of being satisfactorily assimilated into the surrounding landscape.

39. I conclude that the development has a harmful effect on the landscape character of the surrounding area, which is contrary to Policies BNE4, BNE5 and H22 of the Local Plan.

River Mease SAC

40. The Conservation of Habitats and Species Regulations 2017 requires that where any proposal is likely to have a significant effect on a European site either alone or in combination with other plans or projects, an appropriate assessment must be made in view of that site's conservation objectives. Circular 06/2005 sets out that the decision on whether or not an appropriate assessment is necessary should be made on a precautionary basis.
41. The River Mease is defined as a Special Area of Conservation (SAC) because it is an important conservation site due to the habitats which it provides and the species which are present. A SAC falls within the definition of a European site.
42. Policy BNE3 of the Local Plan states that planning proposals that could have a direct or indirect effect on sites of ecological importance, which includes the River Mease SAC, will be refused where mitigation measures/compensation cannot sufficiently offset significant harm. Policies BNE5 and H22 also restrict development which has an unacceptable impact on biodiversity.
43. In this case the Council has carried out a Habitats Regulations Assessment (HRA) which has been considered by Natural England. The HRA includes recommended mitigation measures which are proposed to address any likely effects of the development on the SAC. In addition to onsite works, which are capable of being secured by planning conditions, the mitigation includes the payment of £633 in accordance with the River Mease Developer Contributions Scheme (DCS2). The DCS2 ensures that the effects of any additional phosphates generated by the drainage associated with the development are offset.
44. Subject to the mitigation measures set out in the HRA being secured Natural England has no objections. The appellant has provided the DCS2 contribution via a unilateral undertaking (UU) in a form which the Council finds to be satisfactory. However, the UU is linked to the planning application made under the Council's reference DMPA/2019/1408 and not the DPA.
45. I find that a unilateral undertaking is necessary to make the development acceptable, directly related to the development and, on the basis that the agreed formula for calculation of the DCS2 contribution has been applied, that it is fairly and reasonably related in scale and kind to the development. Were I to be allowing the DPA I would have sought a further UU in respect of that application and I am confident that the appellants would have entered into such an agreement.
46. The HRA has been provided and I have comments in support of the mitigation measures proposed in the HRA from Natural England, which is the appropriate

body to advise on matters relating to impacts on a SAC. I have, in my role as decision maker, therefore been able to carry out the appropriate assessment.

47. I have a statutory duty to ensure that there would be no adverse effect upon the integrity of the SAC and the evidence before me leads me to that finding. Therefore, I conclude that, subject to the mitigation measures which can be secured, including a further UU in respect of the DPA, the development would not have a harmful effect on the River Mease SAC and that in such circumstances it would be in accordance with Policies BNE3, BNE5 and H22 of the Local Plan.

Material considerations

Need for/supply of gypsy and traveller sites

48. The PPTS, which is itself a material consideration, makes it clear that a relevant matter in the consideration of planning applications for traveller sites is the existing level of local provision and need for sites.
49. Notwithstanding that the need for Gypsy and Traveller sites was not quantified, there is no dispute between the parties that there is a need for such sites within the Council area. Whilst the Council argues that it takes a positive approach to the provision of such sites, nevertheless it accepts that it has no adopted policy in terms of site allocations, and it has no 5 year supply of deliverable sites.
50. The Council says that the work which it has commenced in terms of site allocation has been impacted by the Covid-19 and that it may become more expedient to allocate sites through a revised Local Plan. As it stands the Council accepts that it is reliant on the provision of new sites through the planning application process.

Availability (or lack) of alternative accommodation

51. This is also defined as a relevant matter in the PPTS. In this case, there is no evidence that the appellant has an alternative site available to her and her family and the Council's Planning Committee, when it determined the planning application which is the subject of Appeal B, was advised that there were no alternative sites available and no spaces on existing sites in the area.
52. Consequently, in view of the requirements of the notice at least one family would be likely to have to relocate to the roadside. This would make access to education and health services more difficult for that family and it is also not in the public interest to have a family living on the road with no access to drainage or facilities for the storage of waste etc.

Other personal circumstances

53. The development allows the expansion of the area of caravan pitches to accommodate a larger family group allowing a degree of mutual support and co-operation which is acknowledged as of importance to the Gypsy and Traveller community. The site will also provide a stable base from which both families can access essential services such as schools and healthcare. This is particularly important in this case given that two of the children on the site need to attend regular hospital appointments.

54. Some of the children on the site attend the local school and it is anticipated that as they grow up other children will be pupils there. The Headteacher has confirmed that the children who currently attend are thriving and occupation of the site would give the same opportunity to the younger children.
55. The personal circumstances of the appellant has an effect on the scale of the development because there is a particular wish to provide separation between the parking and turning area and the pitches which arises from an event in the family's history. Whilst this part of the development increases the scale of it, the appellant's reasoning is understandable.

The Planning Balance

56. Policy H of the PPTS is a reminder that planning law requires that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise.
57. In this case I have concluded that the development is contrary to the development plan in terms of those policies which seek to protect landscape character and one of the criteria against which the development of gypsy and traveller sites are judged. This harm arises in particular as a consequence of the site layout and the deposit and regrading of rubble on the site to create the hard surfacing. This impact has not been shown to be capable of being successfully mitigated through changes to the site layout in combination with works to the hard surfaced areas or landscaping and planning conditions could not be reasonably imposed to secure such mitigation. This matter attracts significant weight against allowing the appeal and granting the DPA.
58. Policy H22 of the Local Plan contains seven other criteria against which sites for gypsies and travellers are assessed. The evidence and my site visit have shown that these criteria have been met or could be met by the imposition of planning conditions. These matters weigh in favour of this site being an appropriate one for a gypsy and traveller site, but the weight is limited given that the development is not wholly in accordance with policy H22.
59. It has also been shown that subject to mitigation measures, there will be no harmful impact on the River Mease SAC. This has a neutral impact in the planning balance.
60. The Local Councillor who attended the hearing, highlighted objections from local residents in respect of the effect of the development on the landscape and the River Mease SAC, which I have already addressed. She also referred to concerns about the cutting down of trees on the site during the nesting season and an increase of anti-social behaviour by children living on the site. With regard to the effects on nesting birds, this matter is controlled by legislation which falls beyond planning control and therefore is not a matter before me. There is no substantive evidence to suggest that there would be any increase in anti-social behaviour were I to allow the appeals. Consequently, these matters attract no weight and have a neutral effect in the planning balance.
61. The need for gypsy and traveller sites, the lack of alternative accommodation and the other personal circumstances of the appellant all weigh in favour of allowing the appeal and granting the DPA.
62. Drawing all of the relevant considerations together, and in view of the significant weight that I have attached to the harmful effect of the development

on landscape character, I do not find that those matters which weigh in favour of the appeal and the approval of the DPA, outweigh the scale of harm which I have identified. The planning balance in relation to the development, which is the subject of the enforcement notice, as corrected, does not justify a decision other than in accordance with the development plan.

Human Rights and the Best Interests of the Children

63. The occupiers of the caravans are members of the Gypsy and Traveller community which is recognised as having special needs which are protected through positive obligations in terms of their human rights. Furthermore, the caravans are occupied as residential accommodation which are the homes of two families.
64. My decision to dismiss Appeal A, to uphold the enforcement notice (as corrected) and to refuse the DPA would lead to the loss of one of the pitches, which would affect the ability of the appellant to live a Gypsy way of life and result in the loss of their home. This would be an interference with the appellant's rights under the Human Rights Act 1998.
65. I have concluded that the harm arising from the development which is contrary to the development plan is not outweighed by the material considerations, including the need for gypsy and traveller sites and the personal circumstances of the appellant in this case. I have considered whether the imposition of conditions, in the form of works on site and landscaping, allowing the residents to stay on the site, would protect the public interest by means which would have less interference with an individual's rights. However, in this case, given the significant works necessary and the lack of certainty that a satisfactory outcome in terms of the effect on the landscape could be achieved through such works and other mitigation, I am of the view that the imposition of planning conditions would not adequately protect the public interest.
66. There are children on the site and any action which resulted in some of them not being able to live at the site would not be in the best interests of those children. Living on the roadside in particular would make access to school and hospital appointments difficult. The best interests of the children are a primary consideration and no other consideration is more important, however they are not a determinative factor.
67. In this case whilst allowing Appeal A and granting the DPA would be in the best interests of the children, this does not outweigh the harm which I have found in terms of the impact of the development on landscape character.
68. In reaching these conclusions in terms of the Public Sector Equality Duty and in respect of human rights and the Best Interests of the Children, I am mindful of my intention to allow Appeal B which would afford the option to the appellants of implementing a planning permission which would allow both families to remain on the site.
69. The time for compliance with the enforcement notice, which is upheld under Appeal A, allows the opportunity for the appellants to implement the planning permission for two pitches thus enabling both families to remain on site. In this context my determination of both appeals provides both appellants with an option to stay on the site and strikes a fair balance and would be a proportionate response in terms of my positive obligations under the Human

Rights Act and the Best Interests of the Children and discharges my obligations under the Public Sector Equality Duty.

Conclusion on ground (a) and the DPA

70. For the reasons given above, I conclude that the appeal under ground (a) (Appeal A) should not succeed and that the DPA should not be granted.

Ground (f)

71. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
72. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the use of the land to cease, I consider the purpose is to remedy the breach of planning control.
73. Under their ground (f) appeal in respect of Appeal A the appellant requested that requirements 3 and 6 of the notice be amended to accord with a recent appeal decision at the same site (Refs. APP/F1040/C/19/3237351, 3237352 and 3237353) (the 2020 appeal decision). The Council says that it received the 2020 appeal decision at the same time that the notice was served and that had it received it earlier it would have amended the requirements to accord with the changes made by the Inspector in that case. On this basis the Council concedes ground (f) of the enforcement appeal, subject to requirements 3 and 6 being amended to the form of words used in the 2020 appeal decision.
74. The 2020 appeal decision was in respect of the issuing of an enforcement notice by the Council for the formation of a concrete base and engineering operations to alter land levels at the site.
75. Requirement 3 of the notice to which the 2020 appeal decision relates (the 2019 Notice), originally required the removal of rubble with the exception of that which could remain in the area under the approved scheme. The Inspector amended requirement 3 to require compliance with the terms, including the conditions and limitations, of that approved planning permission.
76. Under section 57(4) of the Planning Act 1990 where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which it could lawfully have been used if that development had not been carried out. This is already addressed by the reference to the approved planning permission in requirement 3, and also in requirements 1 and 2.
77. The previous Inspector was not considering the use of the land, only the operational development which had taken place. In deciding to vary the requirement in terms of the removal of material from the land she had concluded on the basis of the evidence that the amount of material was not in excess of that allowed for under the extant planning permission. This provided justification for the variation of the requirement in that case to refer to the terms, including the conditions and limitations of the planning permission.

78. In contrast I am dealing with the use of the site and there is no information before me regarding the amount of material which has been brought onto the site and whether or not any of it is in accordance with that agreed by the Council in the context of the approved planning application. For that reason, the reference to the approved planning application in requirements 1, 2 and 3 is sufficient to highlight the appellant's rights under section 57(4) of the Act and no variation or correction of the requirements is necessary.

79. In relation to requirement 6, the previous Inspector corrected the notice to remove reference to 'an authorised waste transfer station' on the basis that this would be addressed by other legislation and there is no need to impose it as a requirement. I take the same view and shall vary the notice.

Conclusion on ground (f)

80. It has been shown that the requirements of the notice exceed what is necessary in relation to requirement 6 and the appeal under ground (f) succeeds to this limited extent.

Conclusion in respect of Appeal A and the DPA

81. For the reasons given above, I conclude that the appeal under ground (a) (Appeal A) should not succeed. I shall uphold the enforcement notice with a correction and a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

Appeal B

82. Appeal B relates to the refusal of planning permission by the Council for change of use of land for the siting of two gypsy/traveller pitches in lieu of one pitch previously approved under application ref. 9/2018/0616, along with the erection of two amenity buildings, the creation of a hard surfaced parking area and access drive, engineering operations to amend the site levels, along with alterations to the site access (the planning appeal).

83. The key difference between the planning appeal and the appeals against the enforcement notice is that the planning application was supported by plans which provide certainty about matters such as site layout, land levels and the proposed boundaries to the pitches and parking/turning area.

Main Issues

84. The main issues in this case are:

- The effect of the development on:
 - the landscape character of the surrounding area; and
 - the River Mease Special Area of Conservation (the SAC).
- Whether or not there are any material considerations, including Planning Policy for Travellers Sites (PPTS) which outweigh any harm which arises from the development.

Reasons

Character and Appearance

85. In common with Appeal A the relevant policies are Policies BNE4, BNE5 and H22 of the Local Plan and the key issue between the parties is the impact of the development for which planning permission is sought in comparison with what has already been approved on the site.
86. Planning permission was sought for a more extensive development than the approved scheme, both in terms of the size of the site and the number of pitches. Consequently, the proposed development would have a greater impact on the character of the landscape than the approved scheme.
87. However, in terms of the land levels, those shown on the submitted sections A-A and B-B show a gentle slope across the site. Consequently, the proposed new tree and other planting on the boundary between the parking/turning area and the agricultural land running towards the A444 would be effective in screening the site from that direction to a significant extent.
88. The proposed site layout places the two mobile homes perpendicular to Acresford Road, such that the enclosing effect of caravans visible through the hedge would be limited. The layout shown on the plans would also provide a much stronger sense of connection between Acresford Road and the natural landscape alongside Hooborough Brook. Although there would still be a touring caravan close to the access drive close to the middle of the site this would not significantly impinge on the views from the A444.
89. In terms of the boundary treatment shown on the plans, the proposed two metre high timber screen fence along Acresford Road would reduce the degree of visual connection between the road and the countryside to some degree. However, the post and rail fence which would define the boundary towards Hooborough Brook and the tree planting referred to above would be highly compatible with the rural context.
90. Drawing all of these strands together, whilst the development would have some adverse impact on the character of the landscape, most of this impact would be capable of being mitigated by adhering to the submitted plans, in terms of site levels, layout and boundary treatment and compliance with planning conditions. It follows that the development could be satisfactorily assimilated into the surrounding landscape and that it would not unduly impact on the character of the landscape.
91. For the reasons set out above I conclude that whilst the development, by virtue of its scale and extent, would have a harmful effect on the landscape character of the surrounding area, the degree of harm would not be unacceptable and that subject to the imposition and discharge of relevant planning conditions, it would be in accordance with Policies BNE4, BNE5 and H22 of the Local Plan.

River Mease SAC

92. There is no evidence before me nor any dispute between the parties that the impact of the development which is considered under Appeal B would be any different in terms of its impact on the River Mease SAC than that the subject of Appeal A. Consequently, I shall adopt the reasoning set out above in relation to

Appeal A, for my consideration of Appeal B and I conclude that the development would not have a harmful effect on the River Mease SAC. In such circumstances the development would be in accordance with Policies BNE3, BNE5 and H22 of the Local Plan.

Other matters

93. The need for gypsy and traveller sites, the lack of alternative accommodation and the other personal circumstances of the appellants all weigh in favour of allowing appeal B and granting planning permission.
94. I have addressed the matters which were raised by the Local Councillor and local residents in relation to the removal of trees and anti-social behaviour in my determination of Appeal A. These matters do not attract any weight in my determination of Appeal B.

Conditions

95. The conditions which were suggested by the Council sought to address the development which has already been carried out on the site. However, I have regarded the planning application which is the subject of Appeal B as seeking consent for proposed development with no retrospective element. For this reason, extensive re-drafting of the suggested planning conditions and additional conditions has been necessary.
96. As some of the conditions are pre-commencement conditions, I have sought and obtained the written agreement of the appellants to their inclusion.
97. Condition 1 is the standard three-year condition for the commencement of development and condition 2 requires that the development is carried out in accordance with the approved plans, which provides certainty.
98. In this case the impact of the development on landscape character is a particularly sensitive issue. It will be seen from my assessment that I have relied on the plans and sections particularly in terms of site layout and levels together with landscaping to establish that the development will have a satisfactory impact on the landscape character of the surrounding area. Adherence to the site sections and site layout shown on the submitted plans is necessary to ensure that the position of the caravans, amenity buildings and parking/turning area are controlled in terms of their impact on the landscape. For that reason, conditions are necessary to ensure that the site layout and site levels are delivered in accordance with the approved plans and that they are retained. (Conditions 3 and 4).
99. Although there is some information shown on the plans in respect of tree, hedge and shrub planting full details of landscaping are necessary to ensure that it provides an appropriate level of screening and integration of the pitches and hardstanding into the landscape. (Condition 5). A condition is also necessary to require that any trees or plants which die are replaced to maintain the effectiveness of landscaping in the long term. (Condition 6).
100. A condition to require the submission and approval of full details of boundary fencing to Acresford Road is necessary to ensure that the appearance of the fencing is compatible with the landscape character of Acresford Road. (Condition 7).

101. It is necessary for conditions 5 and 7 to be pre-commencement conditions to ensure that the layout of the site, the site levels and the landscaping can be implemented effectively and to enable landscaping/fencing to be established on site as soon as practicable following the implementation of the planning permission.
102. Conditions are required, in addition to those relating to landscaping and boundary treatment to ensure that the mitigation measures necessary to protect the River Mease SAC are implemented as set out in the HRA (Conditions 8, 9, 10 and 11). Conditions 9, 10 and 11 need to be pre-commencement conditions because given the importance of the SAC it is essential that the mitigation measures form an integral part of the detailed design of the site and that the site is developed, from the outset, in a way which protects the SAC.
103. The submitted plans show the shower room of timber construction and there are no details, shown on the plans, of the materials to be used to construct the amenity block. The appellants indicated that they wish to construct these buildings with facing brick, so I have included a condition to facilitate this or another material which is acceptable to the Council (Condition 12).
104. There is no street lighting along Acresford Road and while some external lighting on site will be necessary for the security of residents, excessive external lighting or floodlighting would be harmful to the character and appearance of the surrounding countryside. For this reason, an external lighting condition is necessary (Condition 13).
105. My decision has been made on the basis that the future occupiers of the site will be gypsies and travellers. Therefore, it is necessary to control the occupancy of the site (Condition 14).
106. Since the grant of planning permission is for use of land including for the siting of two pitches it is necessary to condition the maximum number of caravans and types of caravans on each pitch. (Condition 15) Similarly as there is an extensive area of hard standing for parking it is necessary to control the potential for adverse effects arising from the use of this area on the amenity of neighbouring residents and users of Acresford Road. For that reason, I have included conditions to limit the number and size of any commercial vehicles (Condition 16) and to preclude any commercial activities including the storage and burning of materials (Condition 17).

Conclusion in respect of Appeal B

107. For the reasons set out above, Appeal B is allowed, and planning permission is granted as set out in the Formal Decision.

Sarah Dyer

Inspector

Schedule of conditions

Appeal B

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Block Plan drawing ref. M.19.02 Revision A, the Amenity Block Elevations and Floorplans, Site sections A-A and B-B, and the Site Location Plan.
3. The site shall be laid out in accordance with Block Plan drawing ref. M.19.02 Revision A and shall be retained in that layout thereafter.
4. The site sections shall be delivered in accordance with the Site sections A-A and B-B and shall be retained thereafter.
5. No development shall commence until a landscape scheme for tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities has been submitted to and approved in writing by the local planning authority. 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. All tree, hedge and shrub planting shall be carried out in the first planting season following the approval of the landscape scheme.
6. In reference to condition 5, if any trees, plants or shrubs approved as part of the landscaping scheme, within 10 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and species, unless otherwise approved by the Local Planning Authority.
7. No development shall commence until full details of boundary fencing adjacent to Acresford Road have been submitted to and approved in writing by the local planning authority. The approved boundary fence shall be erected prior to occupation of the development hereby approved.
8. Prior to occupation of the development hereby approved, the shower/wc building and the amenity building shall be connected to the foul sewer and all foul drainage shall be disposed of via this connection thereafter.
9. No development shall commence until full details of a sustainable drainage system for the disposal of surface water (including a swale, shallow depression or scrape between the access track and parking/turning area to ensure that any surface water flows and sediment supplied by areas of hardstanding can be intercepted) and riparian buffer/tree planting details shall have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to occupation of the development hereby approved.
10. No development shall commence until full details of the installation of a post and rail fence or similar boundary treatment (reflecting flood risk) adjacent to Hooborough Brook to minimise the potential for disturbance/bank erosion has been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to occupation of the development hereby approved.

11. No development shall commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved CEMP.
12. Notwithstanding the details shown on the approved plans, prior to commencement of construction of the shower/wc building and the amenity building full details of the external materials to be used in the construction of those buildings shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the shower/wc building and the amenity building shall be constructed in accordance with the approved external materials.
13. Prior to the installation of any external lighting or floodlighting, a lighting scheme shall be submitted and approved in writing by the Local Planning Authority. Thereafter any external lighting or floodlighting shall accord with the approved lighting scheme.
14. The site shall not be occupied by any persons other than gypsies and travellers as defined in the Government 'Planning Policy for Traveller Sites' (August 2015) or any Government guidance which amends or replaces that guidance.
15. There shall be no more than two pitches on the site and no more than 5 caravans, as defined in the Caravan Sites and Control of Development Act 1960 (as amended) and the Caravan Sites Act 1968, stationed at any time on the site of which only two caravans shall be residential mobile homes/static caravans.
16. No more than a total of three commercial vehicles shall be kept on the land for use by the occupiers of the pitches hereby permitted, and each shall not exceed 3.5 tonnes in weight.
17. No commercial activities shall take place on the land, including the storage or burning of materials.

APPEARANCES

For the Appellants:

Roger Yarwood Agent

For the Local Planning Authority:

Bob Woollard Planning and Design Group

Neil Northrop Weddle Landscape Design

Karen Beavin South Derbyshire District Council

Gaynor Richards South Derbyshire District Council

Interested Party:

Councillor Amy Wheelton

DOCUMENTS SUBMITTED DURING THE HEARING

Letters from Headteacher at St Charles School dated 13 February 2020 and
9 March 2021

Unilateral Undertaking dated 17 March 2021

Amended Plan Ref. E/2018/00110 – Land at Acresford Road, Acresford