The Planning Inspectorate

Appeal Decision

Hearing Held on 4 June 2019

Site visit made on 4 June 2019

by Thomas Hatfield BA (Hons) MA MRTPI

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

Decision date: 27th June 2019

Appeal Ref: APP/R0660/W/18/3210371
Thimswarra Farm, 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 Patrick Cosnett against the decision of Cheshire East Council.
- The application Ref 17/2114C, dated 13 April 2017, was approved on 5 April 2018 and planning permission was granted subject to conditions.
- The development permitted is described as *"removal of condition 1 to make permission permanent and non personal and variation of condition 2 and condition 5 to increase to 3 pitches (total of 7 caravans) on 15/5650C"*.
- The condition in dispute is No 1 which states that:
  1) *The use hereby permitted shall be carried on only by the following: Mr & Mrs Pat Cosnett, Sylvia Smith, Mary Cosnett and Isaac Price, Patrick Cosnett (Junior) and spouse, and their respective resident dependents, and the use of the land as a residential caravan site shall be discontinued and the relevant part of the land, other than the approved stable block, septic tank and hardstanding, restored to its former condition on or before 13th February 2021, in accordance with a scheme of work submitted to and approved in writing by the local planning authority.*
- The reason given for the condition is:
  1) *Having regard to the particular circumstances of the application, and the justification for a temporary permission only.*

Decision

1. The appeal is allowed and planning permission Ref 17/2114C for the use of the land as a residential caravan site at Thimswarra Farm, Dragons Lane, Moston, Sandbach, Cheshire, CW11 3QB granted on 5 April 2018 by Cheshire East Council, is varied by deleting conditions 1 and 4 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 of hard and soft landscaping including details of species, plant sizes and proposed numbers and densities 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.

Preliminary Matters

2. Temporary planning permission was first granted for the current use of the site at appeal in 2012[1]. Three further temporary consents have since been granted, the most recent of which (Ref 17/2114C) will run out in 2021. The current proposal seeks to remove condition 1 to that permission to make the consent permanent.

3. Whilst application Ref 17/2114C sought to vary conditions 1, 2 and 5 to permission Ref 15/5650C, this appeal is made against condition 1 only.

4. The planning application and subsequent appeal were made by Mr Patrick Cosnett. However, Mr Cosnett has since sold the site and no longer retains an interest in it. It has been drawn to my attention that the change in ownership occurred before the appeal was made, and that Certificate B should therefore not have been ticked on the Appeal Form. The appellant's agent acknowledged this error at the hearing and stated that he was not aware of the change in ownership at the time the appeal was submitted. The new owners, Mr and Mrs Hearn, participated in the hearing and presented a case on their own behalf. Accordingly, I am satisfied that no prejudice has arisen to any party.

5. My formal Decision describes the development as *"use of the land as a residential caravan site"*. This description provides greater clarity regarding the nature of the approved development than the descriptions on either the Decision Notice or planning application form.

6. After the hearing, 2 appeal decisions[2] were published that relate to similar proposals on neighbouring sites. Both main parties were given the opportunity to comment on these and I have taken them into account in reaching my decision.

Main Issues

7. The main issues are whether the disputed condition is reasonable and necessary with particular regard to:

(a) The accessibility of the site to local services and facilities;

(b) The effect of the proposal on the character and appearance of the area;

[1] APP/R0660/A/12/2173171
[2] APP/R0660/W/18/3203736 and APP/R0660/W/18/3208887

(c) Whether any harm arising from the proposal would be outweighed by other considerations including the need for sites and the availability of alternative accommodation; and

(d) Whether it is necessary for the permission to be personal.

Reasons

Accessibility

8. Policy SC 7 of the Cheshire East Local Plan Strategy ('the CELPS') states that the proximity of proposed gypsy and traveller sites to local services, facilities, and public transport will be considered. In this regard, the nearest shops, schools and medical facilities are in Elworth which is around 2.3km away. Sandbach railway station is also located approximately 1.6km away. However, Dragons Lane, Plant Lane, and other roads between the appeal site and Elworth are unlit and do not have a pedestrian footway. Occupiers of the site would therefore be unable to access these facilities safely by foot.

9. Paragraph 103 of the National Planning Policy Framework ('the Framework') recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. In this regard, the appeal site is located a relatively short distance from nearby services and facilities considering that it is a rural gypsy site. Whilst future occupiers would be reliant on the use of a private car, this would not be disproportionate given the relative proximity of services and facilities. At the hearing, the Council also drew my attention to Table 9.1 beneath Policy SD 2 of the CELPS. However, the distances specified are not policy requirements and they do not alter my view that the site is in a relatively accessible location.

10. For the above reasons I conclude that there would be no significant harm in terms of the accessibility of the site to local services and facilities. The development would therefore, on balance, accord with Policies SC 7, SD 1, SD 2, CO 1, CO 2 of the CELPS (2017), which seek to guide development to accessible locations.

Character and appearance

11. The appeal site is outside of any settlement boundary and is wholly within the Open Countryside for planning policy purposes. In this regard, Policy PG 6 of the CELPS and saved Policy PS8 of the Congleton Borough Local Plan First Review seek to restrict new development in the Open Countryside to specific categories of use that do not include gypsy and traveller sites. In addition, the Moston Neighbourhood Plan, in its analysis of key themes relating to the Parish (strengths, weaknesses, opportunities and threats), identifies temporary traveller sites becoming permanent as one of several 'threats' to the area. However, the plan does not contain any specific policy to this effect.

12. The appeal site is positioned on the corner of Dragons Lane and Plant Lane. It is not generally visible in longer public views, apart from in glimpses from along a footpath to the south east. From the adjoining roads it is partly screened by existing mature hedgerows, although the tops of the caravans, entrance gates, and a number of lighting columns are visible. However, these have only a modest visual impact and are seen in the context of the existing sporadic development in the vicinity, which includes an adjoining gypsy site, individual dwellings, and a gas governor complex. I also visited the site after

the hours of darkness and saw the effect of the lighting at that time. However, condition 6 to permission Ref 17/2114C requires that no external lighting shall be installed until details have first been submitted to and approved by the local planning authority. That condition appears to be in breach. At the hearing, the new owners stated that they were not previously aware of this condition but that they would be happy to comply with it. This is a matter that could be pursued outside of the appeal process.

13. PPTS states that new traveller development in the open countryside that is away from settlements should be very strictly limited. However, there are sporadic developments dotted along the surrounding roads and a higher concentration of dwellings located around Moston Green, approximately 400 metres to the south. The development sits within this dispersed settlement pattern and is in relatively close proximity to Elworth/Sandbach. I therefore do not consider that it is 'away from' existing settlements for the purposes of the PPTS.

14. Separately, the size of the development is modest, and it does not dominate any nearby settled community in my view. Whilst it adjoins a larger gypsy site to the east, and there are a number of other gypsy sites in the wider area, there is no unacceptable cumulative effect caused by the retention of this site. In this regard, I note that the Inspectors for both the previous appeal at this site, and the neighbouring site, came to a similar view on this matter.

15. For the above reasons, I conclude that some limited harm would arise from the permanent change of use of open land within the countryside. The proposal would therefore conflict with Policies PG 6 and SC 7 of the CELPS (2017) and Policy PS8 of the Congleton Borough Local Plan First Review (2005).

Other considerations

16. It is common ground that the Council is unable to demonstrate a 5 year supply of traveller sites, as required by PPTS. Moreover, at the hearing it emerged that a consent for 24 pitches at Booth Lane (Ref 14/5108C) had lapsed. The Council acknowledged that it was uncertain whether this site would come back into the supply in the future and that it should be removed from its current supply of sites. This would significantly increase the deficit against the 5 year requirement. Overall, the inability to demonstrate a 5 year supply is a significant material consideration that weighs in favour of the appeal proposal.

17. The Council is currently preparing a Site Allocations and Development Policies Document ('the SADPD') that will allocate additional housing, employment, and gypsy sites, as well as setting out detailed planning policies. The SADPD is currently at a relatively early stage of preparation, and it is common ground that its policies and proposed allocations carry limited weight at this stage. A consultation on a first draft of the SADPD took place during September-October 2018. This proposed the allocation of 2 additional gypsy sites that would contain a total of 13 pitches. However, the number of allocations required may need to increase following the removal of Booth Lane from the supply. At the hearing, the Council stated that the SADPD is forecast to be adopted in March 2020. However, this timescale relies on a number of unrealistic assumptions. In particular, it is assumed that the SADPD will be submitted in October 2019 and that hearing sessions will take place in December 2019, which does not appear to be achievable. Moreover, the vast majority of DPDs such as this are subject to a round of main modifications, which has not been assumed in the

Council's timescales. Accordingly, it is likely that the provision of additional sites through the SADPD will be significantly delayed.

18. Whilst the appeal site is not currently a preferred option in the SADPD, it has also not been fully discounted by the site selection report unlike other sites which are identified as having little or no prospect for allocation. Moreover, I note that the SADPD only seeks to allocate sites, at this emerging stage, for the first 5 years rather than the full plan period. More sites will therefore need to be identified in order to meet need in full.

19. The appellant also sought to question the requirement for pitches identified in the most recent Gypsy and Traveller Accommodation Assessment (2018). However, this document and its methodology will be scrutinised by the Inspector examining the SADPD. It is not for me to pre-judge this evidence in the context of a section 78 appeal. In any case, as it is common ground that there is no 5 year supply, this matter has little bearing on the outcome of this appeal.

20. Separately, whilst the original consent at the site was temporary in relation to the use of the land as a residential caravan site, it granted permanent permission for the approved stable block, septic tank and hardstanding. Whilst the approved stable block was never built, a significant part of the site is now covered in hardstanding that was granted under that permission. The site therefore has a partially developed character that could be retained indefinitely.

Personal permission

21. In addition to making the permission temporary, the disputed condition restricts the occupancy of the site to certain named individuals, including Mr Cosnett. None of those individuals currently reside at the site.

22. The original temporary permission that was granted at appeal did not include a condition that made the consent personal. In this regard, Paragraph 52 of that decision states that *"the general need for pitches is so significant that there can be no justification for a personal restriction of use to the Appellant and his dependants"*. However, when the Council subsequently extended the temporary consent, it attached a personal condition. It was explained at the hearing that this was due to the increase in the number of pitches and the personal circumstances of the applicants at that time. However, that increase in the number of pitches was relatively small (from 1 to 2) and the rationale that the previous Inspector employed has not significantly altered since then. In these circumstances, and given the significant shortage of available sites, I conclude that it is unnecessary for the permission to be personal. This element of the disputed condition can therefore be removed.

Other Matters

23. At the hearing, the personal circumstances of the new owners of the site were raised. Mr and Mrs Hearn have 4 school aged children who have attended local primary and secondary schools since last September. The acquisition of a settled base has also allowed the family to live together for the first time, as they had previously lived separately. One of the children also has a significant health condition that Mr Hearn stated had significantly improved since moving to a rural location with cleaner air. The family also have a new born baby who is currently being seen by health visitors, although the existing temporary

consent would allow the baby to be seen during the early stages of its life. These matters were first raised on the day of the hearing and there is no corroborating information before me from either the school or health care professionals. This limits the weight I can attach to these considerations in this case.

24. Mr Hearn stated that he travels for economic purposes for around 3-4 months of the year (in total). He has also never lived in bricks and mortar housing. From the information before me, I am satisfied that Mr and Mrs Hearn and the family members residing at the site fall within the definition of 'gypsies and travellers' set out in the Annex to the PPTS. In this regard, condition 3 of the permission restricts the occupancy of the site to gypsy and travellers only.

25. At the hearing, the proximity of the appeal site to a nearby gas governor and High-Pressure Gas Pipeline-Feeder was also discussed. In this regard, I was informed that this matter had led to the determination of a nearby proposal being delayed following a representation from National Grid. However, the appeal site is significantly further away from the nearby gas infrastructure than the neighbouring site. Moreover, National Grid wrote to the Council at the application stage to confirm that it had no objection to the proposal.

26. Interested parties refer to noise nuisance and anti-social behaviour taking place at the site. However, it is unclear whether this applies to the new or previous owners. In any case, this would be a police or environmental protection matter, rather than a planning matter.

27. The Moston Neighbourhood Plan designates the area of open land on the corner of Dragons Lane and Plant Lane as a Local Green Space. Whilst the appeal site is adjacent to this area, it does not include the Local Green Space itself.

28. There is no evidence before me to suggest that the site as currently developed has any adverse ecological effects. In this regard, the hardstanding at the site benefits from permanent consent and could remain indefinitely. Whilst no ecological assessment has been provided in support of the proposal, Natural England raised no objections. I further note that the Inspector for the first appeal at the site concluded that ecological harm would be unlikely to arise.

Conditions

29. I have considered those conditions imposed on the planning permission under 17/2114C. However, this decision would not create a new separate planning permission and it is therefore unnecessary for me to re-impose the previous conditions. In this regard, the original decision and this appeal decision should be read together. However, I am concerned that condition 4 to 17/2114C is unenforceable as it does not contain any sanction were it not to be complied with. This was discussed at the hearing. I have therefore deleted this condition and replaced it with one that is better suited to its intended purpose.

Overall Balance and Conclusion

30. As set out above, the proposal results in limited harm to the character and appearance of the area, and there is some conflict with the development plan in this regard. Whilst the Moston Neighbourhood Plan forms part of the development plan, it does not develop its generalised concern about temporary traveller sites becoming permanent into a specific policy. No significant harm

would result in terms of the site's accessibility to local services and facilities and this is a neutral consideration in the planning balance.

31. Set against this is the lack of a 5 year supply of gypsy and traveller sites and a significant unmet need in the Borough that is unlikely to be resolved in the near future. Moreover, the emerging SADPD is not currently seeking to allocate sites beyond the first part of the plan period and is likely to be delayed compared to the Council's current timescales. Given the extent of unresolved need, these considerations carry substantial weight in favour of the proposal. In addition, the site has a partially developed character and is largely covered in hardstanding.

32. In my view, the relatively limited harm that would arise from granting permanent permission is clearly outweighed by the benefits of allowing the appeal. In the circumstances of this case, the conflict with the development plan is therefore outweighed by other material considerations.

33. For the reasons given above I conclude that the appeal should be allowed.

Thomas Hatfield

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

P Brown	Planning Consultant
B Hearn	
E Hearn	

FOR THE LOCAL PLANNING AUTHORITY:

G Horton	Senior Planning Officer
A Clarke	Principal Planning Officer
D Taylor	Cheshire and Warrington Traveller Team Manager

INTERESTED PERSONS:

A Roscoe	Moston Parish Council
D Nixon	Moston Parish Council
J Wray	Ward Councillor
J Roscoe	
I Nixon	
C Luckett	
D Thorp	
C Thorp	
W Goodall	
H Goodall	
P Pritchard	
H Pritchard	
C Fell	

DOCUMENTS SUBMITTED AT THE HEARING

1 Appeal Decision Ref APP/Q3630/C/17/3181382, dated 9 May 2019