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## Appeal Decisions

Hearing held on 15 August 2023

Site visit made on 15 August 2023

**by Mark Harbottle BSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16/01/2024**

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**Appeal A Ref: APP/N1350/C/21/3266272**

**Appeal B Ref: APP/N1350/C/21/3266273**

**Land on the North East side of Neasham Road, Neasham Road, Hurworth Moor, Darlington DL2 1QH**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act") by Mr Robert Flannigan (Appeal A) and Mr Mitchell Flannigan (Appeal B) against an enforcement notice issued by Darlington Borough Council.
- The notice was issued on 7 December 2020.
- The breach of planning control as alleged in the notice is: Without planning permission, (1) 4 touring caravans have been stationed on the land for residential use (2 of them being very recently occupied for that purpose) and that together with the works referred to at (2) and (3) below this constitutes an unauthorised change of use of the land from paddock land to a new private Gypsy, Traveller site; (2) the making of an unauthorised site access onto the land from Neasham Road; and (3) the laying of hardcore materials on the land to form an access road and hard standing, removal of hedgerow, the erection of fencing, gates and dog kennels and the installation of services for power and drainage of utility buildings (the works).
- The requirements of the notice are to: (1) Cease residential use of the land and remove from the land all caravans, utility buildings, dog kennels and associated vehicles; (2) Remove the new access, access road, gates, fencing and hardcore materials from the land; and (3) Reinstate the land to its condition immediately before the breach of planning control took place including, without prejudice to the generality of this requirement, the removal of any rubbish and debris in connection with this unauthorised development and the closure of the site access by replanting of the hedgerow at that location.
- The periods for compliance with the requirements are: (1) 2 weeks after the notice takes effect; (2) and (3) 4 weeks after the notice takes effect.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Act. 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.
- Appeal B is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Act.

**Summary of Decisions: Appeal A is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision. Appeal B is dismissed.**

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### Preliminary Matters

1. In these decisions, "the change of use" means item (1) of the alleged breach of planning control and "the works" means items (2) and (3) of the same.
2. At the time of the Hearing, the definition of Gypsies and Travellers in Planning Policy for Traveller Sites (PPTS) did not include people who have ceased to travel permanently. A subsequent update to PPTS widened the definition to

include such people. However, I had already sought the parties' views on this matter, so it was not necessary to invite further submissions.

3. The Council adopted the Darlington Local Plan 2016-2036 ("the DLP") during the appeal. The parties updated their submissions to address the relevant new policies. The National Planning Policy Framework ("the Framework") was revised after the Hearing had closed but did not include any changes material to the planning issues considered in the appeal on ground (a).
4. The appeal site is part of a larger site with planning permission for use as "a private Gypsy site to provide pitches for 2 residential caravans and 2 touring caravans ... and use of land for equestrian purposes". This was initially granted for a limited period but an appeal against the condition imposing that restriction was subsequently allowed<sup>1</sup>.
5. The appellants contend the larger site was used in breach of conditions requiring conformity with the approved plans (condition 2) and limiting the number of caravans (condition 4). If it could be demonstrated that those breaches had persisted for a period of not less than 10 years, ending on or before the date on which the notice was issued, the change of use might be immune from enforcement action.
6. An appeal against a notice alleging a breach of the above condition 4 on land adjacent to the site of these appeals was allowed, and the notice quashed, in January 2022 ("the 2022 appeal decision")<sup>2</sup>. In that decision, it was found that a 3<sup>rd</sup> pitch had been continuously occupied residentially for a period of 10 years before the notice was issued. A lawful development certificate (LDC) to confirm this was also issued. The identified location of the 3<sup>rd</sup> pitch on the plan accompanying the LDC does not fall within the site of these appeals.
7. No appeal has been made on ground (d) and the limited evidence provided by the appellants does not demonstrate continual breach of either condition over a 10 year period on land subject of the current notice. The appeals will therefore be determined on the grounds stated on the appeal form.
8. In its stated reasons for issuing the notice, the Council set out its view that the matters constituting the breach of planning control had all occurred within the preceding 4 years. However, item (1) of the breach is a material change of use of land and while items (2) and (3) are operational development, they were carried out to facilitate the change of use. Accordingly, the relevant period during which enforcement action could be taken is 10 years from the date on which the change of use was instituted.

### **Appeals A and B – the appeals on ground (c)**

9. An appeal may succeed on this ground if an appellant can show that one or more of the matters alleged in the notice does not constitute a breach of planning control. This could be because it is not development or does not require planning permission.
10. It is not disputed that the matters alleged in the notice constitute development. However, the appellants contend that they are authorised by the permissions described in paragraph 4 above. The words "and use of land for equestrian

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<sup>1</sup> 10/00059/FUL, granted 19 November 2010, and APP/N1350/A/11/2153205, allowed 20 September 2011.

<sup>2</sup> APP/N1350/C/21/3266271, allowed 27 January 2022.

purposes” in the description of that development suggest the equestrian use was intended to be a separate use from the private Gypsy site, not part of a mixed use. The Council’s reasons for granting permission referred to “the occupied part of the site,” suggesting that the residential use did not account for all the land. The appeal decision includes a description of how the land was being used at the time, stating, “The caravan pitches and utility buildings are situated in the north western corner of the site, with the remainder being given over to equestrian use.”

11. Furthermore, the approved plans show distinct areas that could be separately used for residential and equestrian uses and the appeal site occupies part of the larger of the 2 paddocks shown on those plans. By reason of its scale, equestrian use of that paddock, which now includes the appeal site, seems unlikely to be ordinarily ancillary or incidental to a residential use.
12. It may have been intended that the occupiers of the caravans would keep their horses in the paddocks, and that may well have occurred in the past. However, it has not been demonstrated that any equestrian use was intimately associated with the residential use, such that it was ancillary or incidental.
13. Paragraph 23 of the 2022 appeal decision records that the appellant and the Council had agreed that a material change of use had not occurred. While I have not seen the evidence presented in that appeal, the decision letter indicates that points I have considered in this ground of appeal were not examined in detail. Consequently, I do not consider that decision to fetter my discretion to determine these appeals according to the evidence before me.
14. The foregoing evidence indicates that the permitted use of the larger site is for 2 uses materially different in character, a private Gypsy site and equestrian use. The area identified for equestrian use on the approved plans, comprising 2 paddocks, is significantly larger than the area identified for caravans and as such I consider it was proposed and approved as an independent use constituting a separate planning unit. No evidence of a functional link between its use for equestrian purposes and the approved private Gypsy site has been demonstrated and while a part of the land identified for equestrian use has an LDC for a 3<sup>rd</sup> pitch, the appeal site does not fall within that part.
15. Accordingly, it has not been demonstrated that the appeals relate to land with a permitted use as a private Gypsy site. The evidence indicates that the land has a permitted equestrian use. The change of use to a private Gypsy, Traveller site, which has a definably different character, is a material change of use requiring planning permission, which has not been granted.
16. For these reasons, the appeals on ground (c) must fail.

### **Appeal A – the appeal on ground (a)**

17. The main issues in this appeal are:

- Whether the private Gypsy, Traveller site is sustainably located in terms of access to services.
- The effect on the character of the rural area.
- The effect on highway safety.
- The effect on ecology, including nutrient neutrality.

- The living conditions of occupiers, particularly with regard to the potential for ground gas migration and contamination from infilled material.
- The need for and supply of Gypsy and Traveller pitches in Darlington.
- The personal circumstances of the appellants and their dependants.

## **Reasons**

### *Whether the site is sustainably located*

18. The site is approximately 3 km from the centre of Darlington and about 1.5 km from local facilities in the Service Village of Hurworth, in countryside defined by policy SH 1 of the DLP. Neasham Road is unlit and lacks footways although there are public footpaths and bridleways to Hurworth and Darlington and an advisory cycle route nearby. Those routes, and Burma Road connecting them, are designated Green Corridors by policy ENV 4 of the DLP. The site therefore has safe access to the borough-wide cycling and walking network including links to the public rights of way network and leisure routes.
19. The location has been found sustainable in the past, but the Council considers it has recently become less so because a bus service no longer runs on Neasham Road. Without access to bus services, the only transport options are the private car, cycling or walking. The Green Corridors are intended to provide an accessible network of well connected, multi-functional open spaces for recreation and play and to enhance visual amenity, biodiversity, landscape, and productivity. However, this does not extend to everyday use such as going shopping or to school, which are undertaken in all weather and at all times of the year. Considering that, and the absence of lighting and footways on Neasham Road and Burma Road, satisfactory access to local schools and other amenities is most likely to be made by means of the private car.
20. The Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, a matter that should be considered in decision-making. Viewed from that perspective and noting that journeys to services and facilities in Hurworth or Darlington would be relatively short, the site is not far away from existing settlements. Furthermore, no evidence that the use would not respect the scale of the nearest settled community or dominate it or place undue pressure on local infrastructure has been presented. Accordingly, the use accords with policy H of PPTS.
21. For these reasons, the site is sustainably located for the provision of Gypsy and Traveller accommodation, in accordance with policies H 9 (criterion d ii) and IN 2 of the DLP.

### *The character of the rural area*

22. The surrounding countryside is relatively flat, with a regular pattern of agricultural fields punctuated by small areas of woodland. There is sporadic development, largely commercial, along Neasham Road. Policy ENV 3 of the DLP makes specific requirements for development in distinct parts of the borough but the site does not lie within any of these, although it is close to the Darlington/Middleton St George/A66/A67/Stockton Corridor historic route.
23. Views of the site are limited by vegetation on Neasham Road, except for the access point, where large gates are visible, set back relative to the adjacent

Gypsy site. Notwithstanding this, most of the site boundaries, where visible, appear appropriate and could, if supplemented by acceptable landscaping, be sympathetic to and in keeping with the surrounding area. Such landscaping could also protect and enhance the natural quality of the rural landscape by reinstating natural hedgerow features.

24. The site adjoins another Gypsy site but, subject to appropriate landscaping, an over-concentration of Gypsy and Traveller accommodation would not be apparent, and the rural character of the area would be adequately maintained.
25. In reaching this view I am mindful of an appeal decision relating to adjacent land to the north<sup>3</sup>, although only an extract from that decision has been provided. Nevertheless, I saw the site in question from a field gate on Burma Road. From that, and the available information, it appears that the scheme before me does not erode the open countryside to a comparable extent or result in a similar cumulative effect.
26. For these reasons I find the effect on the character and local distinctiveness of the rural area to be acceptable, in accordance with policies ENV 3 and H 9 (criterion d i) of the DLP.

#### *Highway safety*

27. Adequate visibility has been created at the site access through the removal of a section of hedgerow. The appellant states that he and the appellant in Appeal B own the land involved and has produced a letter from the former owner to confirm this. However, the highway authority advises that the new access has not been formed to the required standard, although that could be addressed by means of a planning condition if the appeal were to succeed.
28. On that basis, suitable and safe vehicular access can be achieved, as required by policies DC 1 and H 9 (criterion d iv) of the DLP.

#### *Ecology*

29. The site is within the catchment of the Teesmouth and Cleveland Coast Special Protection Area (SPA), a wetland of European importance. Increases in the levels of nitrogen entering the SPA via surface water and groundwater can severely threaten the sensitive habitats and species within it. It is therefore important to carry out an appropriate assessment as to whether any development that discharges wastewater into the catchment includes or is accompanied by measures to achieve nutrient neutrality in terms of nitrate discharge. If that is not achieved, this development and others discharging wastewater into the catchment would harm the integrity of the SPA.
30. The appellant applied to purchase credits to offset the nitrate discharge from the use of the site under a nutrient mitigation scheme operated by Natural England (NE). Purchase of 9 credits to mitigate a total nitrogen load of 8.74 kg per annum, as calculated by the Council, has been approved, a deposit has been paid, and the appellant and NE have signed a provisional Nutrient Credit Certificate (NCC). The NCC would become final subject to the appellant's payment of the balance within a prescribed period.

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<sup>3</sup> APP/N1350/W/21/3268831.

31. The provisional NCC confirms that NE has reserved the required number of credits for the appellant, confirming that it considers the development can be adequately mitigated to avoid harm to the SPA. It is issued on the understanding that any planning permission for the development will include a condition to prevent occupancy until it has been demonstrated that sufficient nutrient credits have been purchased. This is to ensure that development only occurs on condition that adequate mitigation of nitrate discharge is achieved. As the development has been carried out, a different form of wording, requiring cessation of the use if sufficient credits to offset the calculated nitrate discharge are not purchased, would be necessary.
32. A preliminary ecological appraisal was carried out during the appeal. Implementation of its relevant recommendations would ensure any significant adverse effects to biodiversity, other than in terms of the SPA, are adequately mitigated.
33. Subject to mitigation by means of appropriate conditions, the development would not have significant adverse effects on biodiversity or geodiversity. Furthermore, and subject to payment of the identified credits, it would contribute to protecting, maintaining, and managing the SPA. Accordingly, the use and associated operational development accord with policies ENV 7 and ENV 8 of the DLP.

#### *Living conditions*

34. Criterion d iii of DLP policy H 9 requires that the design of Gypsy and Traveller sites takes account of the needs of residents and provides an appropriate pitch layout and adequate facilities for parking, storage, play and, if required, grazing space for livestock. From my observation of the site, I am satisfied that this is achieved.
35. Criterion d v of the same policy requires that all necessary utilities can be provided on the site including mains water, electricity supply, drainage, sanitation and provision for the screened storage and collection of refuse, including recyclable materials. Criterion d vi requires that Gypsy or Traveller sites avoid any unacceptable adverse impact on the amenity, health or living conditions of neighbouring residents or any other neighbouring uses. This includes considerations of flood risk, noise, dust, odour, lighting, traffic generation, and the keeping of livestock or other activities. No evidence of any unacceptable adverse impact in those terms has been identified and the development therefore accords with policy H 9 in these respects.
36. The adjacent land to the north is a former landfill site so the risks of ground gas migration and contamination affecting the occupiers of the appeal site must be considered. Subject to appropriate conditions to secure further investigations and implementation of any works identified as necessary by those investigations, these risks can be suitably managed.
37. Provided appropriate further measures are identified and implemented, the site is suitable for a private Gypsy, Traveller site and unacceptable risks to human health or the environment will not arise. The development would therefore accord with policies DC 1, DC 4 and H 9 (criteria d iii, d v and d vi) of the DLP and is acceptable in this regard.



### *The need for and supply of pitches*

38. The Council's Gypsy and Traveller Accommodation Assessment Update 2017 ("the GTAA") stated the borough needed an additional 63 pitches by 2022 and estimated a supply of 58 additional pitches in the same period. It therefore identified that a further 5 pitches were needed, 1 of which has been created. Planning permission for 2 more is in place.
39. The GTAA also noted that 37 pitches were planned to be created or brought back into use between 2017 and 2022. The appellant contends there is no evidence that any more than 3 of these pitches have been realised. He considers they should therefore be carried forward, along with 18 available but unused pitches also identified in the GTAA, making a shortfall of between 55 and 58 pitches.
40. The Council accepts there is a lesser need for 15 additional pitches during the 5-year period beginning January 2021, of which 8 have yet to be delivered. It is taking steps to realise additional pitches through an extension of its site at Rowan East with a further 25 pitches. A planning application has been prepared and, if permission is granted, funding may be available. It also anticipates the creation of 8 pitches at another Council site, Honeypot Lane, through an application to make transit pitches permanent. If these plans come to fruition, they could provide the additional 23 pitches the Council considers are needed by 2028. The Council also assumes a windfall on small sites of 4 pitches per annum.
41. However, if the 55 to 58 pitches identified by the appellant were added to the number the Council accepts are needed in future, there would be a significant shortfall in provision. No evidence has been produced to show that the 18 available but unused pitches identified in 2017 have since become unavailable, so I do not agree they should be added. However, the lack of evidence regarding the 37 pitches that were planned to be created or brought back into use between 2017 and 2022 is of concern. Furthermore, there is little evidence of small site windfalls being realised at the assumed rate of 4 per annum.
42. The estimates of future need for Gypsy and Traveller pitches in the GTAA and in the subsequent 2020 addendum are based on a definition of Gypsies and Travellers that excludes those who have ceased to pursue nomadic lifestyles and as it does not accord with the current PPTS definition, I consider the GTAA under-estimates the borough's need.
43. The Council is making efforts to secure additional pitches that would meet anticipated future needs. However, for the reason just given, the actual need is likely to be higher than stated in the GTAA and it is not clear whether the additional pitches that should have been realised between 2017 and 2022 have come forward. Furthermore, the Council's strategy for delivering additional pitches is reliant on the expansion of large sites, a matter to be considered in terms of the personal circumstances of the appellants and their dependants. However, the provision of Gypsy and Traveller accommodation on small private sites is consistent with the Council's expectation of windfall sites and is allowed for by DLP policy H 9, subject to criteria d i to vi, which I have found are met.

### *Personal circumstances*

44. The appellants and their families are Romani Gypsies and thus have the protected characteristic of race under section 149(7) of the Equalities Act 2010. Both appellants travel for work and to attend fairs and horse events. Their families include school-age children, whose needs are best met by a secure and stable environment allowing long-term residence. One appellant's eldest son lives in the area and regularly stays with his father. Access to a local GP practice is particularly important to one appellant and the other appellant's wife.
45. While the foregoing confirms the needs of the appellants' families for accommodation in the local area, those needs could be met on another site in or near Darlington. However, the environment provided by the appeal site is important to the welfare of one of the appellants, who explained the difficulties he had experienced when living on a larger site in the area. While this is not addressed directly in the submitted medical evidence, I have no reason to doubt the importance of a private site in a quiet location to his quality of life in terms of his security, confidence, and routine. It appears that he may need to manage his circumstances in this way indefinitely.
46. As noted earlier, the Council's strategy for delivering additional Gypsy and Traveller pitches is reliant on the expansion of large sites, including the one the appellant had difficulty living at. Therefore, even if a 5-year supply of pitches is in place, there would be few opportunities to meet the appellant's needs. While his needs for security, confidence and routine could be met on another small private site, which could arise as a windfall, they are relatively scarce and there is no evidence that any such pitch is available at present. Furthermore, the medical evidence acknowledges the importance of extra support and security provided by his brother and other family members. There must be a risk that this would be diminished if the appellants were unable to find another site to live on together.

### *Other matters*

47. Concern has been expressed that many local people have difficulty finding suitable accommodation and that they consider it unfair that the appellants did not obtain planning permission before moving onto the land. However, section 177(1) of the Act allows that planning permission may be granted in respect of the matters stated in a notice. Consistent with that, the courts have confirmed that the enforcement of planning control should be remedial rather than punitive<sup>4</sup>. They have also confirmed that a grant of retrospective planning permission is not unlawful, although it should not afford an advantage that ought to be denied<sup>5</sup>. Accordingly, and while the concern is understood, and even though intentional unauthorised development has occurred, it does not alter or outweigh my findings on the main issues above.

### *Conclusion on the appeal on ground (a)*

48. For the reasons given, the site is sustainably located to provide windfall accommodation within the framework of DLP policies to meet the needs of the appellants and their dependants. Subject to relevant details being secured through appropriate conditions, the effects on the character of the area,

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<sup>4</sup> *Tapecrown Ltd v FSS & the Vale of White Horse DC* [2006] EWCA Civ 1744.

<sup>5</sup> *Ardagh Glass v Chester CC & Quinn Glass* [2009] EWHC 745 (Admin).



highway safety, ecology and the living conditions of occupiers can be adequately mitigated.

### *Conditions*

49. While a condition requiring commencement of development within a specified period would normally be imposed under the provisions of Section 91(1) of the Act, the development has already been carried out. Consequently, the imposition of such a condition, as suggested by the Council, is not necessary in this instance. Similarly, I shall alter the wording of other suggested conditions where necessary because, as drafted, they are not enforceable as it is not possible to submit details prior to occupation of the site.
50. Condition 1 is necessary to restrict occupation of the site to Gypsies and Travellers in view of the limited supply of available sites within the borough, which does not justify general residential occupation.
51. While not suggested by the Council, it is reasonable to add condition 2 to limit the number of caravans to those specified in the breach. This is to ensure the site design takes account of the needs of residents and provides an appropriate pitch layout and adequate facilities for parking, storage, and play, as required by policy H 9 of the DLP. It will also limit the scale of development in the countryside, consistent with policy SH 1 of the DLP.
52. Conditions 3 and 4 are necessary to ensure that the risks of ground gas migration and contamination from the adjacent former landfill site are investigated and suitably managed in the interests of the health of the occupiers of the site.
53. Condition 5 is necessary to ensure that the site incorporates soft landscaping that provides habitat enhancements to achieve net biodiversity gains and to achieve a satisfactory appearance of the site in the interests of the character and appearance of the area.
54. Condition 6 is necessary to ensure that the access to the site is constructed to a satisfactory standard, with appropriate visibility, in the interests of highway safety.
55. Conditions 7 and 8 are necessary to ensure appropriate mitigation of nutrients to protect the SPA in accordance with the requirements of Regulation 63 of the Conservation of Habitats and Species Regulations 2017.
56. Conditions 9 and 10 are necessary to maintain biodiversity. Condition 9 will ensure that any external lighting avoids indirect disturbance to bats. Condition 10 will ensure that appropriate mitigation measures relating to birds, amphibians and small mammals recommended in the preliminary ecological appraisal are implemented during landscaping works.
57. The Council suggests a condition to prohibit any commercial activity on the site and another to prevent the stationing, parking, or storing of any vehicle over 3.5 tonnes and storage of cars. It explained that the first of these conditions would be targeted at activities such as large-scale dog breeding, or which involve plant and machinery. However, no evidence was presented that activities which either condition would curtail have taken place on the site or are likely. Consequently, and given the likelihood that the introduction of such

activities would result in a material change of use requiring planning permission, I do not consider either condition necessary.

### **Appeal A - Conclusion**

58. For the reasons given, the appeal on ground (c) fails. Subject to the imposition of necessary conditions, the change of use and the associated works accord with the relevant development plan policies, with the development plan as a whole, and with PPTS. Accordingly, there is success on ground (a), and I shall grant planning permission for the change of use and the associated works as described in the notice subject to conditions.

59. In these circumstances, the notice will be quashed and the appeals on grounds (f) and (g) do not fall to be considered.

### **Appeal B - Conclusion**

60. For the reasons given, the appeal on ground (c) fails.

61. In view of the success on ground (a) in Appeal A, the appeals on grounds (f) and (g) do not fall to be considered.

### **Appeal A – Formal Decision**

62. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the change of use of the land from paddock land to a new private Gypsy, Traveller site; the making of a site access onto the land from Neasham Road; and the laying of hardcore materials on the land to form an access road and hard standing, removal of hedgerow, the erection of fencing, gates and dog kennels and the installation of services for power and drainage of utility buildings at Land on the North East side of Neasham Road, Neasham Road, Hurworth Moor, Darlington DL2 1QH as shown on the plan attached to the notice and subject to the conditions in the attached schedule.

### **Appeal B – Formal Decision**

63. The appeal is dismissed.

*Mark Harbottle*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANTS:**

|                     |                                                  |
|---------------------|--------------------------------------------------|
| Bradley Stovell     | Director, Stovell and Millwater Limited          |
| David Stovell       | Managing Director, Stovell and Millwater Limited |
| Robert Flannigan    | Appellant                                        |
| Lisa Flannigan      | Appellant's wife                                 |
| Mitchell Flannigan  | Appellant                                        |
| Alexandra Flannigan | Appellant's wife                                 |

### **FOR THE LOCAL PLANNING AUTHORITY:**

|                 |                                                                                     |
|-----------------|-------------------------------------------------------------------------------------|
| David Coates    | Head of Development Management and Environmental Health, Darlington Borough Council |
| Michael Conyard | Monitoring and Compliance Officer, Darlington Borough Council                       |
| Fiona McCall    | Planning Officer (Policy), Darlington Borough Council                               |
| David Nelson    | Principal Planning Officer (Policy), Darlington Borough Council                     |
| Emma Williams   | Planning Officer (Development Management), Darlington Borough Council               |

### **INTERESTED PARTIES:**

Councillor Lorraine Tostevin, Darlington Borough Council  
Councillor Geoffrey Crute, Neasham Parish Council

## **Documents submitted at the Hearing**

- 1 Letters of notification of the Hearing
- 2 Letters of service of the enforcement notice
- 3 The Council's amended list of suggested conditions
- 4 Appeal decision APP/N1350/C/21/3266271
- 5 Letter from the previous owner of the land
- 6 Letter from Royal Marsden NHS Trust

### **Schedule of Conditions**

- 1) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 2) No more than 4 caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 2 shall be static caravans) shall be stationed on the land at any time.
- 3) The use hereby permitted shall cease and all structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 2 months of the date of failure to meet any one of the requirements set out in i) to v) below:
  - i) Within 3 months of the date of this decision an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites – Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced) shall have been submitted for the written approval of the local planning authority. If any contamination is found, the assessment shall specify the measures to be taken ("the measures"), including the timescale, to remediate the site to render it suitable for the approved use.
  - ii) If within 6 months of the date of this decision the local planning authority refuses to approve the measures or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the measures shall have been approved by the Secretary of State.
  - iv) The approved measures shall have been carried out and completed in accordance with the approved timetable.
  - v) A verification report shall be submitted to and approved in writing by the local planning authority within 2 months of the completion of the measures.

Upon implementation of the approved measures and any additional measures required to be implemented by this condition, those measures and any additional measures shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 4) If, during the course of the implementation of the measures approved under condition 3) above, any contamination is found which has not been previously

identified, the use hereby permitted shall cease and all structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 2 months of the date of failure to meet any one of the requirements set out in i) to v) below:

- i) Additional measures for remediation ("the additional measures") shall be submitted for the written approval of the local planning authority within 30 days of that contamination being found.
- ii) The remediation of the site shall thereafter incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 30 days of the report being completed and approved in writing by the local planning authority.
- iii) If within 2 months of the date of their submission the local planning authority refuses to approve the additional measures or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iv) If an appeal is made in pursuance of iii) above, that appeal shall have been finally determined and the additional measures shall have been approved by the Secretary of State.
- v) The approved additional measures shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of any additional measures required to be implemented by this condition, those additional measures shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 5) Unless within 2 months of the date of this decision a scheme for the landscaping of the site, which shall include a native hedge and standard trees within the site and incorporate relevant measures in the Primary Ecological Appraisal undertaken by Naturally Wild Consultants Limited, reference SAM-20-03, January 2021, to provide the necessary habitat enhancements to achieve net biodiversity gains and proposals for replanting in the event of the failure of any specimen, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 2 months of the local planning authority's approval, the use hereby permitted shall cease and all structures, equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 5 months of the date of this decision, the use hereby permitted shall cease and all structures, equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained with replanting as may be approved.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time

limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 6) Unless within 2 months of the date of this decision a scheme for the construction of the access to Neasham Road together with a timetable for its implementation is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented, including the visibility splays shown on the extract from drawing DN/20/003/003 appended to this decision, within 2 months of the local planning authority's approval, the use hereby permitted shall cease and all structures, equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 5 months of the date of this decision, the use hereby permitted shall cease and all structures, equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 7) Unless within 2 months of the date of this decision a copy of the signed Final Credit Certificate from Natural England is submitted in writing to the local planning authority for approval, the use hereby permitted shall cease and all structures, equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a copy of the signed Final Credit Certificate from Natural England is submitted.

- 8) If a signed Final Credit Certificate cannot be obtained from Natural England for any reason, and unless within 6 months of the date of this decision full details and specifications of an alternative Nutrient Neutrality Mitigation Scheme, including any long term maintenance and monitoring details is submitted to and approved in writing by the local planning authority (in consultation with Natural England) the use hereby permitted shall cease and all structures, equipment and materials brought onto the land for the purposes of such use shall be removed.

If no scheme in accordance with this condition is approved within 3 months of the date of this decision, the use hereby permitted shall cease and all structures, equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.



- 9) Unless within 2 months of the date of this decision a scheme for the sensitive positioning of external lighting to avoid unnecessary spill onto hedgerow, tree line and areas of open grassland, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 2 months of the local planning authority's approval, any external lighting shall be removed until such time as a scheme is approved and implemented.

The scheme shall include details of the type and angle of lighting, including use of narrow-spectrum bulbs that avoid white and blue wavelengths, and the height of lighting columns.

If no scheme in accordance with this condition is approved within 5 months of the date of this decision, any external lighting shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 10) If any vegetation management works are required in connection with the landscaping scheme to be approved under condition 5), clearance works must be carried out outside of the bird nesting season, which is defined as running from March to August, inclusive. If this is not feasible for any reason, a nesting bird survey must be carried out by a suitably qualified ecologist, along with specifications for any exclusion zone around a nest, shortly prior to the start of works to ensure no active nests are present. In the event that any active nests are found during this survey or at any point during the works, a suitable exclusion zone must be put around the nest, in accordance with the specification accompanying the survey, with no work taking place in this area until such time as the nest can be confirmed as no longer active.

Any vegetation management works on site in connection with the approved landscaping scheme must be conducted in a precautionary manner in respect of Great Crested Newts (GCN). If any GCN are encountered during any works, those works must stop immediately and shall not be recommenced other than in accordance with appropriate ecological advice.

Any vegetation management works on site in connection with the approved landscaping scheme must be conducted in a precautionary manner in respect of hedgehogs. Any hedgehogs encountered during site works in connection with the approved landscaping scheme must be carefully moved to a safe location away from the works or be allowed to move off of their own accord.

Any trenches or other excavations created during site works in connection with the approved landscaping scheme must be backfilled or covered over at the end of each working day. If this is not possible for any reason, a suitable means of escape must be provided for any nocturnal wildlife, such as badgers and hedgehogs, that may become entrapped. (A suitable means of escape would comprise a ramp with adequate grip, at least 30 cm wide and set at an angle of no greater than 45°.)

## Appendix

Extract from drawing DN/20/003/003 referred to in condition 6):

