



Appeal Decision

Hearing held on 10 May 2022

Site visit made on 10 May 2022

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 June 2022

Appeal Ref: APP/R3705/W/20/3253928

Stables at land south of Flavel Farm, Warton Lane, Austrey, Atherstone CV9 3EJ

- 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 J Connors against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2020/0156, dated 12 March 2020, was refused by notice dated 22 May 2020.
 - The development proposed is a material change of use of land for mixed use for equestrian use (existing) and proposed residential use for Gypsy-Traveller families with associated development (hard standing and package treatment plant).
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Decision

1. The appeal is allowed and planning permission is granted for a material change of use of land for mixed use for equestrian use (existing) and proposed residential use for Gypsy-Traveller families with associated development (hard standing and package treatment plant) at Stables at land south of Flavel Farm, Warton Lane, Atherstone CV9 3EJ in accordance with the terms of the application Ref PAP/2020/0156, dated 12 March 2020, and the plans submitted with it, subject to the conditions listed in the attached schedule.

Preliminary Matters

2. I have included 'Atherstone' to the address above in the banner heading as it is listed on the appeal form.
3. Since the Council made its decision on the planning application, which is subject of this appeal, on 29 September 2021 the North Warwickshire Local Plan (LP) was adopted. Consequently, the policies contained within the Council's Core Strategy have been superseded. I am required to determine this appeal on the basis of the development plan which is in force at the time of my decision. The Council have confirmed in correspondence that they now rely upon LP Policies LP5 and LP10. Before the Hearing both parties have had the opportunity to submit comments on this matter.
4. Policies LUT10 and W9 of the Warwickshire Local Transport Plan 2011-2026 (WLTP) were cited by the Highway Authority in its submission, but were not included on the decision notice. It was confirmed orally at the Hearing by the Council that they do not form part of the development plan and should be regarded as guidance. I have dealt with the appeal and WLTP policies LUT10 and W9 on this basis.

5. An accompanied site visit was undertaken on 10 May 2022. However, I also undertook unaccompanied visits prior to the event on the evening of 9 May 2022 and on my way to the event on 10 May 2022. I also undertook the Church Lane and Bishop's Field Circular Walk (the Circular Walk) alone, directly after the accompanied site visit had finished.
6. There is no dispute that the Appellants comply with the definition of Gypsies as set out in Planning Policy for Traveller Sites (PPTS). Based on the details provided, the representations made at the hearing and in the absence of substantive evidence to the contrary, I have no reason to disagree.

Main Issues

7. The main issues of this appeal are:
 - whether the proposed development would be in a suitable location with particular regard to its effect on highway safety and the safety of pedestrians; and,
 - whether any harm arising from the proposed development would be outweighed by other considerations.

Reasons

8. The site is located within the open countryside and approximately 500m from the boundary of Austrey. The access to the site is located off Warton Lane, which is a classified C road and comprises the primary route between Austrey and Warton. The section of Warton Lane between the site and Austrey has the characteristics of a typical rural lane, through its width, grass verges either side and no footpaths or street lighting present.
9. LP Policy LP5 concerns the amount of development within the Council area, where the Council seeks to make provision for a minimum of 19 permanent residential gypsy and traveller pitches between 2019 and 2033. LP Policy LP10 is for new gypsy and traveller sites, subject to compliance with 6no. criteria. The Council does not raise any issue with the criteria listed in this policy, apart from point 2, which concerns the location of the site, within a safe reasonable walking distance of a settlement boundary or public transport service, and access to a range of school and health services.
10. Policy AP8 of the 'made' Austrey Neighbourhood Plan 2017-2029 (2017) (ANP) requires any new development to comply with the accepted standards applied by the local Planning and Highways Authorities and should strive to achieve a "five minute walkable neighbourhood", encouraging the use of sustainable, active transport (walking and cycling).
11. The parties agree that the proposal is within a reasonable distance of a settlement, where a number of facilities exist, including a shop, public house, and primary school. There is also no dispute that Warton Lane benefits from a 'hail and ride' bus service. The issue at hand is whether or not the route between the site and Austrey is safe.
12. My attention has been drawn towards an appeal decision¹ (the previous appeal) for a similar scheme on the same site, which was dismissed. This decision comprises a material consideration of significant weight. Whilst noting the

¹ APP/R3705/W/18/3199987 dated 6 February 2019

findings of the previous Inspector, the scheme before me differs in that an alternative route along Cinder Lane has been brought to my attention. It is agreed by the parties that this was not a consideration on the previous appeal. Additionally, the appellant is of the view that the previous Inspector only drove along Warton Lane. However, the extent of the site visit undertaken by the Inspector on the previous appeal is not apparent. Although, I acknowledge the reference to "having driven the length of Warton Lane" (paragraph 12 of the previous appeal decision).

13. During the accompanied site visit, I stood at the entrance of the site and crossed the road, then walked to the junction of Cinder Lane, which is a category D road. I then proceeded unaccompanied, to the start of the Circular Walk from the Bird in Hand public house. When I reached Cinder Lane, I took a slight diversion towards the Warton Lane junction and then back tracked along the full length of Cinder Lane towards Main Road. I noted at both ends of Cinder Lane that there is clear signage advising that the road is unsuitable for heavy goods vehicles (HGV). Whilst the Highway Authority advises of an encounter with an HGV during a site visit on Cinder Lane, it is highly likely that this was an isolated incident.
14. The Highway Authority confirmed orally at the Hearing that the 7no. recorded collisions since 1990 in the personal injury accident data within the vicinity of the site only involved motorists. Having walked in both directions along Warton Lane between the site and Austrey, I accept that this modest section of carriageway would not lend itself to regular walking, during inclement weather or hours of darkness. However, whilst only a snapshot in time, the level of traffic that I experienced at different times of the day² did not appear overly excessive, and largely comparable to the data contained in the 2017 survey³.
15. The amount of traffic on Warton Lane, the associated speed of vehicles and the road width did not result in an inability for motor vehicles to pass safely. Additionally, the verges, the accesses to field gates and to a lesser extent, the drainage gulleys provided suitable refuge along this section of carriageway, should I have needed to step out of the road. Similar characteristics are present along Cinder Lane, coupled with a notable reduction in vehicular movements.
16. I acknowledge that the Circular Walk would not be suitable for everybody, especially those with mobility issues, particularly at the section that joins Cinder Lane. However, I am also mindful that such mobility issues would likely result in the use of an alternative method of transport, in any event. Nonetheless, the National Planning Policy Framework (the Framework) recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
17. Concern has been raised about the safety of the hail and ride bus service and it stopping on Warton Lane. The Highway Authority agreed at the Hearing that the safe stopping of the bus would be at the discretion of its driver and to date no highway safety issues have been raised with this style of service on this road or in the locality. I agree that a bus would likely avoid stopping close to the bend in the road, but find little evidence to substantiate an inability for a

² 5.30pm to 6pm on 9 May 2022; 8am to 8.30am and 2pm to 3.30pm on 10 May 2022

³ The Hurlstone Partnership dated 31 December 2017 (Recorded between Friday 15 and Thursday 21 December 2017)

bus to stop safely on the straighter sections of carriageway towards Austrey and Warton, which are both in proximity of the site.

18. I have found that in the case of both Warton Lane and Cinder Lane that drivers are easily able to assimilate the conditions on the carriageway, when driving along these roads. Thus, reducing the associated potential likelihood of vehicular/pedestrian conflict. Furthermore, I note the signage for a cycle route on Warton Lane opposite the Cinder Lane junction, the public right of ways in the locality and the promotion of the Circular Walk by the Parish Council.
19. An appeal decision⁴ has been supplied by the Council, but this was dismissed on substantial harm to the Green Belt as it comprised inappropriate development, whilst having a harmful effect on character and appearance. Thus, whilst there are some similarities between this decision and the appeal scheme, the circumstances are not directly comparable.
20. Given the above factors, which include my own experiences driving in the locality and walking along Warton Lane, Cinder Lane and the Circular Walk, I find that the site is within a safe reasonable distance of Austrey, with particular regard to walking and cycling. Additionally, there are a number of safe alternative routes available to different parts of the settlement. Thus, there are circumstances present in this appeal that enable me to reach a different conclusion to the previous Inspector.
21. For the reasons given above, I conclude that the proposal would not result in any significant harm that would create adverse conditions with regard to highway/pedestrian safety. Consequently, the proposal would accord with the highway/pedestrian safety aims of LP Policies LP5, LP10, ANP Policy AP8, WLTP policies LUT10, W9 and the requirements of the Framework.

Other Matters

22. The appeal raises issues surrounding the best interests of the child, personal circumstances and need. However, as I have found that the proposal complies with the development plan as a whole, I have not needed to consider these matters any further.
23. A number of interested parties have also expressed a number of concerns including, but not limited to flooding and drainage. However, I note that these matters were considered where relevant by the Council at the application stage and did not form part of the reason for refusal, which I have dealt with in the assessment above. Whilst I can understand the concerns of the interested parties, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.
24. I also note reference to concerns of the adjacent occupier at Flavel Farm (the neighbouring occupier), with regard to a fear of crime and health issues. I accept that the evidence indicates that there has been a dispute between the appellant and the neighbouring occupier in the past, which required intervention by the Police and a Community Protection Notice (CPN) being served. However, the latest correspondence from the Gypsy and Traveller Liaison/Advisor at Warwickshire Police (the GTLA) indicates that the CPN did not escalate to a Community Protection Order, indicating no breach of the CPN.

⁴ APP/R3705/W/19/3220135

The GTLA also confirm that any claims of intimidation from the appellant have not been corroborated and that he is not subject of any ongoing investigations.

25. Consequently, there is an absence of any direct evidence surrounding a fear of crime, which does not add any material weight against allowing the appeal especially in light of the comments received from the GTLA. Whilst I sympathise with the neighbouring occupier, regarding their health issues, such personal circumstances have little bearing on my conclusion of the main issues in this instance.
26. Furthermore, concerns were raised by the neighbouring occupier in regard to their living conditions. However, after my site visit, I do not consider that any such harm would arise in this respect, given the scale of the mobile homes/caravans, their layout and the height of the closed boarded fence on the shared boundary between the site and Flavel Farm. This is further reinforced by the mature vegetation located behind the fence, which extends above it.
27. The effects of the proposal on the adjacent farm as a potential source of noise and odour in the area should also be considered. The issue is acknowledged in paragraph 187 of the Framework, which advises that planning policies and decisions should ensure that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Whilst noting the proximity of the farm complex to the site, there is little before me to indicate that such complaints would realistically arise, especially in the absence of any concerns from the Council.

Conditions

28. The parties have suggested conditions in the Statement of Common Ground which I have considered, making amendments and minor corrections, where necessary, to ensure clarity and compliance with the tests contained within Paragraph 56 of the Framework and the Planning Practice Guidance. In addition to conditions relating to the time limit for implementation, for reasons of certainty a condition requiring the development to be undertaken in accordance with approved plans is necessary.
29. Pre-occupation conditions regarding, landscaping, drainage, external lighting, car parking areas, reconstruction of the vehicular access and a bin collection area are all reasonable and necessary in the interest of character and appearance, the surrounding environment and highway safety respectively. A suggested distance of 20.0 metres for the area of bound material was discussed at the Hearing, but there was little justification for this distance when compared to the suggested 15.0 metres distance for the exclusion of gates. Thus, I have used the distance of 15.0 metres in this instance.
30. Other conditions, such as restricting the site to people who meet the PPTS definition is both reasonable and necessary to define the permission. Controlling the number of caravans and mobile homes on the site is reasonable and necessary to define the permission and in the interest of character and appearance. This was discussed orally at the Hearing and condition no.7 reflects those discussions. Defining the use of the site for residential/equestrian purposes is also both reasonable and necessary, to ensure that the living conditions currently afforded by neighbouring occupiers is maintained.

31. The replacement of trees or shrubs planted as part of the approved planting scheme if they become diseased or die within 5 years is both reasonable and necessary to ensure the successful establishment of the approved landscaping scheme. The conditions surrounding the location of gates on the access and the visibility splays are both reasonable and necessary to ensure highway safety. The conditions relating to floodlighting and outside storage are both reasonable and necessary to ensure no harmful effects to character and appearance.
32. I have not included conditions surrounding the burning of waste, as this is not directly applicable to the proposal and is covered by other and more relevant legislation. Additionally, the stable building has been approved through another planning application and therefore it is not reasonable or necessary to impose a condition restricting additional openings for the purpose of this scheme. Likewise, it is not reasonable or necessary to impose a condition preventing any commercial use of the stable as this is not subject of this scheme and should have been included on the original planning application. In any event, any such commercial operation would likely require a planning application to be submitted in its own right.
33. A condition to prevent/minimise the spread of extraneous material onto the public highway has not been demonstrated either to be reasonable or necessary, given the site comprises a gravel area, along with the measures contained in other conditions such as the area of bound material at the access. Thus, I am satisfied that the highway would be maintained in a satisfactory without such a condition being imposed.

Planning Balance and Conclusion

34. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires this appeal to be determined in accordance with the development plan unless material considerations indicate otherwise.
35. Given my findings above, the proposal accords with the development plan when taken as a whole, and there are no other material considerations that indicate otherwise. It also complies with the requirements of the Framework. I therefore conclude that the proposed development is suitable for the site.
36. For the reasons above, I conclude that the appeal should be allowed.

W Johnson

INSPECTOR

SCHEDULE OF CONDITIONS

Time limit

1) The development to which this permission relates must be begun not later than the expiration of three years from the date of this permission.

Approved drawings

2) The development hereby permitted shall be carried out in accordance with the following approved plans: BP-03 Block Plan and LP-02 Site Location Plan. As received by the Local Planning Authority on 13 March 2020.

Pre-occupation

3) Prior to first use and occupation of the site, the following details shall first be submitted to and approved in writing by the Local Planning Authority. The approved details shall then be implemented in full and retained for the life of the development.

i) landscaping

ii) disposal of foul and surface water drainage

iii) the internal layout of the site, including the siting of caravans if different from the site layout plan;

iv) details of the mobile homes and caravans to be located on the site.

v) any external lighting. Lighting within the site shall not be positioned so as to create glare upon the public highway carriageway.

vi) surfacing, drainage and levels of the car parking and manoeuvring areas as shown on the approved plan. No accommodation shall be occupied until the areas have been laid out in accordance with the approved details and such areas shall be permanently retained for the parking and manoeuvring of vehicles.

4) Prior to first use and occupation of the site, the existing vehicular access to the site shall be re-constructed in accordance with the approved drawing and the specification of the Highway Authority. The access shall be surfaced with a bound material for a distance of no less than 15.0 metres, as measured from the near edge of the public highway carriageway and shall not be constructed in such a manner as to reduce the effective capacity of any highway drain or permit surface water to run off the site onto the public highway.

5) Prior to first use and occupation of the site, details of a bin collection area adjacent to the highway shall be first submitted to and approved in writing by the Local Planning Authority. The approved storage area shall then be fully implemented and retained for the life of the development.

Other

6) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of the PPTS (or its equivalent in replacement national policy).

7) No more than 4 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 2 shall be static caravans) shall be stationed on the site at any time.

8) No commercial activities shall take place on the land, including the storage of materials, and no vehicle over 3.5 tonnes shall be stationed, parked or stored on this site, apart from horse boxes or equestrian vehicles.

9) If within a period of 5 years from the implementation of the site development scheme, any tree or plants which formed part of the approved landscaping under condition 3 (i) site development scheme die, are removed or become seriously damaged or diseased then they shall be replaced in the next planting season with others of similar size and species.

10) Access for vehicles to the site from the public highway (Warton Lane) shall not be made other than at the position identified on the approved drawing number BP-03 providing an access no less than 6 metres in width for a distance of 15.0 metres, as measured from the near edge of the public highway carriageway. No gates shall be hung within the vehicular access so as to open within 15.0 metres of the near edge of the public highway carriageway.

11) The existing visibility splays to the vehicular access, passing through the limits of the site fronting the public highway, with an 'x' distance of 2.4 metres and 'y' distances of 90.0 metres looking left (north-easterly) from the vehicular access to the near edge of the public highway carriageway and 60.0 metres looking right (southerly) from the vehicular access, shall be maintained and retained for the life of the development, remaining unobstructed at all times. No structure, tree or shrub shall be erected, planted or retained within the visibility splays exceeding, or likely to exceed at maturity, a height of 0.6 metres above the level of the public highway carriageway.

12) There shall be no additional floodlighting installed on the site, unless prior written approval has been obtained from the Local Planning Authority.

13) There shall be no outside storage related to the equestrian use on the site whatsoever and the site shall be kept tidy.

****End of Schedule****

APPEARANCES

FOR THE APPELLANT:

Mr A Heine	Agent
Mr J Connors	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr I Griffin	North Warwickshire Borough Council
Mr M Dittman	North Warwickshire Borough Council
Mr T Burrows	Warwickshire County Council

INTERESTED PARTIES:

Cllr D Humphreys	North Warwickshire Borough Council / Warwickshire County Council
Cllr M Humphreys	North Warwickshire Borough Council / Warwickshire County Council
Cllr S Goldney-Neate	Austrey Parish Council
Mr J Collier MRICS FAAV	Land Agent (on behalf of the occupier at Flavel Farm)
Mr S Spencer	NFU Mutual (on behalf of the occupier at Flavel Farm)
Mr R Davies	Farm Community Network (on behalf of the occupier at Flavel Farm)

HEARING DOCUMENTS

The following documents were submitted and accepted at the Hearing:

ON BEHALF OF THE APPELLANT:

- An email dated 25 April 2022 from the GTLA.

ON BEHALF OF THE LOCAL PLANNING AUTHORITY:

- A copy of the Warwickshire Local Transport Plan 2011-2026
- Emails from Environmental Health dated 28 September 2017 and 9 October 2017 in relation to PAP/2017/0519 (for previous application, carried over onto the appeal scheme).
- 2no. screen shots of Public Rights of Way in the locality of the site.

ON BEHALF OF AN INTERESTED PARTY:

- Further representation on behalf of the occupier at Flavel Farm.