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## Appeal Decision

Hearing held on 5 March 2024

Site visit made on 5 March 2024

**by Zoë Franks, Solicitor**

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

**Decision date: 30<sup>th</sup> APRIL 2024**

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**Appeal Ref: APP/J4525/C/23/3316944**

**Railway Street, Grasswell, Houghton le Spring, DH4 4DY**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Isaac Doherty against an enforcement notice issued by Sunderland City Council.
  - The notice was issued on 12 January 2023.
  - The breach of planning control as alleged in the notice is without planning permission, the residential use of the land including the siting/stationing of touring caravans, the siting of structures including a metal storage container and portable toilet, the storage and stationing of vehicles including caravans, motorhomes and other motor vehicles, the erection of 2.7m high fencing and gates, the installation of water and electricity supplies and drainage pipework, the construction of a rock filled gabion structure at the northern end of the site.
  - The requirements of the notice are: (i) Cease all residential use of the land, including the occupation of touring caravans and overnight stays. (ii) Cease the use of the land for outdoor storage, including the storage of vehicles, leisure vehicles, and industrial plant and equipment. (iii) Remove from the land all structures including palisade boundary fencing and gates, metal storage containers and "Portaloo-type" portable lavatory. (iv) Remove from the land all caravans and all motor vehicles including any diggers, dumpers, and trailers. (v) Remove from the land all building materials including in particular sections of palisade fencing and piles of loose stone. (vi) Remove from the land all of the loose stone and compacted dolomite limestone hardsurfacing, excavating to a minimum of 20 centimetres and reinstating the contours of the affected land to match those of the adjoining land at the site boundaries using imported topsoil, sown with grass seed. (vii) Remove from the land the dismantled components and all wastes arising from fulfilling requirements (i) to (v) above.
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) 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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### Decision

1. It is directed that the enforcement notice is corrected by:

The deletion of paragraph 3 in its entirety and its substitution with the words "Without planning permission, A) the material change of use of the land to a mixed use comprising 1) residential use undertaken through the siting of caravans for the purpose of human habitation with associated portable toilet and 2) outdoor storage use including the storage of vehicles and containers, and B) operational development comprising the erection of 2.7 metre palisade fencing and gate, the installation of water and electricity supplies and drainage

pipework, the construction of a rock-filled gabion structure at the northern end of the site and laying of hard surfacing throughout.”; and

The addition of the following words to paragraph 6 “apart from requirement (iii) which must be complied with no later than 14 calendar months after this notice takes effect.”

2. Subject to the corrections, the appeal is allowed in part on ground (a) and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the material change of use of land at Railway Street, Grasswell, Houghton le Spring, DH4 4DY, shown edged red on the plan attached to the notice, to a use comprising residential use undertaken through the siting of caravans for the purpose of human habitation with associated portable toilet, and the siting of 2 shipping containers used for purposes ancillary to the residential use, and operational development comprising the installation of water and electricity supplies and drainage pipework, the construction of a rock-filled gabion structure at the northern end of the site and laying of hard surfacing throughout, subject to the conditions in the Schedule of Conditions attached to this decision.
3. The appeal is dismissed and planning permission is refused insofar as it relates to the outdoor storage use including the storage of vehicles, and the erection of 2.7 metre palisade fencing and gate on the application deemed to have been made under section 177(5) of the 1990 Act (as amended), and the enforcement notice is upheld as corrected.

### **The Notice**

4. The notice alleges both a material change of use and operational development on the land. As the parties have addressed both of these elements of the development during the course of the appeal I am satisfied that the notice can be corrected to separate them out for the purposes of clarity, and without causing injustice.
5. The parties’ cases differ regarding whether there is a mixed use on the site or a single residential use with ancillary storage. The appellant is seeking permission for his family to live on the site in three caravans (to include one static caravan), and it is large enough for these purposes. During my visit, which only represents a snapshot in time but accords with the other evidence submitted, there were various commercial and other vehicles on the site. These vehicles far outnumbered the number of adults living there, and were more than would be regularly required for the purposes of the appellant’s and his son’s work of groundworks and landscaping. There were two containers on the site, one small utility container located next to the caravans which was used in association with the residential use, and another which was used for ancillary storage.
6. I find that as a matter of fact and degree, the size of the site when compared to the number of people living on it, and the number and type of vehicles mean that the overall storage use of the site was not only incidental to the residential use, but an additional primary use.
7. The allegation should therefore be corrected to specifically reflect this mixed use. The parties confirmed that this could be done without causing injustice, and I am satisfied that doing so will not raise any additional issues in relation

to the ground (a) and the deemed planning application (i.e. in addition to those already covered in the submissions).

8. I shall correct the notice accordingly so that it alleges A) the material change of use of the land to a mixed use comprising 1) residential use undertaken through the siting of caravans for the purpose of human habitation with associated portable toilet and 2) outdoor storage use including the storage of vehicles and containers, and B) operational development comprising the erection of 2.7 metre palisade fencing and gate, the installation of water and electricity supplies and drainage pipework, the construction of a rock-filled gabion structure at the northern end of the site and laying of hard surfacing throughout.

### **Ground (a) and the deemed planning application**

9. The main issues are:

- the effect of the development on the character and appearance of the area;
- the effect of the development on the living conditions of those occupying the site;
- the effect of the development on the living conditions of occupiers of neighbouring properties;
- the effect of the development on open space and nature conservation;
- the need for and supply of Gypsy and Traveller pitches; and
- the personal circumstances of the site occupants.

10. The appellants made this appeal (and the deemed planning application) on the basis of the use of the site for the stationing of caravans for residential purposes with ancillary storage. The appellant has not sought separate planning permission for a storage use as a separate primary use. I have found that the storage is more than ancillary to the residential use but I am satisfied that the development sought by the appellant falls within the corrected allegation and forms part of the matters alleged in the notice. I have therefore determined the ground (a) appeal and the deemed planning application on this basis, and have not considered whether an additional primary storage use (as part of a mixed use) would be acceptable.

### *Character and appearance*

11. The site is located in a mainly residential area with a school, housing, allotments and open space nearby. It was previously an allotment site itself but this use ended many years ago. In 2008 a permission was granted for the change of use from vacant land to form storage yard for 2 containers and 2 caravans, erection of stable block and retrospective consent for the erection of 1.8 metre boundary fencing and gates ("the 2008 Permission"). The appellant holds that this permission was implemented as the site was used for storage (although they accept the stables were not built). However, the Council do not agree as they say that conditions precedent imposed on the permission were not discharged, and that it no longer enures in any event as it was a personal permission to the applicant at that time. The Council accepts that hardstanding was laid in 2008, and did not dispute the appellant's case that it was still

evident in 2015 along with 2 structures and 2 caravans (and indeed the small structures and parts of the hardstanding can be seen in the aerial photograph provided from 2021).

12. Whilst there are footpaths adjoining two sides of the site, there are no views from the public domain into the site currently. This is partly due the surrounding topography and built environment, and vegetation including trees, but also due to the very high, unbroken and continuous palisade fence.
13. The land is uniformly covered in loose stone chippings, and is without structures other than the fence, gates and gabion rock-filled structure at the rear. During the visit, there were two caravans, one large motorhome and two containers sited there, as well as various motor vehicles and a generator.
14. The site had not been used for some time prior to the development, and it was previously covered in overgrown vegetation. The appearance of the site has therefore altered significantly since the clearance and with the commencement of the current use. However, the current use would not be very different in terms of appearance when compared to its previously consented storage use. The siting of caravans, and both the ancillary and additional primary storage use are also similar to other uses in the area in terms of character and appearance. The remaining adjoining allotments are fenced, as is the nearby school and there are also various sheds and other buildings adjoining the access way into the site. There is a large travelling showpersons site close by, as well as other agricultural and commercial uses in the wider vicinity with similar external appearance and types of fencing. However, I also recognise that some of the nearest neighbours to the site are dwellinghouses, and the vicinity also includes a significant degree of residential use.
15. The 2.7 m high palisade boundary fence and gates are overly high and solid in appearance, and out of character with this residential element of the immediate area. The fence and gates are industrial and impenetrable both in terms of appearance and physicality, and therefore cause harm to the character and appearance of the area which is in conflict with Policy BH1 of the Core Strategy and Development Plan 2015 – 2033 (“the Core Strategy”) which seeks to achieve a high quality of design. A scheme to agree a different and appropriate boundary treatment, in keeping with the boundary treatments seen on other sites nearby and still providing security for the site, can be secured through the use of a condition. This would overcome the harm and make the development acceptable in terms of its effect on the character and appearance of the area as the mixed use itself and other elements of the development do not cause harm in this respect.

#### *Living conditions*

16. I have already set out above that the development, with a suitable boundary treatment to be agreed and implemented by way of a condition, will not adversely affect the character or appearance of the immediate area. Whilst there is currently no soft landscaping on the appeal site this can also be secured through the use of a condition, as can the refuse and drainage arrangements, and lighting and CCTV. There was no evidence before me to suggest that there were any particular health or well-being issues being caused by the use of the stone chippings on the site. Indeed the location of the site supports the health and well-being of the occupiers by allowing access to local services such as education and healthcare facilities. Part of the site will be

visible from the upstairs windows of the nearest houses but they do not immediately adjoin and the allotment site between provides adequate separation.

17. Representations were received from interested parties regarding the adverse effect on the amenity of nearby residents such as increased noise and traffic, and potential pollution caused by the burning of waste and siting of a portable toilet. The permission being sought under this appeal is to provide residential occupation for one family of five people within three caravans, and two containers for ancillary purposes. Concerns have been raised regarding the nature of the use and whether there has been a commercial vehicle sales business operating from the site. However, this is not the use alleged in the notice, and such a use cannot be granted permission under the ground (a) appeal. Any other primary use taking place on the land (i.e. in addition to the residential and ancillary storage use sought) may in itself require planning permission.
18. It was accepted by the main parties that any issues regarding the connection to energy, water and sewerage supplies can be regularised through the use of a retrospective condition requiring that an appropriate scheme be submitted to the Council for approval and implementation within a set timescale. This will also negate the need for the generator on site.
19. The site has been unused for quite some time, and it is therefore inevitable that any new use will have a different impact on the houses nearby when compared to a vacant plot. In addition, the cleared site will appear very different to one which has been left to become overgrown for several years. However, this is not in itself justification to say that any use on such a previously developed site should not be permitted. Whilst concerns have been raised regarding the noise and burning of waste, I was not given evidence by the Council regarding public nuisance being caused on the site, or of anti-social behaviour complaints dealt with by the Police. I therefore give these concerns little weight in this determination, as the statutory regimes are in place to deal with these issues if they do so arise (as is the case for every site and use.)
20. The Highways Authority have not objected to this development, and there is no evidence before me to show that the development would cause an unacceptable impact on highway safety, or that the residual cumulative impacts on the road network would be severe.
21. I do not therefore find that the development is in conflict with Policy HS1 or HS2 of the Core Strategy which aims to ensure appropriate living standards for both occupiers of development and neighbouring occupiers overall including in relation to noise.
22. Policies HS3 and M3 of the Core Strategy deal with development on land which is considered to be contaminated, and land mining and minerals legacy. Whilst these policies were referred to in the notice no evidence was provided by the Council to show that they considered the land to be contaminated or to potentially have a mining legacy, and they did not seek conditions regarding these issues. As there is nothing before me to suggest that the development may pose an unacceptable risk to health or the environment I do not consider that the development is in conflict with this policy. It is also relevant that the current use is very similar in nature to that granted permission in 2008

(irrespective of whether it was in fact implemented), and that the use prior to that was as allotments.

### *Greenspace and Biodiversity*

23. Saved Policy L1 from the City of Sunderland Unitary Development Plan 1998 ("the UDP") is part of the development plan for the area. However, when granting the 2008 Permission the Council considered that the site offered limited amenity value and was not publicly accessible allotment and that the storage use proposed at that time was in accordance with the UDP. Leaving aside arguments regarding whether the 2008 Permission was in fact implemented, it is accepted that the site was covered in hard-surfacing and used for the siting of some caravans and some small structures after 2008, and there is no evidence before me to suggest that it has been used as public recreational, leisure or open space since that time. I do not therefore consider that the development is in conflict with Policy L1.
24. Policy NE4 of the Core Strategy says that the Council will protect, conserve and enhance the quality, community value, function and accessibility of greenspace. However, the allocations and designations plan which will designate greenspaces has not yet been prepared or adopted, and it is therefore not possible to say whether this site would fall within the definition of a greenspace for the purposes of the policy, other than in the broadest terms (i.e. it was a site covered in vegetation).
25. It is accepted that the site was previously developed with a hard surface as can be seen from the historic aerial photographs (including from 2015) and the appellant states that the stone chippings have been laid on top of this original surface. The site is privately owned and the public have not had access to it. There can be public value in privately owned and inaccessible land by way of amenity value but it is far from clear that the Policy NE4 was intended to protect vacant and overgrown land as it appears to target useable greenspace and clearly references the enhancement of the function and accessibility of such greenspace. In the absence of the allocations policy or any further details regarding the greenspace strategy, I do not consider that the site is covered by this policy.
26. The parties agree that biodiversity net gain did not need to be considered in this case due to the small size of the site and date of the appeal and therefore deemed planning application. The Council accepted that the development was not therefore in conflict with Policy NE2.

### *Policy H4*

27. It is agreed that the appellant meets the definition in the Planning Policy for Traveller Sites updated in 2023 ("the PPTS"). As such the most relevant policy within the Core Strategy is Policy H4, Travelling Showpeople, Gypsies and Travellers.
28. The Gypsy and Traveller Accommodation Assessment ("the GTAA") undertaken in 2017 identified there was no need for any permanent sites for Gypsies and Travellers in the plan period to 2033. Policy H4.2 is a criteria-based policy which states that it applies where additional need is identified but does not provide further guidance on how this need should be shown. The Council confirmed that work regarding such need is planned to be undertaken as part

of the review of the development plan. However, there is currently no more recent evidence available following the GTAA which informed the Core Strategy.

29. Paragraph 6.35 of the accompanying commentary to Policy H4.2 recognises that the Plan needs to have sufficient flexibility to address any planning applications which come forward for new sites. Policy H4.2 addresses that need and it is in accordance with the PPTS which requires that where there is no identified need, criteria-based policies should be included in development policy to provide a basis for decision in case applications nevertheless come forward. The appellant and his family do not have an alternative place to go and the Council confirmed that they were not aware of any other available pitches. This means that the appellant may have to live on the roadside if required to leave the appeal site and there is a clear identified need for pitches for him and his family.
30. The Council accepts that most of the criteria within Policy H4.2 are met by this development but say that it is in conflict with it because it adversely affects the character of the immediate area and the amenity of nearby residents, and that it will also have an adverse effect on the health and well-being of the site occupiers. I have already dealt with these issues earlier in the decision and have not found that the development causes any such harm which cannot be adequately overcome through the imposition of conditions.
31. I therefore find that the development is in accordance with Policy H4. In addition the development is in accordance with the PPTS which advises that the Government's aim is to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure, all of which is provided by this site. The site is on previously developed land, within an existing settlement, provides a settled base and helps to ensure that the children living there can attend school on a regular basis.

#### *Other matters*

32. Other matters raised include the effect of the portable toilet and gabion structure on the health and safety of the users of the areas adjoining the site. There was no specific evidence regarding any adverse effects caused by these elements of the development, and I therefore attribute little weight to them.
33. Issues regarding whether there has been "land grabbing" or the provision of services and the digging up of land without consent are not matters directly relevant to the planning merits of the appeal.

#### *Planning Balance*

34. To the extent that development plan policies are material to an application for planning permission the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise. Other than the perimeter fence and gates, which harm the character and appearance of the area, the residential development is in accordance with the most relevant development plan policy, Policy H4, as well as the Framework and the PPTS. It also accords with other development plan policies referenced in the notice as set out above, and the development is therefore in accordance with the development plan as a whole. The appeal under ground (a) therefore succeeds in part, and permission is granted under the deemed

planning application for part of the alleged development as set out in the formal decision (i.e. the alleged development other than the existing fence and gates and the storage component of the mixed use) and with the conditions as set out below.

35. As I have found the development to be acceptable on the basis of the above considerations there is no need to consider further the supply of, and need for, pitches, or the personal circumstances of the site occupants.

### **Conditions**

36. The following conditions which are to be imposed meet the statutory and policy tests.
37. Conditions 1 and 2 regulate the number and type of caravans and storage containers on the site, and therefore provide certainty regarding the overall extent and effects of the development.
38. Condition 3 is required as permission has been granted on the basis of the occupier of the site as an Irish Traveller and assessed against Policy H4 which deals with the need for new pitches for Gypsies and Travellers. This condition is intended to secure use of the site only for this purpose.
39. Condition 4 is imposed to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the outstanding matters before the development takes place. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.
40. All of the details required to be submitted can be provided by the appellant and it is therefore appropriate to impose this condition without allowing flexibility regarding the timing of the provision of the details as discussed during the hearing. This will provide certainty regarding the timescales.

### **Conclusion**

41. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the material change of use of land at Railway Street, Grasswell, Houghton le Spring, DH4 4DY, shown edged red on the plan attached to the notice, to a use comprising residential use undertaken through the siting of caravans for the purpose of human habitation with associated portable toilet, and the siting of 2 shipping containers used for purposes ancillary to the residential use, and operational development comprising the installation of water and electricity supplies and drainage pipework, the construction of a rock-filled gabion structure at the northern end of the site and laying of hard surfacing throughout, subject to the conditions in the Schedule of Conditions attached to this decision, but otherwise I will uphold the notice with corrections and refuse to grant planning permission in respect of the 2.7 metre palisade boundary fence and gates, and the outdoor storage use. The requirements of the notice will cease to have effect so far as

inconsistent with the planning permission which I will grant by virtue of section 180 of the 1990 Act (as amended).

**Ground (g)**

42. The compliance period in the notice of 3 months is a sufficient period for the primary storage use to cease. The palisade boundary fencing and gate should be permitted to remain in order to secure the site until the scheme for the new boundary treatment and perimeter fencing has been approved and implemented. The period in relation to it should therefore be extended to 14 months (to reflect the timescales in Condition 4 and allow 3 months for implementation). The appeal on this ground therefore succeeds partly.

*Zoë Franks*

INSPECTOR

## **APPEARANCES**

FOR THE APPELLANT:

Philip Brown, BA (Hons) MRTPI

Isaac Doherty, Appellant

Isaac Doherty (Junior), Site Occupant

FOR THE LOCAL PLANNING AUTHORITY:

Harvey Emms, BA (Hons) MRTPI, Lichfields

## **DOCUMENTS**

1. Sunderland City Council Enforcement Appeal Statement
2. Draft Conditions

## **SCHEDULE OF CONDITIONS**

- 1) No more than 3 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 1 shall be a static caravan) shall be stationed on the site at any time.
- 2) The use of the site for the siting of containers hereby approved shall be for the purposes ancillary or incidental to the residential use only and shall be limited to 2 shipping containers, not exceeding 6.05m long, 2.44m wide and 2.59, high measured externally.
- 3) 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' education 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.
- 4) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
  - i) Within 3 months of the date of this decision a scheme for: i) the means of foul and surface water drainage of the site and connection to services; ii) proposed and existing external lighting and CCTV on the boundary of and within the site; iii) the internal layout of the site, including the siting of caravans, containers, plots, hardstanding, access roads, parking and amenity areas and refuse storage; iv) on-site hard and soft landscaping including details of all hard landscaping finishes and levels, detailed soft landscaping plan and specification of works including tree, hedge and shrub planting and where appropriate earth mounding including details of species, plant sizes and proposed numbers and densities; and v) the boundary treatment and perimeter fencing; shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
  - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail 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 submitted scheme shall have been approved by the Secretary of State.
  - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

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

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.