The Planning Inspectorate

Appeal Decision

Hearing Held on 10 April 2019
Site visit made on 10 April 2019

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 17th June 2019

Appeal Ref: APP/R0660/W/18/3208887
Caravan site south of Dragons Lane, Moston, Sandbach, Cheshire, CW11 3QB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Martin Smith against the decision of Cheshire East Council.
- The application Ref 17/5170C, dated 5 October 2017, was approved on 9 February 2018 and planning permission was granted subject to conditions.
- The development permitted is the change of use of land for the stationing of caravans for residential purposes for 4 No gypsy pitches together with formation of hardstanding and erection of utility buildings.
- The condition in dispute is No 2 which states that: "*The use hereby permitted shall be carried on only be the following: Martin and Martina Smith; James Dean and Scarlet Smith; Emmanuel Smith; and Violet and Charlene Smith, and their respective resident dependants, and shall be for a limited period expiring on 13th February 2021. The use of the land as a residential caravan site shall be discontinued and the land restored to its former condition on or before the 13th February 2021.*"
- The reason given for the condition is: "*To safeguard the use of the site as a gypsy site, for a temporary period and to specify the named occupants.*"

Decision

1. The appeal is allowed and the planning permission Ref 17/5170C for is the change of use of land for the stationing of caravans for residential purposes for 4 No gypsy pitches together with formation of hardstanding and erection of utility buildings at Caravan site south of Dragons Lane, Moston, Sandbach, Cheshire, CW11 3QB granted on 9th February 2018 by Cheshire East Council, is varied by deleting condition 2 and substituting for the following condition:

    1) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:

        i) Within 3 months of the date of this decision a scheme for lighting within the site as well as hard and soft landscaping including details of species, plant sizes and proposed numbers and densities (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

ii) If within 12 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Procedural Matters

2. I have also dealt with another appeal (reference APP/R0660/W/18/3203736) on an adjacent site. That appeal was for full planning permission and was made by different appellants but with the same Agent. It was held the day after the Hearing for this appeal.

3. That appeal is the subject of a separate decision, however there is considerable overlap in terms of some of the issues, including relating to the need for and supply of sites, and other matters. It can be seen from both of my decisions that I have been consistent in my findings on many of the common matters, but taken together, it will be clear that the decisions are distinct as each application has been considered based upon its own merits.

Main Issue

4. The main issue is whether the disputed condition is reasonable and necessary having particular regard to:
   i) the accessibility of the site to local services and facilities;
   ii) the character and appearance of the countryside; and,
   iii) other considerations.

Reasons

Planning Policy Context

5. The development plan for the area comprises the Cheshire East Local Plan Strategy 2017 (CELP), saved policies of the Congleton Borough Local Plan First Review 2005 (LP) and the Moston Neighbourhood Plan which was made on 14th February 2019.

6. The Council recently consulted on the First Draft Site Allocation and Development Policies Document (SADPD) between 11th September - 22nd October 2018. Draft Policy HOU 5 (Gypsy, Traveller and Travelling Showpersons provision) is the most relevant emerging policy and the plan seeks to allocate sites to meet current gypsy and traveller need. The site subject to the appeal is not currently identified as a preferred site within the SADPD.

7. This was a pre-publication draft and at the Hearing it was established that due to the emerging nature of the plan along with outstanding objections to it, limited weight can be attached to this document. Timescales for publication, submission for examination and adoption were discussed at the Hearing, and it is anticipated that the SADPD would be adopted in 2020.

8. The National Planning Policy Framework (the Framework) 2019 and the Planning Policy for Traveller Sites 2015 (PPTS) are also relevant to my determination of the appeal.

Site Description

9. The appeal site comprises a roughly rectangular traveller site of around 0.64 hectares containing 4 pitches and associated utility buildings and fencing located on an area of hardstanding. The site is accessed from Dragons Lane.

10. The site forms part of a wider triangular field at around 4.5hectares which is bounded by Dragons Lane to the north and Plant Lane to the west. A public footpath runs along the eastern boundary of the wider field. Mature hedgerows enclose this wider site area.

11. This larger field also contains a separate traveller site known as Thimswarra Farm which comprises of 2 pitches and has a separate access from Dragons Lane. The Thimswarra Farm site was granted temporary permission at appeal in 2012[1] and is currently the subject of a separate further appeal. A separate, currently unauthorised site comprising of 2 pitches is also located in this wider area of land. This is currently the subject of a separate, undetermined application.

Background and Planning History

12. Planning permission was originally sought under application reference 17/5170C to remove condition 3 of application 12/0971C. Permission for the site under the latter reference was granted at appeal[2] and condition 3 had a duel function in terms of restricting the site to a personal permission and a temporary permission until a period of 5 years until 13th February 2019.

13. In determining the original appeal, the Inspector found limited harm to the character and appearance of the area and found that the site was poorly located in terms of accessibility to local services, but concluded on that matter that adverse implications would be outweighed by a reduction in long distance travelling. The appeal was allowed and the harm to the countryside was outweighed by the fact that there was a substantial need for gypsy and traveller pitches in Cheshire East and due to the lack of alternative accommodation available to the appellant and family. Temporary and personal permission was therefore granted for a period of 5 years to cater for the appellants short term need and to provide the Council with a reasonable timeframe to deliver site allocations.

14. While consent under 17/5170C was approved on 5th October 2017, removal of condition 3 was not permitted. Instead, approval was granted for a personal permission, but again increasing the temporary consent until 13th February 2021 via a re-numbered condition 2.

[1] APP/R0660/A/12/2173171
[2] APP/R0660/A/12/2187885

15. In assessing the 2017 application, the Council maintained the view that the site was considered to lack accessibility to services and facilities and would have a detrimental impact upon the open countryside. The need for gypsy and traveller site provision was noted, but in light of the progress of the SADPD and its anticipated adoption in 2020, a further extension to the temporary period was considered reasonable to allow sufficient time for a suitable permanent site to come forward.

16. This appeal relates to the imposition of the revised condition of the 2017 approval. The removal of the disputed condition would effectively make the permission permanent and would make the site available for any gypsies and travellers.

Gypsy and Traveller Status

17. Since the original grant of consent in 2014, there has been a change in the definition of gypsy and travellers. It is therefore important to ascertain whether the appellant/occupiers have traveller status in planning terms, as defined in Annex 1 of the PPTS.

18. In this case the Council has not contested traveller status. The appellant gave oral evidence at the Hearing in respect of regular travelling for economic purposes as well as cultural and family events. On that basis, I have no reason to doubt that the appellant/occupiers fall within the PPTS definition.

Accessibility to Services and Facilities

19. LP Policy SC7 states that to ensure that proposals for gypsy and traveller sites are sustainable, proximity of the site to local services and facilities and access to public transport will be taken into account. CELP Policy H8 requires that gypsy and traveller sites are, wherever possible, within 1.6km (1 mile) of existing local shops, community facilities, primary school and public transport facilities. One of the aims of the PPTS is to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure. The PPTS also states that new traveller sites in the open countryside that is away from existing settlements should be very strictly limited, although it is not precluded as a matter of principle. The NP does not have any specific policies relating to gypsies and travellers or access to services and facilities. Paragraph 103 of the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.

20. The PPTS does not specify specific distances from services and facilities, although the general thrust of Policy H8 broadly aligns with national policy and does not wholly prohibit development beyond these distances and thus still remains relevant in my consideration.

21. Moston is a dispersed and rural settlement which is located between two major settlements at Sandbach and Middlewich. The nearest shops, schools and medical facilities are in Elworth, a suburb of Sandbach which are around 2.3km away. The site is located around 1km away from the A533, a main road between the two major settlements as identified above. Busses use this road. Sandbach has a railway station which is around 1.6km away from the appeal site which has services to Crewe and Manchester. Dragons Lane is a rural and unlit road which has no footpaths or lighting along its length.

22. The appellant undertakes their journeys to these local facilities from the site by private vehicles, accepting that the conditions of the road and the distances from these facilities preclude the use of public transport or cycling or walking. This is consistent with the general findings of the Inspector in 2014 on this issue and the removal of the disputed condition would effectively make any occupiers of the site reliant on private vehicles in the long term.

23. However, I saw that local services were only a relatively short distance away from the site, albeit at a marginally greater distance than specified by CELP Policy H8. I am content that the provision of a settled base for gypsy and travellers at the site under the terms of the original consent has and would continue to reduce the need to travel further to access such facilities and that the adverse implications would continue to be outweighed by a reduction in long distance travelling, as found by the original Inspector in 2014.

24. This was disputed by interested parties and local residents who claimed that the appellant did not have a travelling lifestyle "with mileage" prior to the occupation of the appeal site as they previously resided in a house in Middlewich and was thus settled with better and more sustainable access to facilities. However, this was not a factor that was considered by the Inspector when granting the original temporary approval for the site and I am mindful that the need to maintain a gypsy and traveller lifestyle is an important factor. In any case, based on the detailed submissions made by the appellant, including their living conditions within the house and related health effects, along with the timeframes involved, I give these claims by local residents limited weight.

25. Overall, I am of the view that while there is a clear reliance on unsustainable transport modes for occupiers to access local services and facilities from the site, the location of the development and the provision of a permanent settled base for gypsy and travellers would minimise the need to travel and thus there is a demonstrable benefit.

26. I therefore conclude that, on balance, there is no overall harm in terms of sustainable travel and accessibility of the site. The development would accord with LP Policy SC7 and LP Policy H8, the PPTS and the Framework.

Character and Appearance

27. The area around the appeal site is characterised by sporadic development set in the countryside, with the highest concentration of dwellings being located around Moston Green. Sporadic developments are in proximity to the site, including the Grade II listed Ivy farmhouse and a gas governor compound.

28. CELP Policy PG6 seeks to protect the open countryside from urbanising development, and although exceptions are listed, gypsy and traveller sites are not referenced as a specific exception. Policy SC7 states that the impact upon the character and appearance of the surrounding area will be taken into account. The NP sets out a vision for Moston which recognises its rural character and location within the open countryside and states that the gypsy and traveller community will be recognised and integrated within the parish without sites dominating the area. High levels of traveller sites and visual impact upon landscape/character as well as temporary traveller sites becoming permanent are a specific threat identified within the NP, albeit this is not reflected in any specific NP policy.

29. As stated above, the PPTS seeks to strictly limit new sites in the open countryside, although it is not precluded as a matter of principle and requires that that sites should not dominate in scale. The original Inspector found limited harm to the character and appearance of the countryside and judged that harm to be sufficient to justify the refusal of a permanent planning permission.

30. The temporary use has changed the character and appearance of the site from that of an open field to an area of hardstanding with suburban features such as fencing. The use of the site would also not meet any of the exceptions as listed in CELP Policy PG6 and as such there is policy conflict in this regard.

31. The aerial photographs presented at the appeal demonstrate the transformation of the land and while this does appear as a stark incursion into the landscape, this is not the view as experienced in the local area. Views from the ground into the site, including from Dragons Lane and Plant Lane are effectively screened by the presence of mature hedgerows along the highway boundary, with the greatest visibility into the site arising at the access from Dragons Lane. The fence erected as part of the Thimswarra Farm site located behind the hedgerow also provides a further visual barrier along Plant Lane, albeit this would be removed when the temporary consent ceases.

32. More views are accessible from the footpath, and while this is lined by trees and hedges the coverage is thin and patchy in places and thus the site and its suburban character can be viewed from parts of the footpath across the rest of the open wider field. Greater visibility would occur during the winter months when the trees are not in leaf.

33. However, the development when it is able to be viewed, is not as inconsistent in an area already characterised by sporadic development. Further integration could be achieved through conditioning further details of hard and soft landscaping to mitigate any extant or future effects.

34. I am satisfied that the site does not visually dominate the settled community both alone, and in combination with the temporary site at Thimswarra Farm. Future applications for other sites or permanent permission would be assessed based upon their own merits.

35. Concern was raised regarding lighting of the site at night and its increased visibility. The NP does seek to retain rural character by keeping night-time skies dark. However, this is a matter that could also be dealt with by condition.

36. In conclusion on this matter, on balance I find that there is some limited harm which would arise from the permanent change of use of open land within the countryside and there would be conflict with CELP Policy PG6, SC7 and the NP and the PPTS.

The general need for and supply of gypsy sites

37. In terms of the need for sites, CELP Policy SC7 states that sites will be allocated or approved to meet the needs set out in the most recent Gypsy and Traveller Accommodation Assessment (GTAA). Based upon the 2014 GTAA assessment, it is identified that there is a need for 69 additional permanent residential pitches. It is held by the appellant that the permanent permission at the site would contribute to that need.

38. The Council referred to the publication of a new updated GTAA in 2018 which, partly based upon the revised definition of gypsy and travellers in the PPTS, downgrades the total need for 32 pitches up to 2030. They also advised that the draft SADPD proposes three site allocations which would address part of the need identified in the updated GTAA. A site selection report has also been produced assessing the suitability of sites as part of the evidence base for the SADPD. The appeal site is not a preferred site as part of this assessment.

39. The appellant considers that the 2018 GTAA is untested and as such should not be relied upon. The appellant raised a number of concerns in respect of the methodology of the updated GTAA including need being based against known sites. Also raised was the ORS assumptions regarding percentages of unknown households which are formed on a national basis, but which appear to have been upscaled in other GTAAs for other Council's in more recent studies also based on national statistics. The Council were unaware of this concern until the appellant submitted their evidence.

40. Temporary permission was originally granted at the site to cater for the appellant's short term need and to provide the Council reasonable time to deliver site allocations. This period was later extended as part of the conditional consent now subject to the appeal in order to align with the anticipated timescales for adoption of the SADPD.

41. It is not for me to pre-judge, as part of a s78 appeal, the evidence produced which underpins the SADPD, including the 2018 GTAA, as that would be for a Local Plan examiner. However, setting aside the issue in terms of ORS assumptions relation to national statistics, there is evidence to suggest potential undercounting in the 2018 GTAA as some extant consents which were factored into the assessment have now lapsed.

42. At the time the site was granted temporary permission on appeal, the Inspector noted that it was anticipated that sites would not become available until 2015 and as such the Council's timescales have slipped from when the original appeal decision was made. I acknowledge that the Council are committed to addressing need within their emerging and integrated Local Plan, however a significant amount of time has already lapsed with limited progress made.

43. More crucially, I am mindful that the draft plan does not seek to allocate sites, at this emerging stage, to meet its full need as allocations would only amount to 13 permanent pitches at 3 sites to meet 5 year provision, rather than for the full plan period. Moreover, while the appeal site is not currently a preferred option put forward as an allocation in the draft plan, it has not been fully discounted by the site selection report unlike other sites assessed by the report which have been more firmly resisted and discounted in the longer term. I am mindful that more sites will need to be allocated to address the identified need in the full plan period.

44. There is no dispute that the Council are currently unable to demonstrate a 5-year supply of sites and has been unable to do so for a considerable amount of time now. Regardless of the anticipated timeframes for adoption of the SADPD in around 12months, based upon the evidence before me I consider that there is more work to be done before any acknowledged need is met and there are question marks in respect of when this might be achieved.

45. Overall, the Council continue to be unable to demonstrate an adequate supply of gypsy and traveller sites which is a significant material consideration weighing in favour of the appeal site.

Personal Circumstances

46. The appellant contends that the imposition of a personal condition 2014 was not adequately justified by the Inspector. My attention was also drawn to the Thimswarra Farm appeal decision which was allowed in 2012 with no personal occupancy condition.

47. Limited analysis was detailed by the previous Inspector in terms of personal circumstances (paragraphs 34 and 35 of the decision). However, I am not in possession of the full details and evidence of that case and I note that the Inspector was clear that there was a lack of alternative accommodation available to the appellant and his family and that the permission would cater for the appellant's short-term needs (paragraphs 37 and 38).

48. The Inspector for the Thimswarra Farm site attached significant weight to personal circumstances relating to the appellant's children. However, the Inspector found that identified harms would be clearly outweighed by a substantial need for gypsy and traveller provision within Cheshire East, irrespective of whether specific gypsies or travellers had been identified as prospective occupiers. At the Hearing it was confirmed that to align with the Inspector in 2014 at this appeal site all subsequent applications for extensions of time at Thimswarra Farm and at the current appeal site, the Council have consistently imposed a personal permission.

49. The appellant was clear they do not consider that it is reasonable or necessary to consider personal circumstances in light of the overarching need for gypsy and traveller sites in Cheshire East, but did state that a stable base to access healthcare and educational facilities continues to be necessary in the long term, due to the particular needs of the occupants at the site which were detailed at the Hearing.

50. The appellant explained that there are 2 children resident on the site, with 1 being of school age. The appellant's wife also has a medical condition requiring treatment from the doctors Surgery at Sandbach. These particular circumstances were not disputed by the Council, but they consider that they amount to a reasonable need to maintain a personal permission. It is self-evident that families benefit from a stable base to access educational and healthcare facilities and the best-interests of the children would be served by granting consent for the change of use of the land.

51. The personal circumstances are thus as such that I attach significant weight to these factors. Insofar as whether this should result in a personal condition being maintained or removed, I shall address this in the overall planning balance, below.

Other Matters

52. Moston NP contains natural environment policies as part of conserving and enhancing Moston's nature conservation interests. These are underpinned by a report by the Cheshire Wildlife Trust entitled 'Protecting and Enhancing Moston's Natural Environment' dated February 2018. The whole NP area has been identified as a core area for wildlife and the appeal site is considered to

have medium value for habitat distinctiveness. There is also a local wildlife site, as designed by the NP, in proximity to the site and SSSIs located further away to the west and south. Adjacent to the site is a wildlife corridor linking these areas.

53. Policy ENV1 requires an ecological evaluation for developments in such areas and requires that new developments must not create divisions between existing wildlife corridors.

54. It was held by local residents who are concerned about the ecological effects of the site that the temporary permission would enable the ground to be restored in the future, whereas any damage to the environment would be made permanent if the appeal were to succeed.

55. The Inspector in the original appeal decision at the site, found that there was no evidence in respect of concerns relating to ecology and gave little weight to this.

56. No ecological assessment was provided as part of the application to vary the condition, but I note that this was submitted prior to the adoption of the NP when it would have been in an emerging stage. Natural England also raised no objections.

57. There is no detailed evidence to suggest that the site, as currently developed, has any adverse ecological effects, and I am mindful of the conclusions of the previous Inspector. The restoration of the site upon the lapse of any temporary consent could provide a benefit in nature conservation terms but this factor alone would not justify the retention of such a condition. Overall, I therefore find no conflict with NP Policy ENV1.

58. As referenced above, Ivy Cottage Farm is a Grade II listed building and comprises a farmhouse and converted barns. However, the appeal site is of some distance away and I am satisfied that it causes no harm to the setting of the listed building.

59. Concern was raised regarding the appeal procedure as an Inquiry was sought by local residents as well as by the local MP. However, I do not consider that any party was prejudiced by proceeding by way of a Hearing, as all the residents had opportunity to participate in the proceedings and they actively contributed to the discussions held. Concerns regarding the Council's handling of the application is a matter between these parties.

Planning Balance

60. As set out above, there is limited harm to the character and appearance of the area, although this could be tempered, in part, by the imposition of landscaping and lighting conditions.

61. I have concluded that there would be no harm in terms of accessibility. My conclusions are consistent with the Inspector in the previous decision at the site whereby it was concluded any adverse implications from short journeys to access service and facilities would be outweighed by a reduction in long distance travelling in paragraph 19 of the decision.

62. The need for gypsy and traveller sites is a significant material consideration weighing in favour of the appeal. I have also had due regard to the Public

Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Since the appeal is made for a gypsy site and the proposed occupiers are gypsies, they are persons who share a protected characteristic for the purposes of the PSED. Although it does not automatically follow that the appeal should succeed, the need for sites and the lack of any identified sites in the development plan may indicate inequality of housing opportunity for gypsies and travellers. The equality implications add further weight in favour of the scheme.

63. In addition the personal circumstances of the appellant and his family are also important. In particular, the best interests of the children, though not determinative, are a primary consideration which are at the forefront of my mind in considering the overall balance.

64. Taken together, these factors clearly outweigh the limited harm to the character and appearance of the area that I have identified.

65. Insofar as this appeal relates to the disputed condition and whether it is reasonable or necessary, in light of my findings I consider a permanent permission is now justified in terms of need. Moreover, while personal circumstances weigh in favour of the development, there is no basis to impose a personal permission for the appellant and his family, again based on the significant need for gypsy and traveller sites – the factor alone is sufficient to outweigh the harm I have identified.

66. On this basis, I do not consider that a temporary or a personal condition is necessary or reasonable. As I am allowing the appeal, my decision would not lead to any violation of the rights of the appellant and his family under Articles 1 and 8 of the Human Rights Act 1998.

Conditions

67. In allowing the appeal I have considered those conditions imposed on the planning permission under 17/5170C. The Council originally requested a number of conditions to be imposed were I to allow the appeal, but I am not creating a new separate planning permission for the development and thus it is not necessary for me to re-impose any such conditions as part of my decision. The original decision and my appeal decision should be read together. This was discussed at the Hearing and agreed by parties.

68. However, for the reasons set out above, relating to character and appearance, it is necessary to impose further conditions in respect of lighting and landscaping. The purpose of this condition is to require the appellant to comply with a strict timetable to deal with lighting and landscaping which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted

for approval during the time set by the condition, approved (either by the local planning authority or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.

Conclusion

69. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

C Searson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Phillip Brown	Phillip Brown Associates
Martin Smith	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Gemma Horton	Cheshire East Council (Senior Planning Officer)
Allan Clarke	Cheshire East Council (Principal Planning Officer)
Jeremy Owens	Cheshire East Council (Development Plans Manager)
Dawn Taylor	Cheshire West Council (Cheshire and Warrington Traveller Team Manager)

INTERESTED PERSONS:

Dave Nixon	Moston Parish Council
Endaf Roberts	Civitas Planning (on behalf of Moston Parish Council)
Alan Holder	Moston Parish Council
Anne Holder	Moston Neighbourhood Plan Steering Group

DOCUMENTS

1 Signed Statement of Common Ground
2 Map depicting gypsy and traveller sites in the locality.
3 Email extract re Blaby Local plan Examination.
4 Appeal Decision: APP/J0405/W/18/3193773.
5 Map of appeal site and development site at 'The Poplars.'
6 Aerial Photograph of Moston
7 Bound copy of Moston Neighbourhood Plan 2018-2030.