

SOUTH DERBYSHIRE DISTRICT COUNCIL

DEVELOPMENT CONTROL SUB-COMMITTEE – 7th April 2002

Planning Services Manager

I N D E X

PART 1 Planning Applications

PART 2 Appeals

In accordance with the provisions of
Section 100D of the Local Government Act 1972,
BACKGROUND PAPERS are the contents of the files
whose registration numbers are quoted at the
head of each report, but this does not include
material which is confidential or exempt
(as defined in Sections 100A and D of that Act, respectively).

PLANNING SERVICES MANAGER

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When moving that a site visit be held, Members will be expected to consider and propose one or more of the following reasons:

1. The issues of fact raised by the Planning Services Manager's report or offered in explanation at the Committee meeting require further clarification by a demonstration of conditions on site
2. Further issues of principle, other than those specified in the report of the Planning Services Manager, arise from a Member's personal knowledge of circumstances on the ground that lead to the need for clarification that may be achieved by a site visit
3. Implications that may be demonstrated on site arise for consistency of decision making in other similar cases

07/05/2002

Item 1.1**Reg. No.** 9 2001 0328**Applicant:**
Mr K N Holloway
Park Farm
Stretton En Le Field
Swadlincote
Derbyshire
DE12 8AB**Agent:**
Mr K N Holloway
Park Farm
Stretton En Le Field
Swadlincote
Derbyshire
DE12 8AB**Proposal:** **Change of use of redundant farm buildings to workshops/offices (B1 Use Class only) at Blakenhall Farm Caldwell Swadlincote****Ward:** **Linton****Valid Date:** **04/04/2001****Site Description**

The site is located in the countryside outside the confines of any sustainable settlement..

The buildings, the subject of this application, form part of an agricultural holding. They are utilitarian structures but lie in proximity to other more traditional brick built buildings and close to the former farm house that is in the ownership of another party.

The Proposal

The applicants originally sought consent to convert the buildings for general industrial and storage uses. These are uses that lie within Classes B2 and B8 of the Use Classes Order. However, following negotiation on the application the applicants now seek consent to convert the buildings to uses within Class B1 (light industry) only. This use class allows uses of light industry that should not cause disturbance in either residential or rural areas.

In addition, the applicants do intend to form a driveway to serve the units for which consent is sought. However, they are prepared to forsake this if necessary

Applicants' supporting information

The applicants have made the following comments:

- (i) The proposed driveway around the buildings would improve life for the residents of Blakenhall Farmhouse,
- (ii) PPG 13 is not intended to resist all development in rural areas but to offer opportunities to work in rural areas and so reduce commuting,

- (iii) Currently, the machinery that accesses the farm buildings is very large and causes difficulties for the occupier of the former farmhouse. It is a danger to young children as visibility is not good. The new access would improve matters,
- (iv) Up to 150/200 vehicle movements will use the buildings at the present time during busy farming periods. The grain store alone takes 30 articulated lorry movements to fill,
- (v) The buildings would attract more use but specifying their hours of use could control their use. This would minimise disturbance,
- (vi) The use of the site for articulated lorry movements would cease and the use of the buildings in the early hours and late at night, when they are used for farming, would also cease,
- (vii) The drier that is used at Blakenhall Farm is noisy, dusty and smelly. This too would cease use if permission is granted,
- (viii) There is no intention to build further buildings to replace those for which consent is sought,
- (ix) Temporary permission for only twelve months would not be acceptable and a minimum period of two years is suggested if temporary consent is granted

A further letter of objection has been received from the original objector re-confirming the objection to the application due to the proximity of the buildings to the domestic environment and the fact that the converted buildings would share infrastructure with the objector's home.

In addition it is re-iterated that:

- (i) commercial activity compared to the sporadic agricultural use at the present would be a gross invasion of privacy and cause noise pollution and disturbance to this quiet environment
- (ii) the access is via a private property where three young children play, access is through the garden to the house and any use other than slow moving tractors on an occasional basis is unacceptable for both safety and security reasons
- (iii) the buildings are low quality, one being in a very poor state and it is unsafe
- (iv) the buildings have no services and any waste would be directed over agricultural land and any additional drainage would have an impact on the objectors home
- (v) the access from the main road is very dangerous and the private drive is narrow.

Planning History

9/2000/0628: Proposed change of use of buildings to workshop/store. Refused.

9/190/1100: Use of buildings for building fabrication, plant storage and offices. Refused.

Responses to consultation:

The highway authority has no objection to the proposal subject to improvements being made to the visibility splays onto Cauldwell Road. However, concerns are expressed that the proposal is not sustainable.

The Environment Agency objects to the proposal stating that the scale of the proposal is in excess of what would normally be serviced by a septic tank. The objection would be overcome if the applicants were to use a package treatment plant. Subject to that matter being overcome the Agency has no objection to the proposal subject to conditions.

The Environmental Health Officer has no objection subject to:

- (i) a temporary permission for 12 months being granted so that the use of the premises could be monitored,
- (ii) that the hours of operation being restricted to 8:00 a.m. to 5:00 p.m. on Monday to Friday only, and,
- (iii) that the buildings being sound insulated in accord with a scheme to be agreed.

Responses to Publicity

A letter of objection has been submitted from the only close neighbour to the property that makes the following points:

- (i) the proposal would destroy the rural essence of this attractive area,
- (ii) the proposal would be invasive,
- (iii) the application as submitted is a misrepresentation of the site,
- (iv) the plans are short sighted and environmentally insensitive,
- (v) access to the site is on a blind corner and dangerous to road users,
- (vi) the buildings are not redundant,
- (vii) there is no public transport to the site,
- (viii) there are a number of commercial complexes in the Burton and Swadlincote area,
- (ix) the proposal would destroy a beautiful area and damage the countryside,
- (x) the access travels through the objector's property which could be a threat to the applicant's children,
- (xi) the current civil rights allow the use of the site for agricultural purposes only (this is not material to the application),
- (xii) the noise would be unacceptable,
- (xiii) the drainage is inadequate,
- (xiv) the foundations of the buildings would be affected,
- (xv) the applicants' have misrepresented the actual situation on the ground in terms of the parking area and drainage, and,
- (xvi) more information is needed on the intended use, working hours and traffic flow.

Structure/Local Plan Policies

The relevant policies are:

Joint Structure Plan: GDSP 1, GDSP 4 and Economy Policy 5

Local Plan: Employment Policy 4 and Environment Policy 1

Planning Considerations

The main issues central to the determination of this application are:

- The principle of the development,
- The affect of the development on the character and appearance of the area,
- The impact of the development on the amenities of the residential neighbours, and,
- Highway safety

Planning Assessment

The site is in the open countryside, where new development is strictly controlled. However, the planning policies of the Council do allow for the re-use of buildings for industrial purposes in the countryside. Therefore, on balance, the principle of this development is acceptable.

The applicants originally sought consent for general industrial uses. However, the application has now been modified to light industrial uses only. Such uses should be capable of being carried out in a rural location without detrimental impact on the character or amenity of an area.

A new drive was originally proposed for the site. However, it would have an impact on the visual amenity of the area and, in addition to the comments made below concerning temporary permissions, it is not necessary at the present time to require this until the impact of the use has been fully assessed. If after a temporary period it is still felt to be essential to enable the uses to carry on it could be re-considered at that time.

The comments of the Environmental Health Officer (EHO) are noted. A single residential unit does exist close to the site. However, the site could still be lawfully used for intensive agricultural operations which could have significant impact on the amenity of the occupier of the farmhouse. The proposed use should not have significant impact on the amenity of the occupier of the property. However, the movement of vehicles, notwithstanding the comments made concerning current levels of traffic, may impact on amenity and, therefore, the suggestion of a temporary permission would enable a cautious approach to be taken on this matter. This is recommended as are the other suggested conditions of the EHO.

The highway authority has no objection subject to improvements being made to the junction of the site with the main highway network. This would not be detrimental to the character of the area and could be carried out without significant investment. Subject to this the proposal is acceptable from a highway safety point of view.

The application has been re-advertised to accord with the negotiations that have taken place. The period for consultation goes two days beyond the committee date.

Recommendation

GRANT permission subject to the expiry of the consultation period and subject to no further comments being received, if further comments are received these are to be dealt with by the Head of Planning Services, and the following conditions:

1. This permission shall be for a limited period only, expiring on 31st May 2004 on or before which date the use shall be discontinued and the site reinstated to the satisfaction of the Local Planning Authority unless, prior to that date, an application has been made and permission has been granted for an extended period.

Reason: To enable the Local Planning Authority to retain control over the future use of the site in the interests of the amenity of the area.

2. Notwithstanding the originally submitted details, this permission shall relate to the revised description as set out in your letter of 28th March 2002.

Reason: For the avoidance of doubt, the original submission being considered unacceptable.

3. There shall be no goods or materials stored in the open within the site. All materials, plant and machinery shall be stored within the buildings that occupy the site.

Reason: In the interests of the amenity of the area.

4. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) and Article 3 and Part 3 of the Town and Country Planning (General Permitted Development) Order 1995, this permission shall relate to the use of the premises for uses within Use Class B1 of the Town and Country Planning (Use Classes) Order 1987 as described in your application and for no other purpose.

Reason: In order that the Local Planning Authority may retain control over the future use of the premises and in the interests of the amenity of the area.

5. No machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside the following times nor at any time on Saturdays, Sundays, Bank or Public Holidays: 08:00 to 17:00 hrs.

Reason: To ensure that the use does not prejudice the enjoyment by neighbouring occupiers of their properties.

6. No work shall take place outside of the buildings.

Reason: In the interests of the amenity of the area.

7. Notwithstanding any details submitted, no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

Reason: In the interests of the appearance of the area.

8. Notwithstanding the originally submitted details the roadway shown on the originally submitted details shall not be constructed in any form.

Reason: In the interests of the appearance of the area.

9. Prior to the first use of the building shown on the submitted plan as an implement shed details of its full enclosure shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, prior to its first use the scheme of enclosure shall be implemented in full. It shall then be retained as agreed.

Reason: In the interests of the amenity of the area.

10. Prior to the development hereby approved commencing details of how the buildings are to be sound insulated shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the agreed scheme shall be fully implemented prior to the first use of the building to which it relates and be maintained as such thereafter.

Reason: In the interests of the residential amenity of the area.

11. Prior to the first use of the premises hereby granted consent, a 4.5 m by 160 m visibility sightline shall be provided to the south east of the junction with the Cauldwell Road. The land in advance of the sightline shall then be maintained free of obstructions exceeding one metre in height relative to road level.

Reason: In the interests of highway safety.

12. In the first planting season following the formation of the visibility splay at the access, a new hedgerow including appropriate hedgerow trees shall be planted behind the visibility sight line required under Condition 11 in accordance with a planting and maintenance schedule which shall have received the prior written approval of the Local Planning Authority. The hedgerow shall be maintained in accordance with the approved maintenance schedule.

Reason: In the interest of the amenity and rural character of the area.

07/05/2002

Item 1.2**Reg. No.** 9 2001 0968**Applicant:**

Mr C Carruthers
72 Leicester Road
Measham
Swadlincote
Derbyshire

Agent:

Mr. D. Granger
David Granger Architectural Design
The Old Dairy
Mill Street
Packington
Ashby De La Zouch Leics
LE651WN

Proposal: The retention of a portable amenity building and the erection of an additional portable building to provide toilet accommodation and additional storage at Springwood Fisheries Land Forming Part Of O S Field Number 4400 Ashby Road Melbourne Derby

Ward: Melbourne

Valid Date: 01/10/2001

Site Description

The site contains two fishing lakes. A timber building has been placed on the site adjacent to a landscaped embankment against the highway verge. Some tree planting has been undertaken. The site lies in the National Forest.

Proposal

The proposal seeks to retain the building (albeit with modifications) and to erect a smaller timber building, which would be a toilet block.

Applicant's Supporting Information

- a) The purpose of the buildings is to provide facilities for toilets, disabled use and internal storage.
- b) The applicant would accept a temporary permission in order to ensure viability for the business.
- c) The buildings are of a portable nature and could be easily moved from the site should this become necessary.
- d) The fishery is based a long-term well thought out business plan, providing the opportunity for anglers of all ages to access a high quality well stocked fishery with on site amenities.
- e) In a rural location storage of equipment can be a problem and the proposal to use the building would minimise external storage.
- f) The existing building would be subject to aesthetic improvement.

- g) A letter of support from the Professional Anglers Association is attached, along with newspaper articles emphasising that young and disabled anglers should be encouraged and appropriate facilities provided.
- h) Extensive landscaping has been undertaken with the remainder to be provided in the next planting season. Meadow grasses will be planted.
- i) Measures have been put in place to encourage wildlife.

Site History

Permission was granted for the formation of the lakes in March of last year, following a site visit (9/2000/1028/F). A copy of the report to Committee is attached for information.

Responses to Consultations

The Parish Council has no objection.

Melbourne Civic Society comments that the site is presently an eyesore but has no objection provided that the building is not painted green. Black or grey would be preferable.

The Highway Authority, Environment Agency and Environmental Health Manager have no objection in principle.

Structure/Local Plan Policies

The relevant policies are:

Joint Structure Plan: General Development Strategy Policy 4 and Leisure and Tourism policies 1 & 2.

Local Plan: Environment Policies 1 & 10 and Recreation and Tourism Policy 1.

Planning Considerations

The main issues central to the determination of this application are:

- The principle of development.
- Impact on the character and appearance of the area.

Planning Assessment

Being ancillary to the development previously permitted (that being in accordance with the development plan) the principle of the proposal does not raise new issues.

The existing building was readily apparent in the landscape, viewed from the adjacent highway, when it was erected. The landscaping already undertaken is beginning to have a mitigatory effect on the impact of the building, which has been placed in the least intrusive position within the site. In general as the site begins to mature it becomes more integrated with the landscape. The Local Planning Authority has approved a comprehensive landscaping scheme that will become increasingly effective as a screen to the buildings and the site in general. Conditions relating to the external finish of the buildings and their duration would further reduce potential impact.

Recommendation

GRANT permission subject to the following conditions:

1. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing no. 01/1452.01 Rev D and 01/1452.02 Rev D received on 27 March 2002.

Reason: For the avoidance of doubt, the original submission being considered unacceptable.

2. Within 2 months of the date of this permission the existing building shall be altered in accordance with the details shown on the approved drawings, subject to the requirements of Condition 3 below.

Reason: In the interests of the appearance of the area.

3. Notwithstanding the submitted the walls shall be painted, stained or treated to a colour and specification that shall have previously been submitted to and approved in writing by the Local Planning Authority, in the case of the existing building within 2 months of the date of this permission.

Reason: In the interests of the appearance of the area.

4. This permission shall be for a limited period only, expiring on 31 May 2005 on or before which date the structures shall be removed and the site reinstated to the satisfaction of the Local Planning Authority unless, prior to that date, an application has been made and permission has been granted for an extended period.

Reason: The materials used in the construction of the buildings make them unsuitable for a permanent permission.

07/05/2002

Item 1.3**Reg. No.** 9 2002 0129**Applicant:**
Mr Rook
Blue Post Caravan, Burton Road
Egginton
Derby
DE656HA**Agent:**
Philip Brown
Bolton Emery Partnership
4 South Park Court
Hobson Street
Macclesfield
Cheshire
SK118BS**Proposal:** **The removal of conditions 1 and 2 (to permit un-restricted occupancy of the site) of planning permission 9/988/663 at Blue Post Caravan Burton Road Egginton Derby****Ward:** **Hilton****Valid Date:** **07/02/2002****Site Description**

The site comprises an established site bounded on all sides by tall walls. On its west boundary is the Trent and Mersey Canal to the east and north is scrubby farmland and to the south beyond the access track over High Bridge is High Bridge House which is a Grade II Listed Building. Within the site are areas of hardstanding and a range of outbuildings about the canal boundary on a narrow tongue of land that extends north from the main part of the site.

Proposal

The proposal is to remove two of the conditions attached to the original permission for the use of this land as a gypsy site. The conditions are set out below but the first limits the occupation of the site to a particular family group and the second requires the site to cease being used once the family group referred to in condition 1 has moved off it.

Applicants' supporting information

The attached planning permission pre-dates Circular 1/94 that encourages the provision of private gypsy sites irrespective of the availability of public pitches. Circular 1/94 recognises that gypsy sites are likely to be located within rural areas and the Inspector in the previous appeal considered that the caravan site at Blue Post did not intrude into the open countryside and, could be satisfactorily screened from the adjacent listed building. The existing caravan site accords with Housing Policy 15 of the adopted Local Plan and, therefore, there is no remaining reason why the planning permission should be personal to Margaret Rook, John Price, Rita O'Neill and their dependants. An alternative condition be imposed, as follows:

"The occupation of the caravan site shall be restricted to persons defined as gypsies under the terms of Section 24 (8) of the Caravan Site and Control of Development Act 1960 or any Act revoking or re-enacting that Act".

The removal of conditions 1 and 2 from the planning permission does not infer any greater usage of the site than was originally approved and, therefore, this application has no implications for traffic generation. If the Highways Agency is to be consulted on this a location, the above fact should be conveyed to them. Clearly, refusal of planning permission on highway safety grounds to be wholly unreasonable.

It is noted that the recent refusal had a reason that was on the basis that the site is remote from local facilities such as schools, shops and other community facilities and, that access to the site is substandard. With regard to access, the Inspector in the previous appeal considered that the proposed gypsy site would not have any undue impact on the safety and free flow of traffic using the A38. Having used this junction myself, I am content that the Inspector was correct and that use of the junction onto the A38 is safe.

With regard to proximity to services, the Inspector clearly did not believe that the site was too far away from Burton on Trent where the applicant's children attended school and, where a full range of shopping, health and community facilities are available. Local shopping facilities are available closer to hand, with a post office at Egginton and a shop at Stretton.

The agents have conducted appeals on behalf of travellers on at least 15 occasions. In several of those appeals, proximity to services has been raised by the local planning authority as an issue, but has never been considered by Inspectors to warrant a refusal of planning permission. In fact, of the 12 appeals that have received a decision so far, only 3 appeals have been dismissed 2 on green belt grounds and, the other because of the excessive size of the site. A recent appeal decision in which the agent was involved is appended in support of the application in which at paragraph 25 the inspector considers proximity to services. Attention is drawn to the fact that the closest services at that site were between 2.5Km and 5.5Km from the site. However, the Inspector considered that, whilst not particularly well located in terms of facilities, the site was not unduly remote having regard to other requirements often necessary for gypsy sites. Clearly, in the current case, the location of schools some 3 miles away in Burton on Trent has not been sufficient to deter or prevent my client from sending his children to school.

It is contended that with the current application the proximity to services should not be a bone of contention.

It is also noted that the Environment Agency has raised the issue of whether planning permission 9/988/663 is still extant. Occupation by the named parties, who are all gypsies with a nomadic habit of life, cannot infer a continuous presence on the land. The named persons will continue to occupy the land by keeping it available for their use, not allowing occupation by other persons and, by not using the land for any purpose other than as a caravan site. The applicants have lived on the site, they have not used the site for any other purpose than as a caravan site, and they have kept the site available for use as a caravan site for themselves. They have never had, or shown, any intention to abandon the use of the land as a caravan site and indeed, have recently informed their agent of their intention to continue to live on the site on a periodic basis.

Planning History

Planning permission for the gypsy site was first granted on appeal in 1990 when amongst other conditions the following were attached: -

1. The use hereby permitted shall be carried out only by Margaret Rook and/or John Price and their dependants and/or Rita O'Neill and shall be for a limited period being the period during which the premises are occupied by Margaret Rook and/or John Price and their dependants and/or Rita O'Neill.
2. When the land ceases to be occupied by Margaret Rook and/or John Price and their dependants and/or Rita O'Neill the use hereby permitted shall cease and all caravans, materials and equipment brought onto the land in connection with the use shall be removed from the site

An application to increase the number of pitches to 4 as well as to amend the conditions referred to in this application was refused at the direction of the Highways Agency earlier this year.

Responses to Consultations

Egginton Parish Council has strongly objected to the development. It considers that the site has been vacant for a number of years and that under the terms of condition 1 the permission no longer exists. There is concern that the septic tank may not have sufficient capacity and the site is only capable of accommodating 3 caravans.

Councillor Mrs. Walton objects to the application for the following reasons: -

- a) Highway safety, with extra vehicles entering to and from a busy dual carriageway.
- b) The effect on the amenity of the neighbouring property.
- c) The drainage problems with a danger of flooding and pollution.
- d) The possibility that extra caravans may be put on the site leading to a lengthy and expensive procedure to remove them.
- e) The points raised by the inspector at the previous appeal.
- f) Possibility that businesses may be run from the site leading to extra vehicle movements.

The Highways Agency has no objection on the basis that there would be no material change to highway conditions if the limit on the number of caravans remains at 3.

The County Highways Authority & Severn Trent Water have no objection.

The Environment Agency objects to the proposed development. The site has been inspected and notes that the site has been cleared. Clarification is sought as to whether planning consent 9/988/663 has now lapsed, as occupation of the site would appear to have ceased.

The Agency's indicative floodplain maps and historical flooding records show that the application site is in an area at risk of flooding from the River Trent and a grant of planning consent to vary Conditions 1 and 2, effectively extending the life of the caravan site, would be contrary to advice in PPG 25 Development and Flood Risk. The site is considered to lie in functional floodplain (Paragraph 30 - Category 3c.) which states a presumption against the provision of caravan sites.

When flooded there will be an increase in risk to life and public health as well as representing a long-term cost to the nation, contrary to the governments' policy on sustainable development stated in the Foreword and paragraph 1 of PPG25 Development and Flood Risk.

If it considered that planning consent 9/988/663 has not lapsed, the Agency acknowledge that permission was allowed only due to special circumstances and would not wish to see the situation continue in perpetuity, a position that would result if the occupancy conditions were removed.

Attention is drawn to paragraph 65 of PPG 25 Development and Flood Risk which advises that the Agency should be re-notified, with an explanation why material considerations outweigh the objection, and to give the Agency the opportunity to make further representations.

Where the Agency maintain their objection on flood risk grounds the case will be well founded and stand scrutiny. The Agency will give full support to the Authority in the conduct of an appeal.

Responses to Publicity

Two letters from one family have been received objecting to the proposal on the following grounds: -

- a) This site has been unoccupied for nearly four years therefore the planning permission has long since, lapsed.
- b) Permission for the site was expressly intended as a temporary measure for one particular gypsy family to facilitate their children's schooling.
- c) The lack of compliance with conditions laid down at Public Inquiry, means the site remains an undesirable visual impact on the surrounding area.
- d) There has been an underestimation of the washlands and of flooding in the locality. The disposal of sewage is an added concern.
- e) The extra families and vehicles, which could ensue from removal of conditions, on such a small site, would cause problems in parking and turning. It would mean extra vehicle movements onto High Bridge and onto the A.38, perhaps even lorries and trailers.
- f) The use of this piece of land for permanent residential purposes (one bungalow) was turned down at a Public Enquiry in the 1970's, on the intervention of the Highway Authority, who did not want further vehicles pulling out onto the A.38.
- g) If conditions 1 and 2 were removed, a permanent and expanded gypsy site would be permitted. The potential vehicle movements such a site would create, (in comparison with the single bungalow refused previously), plus the increase in traffic on the A.38 since the 1970's, would seem to indicate refusal on these grounds. If the Highway Authority were not to intervene here, it would certainly show a good deal of inconsistency. This is especially so, in view of their input on other recent planning issues in this vicinity.
- h) Making a permanent gypsy site here and risking increasing the families from one to three, plus the problems from extra vehicles would simply exacerbate the problems already evident. This site has not been used for more than three years, it's use as a gypsy /caravan site should not be allowed to re-commence; it should certainly not be allowed to expand, which would be a distinct possibility if conditions 1 and 2 are removed.

The above are the objectors own summary of a much longer letter that goes into considerable detail about the headlines referred to above. A copy of that letter is available on the file.

In response to concerns of constituents, County Councillor Mrs Littlejohn has indicated that she can swear an affidavit to the effect that to her personal knowledge the site has not been used since 1998.

Structure/Local Plan Policies

The relevant policies are:

Joint Structure Plan: General Development Strategy Policy 1 & 4, Housing Policy 8

Local Plan: Environment Policy 1, Housing Policy 15

Other material policies/advice

Circular 1/94

Planning Considerations

The main issues central to the determination of this application are:

- The validity of the planning permission
- The consequences of removing the conditions
- The consequences of refusing the application

Planning Assessment

The Appeal Decision

The Inspector considered various matters relating to the use of the land as a gypsy site. She stated that the caravans, associated structures and parking have an undesirable visual impact on the setting of the Listed Buildings albeit not from all directions. However, she felt that conditions could mitigate this impact.

Overall, she concluded that the issues were finely balanced but the importance of the children's schooling tipped the balance in the appellant's favour. Thus, she intended to grant a personal planning permission for a limited period for the use of the land for the purpose of a caravan site subject to conditions including the ones referred to above.

The Conditions

Condition 1 to be replaced if permission is granted clearly limits the occupation of the site to the family referred to in the condition. There is no dispute that the family implemented the permission and continued to occupy the site for a number of years.

Condition 2 acts in the same way as a temporary planning permission. The end date of the permission is when the family referred to in condition 1 cease to occupy the site. There is assertion that the site ceased to be occupied by the family some time in 1998. The applicants have been asked to provide evidence that the site has been occupied since that date in the form of community charge payments or gas bottle bills sent to the address. This was in response to the

previous application prior to the receipt of the direction of refusal from the Highways Agency. The applicant's agent contends that the family has a nomadic lifestyle and cannot be expected to occupy the site on a regular basis. It is also contended that Condition 2 is unenforceable as the original family could move back onto the land tomorrow and as the permission has been implemented, would be in accord with the condition.

The question of the enforceability of the condition is one of legal interpretation. The advice received in response to the previous application from the Legal and Member Services Manager was that the matter is complicated in that if permission is implemented in accordance with all conditions imposed then the permission cannot be abandoned. The balance of probability is that the permission is still in existence and the family specified in condition 1 could move back onto the site in compliance with the conditions.

Amending/Removing the Conditions

The suggested condition would limit the use of the site to the gypsy community. This would go beyond the use of the land as envisaged by the Inspector at the time of the Inquiry. However, that decision was taken prior to the publication of Circular 1/94 that encourages the gypsy community to make provision for its own sites. This is the argument of the applicant for the removal of the personal condition. The judgement to be made is whether the Authority accepts the applicant's assertion that the fact that the site has been vacant merely reflects the nomadic lifestyle of the gypsy community. On the other hand, whether the temporary permission imposed by the Inspector in 1990 has lapsed because the site has been vacant for up to 4 years as asserted by elected members and the parish council.

Flooding

It would not be possible to require the removal of the walls on the site as a consequence of a refusal in this case. There is no evidence that the site floods or that flooding would prevent the normal use of the site as permitted. The relevance of the Environment Agency objection is difficult to understand, nor how it could form a defensible reason for refusal.

Conclusions

There are numerous cases reported in the planning press of temporary permissions being removed from gypsy sites. Those cases that are lost at appeal tend to be on prominent sites in Green Belts or in other areas of special protection. The Inspector considered the site at Egginton prominent from some areas in particular from High Bridge itself. It was acknowledged that for most of the year the site would be well screened by existing vegetation, that is and has been the case.

Were the refusal of permission successfully upheld on appeal, the site would remain in its existing state indefinitely in accordance with the existing permission. Abuse and unauthorised use would be likely to become a problem.

Whilst the arguments are finely balanced, on the basis of the research on appeal decisions on similar sites in the country, refusal to permit amendment/removal of the conditions would not be sustained at appeal.

This conclusion is at odds with the objection from the Environment Agency and the Authority will have to notify the Agency of the reasons for it reaching this conclusion.

Recommendation

GRANT permission subject to the following conditions:

1. The occupation of the caravan site shall be restricted to persons defined as gypsies under the terms of Section 24 (8) of the Caravan Site and Control of Development Act 1960 or any Act revoking or re-enacting that Act.

Reason: In order to retain the site available to meet the needs of the gypsy community.

07/05/2002

Item 1.4**Reg. No.** 9 2002 0157**Applicant:**

Michael Saunders & Helen Saunders
Station House, Station Road
Melbourne
Derby
DE731BQ

Agent:

Michael Saunders & Helen Saunders
Station House, Station Road
Melbourne
Derby
DE731BQ

Proposal: The erection of a 2.5 metre high boundary fence at Station House Station Road Melbourne Derby**Ward:** Melbourne**Valid Date:** 14/02/2002**Site Description**

The site lies at the edge of the village and is currently bounded by a timber fence with conifers behind. Beyond the site boundary fencing continues to a height of about 2 metres alongside the boundary to F E Toon & Sons premises.

Proposal

The application seeks to replace the existing fencing and conifer hedge (including the fence along Toons' boundary) with acoustic fencing. Initially proposing fencing to a height of 3 metres the applicant has reduced this to 2.5 metres.

Applicant's Supporting Information

- a) The road outside the house is heavily trafficked, much of this being motorcycles. Noise is accentuated by vehicles accelerating out of the nearby road junction.
- b) The fence is designed to reduce noise by 10 dB.
- c) Neighbours have been consulted and they have no objection.

Responses to Consultations

The Parish Council, the Highway Authority and the Environmental Health Manager have no objection.

Melbourne Civic Society (commenting on the 3 metre proposal) objects strongly, considering the fence to be an eyesore and unneighbourly, to the detriment of visual amenity at an important approach to Melbourne.

Structure/Local Plan Policies

There are no relevant development plan policies.

Planning Considerations

The main issues central to the determination of this application are:

- Visual amenity.
- Residential amenity.
- Highway safety.

Planning Assessment

Whilst it would be some 0.5 metres higher than a standard garden fence the proposed structure would not appear over dominant in the landscape because of the scale of its surroundings. The existing fencing is showing signs of its age and the new fence would arguably look better.

There are no neighbours near enough to be adversely affected.

On the advice of the Highway Authority there would be no harm to highway safety.

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of five years from the date of this permission.

Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990

2. Unless as may otherwise be approved in writing by the Local Planning Authority the roadside elevation of the fencing shall be of the close boarded type, with arris rails facing into the site. Within three months of its substantial completion the fence shall be painted/stained/treated to a colour and specification that shall have previously been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of the appearance of the area.

3. No part of the fence or its foundation shall be located within the public highway.

Reason: For the avoidance of doubt and in the interests of highway safety.

07/05/2002

Item 1.5**Reg. No.** 9 2002 0220**Applicant:**
Mr T Smedley
46, Mount Pleasant Road
Repton
Derby
DE656GQ**Agent:**
David Bown
David Bown
7 Ash View Close
Etwall
Derby
DE656JY**Proposal:** residential use of land (three dwellings) (outline application with all matters except access and siting to be reserved for further approval) at 46 Mount Pleasant Road Repton Derby**Ward:** Repton**Valid Date:** 26/02/2002**Site Description**

The site lies within and at the edge of a group of buildings near the Mount Pleasant public house. The site has been in long term use as a builder's yard. It lies outside the defined village confine.

Proposal

The proposal involves the erection of three dwellings, one of these being indicated on the submitted illustrative drawing to be a conversion of an existing traditional outbuilding. The new dwellings are indicated as attached to the existing building. Siting and access are for consideration in this proposal. The development would result in the cessation of use of the builder's yard.

Site History

Some of the adjacent cottages have been renovated but two are in a semi-derelect condition.

Responses to Consultations

The Parish Council objects for the following reasons:

- a) The site is outside the village confine and the development would extend the village boundary further in a southerly direction.
- b) The roofline from Main Street would be altered.
- c) There would be no improvement to the area. The derelict cottages should be dealt with before any new building is approved.

The Highway Authority and Severn Trent Water Limited have no objection in principle.

Responses to Publicity

A local resident objects as follows:

- a) There would be increased traffic.
- b) Rights of way would be affected.

Structure/Local Plan Policies

The relevant policies are:

Joint Structure Plan: General Development Strategy Policy 4, Environment Policy 15 and Housing Policy 8.

Local Plan: Environment Policy 1 and Housing Policies 7& 8.

Planning Considerations

The main issues central to the determination of this application are:

- The principle of development.
- The impact on the character and appearance of the countryside.
- Residential amenity.
- Highway safety.

Planning Assessment

The site lies outside the confines of the village and is therefore not favoured by the relevant development plan policies. However PPG3 encourages, with qualification, the development of previously used land, the site fitting into this category. PPG7 states that the sensitive filling of small gaps within small groups or minor extensions to groups may also be acceptable. Because of its proximity to the village confine, Repton being a sustainable settlement, development of the site would not be demonstrably contrary to the objectives of sustainable development. As such conversion of the existing building would be favoured by Housing Policy 7 of the Local Plan. The proposal would result in the loss of a potentially incompatible commercial use in close proximity to existing dwellings. Having regard to the above factors other material considerations (including government advice) are capable of amounting to more weight than the development plan policy for development outside village confines in this instance.

The new buildings would be well related visually to the existing enclave of development, appearing as integral with the existing outbuilding. The new dwellings could be designed to reinforce the local distinctiveness of the Mount Pleasant group, which currently contains some modern dwellings.

Whilst there are no known difficulties arising from the use of the land as a builder's yard, if the applicant disposes of the site with its lawful use, then in the absence of conditional control, there could be disturbance to neighbours. The proposal would eradicate the use and its potential problems. Development plan policies would make it difficult to resist alternative business development, with accesses shared by residents.

On the advice of the Highway Authority there would be no harm to highway safety interests.

Recommendation

GRANT permission subject to the following conditions:

1. (a) 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.
- (b) The development hereby permitted shall be begun either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved whichever is the later.

Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990.

2. Approval of the details of the design and external appearance of the building(s) and the landscaping and means of enclosure of the site shall be obtained from the Local Planning Authority in writing before any development is commenced.

Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory.

3. Notwithstanding the particulars of the application the existing building annotated as Plot 1 on the submitted plan shall be retained and converted.

Reason: The proposal lies outside the confines of the village as defined in the adopted South Derbyshire Local Plan and in the interests of sustainable development the Local Planning Authority considers that the building should be converted in accordance with the development plan for the area.

4. No development shall be commence until the access to Mill Hill has been constructed in accordance with the details shown on the submitted plan. The access shall be surfaced with a solid bound material for a minimum distance of 5 m from the carriageway edge.

Reason: In the interests of highway safety.

5. Prior to the first use of the development hereby permitted, parking facilities shall be provided so as to accommodate, in the case of dwellings of four or more bedrooms three cars, in any other case two cars within the curtilage of each dwelling, or in any alternative location acceptable to the Local Planning Authority or as may otherwise be agreed in writing by the Local Planning Authority in accordance with its published standards. Thereafter three parking spaces (in the case of dwellings with four or more bedrooms) or two parking spaces (in any other case), measuring a minimum of 2.4m x 4.8m, shall be retained for that purpose within the curtilage of each dwelling unless as may otherwise be approved in writing by the Local Planning Authority.

Reason: To ensure that adequate parking/garaging provision is available.

7. Prior to the first occupation of the development the existing use of the site as a builders yard shall cease and shall not recommence on all or part of the site.

Reason: In the interests of amenity and highway safety.

8. No work shall take place on the site until details of a scheme for the disposal of surface 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.

Reason: In the interests of flood protection.

Informatives:

To contact the Area Engineer South, Trent Valley Area, Derbyshire County Council, Director of Environmental Services, County Hall, Matlock, Derbyshire (Tel. 01629 580000 xt 7595) at least six weeks before the commencement date of the proposed works in order to arrange the necessary supervision of works on the highway crossing.

07/05/2002

Item 1.6**Reg. No.** 9 2002 0284**Applicant:**

Mr Mrs Brown
8, New Street
Rosliston
Swadlincote
Derbyshire
DE128JE

Agent:

D. Rutter
Architectural/Graphic Services
36 Main Street
Linton
Swadlincote
Derbyshire
DE12 6PZ

Proposal: **Outline application (all matters except siting and means of access to be reserved) for the erection of a detached house on land adjoining 8 New Street Rosliston Swadlincote**

Ward: **Walton**

Valid Date: **14/03/2002**

Site Description

The land currently forms the side garden to the applicant's house. Access to the site is from New Street which a narrow cul-de-sac with a small turning space opposite the site entrance.

Proposal

The submitted plans show a detached house standing back from the road frontage.

Planning History

An outline permission for the erection of a dwelling on the site was renewed in 1995 but has since lapsed.

Responses to Consultations

The Parish Council comments that there would be likely to be congestion at the vehicular access due to the lack of turning. The County Highway Authority has no objection subject to conditions to ensure that sufficient off-street parking is achieved.

Structure/Local Plan Policies

The relevant policies are:

Joint Structure Plan: Housing Policy 5.

Local Plan: Housing Policy 5

Planning Considerations

The main issues central to the determination of this application are:

- The principle of proposal vis a vis the development plan
- The impact on the amenities of neighbours
- The impact on highway safety

Planning Assessment

The development plan seeks to ensure that residential development in villages is restricted to the built confines as set out in the proposals map and that any such development should be in keeping with the scale and character of the area. More recently, the Council's interim statement on residential development since the publishing of PPG 3 identifies Rosliston as a 'sustainable' village.

From the point of view of the development plan, there has been no material change in circumstances since the outline permission was last renewed in 1995. The Parish Council's concerns regarding the turning space on the site are not supported by the County Highway Authority and as there have been no change in circumstances, to withhold permission would not be justified for that reason. With regard to amenity, the proposed siting of the dwelling would appear unlikely to result in any undue harm to the living conditions of either adjoining occupier. In all other regards the application is considered acceptable.

Recommendation

GRANT permission subject to the following conditions:

1. (a) 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.
- (b) The development hereby permitted shall be begun either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved whichever is the later.

Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990.

2. Approval of the details of the design and external appearance of the building(s) and the landscaping and means of enclosure of the site shall be obtained from the Local Planning Authority in writing before any development is commenced.

Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory.

3. Prior to the first use of the development hereby permitted, parking facilities shall be provided so as to accommodate three cars within the curtilage of the dwelling, or in any alternative location acceptable to the Local Planning Authority or as may otherwise be agreed in writing by the Local Planning Authority in accordance with its published standards. Thereafter three parking spaces, measuring a minimum of 2.4m x 4.8m, shall be retained for that purpose within the curtilage of each dwelling unless as may otherwise be approved in writing by the Local Planning Authority.

Reason: To ensure that adequate parking/garaging provision is available.

4. Notwithstanding the submitted details, the access shall have a minimum width of 3.2 metre and be surfaced in a solid bound material prior to the occupation of the dwelling hereby permitted.

Reason: In the interests of highway safety.

5. Notwithstanding any details submitted, no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

Reason: In the interests of the appearance of the area.

6. Prior to the development hereby approved commencing, details of the finished floor levels of the buildings hereby approved and of the ground levels of the site relative to adjoining land levels, shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the development shall be constructed in accordance with the agreed level(s).

Reason: To protect the amenities of adjoining properties and the locality generally.

07/05/2002

Item 1.7**Reg. No.** 9 2002 0345**Applicant:**

Mr Mrs M Nicholson
35, Compton Avenue
Aston-on-Trent
Derby
DE722AU

Agent:

C. Dickinson
Mr. C. J. Dickinson
24 Rectory Lane
Breadsall
Derby
DE21 5LL

Proposal: The erection of a two storey extension at 35 Compton Avenue
Aston-on-Trent Derby

Ward: Aston

Valid Date: 27/03/2002

Site Description

The site lies at the edge of the village and the dwelling benefits from a garden that has been extended (along with others) into the former field.

Proposal

Part of the extension affects the extended garden.

Site History

The extended gardens are affected by a condition that restricts permitted development, imposed under planning permission 9/0797/0326/U.

Responses to Consultations

Any views of the Parish Council will be reported verbally.

Structure/Local Plan Policies

The relevant policies are:

Local Plan: Housing Policy 13.

Planning Considerations

The main issues central to the determination of this application are:

- The principle of development.