



Appeal Decision

Site visit made on 17 May 2021

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2021

Appeal Ref: APP/P1045/C/20/3264805

Land opposite the Square and Compass Inn (PH), Main Road, Darley Bridge, Derbyshire DE4 2EQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms Suzanne O'Sullivan, Frederic Robinson Ltd against an enforcement notice issued by Derbyshire Dales District Council (the LPA).
- The enforcement notice was issued on 5 November 2020.
- The breach of planning control as alleged in the notice is, without planning permission, the unauthorised use of the site as a camping and caravan site.
- The requirements of the notice are, permanently cease the use of the site as a camping or caravanning site.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) and (a) 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.

Summary of Decision: The appeal is dismissed and the notice is upheld with variations.

The Notice

1. The use of the word permanently within the requirements of the notice is unnecessary having regard to the provisions of section 181(1) of the 1990 Act which states that compliance with an enforcement notice shall not discharge the notice. In addition, the requirement should be to cease the use of the land as a camping AND caravanning site since that is the use subject of the notice. The notice can be varied accordingly without injustice to the appellant or the LPA.

The appeal on ground (d)

2. An appeal on ground (d) is made on the basis that, at the date the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters stated within the notice.
3. The relevant time period for the development to be immune from enforcement action in this case is ten years in accordance with Section 171B(3) of the 1990 Act. For the appeal to therefore succeed, it is necessary for the appellant to demonstrate, on the balance of probabilities, that use of the land materially changed to a camping and caravan site on or before 5 November 2010 and continued substantially uninterrupted for the ten-year period.

4. In support of its case, the appellant has provided a signed Statutory Declaration from William Robinson, a director of the company which owns the freehold of the land. It is declared that the land has been used as a caravan and camping site for a period in excess of 10 years. Included is a hand written letter from a Mr Page, said to be the camp site licensee, to the freehold owner discussing the issue of installing electric hook-ups into the land which at that time was in use as campsite. The letter is dated 8 April 2008. In addition, a letter dated 9 September 2004 indicates investigations were under way at that point as to whether an electricity supply could be provided to the land to support its use as a camping and caravan site. The LPA do not dispute this matter and I see no reason to conclude otherwise. As a result, the evidence points to a material change of use of the land to camping and caravan site taking place more than 10 years prior to the issue of the notice.
5. However, the LPA indicates that the site operated lawfully as a caravan site between 10 November 2010 and 10 November 2011. This is because the site is said to have benefitted from a certificate issued by an exempted organisation, the Camping and Caravanning Club, for use of the site for 5 caravans or fewer. As such the use was granted planning permission by virtue of Article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995 since it fell to be considered as permitted development under Part 5 of Schedule 2. In that instance, it would not have been open to the LPA to take enforcement action until 11 November 2011 at the earliest. Once, the exemption ceased to apply, the use of the land would no longer have benefited for the permission granted under the GPDO as a camping and caravan site and its use would have resulted in a fresh breach of planning control. As a result, the relevant 10-year period of immunity cannot be demonstrated.
6. The appellant argues that the use of the land between that period did not meet the limitations of the permitted development right under Part 5 (which are set out in the Caravan Sites and Control of Development Act 1960) and thus the breach occurred more than 10 years ago and has been continuous since. Namely, it is said that the site frequently accommodated more than 5 caravans at any one time and that users of the land were not members of any recognised recreational organisations.
7. The Statutory Declaration of Mr Page as the licensee for the public house between 2003 and April 2011 indicates that between May and October each year, special events would be held on a regular basis on the land, usually on weekends and accommodating up to 10 caravans in addition to campers in tents.
8. However, the declaration is not sufficiently precise as to how often such special events were held nor indeed is it specific about the number of caravans on the site. Moreover, the declaration is not supported by evidence of specific dates either through booking details or photographic evidence. Furthermore, it is not stated nor evidenced whether or not those people attending the site were members of recognised recreational organisations. As a result, I consider the evidence before me is insufficiently precise and unambiguous to conclude that the material change of use of the land to a camping and caravan site occurred more than 10 years prior to the issue of the notice and continued in breach of planning control for a period of 10 years or more.

9. The appeal on ground (d) therefore fails.

Appeal on ground (a)

Main Issues

10. The main issues are:

- the effect of the development on the living conditions of nearby residents with particular regard to noise and disturbance; and,
- the effect of the development on the character and appearance of the area.

Reasons

Living Conditions

11. The appellant indicates that the appeal site lies around 79m from the closest residential property of 2 Main Road, Darley Bridge. The Council has not disputed the figure thus I have no reason to believe that is not the case.
12. The LPA indicates that noise complaints arose in 2019 when the south-eastern corner of the site was being used for camping. However, the LPA has not specified the nature or frequency of the complaints nor indeed from which nearby residents the arose.
13. Nevertheless, the size of the site, particularly when the area of land to the south-eastern corner of the site is taken into account, is particularly large and its proximity to the properties on Main Road is reasonably close at its nearest point. Consequently, its use for camping and caravanning could result in significant levels of noise and disturbance arising from music, vehicle engines, loud voices and smoke from fires or barbeques.
14. The LPA has suggested a condition requiring the agreement of the number of pitches and the layout of those pitches. This could ensure that the LPA could be satisfied that an appropriate number and appropriate spacing of campers can be accommodated without resulting in undue noise and disturbance. Moreover, the LPA has suggested a condition which prevents the use of the site between 31 October and 1 March. This would ensure there would be no noise and disturbance arising from the site at all for four months of the year.
15. However, to ensure that noise did not unduly affect the living conditions of nearby residents, it would be necessary to impose a condition which restricts noise levels emitted from the site at particular monitoring points on certain days and between specific times. The appellant has suggested such a condition but has not indicated what those noise levels should be, where the monitoring points should be or indeed what days and times for noise restrictions to apply would be appropriate. In the absence of any evidence which demonstrates what noise levels or restrictions would be appropriate, I cannot be satisfied that the detrimental impacts on nearby residents by reason of noise and disturbance can be suitably mitigated by way of condition.
16. I conclude, therefore, that the development will have a harmful effect on the living conditions of nearby residents with particular regard to noise and disturbance. Consequently, the development will conflict with Policy PD1 of the

Derbyshire Dales Local Plan 2017 (the LP) which requires development to not cause unacceptable effects by reason of, amongst other things, noise.

Character and Appearance

17. The appeal site comprises an area of land largely laid to grass either side of a car park located adjacent to Main Road and opposite the Square and Compass Inn. I saw from my site that through the centre of the site is a hard-surfaced access road.
18. The site sits adjacent to Main Road on its approach into Darley Bridge. It contains significant mature tree planting along the north-western, south-western and south-eastern boundaries. These have the effect of largely screening the site from views in those directions. To the north-eastern boundary, however, the site is relatively open to short, medium and long-range views as it is bound only by a low-level stone wall.
19. However, the scale of the site is relatively limited when seen in the context of the large, flat area of open land to the north-east. The division of the site from that area of land by the road, the comparatively limited scale of the site and the backdrop of significant mature trees means that it does not feature particularly prominently within the wider landscape nor does it have any significant association with the land to the north-east.
20. Moreover, where the site can be seen from the open land to the north-east, it is seen in the context of the nearby buildings of the cricket club to the north-west and the public house and surrounding buildings to the south-east. As a result, I find the level of encroachment onto the landscape would be limited and would not result in harm to the landscape character of the area.
21. Furthermore, the use of the land as a camping and caravanning site means the presence of structures in the forms of caravans, tents, vehicles and other associated paraphernalia will be transient, such that the degree of visual effect on the wider landscape will vary over time.
22. I conclude, therefore, that the development will not have a harmful effect on the character and appearance of the area. As a consequence, it will comply with Policies S4, PD1 and PD5 of the LP which state that new development should enhance the landscape's intrinsic character and distinctiveness, be of high quality design and not harm the character of the landscape.

Other Matters

23. I have had regard to the fact that the appeal site lies within Flood Zones 2 and 3 and the National Planning Policy Framework requires an exception and sequential test to be undertaken in such circumstances. However, given my findings in respect of the main issues, a conclusion either way in respect of flood risk would not alter the overall outcome of the appeal.
24. I note that the use of the land as a caravan and camping site supports the economic viability of the public house and that the loss of income from its use could be detrimental to the long term viability of the business. I also recognise the relatively suitable location of the site in terms of access by sustainable modes of transport and the contribution the use will make towards the provision of tourist accommodation within the area. However, the evidence in support of those factors is limited and as a consequence, none of the issues,

either individually or cumulatively, outweigh the harm that will arise to the living conditions of nearby residents.

Conclusion

25. Whilst I have found the development will not result in harm to the character and appearance of the area, I have found that it will result in harm to the living conditions of nearby residents. That is the prevailing consideration and as a result I find the development is in conflict with the development plan as a whole.
26. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

27. It is directed that the enforcement notice is varied by:
- deleting the word “permanently” from section 5.1(a) of the notice
 - deleting the word “or” from section 5.1(a) of the notice and substituting it with the word “and”.
28. Subject to the variations, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

J Whitfield

INSPECTOR