

2. PLANNING AND OTHER APPEALS

(references beginning with a 9 is planning appeal and
references beginning with an E is an enforcement appeal)

Reference	Place	Ward	Result	Cttee/delegated
9/2006/1240	Swarkestone	Aston	Dismissed	Delegated
E/2005/204	Weston-on-Trent	Aston	Dismissed	
9/2006/1418	Egginton	Etwell	Allowed	Delegated
9/2005/1390	Linton	Linton	Allowed	Committee
9/2006/0623	Findern	Willington/ Findern	Allowed	Committee



Appeal Decision

Site visit made on 17 July 2007

by **Dannie Onn** RIBA IHBC

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

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Date: 30 July 2007

Appeal Ref: APP/F1040/A/07/2041967

1 St James Court, Swarkestone, DE73 7GT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Alan Wrigley against the decision of South Derbyshire District Council.
- The application Ref 9/2006/1240/FH, dated 16 October 2006, was refused by notice dated 20 December 2006.
- The development proposed is erection of a single storey house extension.

Decision

1. I dismiss the appeal.

Reasons

2. The appeal site lies within the Swarkestone Conservation Area and across Church Lane from the Grade II* listed church of St James. The Conservation Area encompasses the village and the remains of an old Hall and associated land. It forms an historic rural setting for the church.
3. St James Court is a small group of dwellings developed from a former farmstead. No 1 is a single storey range extended at the time of conversion. It attaches to a gabled two-storey dwelling. The buildings are built of brick with plain tile roofs and are prominent on approach to the village. They are of simple vernacular form and agricultural character. They complement the character of the Conservation Area. An existing lean-to glass structure is below eaves level and only slightly detracts from this character.
4. The proposed extension would introduce a hipped roof projection from the single-storey range. That would be an alien roof form at odds with the prevailing character of the settlement. The projection on the open side of the farmstead grouping would clutter the simple, coherent form of the converted farm buildings. That would weaken the historic agricultural character by emphasising the residential use. The special character of the conservation area and the setting of the listed church would be harmed.
5. The character and appearance of the Conservation Area would be neither preserved nor enhanced, contrary to Environment Policy 9 of the Derby and Derbyshire Joint Structure Plan and Environment Policy 12 of the South Derbyshire Local Plan. The setting of the church would not be preserved, contrary to Environment Policy 10 of the Structure Plan and Environment Policy 13 of the Local Plan.

6. I note that extensions have been permitted nearby. However, these are of different form and in different situations. They do not indicate that the appeal should be allowed. I have therefore determined the appeal on its own merits.

Dannie Orr

INSPECTOR



Appeal Decision

Hearing held on 10 July 2007

by **D Roger Dyer** BA, DipArch, RIBA,
FCI Arb, Barrister

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Decision date:
1st August 2007

Appeal A Ref: APP/F1040/C/06/2030429

The Coopers Arms, The Green, Weston on Trent DE72 2BJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Paul Richard Groome against an enforcement notice issued by the South Derbyshire District Council.
- The Council's reference is RMS/E2005/204.
- The notice was issued on 23 October 2006.
- The breach of planning control alleged is "the unauthorised siting of an outside bar with associated drinking area."
- The requirements of the notice are:
 1. To remove the wooden building and veranda drinking area from the site.
 2. To remove from the land and dispose of at an authorised location, any building or other materials resulting from carrying out step 1 above.
 3. To restore the land to its appearance before the breach took place by levelling the ground and re-seeding it with grass."
- The period for compliance with the requirements is 4 calendar months.
- The appeal is made on the grounds set out in section 174(2)(a), (d) and (f) of the 1990 Act as amended.

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

Appeal B Ref: APP/F1040/A/06/2019728/NWF

The Coopers Arms, The Green, Weston on Trent DE72 2BJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Paul Richard Groome against the decision of the South Derbyshire District Council.
- The application ref: 9/2005/1352/F dated 11 November 2005 was refused by notice dated 9 January 2006.
- The development proposed is: "Retrospective planning permission amendment to site permission".

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. The notice of refusal issued by the Council in respect of the matters dealt with in Appeal B referred to the application as "The retention of an outside bar with associated drinking area." I am satisfied that represents the matters for which the appellant had applied.
2. After the appeal was lodged the appellant withdrew his appeal against the enforcement notice on ground (d). His appeals on grounds (a) and (f) continue to fall to be considered.

Preliminary Matters

3. The Coopers Arms was formerly known as Weston Hall. It is a Grade II* listed building that was a farmhouse before it was brought into use as a public house and restaurant following the grant of planning permission in 1988. In 1997 planning permission was granted to retain a timber building to provide an outside bar facility at the site. It appears that the timber building was subsequently re-sited and extended to the present form of the building that is the subject of this appeal.
4. The listed building was built in the early 17th century for the Roper family. It has three storeys with attics and a basement. Architecturally it is a striking building. The main walls are in red brick with stone dressings, moulded stone string courses to each floor and above the attic windows, flush ashlar quoins and an ashlar basement. The slate roofs have moulded stone copings to the gables on plain kneelers. At the sides there are large quoined external brick stacks. The list description suggests that the building was intended to be an H-plan, recognisable by the brickwork extensions at one corner, but only one side wing and a single storey of the central wing was erected. The building has associations with the Civil War, having been used as barracks in 1644.

Appeal A. The appeal on ground (a): that planning permission should be granted; and

Appeal B. The section 78 appeal.

Policy considerations

5. The development plan consists of the Regional Spatial Strategy for the East Midlands (RSS8); the Derby and Derbyshire Joint Structure Plan that was approved in January 2001; and the South Derbyshire Local Plan adopted in May 1998. Each of these documents contain policies for the preservation of the historic environment including the protection of historic buildings.
6. In reaching my decision I have taken account of Government advice in Planning Policy Note 15 (PPG15) "Planning and the Historic Environment", PPG24 "Planning and Noise" and PPG18 "Enforcing Planning Control".

The main issues

7. The principal considerations in this case are first, whether noise generated by use of the bar is acceptable in relation to the amenities of nearby residential properties and, secondly, whether the setting of the listed building has been preserved.

The appellant's case

8. On behalf of the appellants it is said that the external bar is used mainly in the spring and summer months when good weather conditions allow. No music is played or amplified noise and there is no illumination. The bar is closed at dusk. As it was originally sited in front of the listed building, the appellant has referred to paragraphs 3.34 to 3.36 of Planning Policy Guidance Note 15 (PPG15) in terms of the curtilage of the main house.

9. The appellant says that the present location of the bar protects neighbouring amenity more than its earlier position because the unit turns its back onto neighbouring property leaving little opportunity for customers to use the area behind it for recreational purposes. The appellant suggests that if necessary that part of the site could be protected by a condition requiring the erection of a barrier in that area. The appellant suggests a post and rail fence against which shrubs could be planted.
10. In the appellant's submission it is relevant that the bar has the benefit of a full-on licence and it is inspected by the Environmental Health Authority regularly. Although it is connected to mains water and drainage, he says no food is served from the bar. Because of the ambience of the area with its fishing lakes, the appellant finds that visitors are attracted to the features of the site and the opportunity to use these outside facilities. He told me that the bar and restaurants within the main house have a strict dress code, but fishermen or others casually dressed may use the external bar. In consequence fishermen, children and others can enjoy these facilities thus leading to the creation of three local jobs plus three waitresses. It also provides external facilities at times when the main building is used for conferences or weddings.
11. Part of the appellant's case is that the design of the bar, along with its external materials are appropriate to and preserve the setting of the listed building. The main house has been added to over the years and represents several architectural styles. The fact that the bar is located in the setting of the listed building should not prohibit appropriate development, especially as it assists in the enjoyment of the listed building and its continuous use. This is one of those rare occasions when a Grade II* building can be put to a use whereby the whole community can visit and appreciate the house in use.
12. The appellant suggests the bar itself is typical of timber pavilions seen on village greens or cricket fields. It has a verandah that accommodates six tables giving staff and customers excellent views of the area. If it were moved back to its original position it would expose a huge area of ground that could be used legitimately for other purposes that would not be conducive to the amenities of neighbours. Besides, the eastern boundary, against adjoining residential properties, has much foliage including a newly planted conifer hedge on adjoining land that contrasts with the species of trees that enhance the character and appearance of the listed building.

Reasons

The question of noise

13. From the evidence presented to me at the hearing it became clear that the Coopers Arms has become a successful establishment over recent years attracting bookings for conferences and wedding receptions apart from general trade in terms of its bar and restaurant facilities. At my site inspection I saw that it was busy even at a mid-week lunch time. The pleasant grounds beside a large fishing lake naturally attracts customers to use the waterside tables to take their drink or to merely sit outside. Inevitably the very success of the business and its environment has led to the congregation of visitors in or around the lakeside area and, in particular, the outside bar. In those

circumstances the precise location of the bar is critical to its effect on residential amenities.

14. The evidence demonstrates that the bar has been moved from the position it occupied when planning permission was granted in 1997. Although that change of location was not very great, in my judgement it was enough to make a significant difference to neighbours' perception of disturbance. It is now only 2.5m from the boundary fence and sited so that it is close to the neighbouring house and its patio. The proximity of the bar gives rise to the potential for disturbance, not only from the appellants' customers, but also from the electrical and other equipment necessary for the bar's operation.
15. The Council's officers suggested that the outside bar should be re-sited to the western end of the appeal site but I can appreciate that would require substantial rearrangement of the site including the car park and access to the outside bar from the main house. It was submitted to me by the Council's planning officer that to revert to the permitted position of the bar was no longer available because the permitted building had been replaced by a larger structure. In my opinion, though, if an outdoor bar were to be retained, its original location would have resulted in significantly less harm. Accordingly I conclude that to consider alternative locations is not necessary but it is clear to me that the present structure and its location contribute to undesirable disturbance to residential amenity. While the use of the curtilage of the public house is incidental to its lawful use, the external bar could not be in a worse position. Because of its very close proximity to the adjacent dwelling, in conjunction with the availability of drinks for sale in the bar, unacceptable intrusion to neighbours' living conditions is almost inevitable.

The effect on the listed building

16. While there have been physical changes necessary for the use of the main house as a public house and restaurant, it remains an outstanding building of architectural and historic interest and of great importance to the nation's built heritage. Statute requires the desirability of preserving its setting as clarified by PPG15 and development plan policies. It follows that it is essential that its setting should be preserved and that any structures proposed within its curtilage should be designed with care and with consideration for their effect on the listed building.
17. The outside bar in its permitted form did not possess any architectural merit but its very modest scale and its low-key design allowed it to appear subservient to the main building and it was acceptable to the Council for those reasons in 1997. It has, though, since been extended to provide a "verandah" with a foot-print rather larger than the bar itself. The design of the verandah departs from the simplicity of the bar itself while the use of modern materials such as a Perspex roof and the railings contribute to an appearance that is intrusive into the setting of the listed building. The overall effect is damaging to the setting of the historic building.
18. For all the above reasons I have come to the conclusion that these appeals should be dismissed. I have taken note of the proposals for landscaping and

other conditions but in my judgement those conditions would not address the harm to amenity and to the setting of the listed building. The appeals fail.

Appeal A. The appeal on ground (f): that lesser steps would overcome objections.

19. The appellant relies for this appeal on the imposition of conditions to reduce any impact on neighbours' property. In particular, as indicated above, he suggests a condition requiring a barrier to prevent the general public entering areas defined by a plan submitted with his statement of case.
20. In my judgement the outside bar is in the wrong position and has been extended in such a way that only reversion to its original size, design and location would overcome the harm identified. Failing that, the requirements of the notice represent the only remedy. The appeal on ground (f) fails.

Conclusions

21. For the reasons given above and having regard to all other matters raised, I conclude that these appeals should be dismissed. The relocation of the permitted bar seriously harms residential amenity while the extent and configuration of the added verandah severely damages the setting of the listed building. In reaching my decision I have taken account of all other matters brought to my attention at the hearing or in writing. I have noted the appellant's submission that local policies seek to encourage tourism and that the appellant's business meets that objective. However I have found nothing that outweighs the main planning considerations in this case.

Formal Decision

Appeal A

22. I dismiss the appeal.

Appeal B

23. I dismiss the appeal.

D Roger Dyer
INSPECTOR



Appeal Decision

Site visit made on 17 July 2007

by **Dannie Onn** RIBA IHBC

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Date: 9 August 2007

Appeal Ref: APP/F1040/A/07/2039708
52 Church Road, Egginton, Derby, DE65 6HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mrs Mitchell against the decision of South Derbyshire District Council.
- The application Ref 9/2006/1418/FH, dated 5 December 2006, was refused by notice dated 31 January 2007.
- The development proposed is erection of a 2 storey house extension.

Clarification

1. I have dealt with the appeal using the more accurate description on the appeal form in place of that on the application form.

Decision

2. I allow the appeal, and grant planning permission for demolition of an existing single-storey extension and replacement with a two-storey extension and a new two-storey extension on the other side of the dwelling at 52 Church Road, Egginton, Derby in accordance with the terms of the application, Ref 9/2006/1418/FH, dated 5 December 2006, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.
 - 2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 3) No development shall take place until full details of the means of enclosure and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved.

Reasons

3. The appeal site is a residential property alongside the entrance to the churchyard of St Wilfrid's Church. The church is a Grade I listed building. It has a formal entrance consisting of an access and parking area, entrance gates and a straight pathway through an avenue of trees. These are significant features in the setting of the listed building. Although there is mature planting

in the churchyard and along the boundary, No 52 is clearly visible from the roadway and the path to the church. It is part of the visual experience on approach to the listed building and within its setting.

4. The existing single-storey garage and store on the side of the house extends to form the boundary with the churchyard. The replacement two-storey extension would be set away from the boundary and thus would move this unremarkable modern development away from the churchyard. The appellant says that there could be additional planting. That would enhance the separation and, together with a continuation of the fence, could be secured by condition.
5. The proposed extensions would create a wider, more imposing frontage, clearly seen on approach to the church. However, No 52 is already a modern building next to an historic setting. Taken together with the enhancement to the churchyard boundary, I do not consider that the overall effect would be harmful.
6. I conclude that the proposed development would be no more intrusive on the church and churchyard than the existing house. The setting of the listed building would thus be preserved. That would accord with Environment Policy 10 of the Derby and Derbyshire Joint Structure Plan and Environment Policy 13 of the South Derbyshire Local Plan.
7. I have attached the suggested condition relating to the materials for the extensions to avoid an incongruous appearance for the overall building. I have also attached the condition to ensure a suitable fence and planting replaces the demolished garage wall.

Dannie Onn
INSPECTOR



Appeal Decision

Hearing held on 2 May & 27 June 2007

Site visit made on 27 June 2007

by **Claire Sherratt** DipURP MRTPI

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for Communities and Local Government

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Date: 23 August 2007

Appeal Ref: APP/F1040/A/06/2032633

Land north of Cauldwell Road, Linton, Swadlincote DE12 6RX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Martin Smith against the decision of South Derbyshire District Council.
- The application Ref 9/2005/1390/U, dated 18 November 2005, was refused by notice dated 6 June 2006.
- The development proposed is the change of use to a gypsy caravan site for 3 families.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Application for costs

1. At the Hearing an application for costs was made by Martin Smith against South Derbyshire District Council. This application is the subject of a separate Decision.

Procedural Matters

2. I adjourned the hearing on 2 May 2007, as the Council had not given sufficient notification to interested parties of the hearing date and venue. I heard that a number of local residents were unable to attend as a result. The hearing reconvened on 27 June 2007.
3. Notwithstanding the description of development included on both the application forms and reason for refusal, I heard that the proposal is for 4 caravans (one of which would be a tourer) to accommodate one family. This was confirmed to the Council, during the application process, in a letter from the appellant's agent. I do not consider any interested parties would be prejudiced by this amendment and I have determined the appeal on this basis.

Main issues

4. I consider the main issue is whether future occupiers of the site would be at risk from landfill gas emissions and / or the presence of asbestos waste.

Reasons

5. The appeal site comprises an area of vacant land in open countryside, outside the settlement of Linton. The site, part of a former colliery railway line, has been subject to landfilling in the past. The appeal site relates to an area of land that has approximately 19m of road frontage and is about 40m deep. The appellant owns additional land adjacent to the site. It is proposed that there

would be a maximum of three caravans for occupation by the appellant and his family. In addition, a mobile toilet block is proposed, although no details accompanied the application.

6. Policy 8 of the Derby and Derbyshire Joint Structure Plan stipulates that provision will be made for both permanent and transit caravan sites for gypsies and travellers which should normally satisfy a number of criteria. Housing Policy 15 of the South Derbyshire Local Plan supports gypsy caravan sites provided that, amongst other criteria, it would be acceptable in environmental terms.
7. The Government's core policies and principles contained in Planning Policy Statement 23 'Planning and Pollution Control' (PPS23) and the advice in the accompanying Annex 2 'Development on Land Affected by Contamination' are also material to my decision. When considering development on land affected by contamination, the principal planning objective is to ensure that any unacceptable risks to human health, buildings and other property and the natural and historical environment from the contaminated condition of land are identified so that appropriate action can be considered and then taken to address those risks. An assessment of risk should be carried out by the applicant for consideration before the application is determined. The potential for contamination to be present and any risks arising should be properly assessed and any necessary remediation and subsequent management measures to deal with unacceptable risks, incorporated in the development.
8. It is understood that tipping probably ceased on the site in 1989. According to the Environment Agency records the former cutting was filled with commercial and non-hazardous waste and asbestos. The site was subsequently capped with clay and covered with top soil.
9. Two previous applications for use of the site as a gypsy site have been refused. The first was subject to an appeal in 2003. The previous Inspector identified the most significant implications for the occupation of caravans on the appeal site as being the potential presence of landfill gas (principally methane), the risk of underground combustion and the presence of asbestos. I consider these are the key matters that also require consideration in this appeal.

Landfill Gas

10. The first application and appeal were supported by a site investigation report completed in November 2002. This was an interim report, requiring further monitoring to confirm the extent of any contamination. The findings of the 2002 report were based on the whole of the appellant's land (this includes the appeal site edged red and adjoining land edged blue on the application plans). It found that landfill gas emissions were low. However my colleague, who determined the appeal in 1993, did not consider that recorded levels and flow rates observed in the spike tests gave a reliable conclusion that the wastes were stabilised. He considered that there remained the possibility that trapped pockets of gas may exist or be developing, particularly under the area of hard surfacing. A sample of surface water collected from the landfill site and analysed in February 1993 conformed to European drinking water standards.
11. Further ground investigation was carried out between November 2003 and January 2004. This included measurement of Methane, Carbon Dioxide and

Oxygen levels on three separate occasions. These tests showed that the area of gas emissions was smaller than previously identified and occupied only the central area of the site. Methane was not encountered at the southern end of the site that relates to this appeal.

12. In 2005, a further gas emissions and soil contamination survey was carried out by the Centre for Land Evaluation and Management, of the University of Derby (CLEM). This comprised gas monitoring carried out on four occasions over two months and five samples were collected for containment analysis. Initially CLEM had intended to carry out the monitoring over 3 months. Analysis of soil samples from the site indicated an absence of significant levels of contamination.
13. A series of fixed spike holes were monitored for landfill gas on the entire area of land owned by the appellant. Gas monitoring of pre-existing standpipes and knock-in pipes adjacent to the site was also carried out. Whilst Methane and Carbon Dioxide were detected across the central part of the appellant's land and on adjoining land to the east, the appeal site itself was again found to be unaffected by gas emissions.
14. The spike hole surveys revealed that in a number of places where methane was being emitted, it was at greater than 1% by volume although the level of flammability of the gas emissions at those points is likely to be reduced by the presence of the high CO₂ and low O₂ concentrations also recorded in most cases. In addition, measured flow rates of gas were generally low with a maximum in any survey of 3.4 l/hr, below the thresholds considered for the safe completion of landfill sites.
15. The Council's witness suggested that permanently instated boreholes monitored over a 24 month period would be an acceptable monitoring regime. This is contrary to the findings of the Council's Environmental Health Officer who found the monitoring exercise carried out to be acceptable. I heard that he was satisfied with the investigations carried out and considered monitoring could cease after only two months. He consequently raised no objections to the application.
16. I am mindful that monitoring exercises have now been carried out on three separate occasions. The wider site is still gassing and this has been recorded in the same general vicinity on each occasion. The available information indicates that the first 50 or so metres of the site had been tipped with inert material and topped with a clay seal at the end of the first phase of tipping. This is supported by the records from the County Council and Environment Agency. Furthermore, the lack of any gas being released on the appeal site (the first 40m of the site) would also appear to support the likelihood of the material in this area being mostly inert in nature. The appeal site is located approximately 18 metres south of the closest extent of any found gas emissions recorded.
17. The most recent CLEM report recommends, as a precaution, a shallow gas collection pipe system should be installed to vent any gas from the site and measures taken to prevent gas accumulation in buildings by maintaining sufficient natural ventilation. Disturbance of the restored landfill surface should be avoided, as should the cultivation of the site and the consumption of any

associated crops and the lighting of fires. It also recommends that foul sewage should be dealt with by the installation of an above ground collection tank.

18. When considered in isolation, I consider the occupation of the appeal site would not result in unacceptable risks to the appellant and his family or to others. The appellant has addressed effectively the issue of potential contamination on the appeal site. Furthermore, the appeal site has been subject to development in the past as it was the location for the vehicular access to the tipping areas beyond, a site office and cabins. On the land beyond, where landfill gas is still evident, the risks associated with occupation obviously become greater than on the appeal site, albeit that those risks would still be relatively low. I consider that it is an advantage that the appellant is also the owner of the adjoining land and would therefore have control over its use, given that he is aware of the landfill issues and results of the surveys carried out to date. The physical separation of the appeal site could potentially be achieved through the erection of fencing or a hedge on top of a bund of imported top soil, thereby avoiding any breach of the clay cap. The Council accepts in its statement that a hedge could ultimately enclose the site but that it would take time to mature. This would satisfactorily protect against future occupiers of the site, children in particular, or visitors, inadvertently entering the site and using it inappropriately.
19. There was some discussion at the hearing about whether a condition preventing fires would be difficult to enforce. It is not a condition suggested by the Council in its statement of case. Nevertheless, I consider it would be reasonable as a precautionary measure in light of the recommendations by CLEM and enforceable by a Council representative asked to investigate such a breach. I am also mindful that the recommendations set out in the report are relevant to the whole area monitored and not simply the appeal site where no gas emissions were detected. Services could be provided above ground to avoid new pathways being introduced. No details of the proposed toilet block are included in the application and these would need to be agreed including construction methods to ensure sufficient ventilation would be retained around and beneath it.

Presence of Asbestos

20. According to site license asbestos should have been sealed in red plastic bags. Records show that asbestos was placed towards the rear of the site low down. During the infill operations, asbestos was a concern, as evidenced from parish council records at the time. Monitoring was carried out by Council officers and I have no substantive evidence before me to suggest that the operators were in breach of the site licence. If any asbestos is exposed underground, I heard that it would be contained under the clay cap. I concur with the view of my colleague in the previous appeal that so long as the asbestos remains buried and undisturbed it should not present a significant health hazard.

Underground Combustion

21. In 2003, my colleague concluded that, having regard to the wider site, there was a substantial possibility that an appreciable amount of combustible material remains, albeit that it would have decomposed considerably in the period since the site closed. Given the nature of the infill material in the first

50 metres or so of the cutting, and having established that there is no gassing on the appeal site, concerns about underground combustion would not, in my view, justify planning permission being withheld subject to a physical barrier being erected between the appeal site and adjacent land.

Conclusions

22. It is clearly essential that if the development proceeds, the clay cap should remain intact and the appeal site separated from the land beyond, where any risks to the occupiers, albeit low, are of greater concern. This would prevent the residential use of the site spilling out beyond the appeal site and being used inappropriately. To conclude on the main issue, I am satisfied that the proposal would deliver an appropriate development and that the risks are sufficiently well known to render the proposal acceptable. It would not conflict with Housing Policy 15 of the South Derbyshire Local Plan in that I find it acceptable in environmental terms.

Other Matters

23. In addition to the only concern of the Council about the implications of the former landfill operations on the safe occupation of the site, other interested parties raised additional concerns. There are a number of authorised traveller sites in the locality. The need for a further site was queried. Residents referred to an outdated policy (Policy H11¹) that was not adopted. This required, amongst other criteria, a need for sites to be demonstrated. However, the adopted LP policy makes no such provision, although SP Policy makes reference to need.
24. The Council has not carried out a needs assessment to date although it has joined with a number of other authorities to produce one. It is hoped that the results of the assessment would be available in the autumn of this year. In the meantime the Council accepts that there is an unmet need for gypsy sites in the area.
25. Although some representations alluded to the site being in the Green Belt, I established at the hearing that this was not the case. It is however in the National Forest. Circular 01/2006 accepts that gypsy sites would be acceptable in rural locations in principle. The site is situated outside the settlement boundary of Linton, in the countryside. Circular 01/2006 specifies that local landscape and local nature conservation designations should not be used in themselves to refuse planning permission for gypsy and traveller sites.
26. Mature hedges adjacent to Caldwell Road offer some screening of the site. However, I do not dispute that any caravans and associated paraphernalia would be visible from certain viewpoints, particularly from the bridleway to the west of the site and at the entrance. The site would be occupied by one family and conditions were suggested to restrict the number of caravans that could be accommodated on the site and the number of commercial vehicles. Additional landscaping could be incorporated within the site providing top soil is imported to ensure roots did not breach the existing clay cap. This would provide further mitigation against any impact that the development would have.

¹ Document 5

27. I acknowledge that the site has been subject to unauthorised camping in the past and was untidy in appearance. It continues to look unattractive now as it has been subject to substantial fly tipping. I agree that this is not a reason to permit the use of the site as a gypsy site. Nevertheless, overall, I am satisfied that a well kept and tidy gypsy site, would not unduly harm the character and appearance of the surrounding area or unacceptably undermine the objectives of the National Forest.
28. Although situated outside the settlement boundary of Linton it is within walking distance of it. The same services and facilities would therefore be available to any future occupiers of the site as are currently available to occupiers of properties in Linton. Circular 01/2006 is clear that matters of sustainability should not only be considered in terms of transport mode and distances from services. Local planning authorities should first consider locations in or near existing settlements with access to local services. In my view, the appeal site is reasonably well located being within walking distance of the local facilities in Linton but also reasonably accessible to the varied services at Swadlincote.
29. Concern was expressed that government policy favours the gypsy and traveller community as members of the settled community would not be able to obtain planning permission for a dwelling outside the defined settlement boundaries. This, it was argued, does not foster good relations between the settled and gypsy community. However, contrary to the concerns expressed, it is intended that the advice contained in the Circular 01/2006 *'will help to promote good community relations at a local level, and avoid conflict and controversy associated with unauthorised developments and encampments.'* It recognises the conflict and distress associated with unauthorised encampments, and the anti-social behaviour that sometimes accompanies such sites.
30. It is accepted that gypsies and travellers in rural areas often face difficulties in securing an adequate supply of affordable land for their needs. In settlements where residential development would be acceptable in principle, land is unlikely to be affordable to the gypsy community. Where there is a lack of affordable land to meet local gypsy and traveller needs, Circular 01/2006 advises that local planning authorities should include a 'rural exception site' policy in the relevant Development Plan Documents. Similar exceptions for the provision of 'affordable housing' for the settled community outside defined settlement boundaries is often addressed in development plans.
31. I have also had regard to concerns in relation to the impact of the proposed development on highway safety. The section of Cauldwell Road from which the appeal site is accessed is subject to the national speed limit. Shortly after, on entering the village, it is reduced to 30mph. I heard that cars regularly speed along this road. Nevertheless, I saw that visibility on leaving the site was reasonable. I consider the traffic movements associated with one family would not be significant. Whilst the appellant may have commercial vehicles associated with his business, this would not necessarily increase the number of vehicle movements from the site. I saw the proximity of the site to the bend. I would expect vehicles to be slowing down on the approach to the bend and I am satisfied that sufficient distance remains to allow vehicles to have regard to vehicles entering or leaving the site. I am not aware of any accidents that have occurred that could be attributed to the previous unauthorised occupation of the site or the landfill operations. Furthermore I am mindful that the

highway authority raises no objections to the proposal in terms of highway safety. I give their views substantial weight. Whilst not more than two commercial vehicles may be parked at the site as discussed at the hearing, I do not consider this would justify the need to provide an oil interceptor on the site as suggested by the Council. The use of the site would not be for commercial purposes.

32. I agree with the Council's assessment of the planning merits of the case that the decision turns on whether the site would be acceptable in environmental and safety terms. This is consistent with the findings of my colleague in 2003.

Conditions

33. The Council suggested that a number of conditions should be imposed if the appeal is allowed. I have already made reference to many of those suggested and why I agree each to be necessary, or not, within the reasoning of my decision. In addition to those I have referred to, I agree that a remediation validation report should be submitted to the Council to ensure those recommendations set out in the CLEM report are adhered to. In the interests of highway safety, the access shall be surfaced.

Overall Conclusions

34. To conclude overall, I consider that the proposed development would not result in an unacceptable risk to the health and safety of the appellant and his family or others. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Formal Decision

Appeal Ref: APP/F1040/A/06/2032633

35. I allow the appeal, and grant planning permission for the change of use to a gypsy caravan site for 1 family at Land north of Cauldwell Road, Linton, Swadlincote DE12 6RX in accordance with the terms of the application, Ref 9/2005/1390/U, dated 18 November 2005, and the plans submitted with it, subject to the following conditions:
- 1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.
 - 2) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.
 - 3) No more than 4 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which at least 1 shall be a touring caravan) shall be stationed on the site at any time.
 - 4) Notwithstanding the application plans, no development shall commence until a scheme for the clearance of the site and details of all proposed surfacing materials have been submitted to and approved in writing by the local planning authority. The site shall not be occupied until the agreed scheme has been implemented in accordance with the approved details.
 - 5) No commercial activities shall take place on the land, including the storage of materials.

- 6) Not more than two commercial vehicles, which shall not exceed 3.5 tonnes in weight), shall be stationed, parked or stored on this site.
- 7) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the exact position, design, materials and type of boundary treatment to be erected including the precise method of construction and details of associated earth works and measures to ensure that there shall be no breach of the clay cap. The boundary treatment shall be completed before the use hereby permitted begins in accordance with a timetable agreed in writing with the local planning authority. Development shall be carried out in accordance with the approved details.
- 8) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained. All planting, seeding or turfing comprised in the approved details of landscaping, which shall include details of associated earth works necessary to avoid any breach of the clay cap, shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 9) Prior to the occupation of the caravans hereby approved a remediation validation report along with a signed copy of the attached certificate shall be submitted to the local planning authority.
- 10) No development shall take place until details of a scheme for the disposal of surface and foul water have been submitted to and agreed in writing by the local planning authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.
- 11) Prior to the first occupation of the site, the access shall be surfaced in a bound material for a distance of 5 metres back from the highway, the precise details of which shall be first submitted to and approved in writing by the local planning authority.
- 12) No development shall take place until details of the proposed toilet/shower block have been submitted to the local planning authority together with the proposed method of construction of any necessary hardstandings. The block shall be erected in accordance with the approved details.
- 13) No burning of materials shall take place on the site or adjoining land shown edged in blue on the application plans.
- 14) No caravans shall be brought onto the site until details of their intended siting and any associated hardstandings have been submitted to and approved by the local planning authority in writing. The caravans shall

only be positioned in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

- 15) Any caravans positioned on the site shall be capable of being towed on the public highway, in accordance with the relevant Highways Act legislation, without division into separate parts.
- 16) No development shall take place until details of and the methods by which all services (i.e. electric, water, telephone) are to be provided on the site. The services shall be provided fully in accordance with the approved details.

Claire Sherratt
INSPECTOR



Costs Decision

Hearing held on 2 May & 27 June 2007

Site visit made on 27 June 2007

by **Claire Sherratt** DipURP MRTPI

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

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Date: 23 August 2007

Costs application in relation to Appeal Ref: APP/F1040/A/06/2032633 Land at Caldwell Road, Linton, Swadlincote DE12 6RX

- 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 Martin Smith for a partial award of costs against South Derbyshire District Council.
- The hearing was in connection with an appeal against the refusal of planning permission for change of use to gypsy caravan site.

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

The Submissions for Martin Smith

1. In support of the application reference was made to Annex 2 of Circular 8/93, in particular paragraph 2 that relates to procedural conduct in inquiry and hearing cases. The Council failed to give sufficient notice of the hearing date and venue which led to an adjournment of the hearing on 2 May 2007. The Appellant has, as a result of that adjournment, incurred unnecessary expense as it was necessary for his representatives to appear at the hearing on both days.

The Response by South Derbyshire District Council

2. The Council accepted and apologised that it did not give sufficient notice of the date and venue of the hearing. It has since reviewed its procedures to ensure it does not happen again. It accepts that the appellant incurred unnecessary expense as a result.

Conclusions

3. 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.
 4. I heard at the inquiry that the late notification of the hearing date and venue (3 days notice) had prevented some interested parties from attending. I considered it was necessary to adjourn the hearing as interested parties had been prejudiced as a result of the failure of the local planning authority to give sufficient notice of the hearing to interested parties.
 5. Paragraph 2 of Annex 2 of Circular 8/93 confirms that both appellant and planning authority are expected to comply not only with the normal statutory
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procedural requirements for inquiries but also where applicable the non statutory code of practice for hearings. Whilst a failure to comply with these rules may occasionally be excusable, in this case I consider the Council did act unreasonably and caused the appellant to incur unnecessary expense. A partial award of costs is awarded in respect of the costs incurred due to the unnecessary attendance of the appellant's representatives on 2 May 2007.

Formal Decision and Costs Order

6. 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 South Derbyshire District Council will pay to Martin Smith, the costs of the appeal proceedings limited to those costs incurred in the attendance of those parties representing the appellant on 2 May 2007, 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 refusal of planning permission for change of use to a private gypsy caravan site on land off Caldwell Road, Linton, Swadlincote, DE12 6RX.
7. The applicant is now invited to submit to South Derbyshire District 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



Appeal Decision

Site visit made on 20 August 2007

by Anthony Thickett BA(Hons) BTP
MRTPI Dip RSA

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

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Date: 30 August 2007

Appeal Ref: APP/F1040/A/07/2042722

Land at The Old Hall, Lower Green, Findern, Derbyshire, DE65 6AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by J A Ball New Homes Ltd against the decision of South Derbyshire District Council.
- The application Ref 9/2006/0623/O, dated 23 May 2006, was refused by notice dated 10 October 2006.
- The development proposed is the demolition of single storey outbuildings and erection of 3 dwellings; erection of double garage for The Old Hall, new vehicular access. The application is in outline with all matters bar siting and means of access reserved for subsequent approval.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Procedural Matters

1. The description of development set out above is not that given on the planning application form. The appellant initially sought to build 4 dwellings but the proposal was amended to the development described above prior to the determination of the application by the Council. The appeal proposal is shown on drawing number 05_2086_05E.
2. Following the refusal of the appeal application, the Council granted planning permission for the siting of the dwellings on Plots 2 and 3. The appellant argues that, as a consequence, I need only concern myself with Plot 1. That is not the case, the whole of the appeal application is before me.

Main Issue

3. The main issue is the impact of the proposal on the character and appearance of the area and the setting of All Saints Church (a Grade II listed building).

Planning Policy

4. The Council's reason for refusal does not allege any conflict with national or local policy but a number of policies are set out in the Council's statement. The development plan for the area includes the Derby and Derbyshire Joint Structure Plan 2001 and the South Derbyshire Local Plan 1998. Housing Policy 5 of the Local Plan lists Findern as a village where new housing will be permitted provided it would be in keeping with the scale and character of the settlement. This aim is reinforced by Housing Policy 5 of the Structure Plan. Environment Policies 10 and 16 of the Structure Plan and Local Plan
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Environment Policies 9 and 13 seek to protect trees and the setting of listed buildings.

Reasons

5. The 3 dwellings would be built within the grounds of The Old Hall. The site lies to the east of and adjoins the churchyard to All Saints Church. Access is currently from Lower Green alongside the churchyard but this would be retained for use by pedestrians only. A new vehicular access is proposed from Sycamore Avenue which adjoins the north eastern boundary. The appeal site, the church and the buildings enclosing Lower Green are part of the attractive historic core of the village.
6. The attraction of this part of the village is also due to the mature trees around the church and within the appeal site. The centre of the site is dominated by a large horse chestnut and the drive leading to The Old Hall is lined by an avenue of lime trees. All these trees make a positive contribution to the character of the historic core of the village. The Council argue that it will come under pressure from prospective occupiers to carry out works to these trees. This is not a concern shared by The County Council's Tree Preservation Officer who has no objection to the proposal. From what I have seen and, in the absence of any technical evidence to the contrary, I share the County Council's view that the proposal would not lead to the loss of these trees.
7. The County Council's Conservation and Design Officer is also satisfied that the proposal would not have an adverse impact on the relationship between the church and The Old Hall. It must follow, from the grant of planning permission for Plots 2 and 3 that the Council are satisfied that buildings sited here would not harm the setting of the church (or have an adverse impact on the trees within the site). I agree, the buildings would be set well back from and would not affect the integrity of the churchyard. From Lower Green, views of the dwelling on Plot 1 would be obscured by the horse chestnut and the limes. I am satisfied that the proposed siting would respect the historic core of the village and the relationship between the church and The Old Hall.

Other matters

8. The Highway Authority do not share residents' concerns regarding the ability of local roads to accommodate the traffic generated by the proposal. In the absence of any technical evidence to the contrary, I see no reason to take a different view. I am satisfied that the proposed dwellings could be designed in such a way so as to safeguard the living conditions of adjoining occupiers.

Conditions

9. I have considered the Council's suggested conditions in light of the advice in Circular 11/95. It is necessary, in the interests of the visual amenity of the area, to impose conditions regarding tree protection and floor levels. As external appearance is a reserved matter, there is no need for a condition relating to the type and colour of gutters and down pipes. Findern is recorded in the Domesday survey and, given the location of the site in the historic core of the village, a condition regarding a programme of archaeological work is necessary.

10. I shall impose a condition regarding the access to Sycamore Avenue but the dimensions of the visibility splay required by the Highway Authority are probably based on advice now superseded by Manual for Streets. Manual for Streets may specify a visibility splay of a smaller magnitude which could reduce the amount of hedge lost fronting Sycamore Avenue to the benefit of the character and appearance of the area. In order to safeguard the trees on the site, I shall require the new access to be created before any site clearance or construction. Car parking and manoeuvring spaces are shown on the submitted drawings and I have no reason to believe they will not be provided. I have seen nothing to indicate that parking on the street would be detrimental to highway safety and see no need to require parking spaces to be provided on site.
11. The drawing upon which this decision is based is set out in paragraph 1 above and a condition restricting the permission to that drawing is not required. In the absence of anything from a statutory undertaker to indicate a lack of capacity, I see no reason why drainage cannot be dealt with under Building Regulations.

Conclusions

12. For the reasons given above and having regard to all other matters raised, I find that the proposal would not have an adverse impact on the character and appearance of the area or the setting of All Saints Church. I conclude that the proposal complies with the development plan policies set out above and that the appeal should be allowed.

Formal Decision

13. I allow the appeal, and grant outline planning permission for the demolition of single storey outbuildings and erection of 3 dwellings; erection of double garage for The Old Hall, new vehicular access at land at The Old Hall, Lower Green, Findern, Derbyshire, DE65 6AD in accordance with the terms of the application, Ref 9/2006/0623/O, dated 23 May 2006 and the plans submitted with it, subject to the following conditions:
- 1) Details of the design, external appearance of the buildings and the landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
 - 2) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
 - 3) The development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
 - 4) No development shall take place, nor any demolition works or site clearance, until there has been submitted to and approved in writing by the local planning authority details of a scheme for the protection of trees

to be retained on the site during the demolition of the buildings and throughout the course of the development.

- 5) No development shall take place until details of the method of the construction of the access road within any tree protection zone approved under condition 4 above have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) No development shall take place, nor any demolition works or site clearance until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority.
- 7) No development shall take place until details of ground and floor levels have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 8) Notwithstanding the access and visibility details shown on drawing number 05_2086_05E, no development shall take place, nor any demolition works or site clearance until details of a visibility splay have been submitted to and approved in writing by the local planning authority. The approved visibility splay shall be maintained free of any obstruction exceeding 1m in height for as long as the development hereby permitted remains in existence.
- 9) No development, nor any demolition works or site clearance, other than works required to create the access to Sycamore Avenue, shall take place until the access to Sycamore Avenue has been constructed in accordance with the details shown on drawing number 05_2086_05E and the visibility splay approved under condition 8 above.

Anthony Thickett

Inspector

