

Appeal Decision

Hearing held on 21 February 2017

Site visits made on 20 and 21 February 2017

by Richard Schofield BA(Hons) MA MRTPI

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

Decision date: 12 May 2017

Appeal Ref: APP/R0660/W/16/3150398

Land opposite Five Acres Farm, Cledford Lane, Middlewich CW10 0JS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Jerry Smith against the decision of Cheshire East Council.
 - The application Ref 16/0198C, dated 12 January 2016, was refused by notice dated 15 March 2016.
 - The application sought planning permission for change of use of land to use as a residential caravan site for 3 gypsy families with a total of 6 caravans, including laying of hardstanding, improvement of existing access and erection of 2 amenity buildings without complying with a condition attached to planning permission Ref 10/0015C, dated 26 May 2010.
 - The condition in dispute is No 4 which states that *'There shall be no more than 3 pitches on the site. On each of the 3 pitches hereby approved no more than two caravans (as defined in the caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968) shall be stationed at any time, of which only one caravan shall be a static caravan or residential mobile home'*.
 - The reason given for the condition is: *'To ensure an adequate provision for gypsy sites within the Borough and ensure adequate control over buildings which may detract from the character and appearance of the open countryside in compliance with policy PS8 and H8 of the adopted Congleton Borough Local Plan first Review 2005, policy HOU6 of the Cheshire Structure Plan, and ODPM Circular 01/2006'*.
-

Decision

1. The appeal is allowed and planning permission is granted for change of use of land to use as a residential caravan site for 3 gypsy families with a total of 6 caravans, including laying of hardstanding, improvement of existing access and erection of 2 amenity buildings at Land opposite Five Acres Farm, Cledford Lane, Middlewich CW10 0JS in accordance with the application Ref 16/0198C dated 12 January 2016, without compliance with condition numbers 1, 4, 7, 8, 10 and 11 previously imposed on planning permission Ref 10/0015C dated 26 May 2010 and subject to the conditions set out in the Schedule to this decision.

Preliminary Matters

2. The appellant seeks, through the challenge to the disputed condition, to secure an increase in the number of pitches on the appeal site from three permanent pitches to four permanent pitches and four transit pitches. This could result in the addition of up to five touring caravans and one mobile home on the site,
-

over and above those already permitted. I have considered the appeal on this basis.

3. Mr Smith's gypsy status, and that of other site residents, for planning purposes is agreed between the parties. It was also agreed that planning permission 10/0015C has been implemented and, as such, that there is a lawful permission in place for three pitches on the appeal site. Based on all that I have read, heard and seen, I have no reason to depart from this consensus.
4. The Council is in the process of producing a new Cheshire East Local Plan. This is, however, at the time of writing still in the process of consultation and the examining Inspector's final report has yet to be produced. It was confirmed at the Hearing that there is no date set for adoption. This being so, having regard to paragraph 216 of the National Planning Policy Framework (the Framework), I afford it little weight at the present time and have determined the appeal in the line with the adopted development plan.
5. Notwithstanding that the description of development is still for 3 gypsy families and 6 caravans, it is the new conditions that are now relevant in controlling the number of caravans/pitches at the appeal site.

Main Issue

6. The main issue is whether the disputed condition is reasonable and necessary in the interests of preserving the character and appearance of the area.

Reasons

7. It is common ground that in relation to the definitions set out in the Congleton Borough Local Plan First Review (the Local Plan), which seeks to direct development to sites within settlements defined in policies PS4 and PS5, the appeal site is in the open countryside. As such, development upon it falls to be determined under policy PS8. This lists specific types of development, of which the appeal proposal is not one, which may be permitted in the open countryside. As such, on its face, the appeal scheme would appear to be at odds with adopted development plan policy.
8. However, the appeal site is an extant, developed gypsy site (albeit that some of that development is unauthorised) and the Council has stated that it has no issue with the in-principle location of pitches upon it. As such, although the appeal site is within the open countryside for the purposes of planning policy, insofar as it is not within the boundaries of an identified settlement, it is not undeveloped greenfield land. Additional pitches on the site would certainly not result in a change from open, undeveloped countryside to a developed plot.
9. Indeed, the Council stated at the Hearing that 'significant weight' in favour of the proposal should be afforded to the site's status as previously developed land. This reflects the guidance in the Planning Policy for Traveller Sites (PPTS), which, at paragraph 26, indicates that weight should be attached to the effective use of such land and that it is preferable for traveller sites to be located on land of this type rather than on 'greenfield' sites. I have no reason to depart from this view.
10. Although the wider area in which the appeal site is situated is undoubtedly rural, being open fields (with the British Salt works visible away to the west), the site does not stand alone, divorced from any similar development. It is

situated within, what may be loosely characterised as, a hamlet made up of a further gypsy site on the opposite side of the road; Kinderton Park, a substantial residential 'park homes' site, which borders the appeal site on its northern side; and a small number of bricks and mortar dwellings.

11. The Council acknowledged that the site is reasonably well contained and it was apparent from my site visits that, even with hedgerows not in leaf, the caravans, mobile homes and amenity block structures already upon the site (the unauthorised building notwithstanding) are not overly intrusive when viewed from surrounding public vantage points. Indeed, the limited sightings of them from Cledford Lane are seen in the context of the nearby park homes and the gypsy site at Five Acres Farm.
12. The addition of up to an extra five touring caravans and one mobile home on the site would result in an intensification of the use. This may be harmful in some situations but, given the site context set out above, it is difficult to see how this increase over and above what is already permitted would have an adverse impact upon the character and appearance of the site or, indeed, the area.
13. The Council's decision notice also asserts a failure of the scheme to preserve '*the openness of the open countryside*'. Notwithstanding the lack of any obvious policy justification for such a reason for refusal, which could be inferred as being akin to the application of a Green Belt test, the site is already developed and, by definition, is not in practical terms '*open countryside*'. Indeed, Local Plan policy H8, which sets out various criteria that gypsy and traveller sites must meet, refers to the need to avoid '*encroachment on the open countryside*' (a criterion against which the proposal before me would measure favourably) not to preserve its openness.
14. I conclude, therefore, that the disputed condition is, as written, unreasonable in the interests of preserving the character and appearance of the area. The proposal would not conflict with the requirements of Local Plan policy H8, which requires gypsy and traveller sites to be of an appropriate scale and not detract from the value of the surrounding landscape.
15. The appeal proposal would conflict with the requirements of policy PS8, but this conflict is tempered by the fact that the Council clearly, and explicitly, agrees the principle of the use of the site as a gypsy and traveller site. Given this somewhat paradoxical approach, which the Council struggled to explain, I afford little weight to the 'face value' conflict with the criteria in policy PS8 and conclude that the appeal scheme accords with the development plan when taken as a whole.
16. This is not, however, to say that anything goes. Some form of planning control is, in my judgement, required to ensure that the site's impact upon the character and appearance of the area does not become adverse. As such, in addition to those conditions discussed at the Hearing, I have applied a new condition limiting the number of caravans and mobile homes on the site.

Other Matters

17. Concerns were raised about the effects upon highway safety and efficiency, on Cledford Lane, that might arise from the appeal proposal. There is not, however, any objection to the proposal from the local highways authority nor is

there any evidence before me to suggest that the lane is inherently unsafe. Allegations were made about its regular use by HGV traffic, but no substantive evidence has been provided to this effect. At the time of my afternoon site visits, which were admittedly just snapshots in time, traffic along the lane consisted of cars and vans, with the occasional tractor. In addition, the road did not appear to be in a particularly poor condition, due to potholes and/or uneven surfacing, as alleged by some objectors.

18. It was suggested that the appeal proposal would reduce the value of properties on Kinderton Park. There is no evidence before me to substantiate this, however, nor is there anything to suggest that sales on the site have been affected by the presence of extant gypsy site permissions in the immediate area.
19. The use of the appeal site for transit purposes was a concern for some Kinderton Park residents, with regard to the potential for increased vehicular noise, disturbance and pollution. It may be that there would be more vehicle movements, but the 'comings and goings' would be unlikely, in my judgment, to result in frequent changeovers of occupants (e.g. on a daily or even weekly basis) that would give rise to any significant levels of disturbance. It is also notable that Kinderton Park is itself a sizeable residential community with numerous cars present upon it. As such, the area is not un-used to vehicular movements. In addition, the weight of vehicles upon the site could be controlled by condition.
20. The running of small businesses from the site, which could give rise to adverse impacts upon the living conditions of the occupiers of nearby dwellings, and lead to land contamination, was a concern. This is, however, something that could be addressed by condition.
21. It was alleged that there was already noise and disturbance from the site, with children riding motorbikes and driving cars 'at all hours'. Again, however, there is no evidence before me to substantiate this allegation and the Council confirmed that it had not received any complaints with regard to anti-social behaviour on the site.
22. I am mindful that the husband of one of the Kinderton Park objectors is said to be disabled and ill. Although I am sympathetic to this, there is no reason to consider that the addition of the proposed extra pitches on the site would have any adverse consequences for the individual concerned.
23. There are recent permissions for additional pitches elsewhere in the district. Nonetheless, the Council accepts that it is still unable to meet its pitch requirements and, as such, there is a need for the additional pitches proposed.
24. I note the Council's concerns that the police would be unable, using their statutory powers, to direct gypsies and travellers to a private site. This is not, however, the purpose of private transit pitches, which are typically for friends and family of the site's main occupiers, and there is no objection to the proposal from the local police force.
25. It was confirmed at the Hearing that the Council is currently unable to demonstrate a five year supply of gypsy and traveller sites. There was some discussion as to whether these circumstances 'triggered' the Framework's policy that relevant policies for the supply of housing should not be considered

up-to-date where a local planning authority '*cannot demonstrate a five year supply of deliverable housing sites*'. This was in the light of the Written Ministerial Statement of 22 July 2015, which the appellant alleged is unlawful and discriminatory, which states that:

those persons who fall within the definition of 'traveller' under the Planning Policy for Traveller Sites, cannot rely on the lack of a five year supply of deliverable housing sites under the National Planning Policy Framework to show that relevant policies for the supply of housing are not up to date. Such persons should have the lack of a five year supply of deliverable traveller sites considered in accordance with Planning Policy for Traveller Sites.

26. It is not for me to determine the legality of this advice. Notwithstanding this, as I am allowing the appeal, having found no harm, I have not considered this matter further.

Conditions

27. A number of conditions, in addition to that in dispute, were discussed with the parties at the Hearing. I have attached those agreed as still being appropriate to carry over from the original planning permission, amended as necessary, and have included additional and alternative ones agreed as being necessary.
28. A plans condition is necessary to provide certainty, with particular regard to the siting of the caravans. Occupation should be limited to gypsies and travellers given the specific policy basis for accepting the use. To ensure the continued lack of adverse impact of the site upon character and appearance, conditions requiring a restriction on the number of caravans and controlling external lighting are necessary.
29. Conditions in relation to vehicle weight and restrictions on business use are necessary in the interests of preventing adverse impacts upon the living conditions of the occupiers of nearby dwellings.
30. Notwithstanding that some development has already taken place on the site, a drainage condition is warranted given the additional caravans proposed and the commensurate need to ensure that the site remains appropriately drained.
31. A condition limiting the time for which the transit pitches may be occupied, and within which previous occupiers may return, is necessary in the interests of ensuring the efficient operation of the site and ensuring the required transit pitches remain as such.
32. I have not reapplied conditions 1, 7, 8, 10 and 11 of planning permission Ref 10/0015C as, respectively: development has already taken place; the change of use to a gypsy site applies to the whole site, and it is not reasonable to exclude the agricultural storage building (which is included in the red line boundary) from this use; the utility blocks have been constructed; appropriate landscaping is already in place for the purposes of the scheme before me and additional internal landscaping is indicated on the submitted plans.
33. There was some debate at the Hearing as to whether it was still appropriate to reference ODPM Circular 01/2006 in condition 2, given that it has been replaced by the PPTS. On balance, I am mindful that reference to the PPTS, albeit that it is the most up-to-date articulation of Government policy, would

arguably narrow the category of potential site occupants and, thus, materially affect the extant permission. As such, I have kept the reference to the superseded circular.

Conclusion

34. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed. I have, therefore, granted a new permission, with appropriate conditions.

Richard Schofield

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted, including the siting of the caravans, shall be carried out in accordance with the details contained within the following plans: Site Location Plan Drg No 15_713A_001 and Proposed Site Plan Drg No 15_713A_003.
- 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) There shall be no more than eight pitches on the site of which no more than four shall be permanent pitches and no more than four shall be transit pitches. On each of the four permanent pitches no more than two caravans (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968) shall be stationed at any time of which only one shall be a static caravan. On each of the four transit pitches no more than one caravan, to be a touring caravan only, shall be stationed at any time.
- 4) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 5) No commercial activities shall take place on the land, including the storage of materials.
- 6) Within three months of the date of this permission full details of the proposed foul and surface water drainage from site shall be submitted to and approved in writing by the local planning authority. The approved details shall thereafter be implemented in full before the first occupation of the proposed pitches shown on Proposed Site Plan Drg No 15_713A_003.
- 7) No caravan or person(s) occupying the transit pitches hereby permitted shall remain on any one of those pitches for a continuous period of more than three months. Having vacated a transit pitch that caravan or person(s) shall not return to reside on any of the transit pitches until a minimum period of six weeks has elapsed from the date of last occupation.
- 8) There shall be no external lighting on the site unless expressly permitted in writing by the local planning authority.

APPEARANCES

FOR THE APPELLANT:

Mr Matthew Green
Mr Jerry Smith

Green Planning Studio Ltd
Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms Philippa Radia

Cheshire East Council

DOCUMENTS SUBMITTED AT THE HEARING

1. Statement of Common Ground
2. Witness Statement of Jerry Smith
3. Inspector's Views on Further Modifications Needed to the Local Plan Strategy (Proposed Changes) 13 December 2016
4. Appeal Decision APP/R0660/C/15/3134425