



Appeal Decision

Hearing held on 29 March 2022

Site visit made on 29 March 2022

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 May 2022

Appeal Ref: APP/R0660/W/21/3279631

Thimsworra 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 refusal to grant planning permission.
 - The appeal is made by Mr Billy Hearn against the decision of Cheshire East Council.
 - The application Ref 19/5213C, dated 1 November 2019, was refused by notice dated 25 January 2021.
 - The development proposed is change of use of land to use as a residential caravan site for 7 gypsy families with a total of 16 caravans, including no more than 7 static caravans/mobile homes, together with laying of hardstanding, erection of communal amenity building, erection of 5 utility buildings and erection of stable building.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site address on the application form refers to '*Thimswarra Farm*', whilst the Council's decision notice states '*Thimsworra Farm*'. At the Hearing the main parties confirmed that the appeal site address should be referred to as '*Thimsworra Farm*', I have therefore proceeded on this basis.
3. The main parties, in both the written evidence and at the Hearing have referred to the emerging Revised Publication Draft, Site Allocations and Development Policies Document, 2020 (SADPD). The SADPD has been independently examined by an Inspector and the Council are preparing main modifications. Most relevant to this appeal are emerging Policies HOU5a and HOU5c. As such, in accordance with paragraph 48 of the National Planning Policy Framework (the Framework), and given its advanced stage of the plan preparation, I attribute moderate weight to the SADPD in the appeal decision.
4. I have also had regard, and in accordance with paragraph 30 of the Framework, to the Moston Green Neighbourhood Plan 2018-2030, made 11 November 2019, (MNP) which the Council provided as part of their appeal submission.
5. At the Hearing interested parties provided a map extract which showed the extent of the major accident hazard pipeline zones in regard to the appeal site area. All parties have seen this additional plan. As such, I have taken this plan into account in this decision on the basis that this indicates the location of the gas pipeline zones.

Background

6. The appeal site forms part of an existing and wider gypsy and traveller site and has a varied and long planning history. Planning permission for the amalgamated parts of the appeal site has previously been granted, including variation of conditions by the Council and through other appeal decisions¹. At the Hearing, it was agreed, that there were two existing pitches and from site visit observations that permission 16/0962C (appeal decision 3203736) for one gypsy family with two caravans, had not been implemented with pre-commencement conditions still to be agreed. This is due to expire in June 2022.
7. Therefore, the main parties at the Hearing confirmed that the proposal would result in additional 10 caravans and in total for 16 caravans (no more than 7 static) positioned at the site, and 5 additional pitches. I have therefore dealt with the appeal on this basis.

Main Issues

8. The main issues are:
 - The accessibility of the site to local services and facilities;
 - The effect of the proposal on the character and appearance of the area;
 - The effect of the proposal on the setting of nearby listed buildings;
 - Biodiversity, with particular reference to any direct effects on the Sandbach Flashes, Site of Special Scientific Interest (SSSI); and
 - Whether any harm arising from the proposal would be outweighed by other considerations.

Reasons

Accessibility

9. The Government's Planning Policy for Traveller Sites (PPTS) states that Local Planning Authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan.
10. Policy SC7 of the Cheshire East Local Plan, Local Plan Strategy 2010-2030, 2017 (CELPS) sets out that consideration will be given to the proximity of the site to local services and facilities, access to public transport and safe pedestrian, cycle and vehicular access onto the site.
11. The appeal site lies outside of any defined settlement boundary, within the open countryside. It is some 2-3km to the nearest town of Sandbach, which has the majority of main services and facilities within the larger settlement. The nearest village is Elworth being some 1.8km away and has several shops, doctors' surgery, school and access to public transport.

¹ 11/3548C – APP/R0660/A/12/2173171, 143086C, 15/5650C, 16/2247C – APP/R0660/W/19/3232925, 16/0962C – APP/R0660/W/18/3203736, 17/2114C – APP/R0660/W/18/3210371; LPA SOC Appendix 5

12. At the Hearing the appellant contended that the site should be considered as part of a small settlement relating to Moston Green. It appears that there are a limited number of residential dwellings within the immediate area, although sporadic, and Moston Green forms the parish area rather than an identified rural other village settlement. I also acknowledge that table 9.1 in the justification text of Policy SD2 sets out appropriate distances for access to services and amenities, and the site would not meet those, however there is no specific policy requirement in either SC7 or SD2 relating to distance.
13. There is an absence of formal footways linking the site with the wider area including along Dragons Lane and Plant Lane, and the highways are devoid of any street lighting. There is a bus stop, but this is positioned along Booth Lane, a considerable distance from the site, and Sandbach Railway Station is some 1.6km away. Plant Lane appears to be part of a national cycle route and Dragons Lane is identified as a proposed route on the Council's PROW records. However, access and navigation would be difficult by walking or cycling, given the road conditions and that this would be unrealistic throughout the year, particularly in winter months.
14. As such, the opportunities to use sustainable modes of transport are restricted, and I consider that most journeys to and from the appeal site would be made by private motor vehicles, whether to the nearby village of Elworth, or to the larger town of Sandbach. However, these journeys to reach facilities and services within the nearby village would be relatively short and Elworth offers a range of facilities including shops, and schools.
15. In consideration of the location, I have had regard to other developments the appellant has drawn my attention to, and the other appeal decisions in the immediate vicinity of the site, in respect of locational accessibility. Whilst I do not have full details of these other schemes, they do appear to be similar in distance to local services and facilities, and the appeal decisions relate to the wider area and part of the appeal site. I see no reason to depart from that approach.
16. The appeal site is not in a location away from settlements where traveller sites should be very strictly limited in accordance with PPTS, and it would enable reasonable and satisfactory access to local schools and other amenities. Necessary utilities are capable of provision within the appeal site. On this basis, I conclude that the appeal site is a suitable location for gypsy and traveller accommodation and would accord with policies SC7 and SD2 of the CELPS, in locational terms.

Character and appearance

17. Policy PG6 of the CELPS restricts development within the open countryside to specific categories and exceptions, it is also caveated that developments will be subject to compliance with all other relevant policies in the local plan and particular attention given to design and landscape character, so the appearance and distinctiveness of the countryside is preserved or enhanced.
18. Saved Policy PS8 of the Congleton Local Plan First Review, 2005 is similar in its restrictive nature, albeit it was not cited in the reasons for refusal. CELPS Policy SC7 (viii) requires consideration to be given to the impacts on the character and appearance of the surrounding area.

19. The appeal site comprises of a parcel of land some 0.6 hectares, consisting mainly of a grassed field in the open countryside to the south side of Dragons Lane. The site is bounded by both Dragons Lane to the north and Plant Lane to the west. A public footpath is located further south-east of the wider site. To the north-western corner of the site is existing development consisting of two authorised gypsy and traveller pitches, with amenity buildings, hardstanding and kennels.
20. The appeal site is accessed from Dragons Lane with an existing gated frontage. The wider area of the site contains a number of separate traveller sites and unauthorised pitches, the subject of ongoing enforcement by the Council.
21. The proposal would alter the character of the area through the introduction of the additional number of caravans, with 16 in total on 7 pitches, 5 additional on areas of the land which are currently free from built form, open in part and greenfield land. It would introduce a substantial residential use across the site area with a large ornate communal building, 5 amenity buildings and a stable. There would be a significant increase in hardstanding to serve the pitches, internal road, additional private motor vehicles per pitch, outside domestic paraphernalia serving 7 gypsy households, and the further installation of a package sewage treatment plant.
22. Although the site would be screened to some degree, when considered in combination with the existing sites it would result in intrusion, as further pitches have filled in gaps and removed the existing sporadic nature of development within the wider field, which had previously been accepted. It would also lead to development extending further along Plant Lane. Thus, the proposal would create some urbanisation and negative cumulative impact on this part of the rural landscape.
23. The site would still be viewed from immediate public views along the junction point with Plant Lane, at the triangle area, existing access point and the general layout, including the scale of the communal building would result in some erosion of this open part of the countryside and greenfield land. Nevertheless, it would still be seen as a relatively modest development, in context to the existing development within the wider landscape, with limited wider views other than glimpses from the public right of way to the south-east.
24. Moreover, the additional landscaping, and retention of the close boarded fencing, trees hedgerows and existing vegetation would go some way to further screen the site, and additional enhancements of soft landscaping could be secured by condition. However, this would not sufficiently mitigate the harm that would arise, which would be moderate in terms of its severity.
25. At the Hearing the appellant referred to several other gypsy and traveller sites, and the size, scale of communal and individual amenity buildings serving those sites. I do not have the precise circumstances that led to those sites being acceptable or why permission was granted before me. Therefore, I cannot be certain they are directly comparable with the appeal proposal in terms of location, design or planning policy. In any case, I have dealt with the proposal on its individual merits.

26. For the reasons given above, I conclude that the proposal would cause adverse harm to the character and appearance of the area. This would be in conflict with Policies SC7, PG6 and SD2 of the CELPS, as I have already set out, and that these policies, amongst other things expect development to positively contribute to an area's character and identity, creating or reinforcing local distinctiveness, and respect landscape character.

Heritage Assets

27. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
28. To the west of Plant Lane are a group of Grade II Listed Buildings (LB), known as Ivy Cottage Farm comprising of a late C18 farmhouse of brown brick and slate roof and a shippon (Ivy Oak Barn now converted) and stable 10m north of Ivy Cottage. These are identified as being harmoniously designed and closely spaced forming an attractive group of buildings.
29. The Council at the Hearing suggested that the open nature of the countryside and fields would historically have formed part of the historic setting of this group of buildings. Whether this was the case, it seems to me that the setting is now more tightly confined, due to the presence of the intervening Plant Lane, with the LB set back from the roadway with front gardens, and that the appeal site is further separated by a boundary fence with hedgerows / trees sitting in front and behind. The boundary treatments run the entire length of the site along Plant Lane, which cumulatively give a sense of severance from the LB.
30. The roof top of the farmhouse would be glimpsed from within the appeal site, particularly from the proposed paddock area, which would have a relatively modest single storey stable building but would otherwise remain open. The appeal scheme generally would be low level with the majority of plots and the communal day room towards the northern end of the site. Views across from the LB would be limited due to the boundary treatments and seen in the context of the other development. The triangle at the top of Plant Lane is also a considerable distance from the LB. There would be a substantial distance between the caravans and the curtilage of the LB, and accordingly the impact would be neutral in my view. As a result, the way the setting and significance of the group of LB are experienced would be preserved.
31. I am also mindful of the previous appeal decision (3203736), for land south of Dragons Lane relating to the immediate and wider setting of the site, in which the Inspector found that there would be no harm to the setting of the LB.
32. I conclude the proposal would not cause harm to the setting of the LB. It would therefore not be in conflict with Policies SC7 and SE7 of the CELPS or Policy HER1 of the MNP. Taken together, amongst other things these policies require consideration is to be given on the impact on the historic environment, and that the character, quality and diversity of the historic environment including Moston's historic assets, and their setting will be conserved or enhanced, whilst new development should seek to avoid harm.

Biodiversity / SSSI

33. The appeal site falls within the Impact Risk Zone for the Sandbach Flashes SSSI, therefore the potential impact from the development on the notified features of the SSSI should be assessed and any mitigation applied as appropriate. Sandbach Flashes is a site of physiographical and biological importance, consisting of a series of pools formed as a result of subsidence due to the extraction of underlying salt deposits. Associated habitats, including plants and animals are rare and of considerable interests. It is an important site for breeding birds, wildfowl and waders as migrants. Birds may also rely on areas outside of the SSSI boundary and supporting habitats have an essential role in maintaining the SSSI.
34. Natural England (NE) and the Council's ecologist have made representation and objected on the basis that the proposal could have potential significant effects on the SSSI, in regard to the level of use by the SSSI birds and there is insufficient information in order to determine the significance of these impacts and the scope for mitigation.
35. In this case, the appellant did not submit any ecological assessment as part of the application or appeal, following NE consultation. At the Hearing, the appellant contended that an ecological survey would not be required on the basis that it wouldn't identify any implications for protected birds due to the appeal site being small and the lack of feeding ground.
36. Reference was also made to a nearby housing development, granted consent by the Council, which was deemed to not impact on the SSSI, and previous appeal decisions at the site. I do not have full details of that residential scheme. Nevertheless, this appeared to relate to a brownfield site. With regard to those previous appeal decisions at Dragons Lane, in comparison the proposal before me is larger in size and number of pitches/caravans, which the Council advised would trigger detailed consideration by NE. The absence of harm in respect of those schemes, does not justify the proposal before me, and, in any case, I have determined the appeal on the basis of the evidence presented.
37. SSSI are protected under the Wildlife and Countryside Act 1981 from damaging operations, including development proposals. The Framework at paragraph 180 gives a high level of protection to SSSI, including on land within or outside, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of SSSI.
38. Therefore, I cannot be certain that any harmful effects arising from the proposal could be adequately avoided or mitigated against, and consequently that the SSSI would not be adversely affected. Moreover, Circular 06/2005² advises that *'it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed'*.

² ODPM Circular 06/2005: Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their impact within the planning system.

39. At the Hearing interested parties also drew my attention to a new man-made great crested newt pond, to promote biodiversity which had been created nearby to the appeal site. However, I do not have any clear evidence of the exact location of the pond, whether it is within 250m of the appeal site, or whether there is a reasonable likelihood of protected habitats from the pond being affected by the proposal.
40. Furthermore, the Council's ecologist sets out that the proposal would not be likely to have an adverse impact on priority / protected habitats or species, and that biodiversity enhancements could be incorporated by a suitably worded condition, which could include a strategy for enhancement measures for local protected species. Nonetheless, this does not outweigh the concerns in regard to the potential impacts on the SSSI.
41. In the absence of detailed information that negative impacts would be avoided to the SSSI, the proposed development would be contrary to Policy SE3 of the CELPS and Policy ENV1 of the MNP which together, and amongst other criteria, do not permit development proposals which are likely to have an adverse impact on a SSSI, and seek to protect habitats and wildlife. Moreover, it would also be at odds with the guidance contained within the Framework, relating to habitats and biodiversity.

Other Considerations

42. Policy SC7 of the CELPS sets out the overall need for gypsy and traveller site provision between 2013-2018, which is in line with the Gypsy and Traveller Accommodation Needs Assessment (GTAA), 2014. The Council in support of the emerging SADPD updated its evidence base of need on a sub-regional basis with the 2018 GTAA. This GTAA covers the period to 2030 and identifies a total need of 32 gypsy and traveller residential pitches, and 5-10 transit site pitch provision.
43. The SADPD seeks to allocate sites to meet the current gypsy and traveller need. The appeal site was discounted at an early stage and is not identified as a preferred site in the SADPD. The appointed examining Inspector's post hearing comments dated January 2022 sets out *'having reviewed the evidence on the need for and supply of accommodation for Gypsies and Travellers and Travelling Showpeople, I consider that the 2018 GTAA provides a robust and up to date assessment of the need in Cheshire East'*. I see no reason to disagree with these findings.
44. It continues that *'The identified supply of 40 permanent pitches for the period 2017-2030, comprising permissions granted since the baseline date of the GTAA and proposed allocations, would be sufficient to meet the identified need of 32 pitches for families who will meet the PPTS definition, plus 30% of the estimated unknown need'*. Appendix 10 of the Council's statement of case includes table Appendix 1 – Gypsy and Traveller Pitch Schedule, which shows the breakdown and commitments of the current position in 2022.
45. The examining Inspector highlighted that it is important that criteria HOU5a and HOU5c guided applications on windfall sites. They should not be unduly restricted, and main modifications to the criteria wording would ensure applications would meet needs arising from families in the borough and any in-migrating families.

46. At the Hearing, the appellant set out that there were currently no available alternative pitches within the Borough, including the Council owned sites, but many of the sites were also private and full. There was a distinct lack of rented suitability as many were family only sites, unlike the appeal site which would be available now for their individual needs.
47. In any event, there is no dispute by the main parties that for the period 2020/21 – 2024/25 (and taking account of any backlog) the Council cannot currently demonstrate a 5-year supply of deliverable gypsy and traveller sites. I acknowledge that the SADPD will provide a mechanism to deliver a 5-year supply in the Borough, and it will adequately and positively provide for accommodation needs once adopted. However, in light of the Council's current position, and lack of alternative sites these are significant material considerations that weigh in favour of the appeal.

Personal Circumstances

48. The appellant (Mr Hearn) did not attend the Hearing, but his wife was present and at the Hearing confirmed they come from a long line of gypsies who continue to live a gypsy lifestyle through choice and moved to the area some time ago from Slough. They are the existing residents on the established part of the appeal site and have a settled base. Mrs Hearn explained that the proposal would facilitate accommodation and a settled base for their extended family to move to, from outside of the Borough.
49. Mrs Hearn advised they have 6 children which range in age including 1 to 16, those of school or college age are registered at nearby facilities but the intention is to eventually home school the younger children. The children have a number of health issues, which was discussed at the Hearing. Her husband travels for work purposes and she also cares for the needs of his parents, particularly his father who needs medical support. Mrs Hearn has health issues herself, and the proposal would mean that she would be able to receive additional support by the extended family moving to the site. However, as Mr and Mrs Hearn and their children already reside at a consented pitch in this location, the education, health care arrangements, and existing social networks of the children would not be significantly affected were the appeal to be dismissed.
50. Whilst evidence was not provided in the original application, the Council did not contest the situation of the appellant and their family or dispute the appellants PPTS status. However, the Council maintain that there is not an urgent need as the family are already residing on the two permanent pitches, with one pitch already enabling family to come and go, and the personal circumstances should not be a determinative factor in the decision.
51. It was clear from the evidence given by Mrs Hearn, that there was a desire for extended support from her relatives, and to live and stay together as a larger extended family group. Mrs Hearn indicated this consideration would chiefly apply to her parents, although it was unclear whether all of the additional 5 pitches, would be occupied by immediate adult or child relatives of Mrs Hearn, and to the extent of their current circumstances, status or need for a settled base.

Other Matters

52. Since the appeal was lodged, a Written Ministerial Statement was issued on 16 March 2022, and NE updated its advice in relation to nutrient level pollution in a number of existing and new river basin catchments being in unfavourable condition. Cheshire East Council was newly listed as having protected water bodies affected by this, and in the interests of natural justice the main parties were invited to make representation. At the Hearing, the Council advised there are only two designated sites in the Borough including Wybunbury Moss and Rostherene. The main parties agreed that the appeal site does not fall within the catchment of either of these designated sites. As such, there would be no adverse impacts, and it is not necessary for me to consider this matter further.
53. There are two National Grid Pipelines which run along the eastern side of the field, underground and a Gas Governor. At the Hearing the proximity of this was discussed in relation to the zones, required buffers and that one of the proposed caravan pitches had the potential to encroach within the zone. Nevertheless, the main parties agreed that the precise siting of the caravan within the affected pitch could be dealt with by a suitably worded condition. Moreover, the Health and Safety Executive and National Grid did not raise any objections to the proposal, I am therefore satisfied that any risks associated with the proposal would be acceptable.
54. The proposal would not cause any harm to highway safety, and the site layout would allow sufficient space for the pitches and enable a vehicle to enter and exit in a forward gear safely. I further note that the Highway Authority has not objected to the development on safety grounds. In respect of flooding, the flood risk management team raised no objection to the proposal, and it would not increase flooding elsewhere. The matter of present unauthorised sites and access points nearby, and existing lighting and noise at Meadow View, would not justify withholding permission.
55. I acknowledge that the wider site was once an open field, which has now been divided and utilised for individual pitches and sites, whether authorised or not and there have been longstanding concerns over the wider site. The MNP also identifies the parish hosts a significant gypsy and traveller community. In any case, I must consider the appeal proposal on its own planning merits, in the context of the approved pitches and on the evidence before me.
56. The matter of suitable lighting to ensure dark skies are safeguarded, drainage, stable maintenance and use, materials, contamination, could be dealt with by suitably worded conditions. The proposed development would not cause any harm in respect of the living conditions of neighbouring residents.

Planning Balance

57. The proposal would cause harm to the character and appearance of the area, and I afford this moderate weight. I attach substantial weight to the potential adverse impacts to the SSSI. The proposal would be contrary to the development plan in these respects.
58. In the overall planning balance, the benefits of the proposal, including the provision of 5 additional gypsy and traveller pitches, the contribution to the Borough's deficient 5 year supply, and the personal considerations offered by the appellant, are not sufficient in this case to outweigh the potential adverse

effects on the integrity of the SSSI. This on its own is sufficient for me to conclude that the proposed development is unacceptable.

59. In coming to that view, I have had due regard to the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty (PSED) under the Equality Act 2010. The appellants and extended family, who intend to occupy the site have protected characteristics for the purposes of the PSED. However, after having regard to all material considerations, I am satisfied that the aim of avoiding unacceptable harm to SSSI can only be adequately addressed by dismissal of the appeal, which is therefore necessary and proportionate.

Conclusion

60. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

K A Taylor

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

P Brown	Planning Consultant
E Hearn	on behalf of the appellant

FOR THE LOCAL PLANNING AUTHORITY:

G Horton	Senior Planning Officer
A Clarke	Principal Planning Officer

INTERESTED PARTIES:

D Nixon	Moston Parish Council
A Roscoe	Moston Parish Council
D Thorpe	
O Lockett	
M Brooke	

Documents submitted at the Hearing

1 Gas Pipeline Zone Plan