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# Appeal Decision

Site visit made on 7 November 2023

**by D Hartley BA(Hons) MTP MBA MRTPI**

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

**Decision date: 27<sup>TH</sup> NOVEMBER 2023**

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**APP/C3430/C/22/3312914**

**Land adjacent to Brinsford Bridge, Stafford Road, Coven Heath, South Staffordshire WV10 7HE**

- 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 Patrick Dunne against an enforcement notice issued by South Staffordshire Council.
- The enforcement notice was issued on 10 November 2022.
- The breach of planning control alleged in the notice is failure to comply with condition No 1 of a planning permission Ref 21/00624/VAR granted on 24 August 2021.
- The development to which the permission relates is the erection of two amenity buildings. The condition in question is No. 1 which states '*The development shall be carried out in accordance with the approved drawings: Amended Amenity Building Floor Plans & Elevations, received on 23/07/2021, Location Plan received 01/06/2021*'.
- The notice alleges that the condition has not been complied with as follows: 'i) *increased total ridge height on both buildings of a minimum of 30cms; ii) Increased ridge height of dormer windows on both buildings; iii) Increased height to the eaves on both buildings of over 0.60 metres; iv) Redesigned central front entrance/porch with an increased height to the eaves on both buildings of a minimum of 1.90 metres; v) Redesigned central front entrance/porch with an increased depth on both buildings of a minimum of 1.00 metre; vi) Redesigned entrance on both buildings to central front entrance/porch with double door entrance; vii) Redesigned fenestration with an increase in the number of panes from two paned windows to three paned windows, and viii) Insertion of additional windows and Velux roof lights or reduction in number of windows or doors throughout both buildings*'.
- The requirements of the notice are: 'i) *Reduce the total ridge height on both buildings to the approved drawing height, (Appendix 1 of this notice); ii) Reduce the height of the dormer windows on both buildings to the approved drawing height, (Appendix 1 of this notice); iii) Reduce the height of the eaves on both buildings to the approved drawing height, (Appendix 1 of this notice); iv) In respect of the redesigned central front entrance/porch on both buildings, reduce the height of the eaves to the approved drawings height and reduce the depth to the approved drawing depth shown on the approved drawing at 1.00m, (Appendix 1 of this notice); v) In respect of the redesigned entrance to the central front entrance/porch on both buildings, remove the double door and replace with a single door and two double paned windows to reflect the design shown on the approved drawing, (Appendix 1 of this notice). In respect of Building 1 Shaded Blue on the Plan at Appendix 2 attached to this notice vi) In the front elevation, replace the three paned windows with two paned windows on the ground floor and remove the side windows to the central front entrance/porch; vii) In the left elevation, (from the front), insert the door shown on the approved drawing and replace the three paned window with a two paned window on the first floor; viii) In the rear elevation, replace the three paned windows with two paned windows as shown on the approved plan and remove the three paned window on the lefthand side and Velux roof lights in the rear roof elevation; ix) In the right elevation, (from the front) replace the three paned window with a two paned window on the first floor. In respect of Building 2 –*

*Shaded Green on the Plan at Appendix 2 attached to this notice x) In the front elevation, replace the three paned windows with two paned windows on the ground floor and remove the side windows to the central front entrance/porch; xi) In the left elevation, (from the front), remove the two windows to the ground floor, and large window to the first floor and replace with a single door and window show on the approved drawing and in the positions shown on the approved drawing; xii) In the rear elevation, Velux roof lights in the rear roof elevation xiii) In the right elevation, (from the front), replace the three paned windows to the left-hand side and first floor with two paned windows'.*

- The period for compliance with the requirements is six months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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## Decision

1. It is directed that the enforcement notice be corrected by deleting the words '*in the rear elevation, velux roof lights in the rear roof elevation*' in paragraph 5 xii) and replacing them with '*remove the velux rooflights from the rear roof elevation*'. Subject to this correction, the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the erection of two amenity buildings without complying with condition 1 of planning permission 21/00624/VAR, but subject to the other conditions attached to that planning permission.

## Procedural Matter

2. In the interests of clarity and certainty, and as information to accompany the ground (a) appeal, the appellant submitted two drawings, one labelled as 'Amended Amenity Building and Elevations No.1' dated June 2023 and the other as 'Amended Amenity Building and Elevations No. 2' dated June 2023. There is no dispute between the main parties that these drawings reflect the amenity buildings that had been constructed on the appeal site when the notice was issued. I have proceeded to determine the appeal on this basis. However, it was not possible for me to view inside amenity building No. 1 as part of my site visit and all curtains were closed. I do not therefore know if the internal use or configuration of amenity building No. 1 has changed since the notice was issued.

## The Notice

3. There is an error in paragraph 5 xii) of the enforcement notice in that it states, '*in the rear elevation, velux roof lights in the rear roof elevation*'. This should have said '*remove the velux rooflights in the rear roof elevation*'. I am satisfied that correcting the notice to reflect the above wording would not lead to any injustice. It is clear from the reasons for issuing the notice that it was directed at the velux rooflights. The notice is accordingly corrected.

## Reasons

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

#### *Background and main issue*

4. The appeal site falls within land washed over by Green Belt. It is allocated as a Gypsy/Traveller site (site GT08) in the adopted South Staffordshire Site Allocations Document 2018. The evidence is that planning permission was approved several years ago for two permanent pitches and a further transit pitch. Planning permission was subsequently approved on 18 September 2020 for the erection of two amenity buildings<sup>1</sup>. An application under section 73 of the Act was submitted to vary this planning permission in respect of amended floor plans and elevations to allow the provision of storage in the roof spaces<sup>2</sup>. This was approved on 24 August 2021. The enforcement notice is directed at a breach of condition No. 1 of this planning permission.
5. I have considered the reasons for issuing the enforcement notice and the main issues for consideration are whether the breach of planning control is inappropriate development in the Green Belt including its effect on openness; the effect of the development on the character and appearance of the area; and, if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify development.

#### *Whether inappropriate development in the Green Belt*

6. While Policy E of the Government's Planning Policy for Traveller Sites 2015 indicates that Traveller sites in the Green Belt are inappropriate development, the primary use of the land as a Gypsy/Traveller site was considered and approved on appeal in 2007.<sup>3</sup>
7. There is no evidence that the previously approved amenity buildings were substantially completed and thereafter extended. The breach of planning control relates to buildings that are not in accordance with the approved plans and it is necessary that I consider the appeal development based on the construction of new buildings in the Green Belt. In this context, I do not find that the exception in Paragraph 149 of the National Planning Policy Framework 2023 (the Framework) which relates to '*the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building*' is relevant in terms of this appeal.
8. I find that the evidence is that the amenity buildings that have been erected on the site constitute buildings which do not meet any of the exceptions in paragraph 149 of the Framework. In this regard, the breach of planning control constitutes inappropriate development in the Green Belt. In this regard, there is conflict with the Framework and with policy GB1 of the South Staffordshire Council Core Strategy 2012 (Core Strategy).

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<sup>1</sup> Planning permission reference number 19/00863/FUL

<sup>2</sup> Planning permission reference number 21/00624/VAR

<sup>3</sup> Appeal Ref APP/C3430/A/06/203210/NWF

### *Openness*

9. The amenity buildings are located alongside Gypsy/Traveller pitches and are seen against caravans, vehicles and other domestic paraphernalia associated with the approved residential caravan site. The site is screened from public view by boundary landscaping, but it is acknowledged that some glimpses of the amenity buildings can be seen from the main road. The buildings are two-storey in height and have relatively large footprints.
10. Openness has both a spatial and visual dimension. Overall, I find that moderate harm has been caused to the openness of the Green Belt. This adverse harm weighs against allowing the appeal.

### *Character and appearance*

11. The appeal site is an allocated Gypsy and Traveller site. It falls within a mainly rural area and is partly visible from the main road. Much of the site is, however, screened from public view owing to boundary landscaping. Amenity building No. 2 is most conspicuous from those passing the site given its location, height and land levels.
12. I accept that the amenity buildings include additional fenestration details in terms of window openings (including velux windows), some of which are new or are larger than what was previously approved by the local planning authority (LPA). However, in the context of what has already been approved by the LPA, I do not find that the relative alterations, modifications and additions have resulted in buildings that appear significantly more dominant, bulky or residential in this rural location, even factoring in the increased eaves and ridge heights. In other words, in considering this main issue, it is reasonable that I consider planning permission No. 21/00624/VAR which is a realistic fall-back position available to the appellant.
13. I accept that the porches are larger than approved by the LPA and there is more glazing than consented. Nonetheless, the LPA has already approved amenity buildings which are noticeable from the A449 dual carriageway, and, in this context, the appeal buildings do not appear bulky or akin to dwellinghouses in relative terms.
14. The appeal site is not appreciated by passers-by as having a close relationship with other surrounding buildings and, in this regard, I do not find that in terms of their design or use of materials the amenity buildings have caused harm to the scenic beauty and character of the countryside. While I do not disagree with the LPA that the relative ridge and eaves height increases have directly resulted in an increase in floorspace, the effect of such development on the character and appearance of the area is not in itself determined by what has changed internally. It is the external changes relative to the amenity buildings, which are determinative in terms of considering this main issue. As detailed above, the LPA do not specifically dispute the need for the internal floorspace.
15. I recognise that the amenity buildings have the appearance of two storey dwellinghouses. However, that was the case in respect of the development approved under planning permission 21/00624/VAR. Indeed, the LPA comment in their officer report, *'whilst I accept that the buildings have a rather domestic appearance, a condition can be imposed ensuring that the structures are only used as amenity buildings in connection with the use of the gypsy site'*. Given

the fall-back planning permission, I do not find that the amenity buildings appear materially different in visual terms. Furthermore, the already imposed condition relating to incidental use of the amenity buildings would remain if the deemed planning application were to be approved.

16. For the above reasons, I conclude that the breach of planning control has not resulted in any material harm being caused to the character and appearance of the area when the fall-back planning permission is considered. In this regard, and, in the context of what the LPA has already approved on the site, I conclude that the development does not conflict with the design, character and appearance requirements of policies EQ4 and EQ11 of the Core Strategy, chapter 12 of the Framework, the National Design Guide 2021 and the South Staffordshire Design Guide 2018.

#### *Other Considerations*

17. In its officer report, the LPA make it clear that the need for the unauthorised buildings is not in dispute. Indeed, the LPA raise no concern about the need for the space that has been created arising from the unauthorised alterations and modifications to the amenity buildings approved as part of planning application No 21/00624/VAR.
18. The LPA agrees with the appellant that the principle of the need to accommodate the amenity requirements of Gypsies and Travellers has already been established. In addition, there is no dispute between the parties that the amenity buildings which are the subject of this appeal provide health, hygiene and living conditions benefits for occupiers of the Gypsy/Traveller site.
19. Planning application No. 21/00624/VAR constitutes a realistic fall-back position to which I afford very significant weight as part of the consideration of this ground (a) appeal. In this context, the amenity buildings that are the subject of this appeal are not materially different in design or volume terms to those amenity buildings that have already been approved by the LPA. In this context, I have found that harm has not been caused to the character and appearance of the area. Furthermore, and while I have found that the breach of planning control constitutes inappropriate development in the Green Belt and that moderate harm has been caused to the openness of the Green Belt, the relative impact on the openness of the Green Belt is not very significant when the fall-back position is considered.
20. The appeal site is close to the edge of the Staffordshire and Worcestershire Canal Conservation Area (CA). However, given the existence of boundary landscaping and the location of the amenity buildings, coupled with the fact that the LPA has approved similar amenity buildings already and does not require the removal of most of the development in terms of the requirements of the notice, I do not find that the breach of planning control has caused harm to the setting of the CA. In other words, and, for these reasons, the breach of planning control has preserved the setting of the CA and hence its significance.

#### *Ground (a) appeal conclusion*

21. For the reasons outlined above, I conclude that the breach of planning control amounts to inappropriate development in the Green Belt. Furthermore, moderate harm has been caused to the openness of the Green Belt. These are matters to which I afford substantial adverse weight in the planning balance. In

the context of the fall-back planning permission position, I have found that the appeal development has not caused harm to the character and appearance of the area. This is therefore a neutral matter in the planning balance.

22. I conclude that the harm caused by the development to the Green Belt owing to inappropriateness, and the moderate harm caused to the openness of the Green Belt, is clearly outweighed by the identified other considerations above sufficient to demonstrate the very special circumstances needed to justify the development. Therefore, the ground (a) appeal succeeds.

#### *Conditions*

23. Where an appeal on ground (a) is allowed in respect of a breach of condition, such that the condition(s) being enforced against will be removed and no new conditions are to be imposed, planning permission should be granted on the deemed planning application under section 177(5) of the Act for the development originally permitted, subject to all of the other conditions previously imposed. Therefore, the condition that is subject to the notice does not have to be discharged on permission ref No. 21/00624/VAR.
24. It is not open to me review any of the other conditions imposed on the original planning permission; doing so would widen the scope of the notice. It has not been necessary for me to impose a new drawings condition as the development has already commenced. The existing condition relating to occupation of the amenity buildings for incidental purposes remains and it is neither necessary nor possible for me to impose such a condition again.

#### **Conclusion**

25. For the reasons given above, I conclude that the appeal should succeed on ground (a). Planning permission will be granted and the enforcement notice will be quashed. The appeals on grounds (f) and (g) do not therefore fall to be considered.

*D Hartley*

INSPECTOR