



Appeal Decisions

Site visit made on 26 October 2022

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 7th March 2023

Appeal A Ref: APP/P1045/C/22/3298576

Appeal B Ref: APP/P1045/C/22/3298577

Appeal C Ref: APP/P1045/C/22/3298578

View House, Hill Somersal, Somersal Herbert, Ashbourne, DE6 5PE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Samantha Jade Walker, Appeal B is made by Philip Stephen Walker and Appeal C is made by Neil Maurice Walker against an enforcement notice issued by Derbyshire Dales District Council.
- The notice was issued on 14 April 2022.
- The breach of planning control as alleged in the notice is Unauthorised building operations comprising the erection of a building for Hair and Beauty use under Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended) and the associated change of use of the land from Agricultural use.
- The requirements of the notice are
 - a) Cease the use of the unauthorised building and land
 - b) Permanently remove the building shown in the area shaded blue, from the land edged in red on the enclosed plan.
- The period for compliance with the requirements is 3 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 as amended. Since Appeal A has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act. As the prescribed fees have not been paid within the specified period, Appeals B and C are made on grounds (f) and (g) only.

Formal Decision

1. It is directed that the enforcement notice be corrected by;-
 - Deleting the breach of planning control in full and substituting it with " the erection a building for hair and beauty use"
 - Deleting the words "and land" from the end of requirement a) in Section 5 of the notice.
2. Subject to these corrections, Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out namely the erection of a building for hair and beauty use on the land at shown hatched blue in the notice, subject to the following condition:
 - 1) The building shall not be used other than for hair and beauty use by Samantha Jade Walker. It shall be used for no other purposes (including any other purposes in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or

without modification). At the cessation of the hair and beauty use by Samantha Jade Walker, the building shall be removed within 6 months of that cessation.

3. I take no further action in respect of Appeals B and C.

The Notice

4. The allegation relates to a building constructed and in use as a hair and beauty salon. In addition to that operational development, the allegation also refers to an associated change of use of the land from agricultural use. The Council however subsequently confirmed that the allegation related only to the erection of a hair and beauty salon and does not extend to any use outside of that building. The allegation is therefore more precisely described as "the erection of a building for hair and beauty use."
5. The first requirement refers to ceasing the use of the unauthorised building and land. That requirement is imprecise when the current use of "the land" as shown edged red on the enforcement land includes residential and agricultural use. The requirements should flow from the notice and the first requirement can therefore be shortened by stating "cease the use of the unauthorised building." The parties considered that no injustice was caused to either party as a result of the amendments as the allegation is limited to the building and its use and was not intended to extend to any wider use of the appeal site. I will amend the notice accordingly.

Appeal A - the appeal under ground (a) and the DPA

6. The deemed planning application (the DPA) under ground (a) derives directly from the allegation. The DPA is therefore for planning permission for "the erection of a building for hair and beauty use."

Main Issues

7. The main issues are the effect of the development on the character and appearance of its countryside location and whether the development is in a sustainable location having regard to the likely use of the private car.

Reasons

Character and appearance

8. Policy S4 of the Adopted Derbyshire Dales Local Plan (2017) (the Local Plan) refers to protecting the intrinsic nature of the landscape. Similarly, Policy PD5 of the Local Plan seeks to resist development which would be detrimental to the character of the local and wider landscape. Policy S1 of the Local Plan refers to conserving the natural environment and Policy PD1 of the Local Plan requires development to respect the character of the landscape and be of high quality design.
9. The appeal site is located within the countryside to the north of Hill Somersall and is made up of farm buildings, a field, a garden, an area of hardstanding for car parking as well as two dwellings. View House Farm is the original farm house and a subsequent barn conversion created View House Barn. The dwellings are at the front of the appeal site with the agricultural elements to the rear and a parking area is towards the centre of the appeal site. Access to the appeal site from the lane is between the two dwellings. The parking area is shared between the various uses and buildings. Hill Farm is located to the west

of the appeal site and there are two dwellings further along the lane to the east beyond the wooded garden area. The character of the area is distinctly rural with sporadic pockets of development.

10. Described by the Council as a garden room, the appeal building is rectangular and made of timber cladding and with 29 square metres of floorspace is relatively modest. The appeal building is located behind View House Farm and is separated from it by a tall hedge. There are no views of the building from the front of the appeal site. Given its location towards the centre of the appeal site, any views outside the appeal site are limited. The appellant has provided a photograph of the view from the entrance to Hill Farm which shows a modest top corner of the appeal building just behind View House Barn
11. The Council considers that its appearance is in contrast to the traditional red brick barn range. However, the presence of dwellings as well as farm buildings does mean that there is already a mix of building styles at the appeal site. Whilst the development is modest in size, largely hidden and is within an existing developed site that appears to have a mixed use. The appeal building does not in my view look incongruous or uncharacteristic in terms of appearance or design in its context. The development takes up a modest space of an area of hardstanding that is used for parking. The development does not harm the intrinsic character and distinctiveness of the landscape or fail to conserve the natural environment.
12. I do not therefore consider that the development does materially harm the character and appearance of the countryside location. For the reasons given, I consider the development does comply with Policies S1, S4, PD1 and PD5 of the Local Plan. I find Policy EC1 of the Local Plan to be less relevant to the issue of character and appear as it primarily addresses sustainable locations. Nevertheless, the use to which any new building is put in the countryside has to be assessed in terms of location and sustainability.

Suitability of the Location

13. Policy EC1 of the Local Plan supports proposals for new or expansion of existing businesses in sustainable locations. Businesses should be accessible in a variety of transport modes, promote opportunities for sustainable transport and seek minimal reliance on the private car. Policy S1 of the Local Plan refers to development making a contribution towards the achievement of sustainable development. The Council considers that the development is heavily reliant upon customers using private cars to get to and from the business which means that the development is unsustainable in the open countryside
14. The appellant works in the appeal building and lives at View House Farm and does not employ any other staff. She states that the average number of customers by car is 3 customers per day over a four and a half day week and she currently has eighteen customers. The size and location of the premises with the appellant as the only worker does mean that numbers are unlikely to increase. The maximum number of cars requiring parking at the same time is likely to be two with a short crossover. There is ample parking for two cars within the car parking area even allowing for the current uses of the site
15. Policy S1 of the Local Plan refers to minimising the need to travel and promoting development in locations where there is access to a range of facilities. However, the National Planning Policy Framework (the Framework)

acknowledges that decision making should take into account that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Paragraph 84 of the Framework states that planning decisions should recognise that sites to meet local business and community needs may have to be found beyond existing settlements and in locations that are not well served by public transport. In these circumstances, it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable.

16. Given the rural nature of the appeal site, it is not disputed that most customers are likely to travel by car. The appellant has provided details of the main bus routes and the distances to the nearest towns which are Ashbourne at just over 10 miles, Uttoxeter is around 6 miles away and Rocester is 5 miles.. A plan shows the home locations of customers with the majority of the customers live in a triangle of rural hamlets. In the event of the business being closed, these customers are not likely to be travelling by public transport to find a similar facility in any event.
17. The extent of the business being carried out is very modest and the amount of traffic generation arising from the business per day is around 3 return trips for customers to and from the salon. Whilst the salon building is not a live/work unit, there are some similarities with that concept and the appellant is not travelling to work by car. The appeal site consists of two separate dwellings and an agricultural use and an increase in 3 car trips per day is not significant in the context of the existing lawful uses of the appeal site.
18. The appellant's justification for the retention of the salon building in a rural location is solely based upon the appellant's particular circumstances in being able to work from home and provide a service. Conditions can ensure that the use is limited to salon use and that only the appellant runs the business. In the circumstances, I do not consider that the location of the development with its limited use is unsustainable to the extent that would warrant dismissing the appeal.
19. Taking into account all of the above and the fact that other means of travel other than the car is often limited in the countryside and subject to appropriate conditions, I consider the development does comply with sustainability objectives of Policies S1, and EC1 of the Local Plan. I find Policy S4 to be less relevant to the issue of sustainability in seeking to protect landscape character but it does in any event refer to facilitating rural community needs.

Other Matters

20. The appellant has referred to the option to convert part of an existing agricultural building to salon use under permitted development rights The Council considers that the option has not been exercised to date and it not particularly relevant to the appeal. However, my assessment of the development on its own leads me to grant planning permission. It is therefore not necessary to consider as part of this appeal what weight if any can be attached to any alleged "fall back" position.
21. The assessment of fees for the DPA is an administrative function carried out by the Council and is not part of the remit of this appeal. If the appellant considers

that the appeal fee is incorrect, that is a matter for the appellant to pursue separately with the Council.

Conditions

22. Any proposed condition has to be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. The parties views upon conditions were sought during the course of the appeal as no proposed conditions were submitted as part of the appeal by the Council and the appellant did not suggest any in her evidence.
23. There is a potential issue in reconciling a specific use of a building by the appellant which is unlikely to be permanent and the retention of a permanent building. Originally, the Council was of the view that in the event of the existing salon use ceasing then the building should be demolished.
24. However, the parties subsequently suggested that it was appropriate for the building to be used for incidental purposes to either View House Farm or View House Barn or for both dwellings in the event of the use by the appellant ceasing and suggested wording. The suggested wording permitted both incidental use and hairdressing use from the grant of planning permission. The nature of the appeal means that I have no details of how the various elements of the appeal site are occupied and used or any justification for the need for incidental residential use for either or both dwellings. Drafting a condition to provide for those options is therefore difficult. The wording of the condition suggested by the parties does not meet the statutory tests largely due to trying to predict future events.
25. In the circumstances, a requirement to remove the building within 6 months of the cessation of the hairdressing business is not unreasonable and meets the required tests. As with any condition, the appellant can apply in the future to vary that condition in the event of a change of circumstances. Such an application would be assessed upon the relevant policies in force at the time and the information provided in support of that application.
26. Restricting the use of the building to the named appellant is in my view appropriate in view of the nature of the appeal. She provides a service to a modest group of no doubt loyal customers. It is necessary to restrict the use of the building to a hair and beauty salon only as this was the use applied for under the DPA and this is the use that has been specifically considered to be acceptable having regard to the circumstances of the site location.
27. As there is ample space in the car parking area to accommodate two cars, I do not consider that a condition requiring designated spaces for the development is necessary. Similarly, I do not consider that the construction of a hedge along the boundary with Hill Farm is necessary in view of the location of the building.

Conclusion

28. For the reasons given above, I conclude that Appeal A should succeed on ground (a) and planning permission will be granted subject to the condition. The appeals on grounds (f) and (g) that form part of Appeal A as well as Appeals B and C do not therefore need to be considered.

E Griffin INSPECTOR