



Appeal Decision

Hearing Held on 10 March 2020

Site visit made on 10 March 2020

by G J Fort BA PGDip LLM MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 April 2020

Appeal Ref: APP/R0660/W/19/3240007

Land Adjoining Meadow View Park, Dragons Lane, Moston 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 Ms D S Smith against the decision of Cheshire East Council.
 - The application Ref 18/2413C, dated 15 May 2018, was refused by notice dated 3 June 2019.
 - The development proposed is the change of use of land from agricultural land for stationing of caravans for residential purposes by 1 Gypsy-Traveller family with facilitating development (utility building, hard standing, septic tank, fencing and gates, shed/dog kennel).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land from agricultural land for stationing of caravans for residential purposes by 1 Gypsy-Traveller family with facilitating development (utility building, hard standing, septic tank, fencing and gates, shed/dog kennel) at Land Adjoining Meadow View Park, Dragons Lane, Moston CW11 3QB in accordance with the terms of the application, Ref 18/2413C, dated 15 May 2018, subject to the conditions in the schedule to this decision below.

Application for costs

2. An application for costs was made by Ms D S Smith against Cheshire East Council. This application is the subject of a separate Decision.

Procedural Matters

3. The description of development given in the banner heading above is a modified version of that which appears on the application form¹, which I have used because it comprehensively describes the development for which permission is sought. I saw that the change of use had occurred at the time of my site visit, alongside some of the operational development, although the utility building is yet to be constructed. It was discussed at the hearing and noted on the site visit that some of the structures mentioned in the description² appear to be on land outside of the red edge boundary shown on the location

¹ Which is "Change of use of land from agricultural land for stationing of caravans for residential purposes by 1 Gypsy-Traveller family with facilitating development (utility building, hard standing, septic tank, fencing and gates, shed/dog kennel) part retrospective"

² Namely some fencing, a shed and a kennel

plan - however, I have assessed the merits of the appeal scheme on the basis of the details as applied for.

4. I was supplied with an up to date map of planning applications and permissions within the Health and Safety Executive (HSE) consultation zones at the hearing. As a copy was also made available for other parties, and its contents were discussed at the hearing I consider that no prejudice would occur as a result of me taking it into account.
5. At the hearing, the Council supplied a printed copy of its rebuttal to the costs application, which had been made by the appellant in writing previously. I gave the appellant time to consider this in an adjournment, and to make final comments on the costs application verbally at the appropriate point of the hearing.
6. It also transpired during hearing discussions that there are a number of development plan policies which the Council consider to be relevant to the appeal development which neither I nor the appellant had been provided with. The Council supplied copies of these after the closure of the hearing, and I sought the appellant's comments on their relevance. Consequently, I consider that no prejudice would occur to the interests of any parties as a result of me taking the development plan policies into account in my assessment of the planning merits of the appeal.

Main Issue

7. The main issue is whether the appeal site would be suitable for residential development having regard to its location adjacent to gas pipelines.

Reasons

Site, surroundings and appeal scheme

8. The appeal site is situated at the side of Dragons Lane, in a rural environment, with sporadic developments situated in a wider landscape of open agricultural fields bounded with hedgerows punctuated in places with mature trees. Immediately to one side of the appeal site is the enclosure, pipelines, cabinets and other utilitarian structures associated with the gas governor; and on the other authorised residential traveller pitches and their access from Dragons Lane. To the rear of the site there is an unauthorised pitch³, and behind that permission has recently been granted for change of use of what is currently an open part of the wider field for one residential pitch⁴.
9. The development has changed the use of the appeal site as described above, close boarded fencing and gates have been installed around the site, and a caravan has been stationed for residential purposes.

Gas Pipelines

10. The appeal site is adjacent to high pressure gas pipelines, which are defined as Major Accident Hazards. Almost all of the site, including the existing and proposed residential accommodation, is within the inner consultation zone for these pipelines as defined by the HSE. In these regards I have given very careful consideration to the advice of the HSE, submitted in writing, and

³ Subject to an as yet undetermined planning application Council reference 19/3706C

⁴ Appeal reference APP/R0660/W/19/3232925

presented at the hearing in terms of the risks arising from the high pressure pipelines, which whilst they are remote in terms of possibility could nevertheless be of substantial severity including, in the worst case scenario, a fireball and subsequent jet fire.

11. At the application stage a holding objection⁵ to the appeal scheme was made by National Grid, but was subsequently withdrawn⁶, and on the basis of this correspondence I am satisfied that the development would cause no adverse impact to the integrity of the pipeline or impede its maintenance. I am mindful, however, that the HSE would “advise against” the siting of more than two dwellings within the inner consultation zone and within the projected radius of a fireball. Whilst I am aware of other pending planning applications in the area, as things stand, there is only one site with permission for a single residential pitch within the inner zone⁷. Consequently, the appeal scheme would, if permitted, increase this number to 2 pitches within the inner consultation zone-and in these terms the HSE would not advise against its permission. For these reasons, it has not been demonstrated that the residual risk arising as a result of the appeal development is of a severity that weighs materially against it in the overall planning balance.
12. Consequently, these considerations lead me to the conclusion on this main issue that the appeal site would be suitable for residential development having regard to its location adjacent to gas pipelines. For these reasons, the appeal development would not conflict with either Policy GR7 of the Congleton Borough Local Plan First Review (adopted January 2007) (the Congleton Local Plan); or Policy SD1 of the Cheshire East Local Plan Strategy (adopted July 2017) (the Local Plan Strategy). Taken together, and amongst other matters, these policies seek to ensure that developments support the health, safety and cultural well-being of the residents of Cheshire East; and do not expose members of the public to unacceptable risk in areas subject to significant hazards. In arriving at this view, I have taken fully into account the Government’s Planning Practice Guidance⁸ insofar as it relates to the handling of development proposals around hazardous installations.

Other Considerations

13. It is common ground between the appellant and the Council that the appellant and members of their family resident at the site meet the glossary definition of the term “gypsies and travellers” set out in the Government’s Planning Policy for Traveller Sites⁹ (PPTS). Although some have questioned the status of the affected individuals, the evidential basis of those statements is not before me. Consequently, on this basis, it is reasonable to conclude that the appellant and members of their family meet the relevant PPTS definition.
14. Whilst the emerging development plan seeks to allocate sites to meet the accommodation needs of gypsies and travellers it is still in a relatively early stage of preparation, and I have no detail on the number of outstanding objections to those allocations. Moreover, I am mindful of the criticisms of the *Cheshire East, Cheshire West and Chester, Halton and Warrington Gypsy*

⁵ Dated 15 June 2018

⁶ In correspondence dated 17 September 2019

⁷ Pursuant to appeal reference APP/R0660/W/19/3232925

⁸ *Hazardous Substances* Published 9 December 2016 Last updated 1 November 2019

⁹ At Annex 1

*Traveller and Travelling Showpeople Accommodation Assessment*¹⁰ (the GTAA), which establishes the needs which the emerging plan seeks to accommodate. In particular, I note concerns regarding firstly, the GTAA's restrictive interpretation of the PPTS definition of "gypsies and travellers"; secondly, the proportion of interviews carried out to inform it; and thirdly, that the proportion of "unknown households" it assumes would meet the PPTS definition is unduly low. Whilst these are more properly matters to be addressed at the examination into the emerging development plan, they nevertheless serve to underline the undersupply of specific deliverable sites in the District, against the identified 5 year requirement: a matter of common ground between the appellant and Council.

15. At the hearing, the availability of alternative sites was explored-and it emerged that no other public or private sites exist in the District that could accommodate the appellant and their family. It was also established that the appellant does not currently have access to any site on which they could station caravans lawfully. Furthermore, I am mindful of the personal circumstances of the adult occupants of the appeal site, who each come from different communities, and as a result have encountered difficulties in finding accommodation on mono-cultural private sites in the area. These considerations, taken together with the demonstrable lack of a 5 year supply of deliverable sites in the District, weigh significantly in favour of the appeal scheme in the overall balance.
16. The appeal site is situated at the roadside, is sandwiched between the hard and engineered character of the gas governor enclosure to one side and a residential site which includes 4 pitches on the other, and within this immediate context it would not look out of place. Fences bounding the appeal site are in the main screened by hedges and mature trees, and the paraphernalia and structures that are currently present and would be accommodated are and would be of a low-rise nature. Moreover, the appeal development has not created a new vehicular access onto Dragons Lane and shares the existing authorised access with the neighbouring site. To the rear, the scheme recently consented at appeal¹¹ for 1 pitch, taken together with appropriate landscaping of that site, which is secured by condition, would screen the back of the appeal site from any wider views from that direction. I note references to the identification of adverse landscape effects of a nearby traveller site set out in a *Gypsy, Traveller and Travelling Showpeople: Site Identification Study*¹² (the Study). However, the granting of permanent planning permission for traveller sites immediately adjacent to the appeal site is a significant material change in circumstances to those that pertained at the time of the Study.
17. These aspects of the appeal site and its surroundings, taken together with conditions relating to the facing and roofing materials of the utility building, and landscaping, mean that the development would cause no material harm to the character and appearance of the area. These aspects would also, taken together with the distance the appeal site achieves from listed buildings in the wider area, and its very limited inter-visibility with these assets, mean that their special interest would be preserved. For these reasons the appeal development does not conflict with Policy LCD1 of the Moston Neighbourhood

¹⁰ Produced by Opinion Research Services, dated August 2018

¹¹ Appeal reference APP/R0660/W/19/3232925

¹² Produced by Peter Brett Associates dated 2014

Plan (the Neighbourhood Plan), insofar as, amongst other things, it requires that traditional materials and detailing should be included in new designs and that new development should complement its immediate surroundings, in terms of both the natural environment and the built environment. For these reasons too I find that the appeal development would not fail to take account of the different roles and character of different areas, or fail to recognise the intrinsic character and beauty of the countryside - points emphasised in a letter from a former Minister of State for Housing and Planning¹³ that interested parties have referred to. Although I note views regarding the potential precedent for further development, I have considered the appeal scheme on the basis of its site and proposal specific factors including its location, and the presence of approved sites in its immediate environs.

18. The appeal site forms part of a wider field that has been incrementally developed with residential traveller pitches. I note the figures supplied by the Parish Council that just under 14% of the Parish's housing stock relates to caravans and temporary structures compared to a proportion of around 0.47% in the wider district. Nevertheless, the appeal site is a small portion of that wider field, which in terms of currently authorised uses constitutes scattered and low scale development in a wider area characterised by scattered and dispersed buildings. For these reasons, the development subject to this appeal would respect the scale of, and would not unduly dominate, the nearest settled community, and in this way would accord with the PPTS¹⁴.
19. I have been supplied with no substantive evidence to suggest that the appeal development would result in a net loss of biodiversity - and I note that no objections were made in these terms either by Natural England or the Council's Nature Conservation Officer. A great deal of the appeal site is open and turfed, hedges and mature trees exist on its boundaries, and the detailing and deployment of further landscaping can be secured by condition. Similarly, conditions relating to lighting could ensure that adverse impacts would be avoided to wildlife, and the environment more generally, as a result of any measures in these regards. I acknowledge, however, that the appeal development would not accord with Policy ENV1 of the Neighbourhood Plan insofar as it requires proposals to be informed by a habitat survey, which weighs against it in the overall balance. Nevertheless, for the above reasons, I consider that the appeal scheme would cause no demonstrable harm to biodiversity. For these reasons too, the appeal scheme would not conflict with Policies ENV2 or LCD2 of the Neighbourhood Plan, insofar as, amongst other matters, they require developments to avoid causing the deterioration in the quality of important natural features such as hedgerows and trees; and to ensure that dark skies are preferred over streetlights in new developments.
20. Dragons Lane and immediately connecting roads lack footways and street lighting and I readily accept that the majority of trips to and from the site will be by means of private vehicles. Nevertheless, services are available, including the train station at Sandbach, and shopping and other facilities at Elworth that are a reasonably short distance from the appeal site- and I have no substantive material before me to suggest that the single additional residential pitch subject to this appeal would place an undue pressure on these local services. Moreover, as discussed at the hearing, in supplying a settled base for the

¹³ Dated 27 March 2015

¹⁴ At paragraph 25

appellant and their family the appeal site would reduce the overall need to travel from site to site, and from those ad hoc sites to services that family members need to use on a day-to-day basis. I am mindful also of the National Planning Policy Framework¹⁵ (the Framework), which sets out that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. These considerations lead me to the view that the appeal development would have access to services and thus would accord with Policy HOU1 of the Neighbourhood Plan in this respect; and would not conflict with the PPTS¹⁶, insofar as it requires traveller site development in the open countryside to avoid placing undue pressure on local infrastructure.

21. Policy HOU2 of the Neighbourhood Plan is related to housing mix and type and prescribes the mix of dwellings to be provided on a site. As this policy is primarily directed to 'bricks and mortar' housing for the settled community it is not of direct relevance to traveller accommodation. In any event, I consider that the appeal development provides the 'smaller housing' that the policy seeks to promote.
22. Although I note references to vehicle collisions in the surrounding area, I have been supplied with no verified accident data in support of this view. Moreover, the appeal development is served by an existing access and would not materially increase its use. Consequently, whilst I note the assertion that traffic in the area has increased, it has not been established that the appeal scheme has led to, or would lead to an unacceptable impact on highway safety, or that its residual cumulative impacts on the road network would be severe¹⁷. In arriving at this view, I note that no objections have been made to the proposal on the part of the local highway authority.
23. Due to the adequate separation distances that the appeal site would achieve from the adjacent residential properties, taken together with the modest extent of the site, and its occupancy by only one family, I consider that it would not cause noise and disturbance of a scale to cause harm to the occupants of any adjacent dwellings. I give only very limited weight to generalised concerns about the appeal site's adjacency to a pet cemetery and crematorium, and its possible effects on the health of the development's occupants.
24. Whilst I acknowledge comments regarding the underlying ground conditions in the area and the effects of periods of heavy rainfall, these do not of themselves indicate that the use of a septic tank at the appeal site is not technically feasible or that it would cause pollution to adjacent watercourses. Moreover, no objections have been made to the use of a septic tank either by the Environment Agency or the environmental health department of the Council in these regards – or in regard to any other potentially harmful pollutants occurring as a result of the appeal development. As a consequence, these considerations do not weigh against the appeal scheme in the overall planning balance.
25. I have been supplied with no substantive evidence to suggest that the Council has not acted proportionately in responding to any suspected breaches of planning control either on the appeal site itself, or in its wider environs; and in any event this does not weigh against the appeal development when assessed

¹⁵ At paragraph 103

¹⁶ At paragraph 25

¹⁷ Per paragraph 109 of the Framework

on its own planning merits. I note suggestions that Article 4 Directions should be applied to the wider area as advised by an Office of the Deputy Prime Minister letter to chief planning officers¹⁸ to which reference has been made; however, such action is outside the scope of the current appeal.

Planning Balance

26. For the reasons set out above, I have found that the appeal scheme does not conflict with Policy GR7 of the Congleton Local Plan, or Policy SD1 of the Local Plan Strategy. However, in failing to supply a habitat survey the appeal scheme conflicts with Policy ENV1 of the Neighbourhood Plan. Nevertheless, I have found no demonstrable harm to biodiversity, and this consideration, taken together with the significant weight in favour of the appeal development arising from its ability to meet needs in the context of a demonstrated undersupply of deliverable sites, clearly justifies a decision other than in accordance with this aspect of Policy ENV1 in this instance. For these reasons, I consider that the appeal should succeed.
27. In arriving at this view, I have given due regard¹⁹ to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, particularly in this case in terms of meeting needs for culturally appropriate dwellings against a background of a demonstrable undersupply, and in enabling equality of access to educational and health services for the occupants of the appeal site. In arriving at this decision, I am cognisant that the best interests of children present at the site is a primary consideration²⁰, and that no other consideration can be regarded as inherently more important. However, as I am allowing the appeal I am satisfied that those best interests would be met.

Conditions

28. The Framework establishes²¹ that conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have assessed the Council's suggested conditions on this basis. Where conditions are attached, I have in some cases made some amendments to the suggested wording in the interests of clarity.
29. In the interests of certainty, I have attached a condition which identifies the approved plans. As the appeal development would supply a traveller site, for which there is a demonstrable undersupply, and to ensure accordance with the description of development given above, I have attached a condition which ensures that the occupation of the site is limited to those meeting the planning definition of the term "gypsies and travellers". To ensure that the appeal development conforms to what is applied for, a condition is attached relating to the number of caravans that could be stationed at the site. Similarly, as this is a residential site, conditions are imposed which restrict the conduct of commercial activities, and the stationing, parking or storage of vehicles of over 3.5 tonnes.

¹⁸ Dated 2004

¹⁹ In accordance with the Public Sector Equality Duty provided by s149 of the Equalities Act 2010

²⁰ Enshrined in Article 3(1) of the United Nations Convention on the Rights of the Child; and in accordance with Article 8 of the European Convention on Human Rights incorporated into UK Law through the Human Rights Act 1998

²¹ At paragraph 55

30. In the interests of the character and appearance of the site and its surroundings, a condition is attached relating to the approval and implementation of a site development scheme including hard and soft landscaping, and the details of any fences, gates or walls. To ensure that conditions are kept to a minimum, and in the interests of the residential amenity of nearby occupants, and nature conservation, I have also incorporated into this condition requirements related to details of external lighting. This is necessary to ensure that the appeal development complies with Policy LCD2 of the Neighbourhood Plan in these respects.
31. To ensure that the appeal development makes appropriate provision for drainage and avoids increasing the risk of flooding elsewhere, the site development scheme condition requires the submission of details of such measures to the Council for approval; and sets out a timetable for the implementation of those measures.
32. In the interests of the finished character and appearance of the utility building, I have imposed a condition requiring details of its facing materials to be submitted to the Council for its approval prior to its construction in accordance with those approved details.
33. Although I am aware of generalised concerns regarding potential contamination of agricultural land, and assertions about historic incidences of fly-tipping and landfill at the wider site, I have been supplied with no substantive evidence to suggest that there is an appreciable risk of contamination on the appeal site itself. Consequently, it has not been demonstrated that the suggested condition related to contaminated land investigation is either necessary or reasonable in this case. I have, however, attached a condition relating to the discovery of land contamination during any development activity pursuant to the permission, which would require it to be addressed in accordance with a methodology and timetable approved by the Council.
34. The appeal site is of a modest extent, and of a layout with limited scope for the installation of excessive amounts of boundary treatment. For these reasons, I find no clear justification to restrict the use of any permitted development rights relating to fences, gates or walls.
35. At the hearing, it was suggested that a condition could be attached to secure facilities for charging electric vehicles. I was referred to no development plan policy to support this requirement; however, I am mindful that the Framework requires²² developments to be designed to enable charging of plug-in and other ultra-low emission vehicles. Nevertheless, the appeal development relates to a site for a single family, the layout of which includes a considerable amount of space free from buildings. Consequently, I consider that the design of the site is one that would enable the charging of plug-in and other ultra-low emission vehicles, with limited disruption, at the point when such facilities may become necessary for the occupants of the site. Consequently, the condition suggested at the hearing is not necessary in this instance.

²² At paragraph 110 (e)

Conclusion

36. For the reasons set out above, and taking into account all other matters raised, I conclude that the appeal should succeed.

G J Fort

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mrs Alison Heine BSc MSc MRTPI	Heine Planning
Mr A Sharp	The Appellant's husband
Mrs D Smith	The Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms Gemma Horton BSc MCD	Planning Officer
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FOR THE HEALTH AND SAFETY EXECUTIVE:

Mr Stuart Reston	HM Principal Specialist Inspector of Health and Safety
Mr Jonathan Statham	Land Use Planning Advice Team

INTERESTED PERSON

Councillor Dave Nixon	Moston Parish Council
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DOCUMENTS RECEIVED AT THE HEARING

- 1 Updated Map of applications and permissions related to HSE Consultation Zones
- 2 The Council's Costs Rebuttal

DOCUMENTS RECEIVED AFTER THE HEARING

- 1 Text of relevant development plan policies
- 2 Appellant's comments on relevant development plan policies.

Schedule of Conditions

- 1) The development hereby permitted relates to and shall be carried out in accordance with the following approved plans: Plan 1 Location Plan; Plan 2 Proposed Site Layout Plan; Proposed Utility Blocks.
- 2) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 3) There shall be no more than 1 pitch on the site, and 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 (of which no more than 1 shall be a static caravan) shall be stationed on the site at any time.
- 4) No commercial activities shall take place on the land, including the storage of materials.
- 5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 6) 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 3 months 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:
 - the means of surface water drainage of the site;
 - the external lighting on the boundary of and within the site;
 - hard and soft landscape works for the site including details of how relevant British Standards (*BS 3936 Nursery Stock*, *BS4428:1989 Code of Practice for general landscape operations* and *BS5837:2012 Trees in relation to design, demolition and construction-Recommendations*) are to be complied with; and
 - fences, gates and walls at the site(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 11 months of the date of this decision the local planning authority refuse to approve the site development 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 site development scheme shall have been approved by the Secretary of State.
 - iv) The approved site development scheme shall have been carried out and completed in accordance with the approved timetable.

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

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.

- 7) At the same time as the site development scheme required by condition (6) above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of 5 years of the proposed planting beginning at the completion of the final phase of implementation as required by that condition. The schedule shall make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies within 5 years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.
- 8) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before development is resumed or continued.
- 9) The development of the utility building hereby permitted shall not take place until details of the materials to be used in the construction of its external surfaces shall have been submitted to and approved in writing by the local planning authority. The utility building shall be constructed in accordance with the approved details.

*****End of Conditions*****