The Planning Inspectorate

Appeal Decision

Hearing Held on 11 April 2019
Site visit made on 11 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/18/3203736
Land south of Dragon's Lane, Moston, Sandbach, Cheshire, CW11 3QB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Thomas Quinn against the decision of Cheshire East Council.
- The application Ref 16/0962C, dated 21 February 2016, was refused by notice dated 29 November 2017.
- The development proposed is the change of use of land to use as a residential caravan site for one gypsy family with two caravans, including construction of access road, laying of hardstanding and erection of amenity building.

Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to use as a residential caravan site for one gypsy family with two caravans, including construction of access road, laying of hardstanding and erection of amenity building at Land south of Dragon's Lane, Moston, Sandbach, Cheshire, CW11 3QB in accordance with the terms of the application, Ref 16/0962C, dated 21 February 2016, subject to the attached schedule of conditions.

Procedural Matters

2. I have also dealt with another appeal (reference APP/R0660/W/18/3208887) on an adjacent site. That appeal was against a condition granting temporary and personal permission at the site and was made by different appellants but with the same Agent. This was held the day before 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 Issues

4. The main issues are:

   i) the effect of the proposed development the character and appearance of the countryside; and,

ii) whether any harm arising from the above is outweighed by 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 (NP) 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 2019 (the Framework) and the Planning Policy for Traveller Sites 2015 (PPTS) are also relevant to my determination of the appeal.

Gypsy and Traveller Status

9. It is important to ascertain whether the appellant/occupiers have traveller status in planning terms, as defined in Annex 1 of the PPTS. In this case the Council has not contested traveller status. The appellant has submitted evidence of regular travelling for economic and other cultural purposes. On that basis, I have no reason to doubt that the appellant/occupiers fall within the PPTS definition.

Character and Appearance

10. The appeal site comprises a roughly rectangular open paddock area of around 0.16 hectares set towards the centre of a larger triangular field at around 4.5hectares which is bounded by Dragons Lane to the north, Plant Lane to the west. A public footpath runs along the eastern boundary of the wider site. Mature hedgerows enclose this wider site area.

11. The wider site contains a number of separate traveller sites including a 2 pitch site known as Thimswarra Farm, a 4 pitch site (as part of the separate abovementioned appeal) and a separate unauthorised 2 pitch site which is currently the subject of a separate, undetermined application.

12. The site would share an existing access into the wider field from Dragons Lane and a new access road which would be bounded by a wooden post and rail fence. The western boundary lies adjacent to an existing fence which demarks the Thimswarra site and there is a paddock to the east. Tree and hedgerow planting is proposed within the site. The site would be separated from the

existing Traveller sites which are located towards the front field boundary with Dragons Lane by open land.

13. 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. Two major gas pipes run through the wider site, in proximity to the appeal site.

14. CELP Policy PG6 seeks to protect the open countryside from urbanising development, and although permissible exceptions are listed, gypsy and traveller sites are not referenced as part of this. 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 are a specific threat identified within the NP, albeit this is not reflected in any specific NP policy.

15. 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. There is a requirement that sites should also be well planned or soft landscaped in such a way to positively enhance the environment and increase its openness and it is made clear that sites should not be enclosed with hard landscaping, high walls or fences that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.

16. It is inevitable that any built development on an open field will have an effect upon the landscape character and there would be visual effects. Aerial photographs of the existing Traveller sites presented at the Hearing exhibit the effects of the existing sites in the wider field and I consider a similar effect would be gained by the proposed development.

17. As experienced 'on the ground,' views into the site are currently largely screened by the existing mature hedgerows along the highway boundaries along Dragons Lane and Plant Lane. Existing fencing which has been erected along Plant Lane (behind the hedge) and within the triangular site at Thimswarra Farm, also provides screening, albeit this may be removed when that consent expires. Views would also be gained from the public footpath which does not have a dense vegetation boundary along its length. Views in winter would also be greater when vegetation is not in leaf. Based upon this, the main views gained would be limited to through the existing access from Dragons Lane and from the public footpath.

18. The site would be set around 60m away from other nearby traveller sites and its presence would be heightened by the length and positioning of the access track leading to the site and by the proposed fence. The development would effectively be 'in-depth' which would represent a change in terms of the general pattern of development in the vicinity which typically is positioned near to local highways. This was a fundamental concern of the Council.

19. The nature of the development set into this field would be experienced in views from the public footpath and from Dragons Lane. However, I am mindful that

the site would be relatively small as the site would be for a single pitch with 2 caravans and amenity building and crucially, the separation of site from the existing traveller sites would help to maintain a semblance of the sporadic character of the area. While the location of the site would effectively thus be an outlier, I do not consider that the development would therefore present an unsightly protrusion into the local landscape in this regard.

20. The soft landscaping proposals would reduce openness in some respects, but I am not persuaded that this in itself would enclose the site and cause isolation, which would go against the advice in the PPTS. The access track, with a post and rail fence, would have an open character and would be commensurate with separation of paddock areas within fields, which is not uncommon in rural areas. Moreover, any landscaping could be conditioned to ensure that it helps to assimilate the site into the landscape, without providing an incongruous 'green compound' in the middle of an open field. Similarly, lighting could be conditioned to retain rural character by keeping night-time skies dark, in accordance with the NP.

21. Based on all of the above, I consider that the development would have an urbanising effect in a rural area, including through its 'in-depth' positioning within an open field, but this would be effectively limited by a number of factors, including existing screening, and landscaping proposals which could be further conditioned. This would help to integrate the development into its rural environs, in accordance with the PPTS.

22. Overall, on this matter, I find that there is some limited harm which would arise from the permanent change of use and the sites position set into open land within the countryside and there would be conflict with CELP Policy PG6, SC7 and the NP.

The general need for and supply of gypsy sites

23. 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) and based upon the 2014 GTAA assessment, there is a need for 69 additional permanent residential pitches. It is held by the appellant that the provision of a new pitch at the site would contribute to that need and that the appellant has sought to do things 'by the book' insofar as the application proposals are not retrospective.

24. A new updated GTAA was published by the Council in 2018 which, partly based upon the revised definition of gypsy and travellers in the PPTS, revises down the need from the 2014 document to 32 pitches up to 2030. The Council 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 was not assessed as part of this assessment, although the adjacent sites with temporary permission were not identified as preferred sites within this, based upon accessibility and character and appearance effects.

25. The appellant considers that the 2018 GTAA is untested and as such should not be relied upon. The appellant also raised a number of concerns in respect of the methodology of the GTAA including need being based against known sites. Concern was also raised in respect of 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 based on national statistics. The Council were unaware of this concern until the appellant submitted their evidence as part of the other Hearing, the day before.

26. 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 relating to national statistics, there is evidence to suggest potential undercounting in the 2018 GTAA as some extant sites which were factored into the assessment have now lapsed.

27. In any event, there is no dispute that the Council are currently unable to demonstrate a 5-year supply of sites and has been unable to for a considerable amount of time now. I acknowledge that the Council are committed to addressing need within their emerging and integrated Local Plan, however, I am mindful that the draft plan does not seek to allocate, at this emerging stage, to meet its full need be it to the lower disputed 2018 GTAA figure or otherwise. The allocations as proposed would only amount to 13 permanent pitches at 3 sites to meet 5 year provision, rather than for the full plan period.

28. Overall, the Council continue to be unable to demonstrate an adequate supply of gypsy and traveller sites and it is unclear to me, at this stage, when the need might be met. This is therefore a significant material consideration weighing in favour of the appeal site.

Personal Circumstances

29. The appellant explained at the Hearing that his extended family has not got a settled base and has been resorting to unauthorised roadside encampments. Accident and Emergency departments at nearby hospitals have been used when in need of medical attention and the schooling of the appellant's dependants is made up of home-education and short placements within schools which the appellant considers having given a disrupted education.

30. While evidence of personal circumstances was not provided in the original application, the Council did not contest the situation of the appellant and his family, although they noted that the benefits could be realised elsewhere and should not be determinative in the decision making process.

31. It is clear to me that families benefit from a stable base to access healthcare and education and that, in this case, this is not currently an option open to the appellant and his family. The best interests of the children would be clearly served by having a stable base and the fact that the appellant owns the site is clearly a realistic advantage in favour of the site, as opposed to others.

32. In this regard, I consider that the personal circumstances of the appellant and his family weighs in favour of the proposed development.

Other Matters

33. A number of comments were made throughout the Hearing regarding the dominating effect of traveller sites within the Parish, and the proximity to adjacent traveller sites being demonstrable of the realisation of longstanding concerns from local residents in this regard.

34. This appeal proposal would result in the addition of a further traveller family to the Parish where there are a number of such sites in the area. However, the long-term status of the Thimswarra Farm site and the existing unauthorised site is, at present, not determined and each application must be determined based upon its own merits.

35. Limited evidence was presented in terms of local concern on this matter and only generalised concerns were raised in terms of pressures upon local infrastructure and services. The site is for a single pitch and as such I consider that it would respect the scale of the community, both alone and in combination with existing sites.

36. I am also mindful that in terms of the triangular field, of which the appeal site forms a part of, future developments would be naturally limited by the presence of the high pressure gas-pipelines which cut across the sites. Due to the regulations in terms of developments across or in proximity to these, further similar developments would be naturally limited by these.

37. Concern was also raised regarding a reliance on unsustainable transport modes to access local services and facilities. This did not form a reason for refusal by the Council, although it was noted that this was a main issue in the other appeal Hearing. In my view, the highways conditions are such that walking or cycling would not be easily undertaken and there is no public transport that would serve the site. However, the site would be only a short distance away from the nearest services and facilities and the provision of a settled base for gypsy and travellers would minimise the general need to travel. On balance, I find that there would be a neutral effect and thus there would be no harm in this regard.

38. Ivy Cottage Farm is a Grade II listed building and comprises of a farmhouse and converted barns. Concern was raised with regard to the setting of this, particularly with regard to the 'in-depth' location of the appeal site within the wider field. However, I saw that the appeal site is of some distance away and separated by 2 field boundaries and a road. In this regard, I am satisfied that the development would cause no harm to the setting of the listed building.

39. 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 designated by the NP, in proximity to the site and SSSIs located further away to the west and south that adjacent to the site is a wildlife corridor linking these areas.

40. Policy ENV1 requires an ecological evaluation for developments in such areas and requires that new developments must not create divisions between existing wildlife corridors and no ecological assessment was provided as part of the application at the site. However, I note that this was submitted prior to the adopted of the NP when it would have been in an emerging stage. Natural England also raised no objections to the site.

41. Ecology is an important consideration in any development scheme and the NP provides detailed guidance on this relating to the local area. However, there is

no detailed evidence to suggest that the proposal would have any adverse ecological effects in terms of protected species, or in more general terms. The development is small in scale and thus would be unlikely affect any corridors. I am mindful of the conclusions of the previous Inspector's at adjacent existing Traveller sites who found no harm to ecology.[1] I therefore find no conflict with NP Policy ENV1.

42. Matters relating to flood risk and drainage were also raised, however the area is at a low risk of flooding and I consider that this could be adequately dealt with by condition.

43. 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 those parties.

Planning Balance

44. I have found that there is limited harm to the character and appearance of the area, although this could be mitigated, in part, by the imposition of landscaping and lighting conditions.

45. The need for gypsy and traveller sites is a significant material consideration weighing in favour of the appeal. I have 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 travellers, 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 as do the personal circumstances of the appellant and his family.

46. The Council asked that if I was minded to allow the appeal, to give consideration to the imposition of a temporary and personal permission in order to allow further time for the Council to allocate sites as part of a plan-led process.

47. However, in light of the acknowledged need, and my concerns regarding the progress on allocating for the full need for gypsy and traveller sites, I consider that a permanent permission should be given so as to secure a stable base for the family and I am not persuaded that a temporary permission is justified in this case.

48. In addition, while the personal circumstances weigh in favour of the development, in light of the significance of the need for sites, I am satisfied that the proposal would help to address that need and thus this tips the balance in favour of the scheme, regardless of the particular personal circumstances of the appellant/occupants. In this regard, I do not therefore

[1] References: APP/R0660/A/12/2173171 and APP/R0660/A/12/2187885

consider it to be necessary to impose a personal permission condition for the appellant and his family.

49. Overall, I consider that the limited harm to the character and appearance of the area, and the conflict with the development plan and PPTS are clearly outweighed by the need to provide gypsy and traveller accommodation and other factors related to this.

50. 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

51. A number of conditions were recommended by the Council. The imposition of pre-commencement conditions have been agreed by the appellant in writing, these are necessary due to the nature of the requirements of these conditions.

52. I have specified the approved plans as this provides certainty. Given the nature of the application and my findings in respect of the need for gypsy and traveller accommodation, I have imposed a condition limiting the occupation of the site to gypsies and travellers. Similarly, the scale of development has been restricted, this would also protect the appearance of the area.

53. In the interests of the appearance of the site and the area, landscaping works, materials for the day room/amenity block and lighting need to be approved and implemented in accordance with submitted details. For the same reason, additional fencing or enclosure should be controlled.

54. To safeguard the amenity of local residents, conditions are necessary to prohibit commercial activities, the storage of materials and the use of large vehicles at the site.

55. Further conditions were also discussed at the Hearing and I consider it necessary to impose a condition in respect of drainage details, again to protect amenity of local residents.

56. A contamination condition was recommended by a consultee to the original application, however, there is no evidence before me in terms of the necessity for such a condition and I am mindful that other traveller sites within the wider field did not have such a requirement on them. In light of the scale of the site, I also do not consider it necessary to impose a condition in terms of controlling the hours of which site works can be undertaken.

Conclusion

57. 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 Poplers.'
6 Aerial Photograph of Moston.
7 Appeal Decision: APP/R0660/W/18/3204676.
8 Listing descriptions Ivy Cottage and Shippon and Stables 10m north of Ivy Cottage.

SCHEDULE OF CONDITIONS

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the approved plans:

   Proposed Utility/Day Room, Post and Rail Fence, Location Plan, and Site Layout Plan.

3) The site shall not be occupied by any persons other than gypsies and travellers as defined by the Planning Policy for Traveller Sites (or its equivalent in replacement national policy).

4) There shall be no more than 1 pitch on the site, with no more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, as amended, shall be stationed at any time, of which only 1 caravan shall be a static caravan.

5) No development shall take place above slab level until samples of the materials to be used in the construction of external surfaces of the utility/dayroom hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with he approved details.

6) No development shall take place until full details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. Where appropriate, these details shall include proposed finished ground levels or contours; hard surfacing materials; minor artefacts and structures (eg street furniture, play equipment, refuse or other storage units, etc.). Soft landscaping details shall include schedules of shrubs and trees to be planted, noting the species, stock size, proposed numbers/densities and details of the planting schemes implementation, aftercare and maintenance programme.

7) The approved landscaping plan shall be completed in accordance with the following:-

   a) All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of the development hereby approved, or in accordance with a programme agreed with the Local Planning Authority.

   b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428(1989) Code of Practice for General Landscape Operations (excluding hard surfaces).

   c) All new tree plantings shall be positioned in accordance with the requirements of Table 3 of British Standard BS5837: 2005 Trees in Relation to Construction: Recommendations.

   d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging

plants of similar size and species to those originally required to be planted.

8) No development shall take place until details of any external lighting shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and retained thereafter.

9) No fences, gates or walls other than those expressly authorised by this permission shall be constructed.

10) No commercial activities shall take place on the land, including the storage of materials.

11) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.

12) No development shall take place until drainage works have been carried out in accordance with details which shall have been submitted to and approved in writing by the local planning authority.