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15/1/2008

Ms A Mealing
Stockton-on-Tees Borough Council
Legal & Admin Services
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TS18 1TW

Your Ref: 05/3333/COU
Our Ref: APP/H0738/A/07/2052633/NWF
Date: 15 January 2008

Dear Ms Mealing

Town and Country Planning Act 1990
Appeal by Mr T Clarke
Site at Leylandii Stables, Durham Road, Stockton-on-tees, Ts

I enclose a copy of our Inspector's decision on the above appeal together with a copy of the decision on an application for an award of costs.

The attached leaflet explains the right of appeal to the High Court against the decision and how the documents can be inspected.

Please note that there is no statutory provision for a challenge to a decision on an application for an award of costs. The procedure is to make an application for judicial review. This must be done promptly.

If you have any queries relating to the decision please send them to:

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Yours sincerely

Nathan Lumber





Appeal Decision

Hearing held on 12 December 2007

Site visit made on 12 December 2007

by **Claire Sherratt** DipURP MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
15 January 2008

Appeal Ref: APP/H0738/A/07/2052633

Leylandii Stables, Durham Road, Stockton-on-Tees, Cleveland TS21 3LR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr T Clarke against the decision of Stockton-on-Tees Borough Council.
- The application Ref 05/3333/COU, dated 28 November 2005, was approved on 24 May 2007 and planning permission was granted subject to conditions.
- The development permitted is a residential gypsy site to accommodate one residential caravan, relocation of stables, a brick wall and gates.
- The conditions in dispute are Nos 1, 2, 4, 5 and 7 which state that:

(1) This consent is granted for a temporary period of 3 years from the date hereof, when unless the renewal of consent is sought and granted by the local planning authority, the residential use of the site shall cease and the buildings and hard surfacing associated with this application shall be removed from site and the site reinstated to its former condition.

(2) The development hereby approved shall be in accordance with the following approved plans; unless otherwise agreed in writing with the local planning authority.

Plan reference Number	Date on Plan
SBC0001	1 December 2005
SN/05/009/02	1 December 2005
SN/05/009/03	1 December 2005
SN/05/009	13 December 2005
SN/05/009/010	13 February 2007

(4) Notwithstanding details hereby approved, the approval does not relate to the elevation of section of wall and the plan location of the gate and wall as indicated on drawing no. SN/05/009/02 received on 1 December 2005 as these details have been superseded by details on plan number SN/05/009/010a revision a, dated 8 February 2007 and received on the 13 February 2007.

(5) The redeveloped access, enclosure and landscaping detail as indicated on drawing number SN/05/009/010a revision a, dated 8 February 2007 and received on 13 February 2007 shall be implemented in its entirety within 3 months from the date of this approval. These works shall include the removal of the existing brick wall, support piers and gate detail.

(7) Notwithstanding details hereby approved, the vehicle access gate shall be erected in accordance with design details to be submitted to and approved in writing with the local planning authority.

- The reasons given for the conditions are:
 - (1) The building is not considered suitable for permanent retention on the site.
 - (2) To define the consent.
 - (4) In order to achieve a satisfactory form of development.
 - (5) In the interests of visual amenity in order to comply with Policy GP1 of the Stockton on Tees Local Plan.
 - (7) In the interests of visual amenity.

Summary of Decision: The appeal is allowed, and the planning permission varied in the terms set out below in the Formal Decision.

Application for costs

1. At the Hearing an application for costs was made by Mr T Clarke against Stockton-on-Tees Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

2. The application was made to regularise the use of land as a gypsy site. The existing stables and residential caravan would be re-positioned within the site. I consider the proposed development would be more accurately described as the retrospective change of use to a private gypsy site to accommodate 1 no. residential caravan, relocation of stables and redevelopment of access and enclosure details.

Main issues

3. I consider the main issues are whether it is necessary to limit the development to a temporary period only; and, if so, whether the requirements of conditions 2, 4, 5 and 7 are reasonable and necessary having regard to the temporary nature of the permission.

Reasons

4. The Council's reason for restricting the permission to a temporary period (condition 1) is that the building is not suitable for permanent retention. The Council's representative explained that it is the form and design of the development that makes it unsuitable for permanent retention due to the location of the site on a main route into Stockton-on-Tees. In the absence of alternative sites the Council nevertheless considered a temporary permission acceptable.
5. The appeal site is situated within the defined limits of Stockton. Within these areas development for residential purposes is generally acceptable in principle in accordance with Policy HO3 of the Stockton-on-Tees Local Plan (June 1997) (LP) (saved under a direction by the Secretary of State under Schedule 8 to the Planning and Compulsory Purchase Act 2004). LP Policy HO7 confirms that gypsy sites will not be permitted in certain identified areas or on land allocated for other development. In considering proposals for gypsy sites the Council will pay particular regard to a number of factors. There is no dispute between the parties that the appeal site is not located in any of the identified areas or allocated for other development. The development would not conflict with any

of the factors outlined in the policy. The proposal would not therefore conflict with this policy although I note that it has not been saved under a direction by the Secretary of State under Schedule 8 to the Planning and Compulsory Purchase Act 2004. As such it can not be afforded the weight of a development plan policy.

6. The appeal site is situated north of a relatively new retail supermarket store and petrol station. To the south of the store is a roundabout. In my view there is a distinct change in character between the development south of the roundabout which is predominantly a built-up urban residential area and the sporadic rural nature of development situated in the open countryside beyond and opposite the retail store. The existing development (including the retail store) to the north of the roundabout and to the east of Durham Road, provides a transition between these two areas of differing character. The northern and western boundaries of the appeal site correspond with the boundary of the defined settlement limit.
7. Durham Road is one of the main routes into Stockton. The entrance to the appeal site is defined by a brick wall with fencing between brick pillars above and large ornate entrance gates. This is an urbanised feature quite uncharacteristic of this particular part of Durham Road. With the exception of the wall, I consider the remainder of the site integrates well with its surroundings. Only limited views of the residential caravan and stables can be gained from outside the site and it is proposed to relocate the caravan to a position behind the stables that would reduce its impact further. A large area of the appeal site is retained as a paddock used for grazing horses. It is proposed to remove the brick wall that I find unacceptable and replace it with a fence with landscaping in front of it. This would ensure that the development integrates satisfactorily with its surroundings. I do not therefore share the concerns raised by the Council that the form of development would not be suitable for permanent retention.
8. The report to committee suggests that the permission should be restricted to 3 years as after this period the provision of a more planned site may become available. Advice on the use of temporary permissions is contained in paragraphs 108–113 of Circular 11/95. Paragraph 110 advises that a temporary permission may be justified where it is expected that the planning circumstances will change in a particular way at the end of the period of the temporary permission. Paragraph 45 of Circular 01/2006 'Planning for Gypsy and Traveller Caravan Sites' confirms that where there is an unmet need but no available alternative gypsy and traveller site provision in an area, but there is a reasonable expectation that new sites are likely to become available at the end of that period in the area which will meet that need, local planning authorities should give consideration to granting a temporary permission. It was agreed by the parties that there is an unmet need for gypsy sites in the borough.
9. Circular 01/2006 advises that such circumstances may arise in a case where a local planning authority is preparing its site allocations Development Plan Document (DPD). This is not the case in Stockton-on-Tees. The Council is still in the early stages of preparing a Local Development Framework. It hopes to adopt a Core Strategy later in 2008. A GTAA has been commissioned that commenced in August 2007. No work has commenced on producing a DPD to

identify suitable gypsy sites. The Council is unlikely to do so until the Core Strategy is complete. In my opinion, the Council are not sufficiently well advanced in finding suitable sites to justify a temporary permission. I am not convinced that there is any reasonable expectation that sites are likely to become available in 3 years or even shortly after. I do not anticipate there will be any change in the planning circumstances relating to this development at the end of a three year period.

10. Furthermore, the appeal site is situated within a defined settlement limit, next to a large retail supermarket and within a reasonable distance of Stockton's many facilities. Paragraph 65 of Circular 01/06 confirms that when deciding where to provide for gypsy and traveller sites, local planning authorities should first consider locations in or near existing settlements with access to local services. In my view it is an ideal location for a gypsy site. I find no conflict with local policies or the Circular. One of the main intentions of Circular 01/2006 is to increase significantly the number of gypsy sites in appropriate locations with planning permission in order to address under-provision over the next 3-5 years. I consider that the proposal would do just that. I find no reason to restrict the permission to a temporary period only.
11. I established at the hearing that the thrust of the remaining conditions would be acceptable in principle to the appellant if the permission were permanent. Whilst I acknowledge that he would prefer not to remove the wall that he has constructed along the frontage, for the reasons I have already set out, I consider the wall to be an incongruous feature along this section of Durham Road. It was argued, on behalf of the appellant, that the requirement set out in condition 5 to redevelop the access, enclosure and landscaping in its entirety with 3 months, was unduly onerous.
12. I consider that the remaining conditions would be necessary and reasonable in respect of a permanent permission in general. However, I agree that the timescales for the completion of the alterations to the site entrance are unduly onerous. Whilst I find it reasonable that the wall, gates and piers are removed within 3 months, I consider that 12 months would be a more appropriate timescale for the replacement fencing and planting to be completed in their entirety. Any plants that die, become diseased or are removed within a period of 5 years of the completion of the landscaping should also be replaced.
13. I discussed whether any further conditions would be necessary if the permission were permanent. In order to ensure the development integrates satisfactorily with the character and appearance of the surrounding area, I consider that the greater proportion of the site should remain as a paddock and not be surfaced. As such, I consider the layout of the site should be agreed.
14. To conclude, I consider condition 1 is unnecessary. It was agreed that condition 2 should relate to plan reference SN/05/009/010 revision a received by the local planning authority on 13 February 2007. I consider condition 5 should be deleted and incorporated into a new condition that sets out a timetable for the removal of the wall, pier and gates, a layout plan to be submitted and approved by the local planning authority, and the replacement fencing and planting indicated to be implemented within 12 months rather than 3. I also intend to impose a condition requiring the landscaping to be maintained for a period of 5 years.

Formal Decision

15. I allow the appeal, and vary the planning permission Ref 05/3333/COU, for a retrospective change of use to a private gypsy site to accommodate 1 no. residential caravan, relocation of stables and redevelopment of access and enclosure details at Leylandii Stables, Durham Road, Stockton-on-Tees, Cleveland TS21 3LR granted on 28 November 2005 by Stockton-on-Tees Borough Council, deleting condition 1 and 5, but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the variation of condition 2 to refer to plan reference SN/05/009/010 revision a, received by the local planning authority on 13 February 2007, and the following new conditions (8 & 9):

- 8) 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 the existing brick wall, support piers and gate detail shall be removed;
 - ii) Within 3 months of the date of this decision a scheme for the internal layout of the site, including the siting of caravans, hardstanding, access roads, parking, paddock and amenity areas (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
 - iii) Within 12 months of the date of this decision, the redeveloped access, enclosure and landscaping detail indicated on drawing number SN/05/009/010 a revision a, dated 8 February 2007 and received by the local planning authority on the 13 February 2007 shall be implemented in its entirety.
 - iv) within 11 months of the date of this decision the site development scheme shall have been approved by the local planning authority or, if 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.
 - v) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
 - vi) the approved scheme shall have been carried out and completed in accordance with the approved timetable.
- 9) Any tree, hedge or shrub that is removed, uprooted or destroyed or dies or, in the opinion of the local planning authority, becomes seriously damaged or defective, within a period of 5 years from the completion of the landscaping referred to in condition 8 above, shall be replaced with another of the same species and size as that originally planted.

Claire Sherratt
INSPECTOR



Costs Decision

Hearing held on 12 December 2007

Site visit made on 12 December 2007

by **Claire Sherratt** DipURP MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
15 January 2008

Costs application in relation to Appeal Ref: APP/H0738/A/07/2052633 Leylandii Stables, Durham Road, Stockton-on-Tees TS21 3LR

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr T Clarke for a full award of costs against Stockton-on-Tees Borough Council.
- The hearing was in connection with an appeal against the grant of planning permission subject to conditions.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

The Submissions for Mr T Clarke

1. In support of the application reference was made to Circular 11/95 'The Use of Conditions in Planning Permissions' and Circular 8/93 'Awards of Costs Incurred in Planning and other Proceedings'. Conditions should only be imposed if they are necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects. Circular 8/93 confirms that in any appeal proceedings, the authority will be expected to produce evidence to substantiate each reason for refusal. The authority has not justified its position in respect of the reasons that it imposed the conditions to which the appeal relates.
 2. The reason that condition 1 was imposed was 'The building is not considered suitable for permanent retention on the site.' The Statement of Case and final comments from the authority do not address the transitional arrangements referred to in Circular 01/2006. At the hearing the authority sought to support its reason for imposing the condition in respect of the impact of the development on the character and appearance of the surrounding area. No evidence was produced to substantiate why the permission was restricted to a temporary permission.
 3. Discussions had taken place with the authority for sometime throughout the application process. Various solutions / amendments have been agreed as a result of those discussions. Throughout this time and in an e-mail dated 28 July 2006 there had always been an assumption that such solutions were based on a permanent planning permission. The officer's report to the planning committee has all the hall marks of an approval until the last sentence which makes reference to a temporary permission. The transitional arrangements referred to in Circular 01/2006 are introduced but not properly considered. The conditions fail to meet the tests set out in Circular 11/95.
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The Response by Stockton-on-Tees Borough Council

4. It is common practice to consider each aspect of the proposed development separately in a report to committee and then look at the overall picture where one aspect may fail. The authority was correct to grant a temporary permission. Reference to the building not being suitable for permanent retention relates to the caravan. The use of the site for residential purposes is not contested. It is the impact of the proposed use that is of concern.
5. The informative on the decision notice explains why the permission was only temporary. It makes reference to 'no significant undue affect'. Had the authority considered that the development would have a significant impact then it would have refused planning permission outright. It has always been considered that the 'building' would not be suitable for permanent retention. As the proposal was not considered to have a significant detrimental impact on the surrounding area and given the lack of other sites available a temporary planning permission was considered acceptable in this case.

Conclusions

6. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
7. The reason that the permission was restricted to a temporary period was because the Council considered the building to be unsuitable for permanent retention. The 'building' refers to the caravan. The form and design of the development adjacent to a primary route into Stockton, is the basis of the Council's concern. In the absence of alternative sites it was nevertheless prepared to permit the development for a temporary period.
8. Advice on the use of temporary permissions is contained in paragraphs 108-113 of Circular 11/95. Paragraph 110 advises that a temporary permission may be justified where it is expected that the planning circumstances will change in a particular way at the end of the period of the temporary permission. Circular 01/2006 sets out the transitional arrangements relating to the provision of gypsy sites in advance of the consideration of GTAAAs and translation into pitch numbers in Development Plan Documents (DPDs). Paragraphs 45 and 46 of the Circular are particularly relevant to the consideration of a temporary permission.
9. As specified in my decision, I do not anticipate that the planning circumstances relevant to this appeal will have changed in a particular way at the end of 3 years. I do not consider that there is a reasonable expectation that new sites are likely to become available at the end of 3 years. The local planning authority is not in the process of preparing its site allocations DPD. I appreciate that the impact that the proposed development would have on the character and appearance of the area is a subjective judgement. Nevertheless, the local planning authority did not substantiate either in writing or at the hearing what would change at the end of the three year period to justify the temporary duration of the permission. Granting a temporary permission in this case did not accord with the advice in Circulars 11/95 or 01/06. I consider the

authority therefore failed to substantiate why it was necessary or reasonable to impose the condition. In my opinion, this is tantamount to unreasonable behaviour.

10. Had the permission not been for a temporary period, then the remaining conditions were acceptable to the appellant, as set out in the statement submitted on his behalf. It is reasonable to assume that he would not therefore have appealed against them. In my view, the appellant did incur unnecessary cost as a result of the unreasonable behaviour of the Council.

Formal Decision and Costs Order

11. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that Stockton-on-Tees Borough Council will pay to Mr T Clarke, the costs of the appeal proceedings, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under section 78 of the Town and Country Planning Act 1990 as amended against the grant of planning permission subject to conditions for a residential gypsy site to accommodate one residential caravan, relocation of stables, a brick wall and gates on land at Leylandii Stables, Durham Road, Stockton-on-Tees, Cleveland TS21 3LR.
12. The applicant is now invited to submit to Stockton-on-Tees Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

Claire Sherratt
INSPECTOR