



Appeal Decision

Hearing held on 17 January 2023

Site visit made on 16 January 2023

by David M H Rose BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2023

Appeal Ref: APP/A0665/W/22/3294710

Whitegate Stables, Plemstall Lane, Mickle Trafford, Chester, CH2 4EN

- 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 A Dunne against the decision of Cheshire West and Chester Council.
 - The application Reference 20/00961/FUL, dated 6 March 2020, was refused by notice dated 24 February 2022.
 - The development proposed is described as 'change of use of land for stationing of caravans for residential occupation for Gypsy Traveller site with associated hard standing, utility block, cess tanks'.
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Decision

1. The appeal is allowed and planning permission is granted for 'change of use of land for stationing of caravans for residential occupation for Gypsy Traveller site with associated hard standing, utility block, cess tanks' at Whitegate Stables, Plemstall Lane, Mickle Trafford, Chester, CH2 4EN in accordance with the terms of the application, Reference 20/00961/FUL, dated 6 March 2020, subject to the conditions set out in the Schedule of Planning Conditions appended to this decision at Annex A.

Preliminary matters

2. The development has already taken place and the proposal is therefore retrospective.
3. The description of development is taken from the planning application form. However, I have removed the word 'material' given the need for planning permission and also 'retrospective' as this is not an act of development.
4. The appeal seeks permission for the change of use of the land to station up to 8 caravans (4 statics and 4 touring vans) for occupation by 4 households and the retention of related development.

Background

5. The site has been occupied by Gypsy/Traveller families since 2007, and has a lengthy planning history. There have been a number of temporary planning permissions, which have now expired, culminating in an Enforcement Notice. This was upheld in an appeal decision¹ dated 15 March 2016, along with the refusal to grant permanent permission.

¹ APP/A0665/C/15/3129145, APP/A0665/W/15/3129142

6. The Enforcement Notice required the use of the land for residential purposes to cease, and the removal of all caravans, domestic structures/items and the associated hardstanding and utility block.
7. At the Hearing, the Council confirmed that the terms of the Enforcement Notice had been met with the exception of the hardstanding and utility block. However, it remained open to the Council to pursue these should the current appeal be dismissed.
8. Given that the site is already in occupation by Mr Dunne and his extended family, and has been for some time, I asked at the outset of the Hearing as to whether the use of the land was 'intentional unauthorised development' in light of the planning history.
9. It was explained that Mr Dunne had purchased the land in 2018/2019. It was presented as an 'active' Gypsy/Traveller site; he was not aware of the Enforcement Notice; and he accepted what he had been told without reference to a solicitor. The Council confirmed that the re-occupation of the land had been in good faith and it had not taken the view that the circumstances amounted to 'intentional unauthorised development'. I agree.

Main issues

10. Planning policy for traveller sites (PPTS) (August 2015) confirms that traveller sites (temporary or permanent) in the Green Belt are inappropriate development. Both parties agree that the appeal proposal is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and relevant development plan policies.
11. Therefore, the main issues are:
 - (a) The effect of the development on the openness of the Green Belt.
 - (b) The effect of the development on the character and appearance of the area, with regard to the development and the location.
 - (c) Whether occupants of the proposed development would have reasonable access to local services and facilities by walking and/or public transport.
 - (d) Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

(a) The Green Belt

12. The appeal site lies in the open countryside outside the settlement of Mickle Trafford. Much of the site has been laid to hardstanding; a utility block has been erected; up to 8 caravans would be sited on the land; and residential use would be accompanied by the parking and movement of vehicles for 4 households and related domestic paraphernalia.
13. The use and the related development individually, and in combination, impinge on the open nature of the Green Belt both spatially and visually. As explained below, harmful impacts are limited and localised. There is also conflict with one of the 5 purposes of Green Belt, namely assisting in safeguarding the countryside from encroachment.

14. The Framework confirms that the Government attaches great importance to Green Belts. It explains that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It adds that the essential characteristics of Green Belts are their openness and permanence. Substantial weight is to be given to any harm to the Green Belt.

(b) Character and appearance

15. The local landscape is characterised, in general terms, by low lying flat topography, large fields, well-established hedgerow boundaries and blocks of woodland. Agricultural and equine uses predominate.
16. Along Plemstall Lane, beyond the well-defined edge of settlement, open uses are interspersed by a group of modern dwellings (replacing a former poultry farm) at Cedars Close; a large utilitarian gas transmission facility; and Bankfield Farm with related stables, manège and extensive outdoor caravan/motorhome storage.
17. Beyond the appeal site lies the isolated Parish Church of St Peter. There is an open-fronted agricultural building to the north and a modern dwelling (The Cottage) to the south. Thereafter, Plemstall Lane divides and leads to a pair of former railway crossing cottages and an extensive group of buildings and outdoor facilities associated with Holme Farm Equine Centre.
18. The appeal site is modest in extent and has, for the most-part, well-established natural boundaries. Views of the site occur from parts of Plemstall Lane and are short-distance and localised. It is possible to see into the site, across its north-western corner, on the approach from the settlement; in the vicinity of the access; through gaps in its roadside boundary; and, most significantly, from the direction of the church.
19. Although the impact of the development would be materially less in summer months when vegetation is in leaf, additional 'screening'² could be achieved by reinforcing these boundaries through the implementation of a well-designed landscaping scheme based on a mix of native species. In particular, the area of open land between the utility building and the stream offers considerable scope to mitigate adverse impacts and to improve the aspect from the locality of the church.
20. Overall, acknowledging the Council's opinion that the hard-surfacing and utility block have changed the character of the land, I consider that the proposal, even when all of the caravans and associated activity are on site, would have only a limited effect on the character and appearance of the area. Additional landscaping, as indicated above, would provide further mitigation.

(c) Accessibility

21. Mickle Trafford is a local service centre. Its limited facilities include a preschool, a primary school, a village hall and a convenience store with Post Office. I accept that these are all within walking distance from the appeal site, albeit towards the upper limit of convenience and duration.
22. Access to facilities in higher order centres is likely to be by private motor vehicle. That said, there is an hourly day-time bus service to Chester or Warrington with stops between Plemstall Lane and Plemstall Way. The Chester Greenway also provides cycle access into Chester, some 6 kilometres away.

² Without creating the impression that the site and its occupants are deliberately isolated from the wider community

23. Plemstall Lane has the characteristics of a quiet country road, in that there is limited opportunity for two vehicles to pass; it lacks footway provision (other than across part of the frontage of Cedars Close) and street lighting is absent between the appeal site and Cedars Close. It is lightly trafficked; it is not a through route; intervisibility is for the most-part good with only one sharp bend, between the gas installation and Cedars Close; and vehicular speeds are likely to be low.
24. The lane gives access to public footpaths running alongside Bankfield Farm and in the directions of Little Barrow and Great Barrow. It is evidently used recreationally for dog-walking. It is also said that it is used by horse-riders.
25. In my opinion, Plemstall Lane is not inherently unsafe for walking or cycling. Moreover, there is nothing of substance to suggest that daylight use for accessing the schools or shop, or using the bus, would be unattractive. After dark, such activity is likely to be less appealing for young children or anyone on their own. However, outside school, shop and bus service hours the prospect of having to walk or cycle after dark is likely to be extremely limited.
26. Overall, I consider that it cannot be said that the site is unsustainably located away from settlements and that all journeys would likely be made by private motor vehicle. Mickle Trafford contains important, albeit limited, facilities to serve day to day needs. The site is also accessible by public transport and a nearby high quality cycle route.
27. The Framework acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Further, paragraphs 14 and 25 of the PPTS implicitly accept that Gypsy/Traveller sites may be located in rural areas where opportunities for sustainable travel may be lessened. The important thing here is that there are appropriate opportunities for walking, cycling and public transport usage having regard to the type of development and its location.
28. In terms of creating safe places, given the characteristics of Plemstall Lane, the scope for conflict between pedestrians, cyclists and vehicles is likely to be extremely limited. In addition, despite the lack of street lighting, I am satisfied that the fear of crime, to the extent that it might exist, would not undermine the quality of life for intended site residents.

(d) Other considerations

Gypsy/Traveller sites need and supply

29. The Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (GTAA), covering 4 neighbouring authorities, was undertaken in 2017 and published a year later. For Cheshire West and Chester, it anticipated a need for 21 pitches to 2030 of which 20 have been approved/provided. Although the Council maintains that its evidence base is up-to-date, and there is a need to identify only one further pitch, a number of factors need to be considered to determine whether this position is robust.
30. Firstly, having identified those households who met the definition of Travelling, set out in Annex 1 of the PPTS, the Council has no information or data as to whether any of the 20 pitches have any correlation in meeting known needs.

31. The GTAA, at paragraph 7.44, indicated that, over and above identified need, consideration would have to be given to the need arising from unknown households. However, the survey itself captured only a small proportion of known households, recording 78 of unknown status and a further 40 as not meeting the PPTS definition as they did not travel for cultural reasons, visiting friends or relatives or had ceased to travel permanently.
32. In addition, in terms of the 78 unknown households, it was assumed that, applying the national average, 10% might meet the PPTS definition. This was despite evidence showing that the proportion of households in the District meeting the definition was 26%. Nonetheless, it was decided that the former was statistically more robust. However, in surveys for a number of other authorities, this assumption has proven to be unfounded.
33. The GTAA also went on to identify, at paragraphs 8.24 and 8.25, that a Judicial Review of the PPTS Annex 1 definition was yet to be determined. In this regard, it noted that should this review prove successful, leading to the reinstatement of those who had travelled for work in the past but had ceased to travel permanently, additional households would meet the relevant definition. The judgement in *Smith v SSLUHC & Ors [2022] EWCA Civ 1391*, finding the change in definition to be discriminatory³, is a material consideration.
34. Further, the GTAA made no allowance for in-migration. Yet the need for pitches has not been subject to further monitoring or review, and movement into the District has become more apparent in recent years. The Council has also had a noticeable increase in planning applications for Gypsy/Traveller pitches following the pandemic. Some 8 applications, amounting to about 20 pitches, await determination. At the same time, applications on the waiting lists for the 2 Council owned sites far outstrip current/imminent vacancies.
35. In addition, according to the Appellant, and not countered by the Council, a former holiday site at Rough Hill is in use by Travellers (approximately 25-30 touring vans); and there are other unauthorised pitches at Helsby, Dunham on the Hill and Towers Lane.
36. It is also relevant to note that a number of unauthorised pitches on land needed for HS2 are due to be vacated in the near future; and a proposal to provide 7/8 pitches for an extended family with long connections to Cheshire, and currently living in touring vans on the drive of a house, was dismissed on appeal in November 2022⁴.
37. The Inspector in that appeal indicated that the 2018 GTAA '*forms the most up-to-date assessment of need in the Borough*'. Whilst that is factually correct, it is evident from what I heard that the GTAA has been shown to have had material shortcomings; identified need has been far outstripped by events; and there is no more informed and up-to-date needs assessment.
38. The purpose of the GTAA was, in part, to underpin the preparation and implementation of development plan policies and, most notably, to guide the site allocation process through a Traveller Development Plan Document. However, the Council decided, in February 2020, to discontinue preparation of the document as it considered that the majority of identified need had already been met.

³ It is to be noted that the PPTS remains extant

⁴ APP/A0665/W/21/3286310

39. The totality of all of these factors overwhelmingly demonstrates that the Council is not meeting the current accommodation needs of Gypsies/Travellers and, without review and intervention, there is no realistic prospect of meeting likely ongoing needs during the Local Plan period to 2030.

Personal circumstances

40. The Statement of Common Ground (SoCG) confirms that the Appellant and his family are accepted as meeting the PPTS Gypsy/Traveller definition. Although not contained within the SoCG, the Council does not dispute the medical evidence submitted in support of the appeal and the additional document handed in at the Hearing. Two members of the family, in particular, have compelling needs, and there is inter-dependence within the family in meeting those needs.
41. The extended family has 6 young children with a further child expected. Four of the children attend preschool or primary school in Mickle Trafford, and there is documentary evidence that 2 of the children took a while to settle into school. Whilst it is not unknown for young children, in general, to take time to adapt to new surroundings when changing schools, the reality here is that by moving from the appeal site to no known alternative would, at best, interrupt the children's education and, at worst, disrupt learning and have a negative impact on their learning and future outcomes.
42. It is clear that the family has nowhere else to go and, as evidenced, it is important that they should live together as an extended family group and that they would find it difficult to live with others.

Other matters raised by interested parties

43. Mickle Trafford Parish Council object to the granting of planning permission and support the local planning authority's reasons for refusal. I have reviewed the history of the site helpfully outlined and documented by the Parish Council which, although material, does not pre-determine the outcome of this appeal on its own merits.
44. I have had particular regard to the circumstances which resulted in the Appellant and his family moving on to the site. Although the Parish Council query the circumstances of vacating an approved site at Meadow View, Shadow Brook Lane, Solihull, the details submitted in support of the application confirm that the family was renting a plot on that site but had to leave as the site could not accommodate overall needs.
45. In terms of moving on to the appeal site, the Appellant's wife is related to a family in Frodsham and, in any event, paragraph 24 e) of the PPTS confirms that authorities '*should determine applications for sites from any travellers and not just those with local connections*'.
46. I have assessed the impact of the proposal on the locality in the knowledge that only a small hardstanding and a stable were the subject of planning permission in 2005; the terms of the Enforcement Notice; and the refusal of planning permission in 2016.
47. I have also considered concerns raised by several local residents which, as far as material, have been addressed in my consideration of the main issues.

The Green Belt balance

48. The Framework confirms that inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Substantial weight is to be given to any harm to the Green Belt.
49. Policy E of the PPTS details that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh the harm to the Green Belt, and any other harm, so as to establish very special circumstances. The PPTS also indicates that there is no exception even if a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, where the proposal is on land designated as Green Belt.
50. In terms of the development plan, Policy STRAT 9 of the Cheshire West and Chester Council Local Plan Part One: Strategic Policies (LP1) in effect defers consideration of the Green Belt issue to the Framework.
51. However, the policy has a dual limb by seeking to protect the intrinsic character and beauty of the Cheshire countryside by restricting development to that which requires a countryside location and cannot be accommodated within identified settlements. Gypsy and Traveller sites are not expressly identified. Nonetheless, Policy C of the PPTS implies that sites in rural or semi-rural settings might be acceptable.
52. Policy SOC 4, specific to Gypsy and Traveller and Travelling Showpersons accommodation, sets out 9 criteria to guide the site allocation process and to determine planning applications. Those related to the main issues in this appeal set out that proposals should be accessible to local services and facilities by walking and/or public transport; be well related to settlements; and be located outside of the Green Belt except in very special circumstances.
53. Policy ENV 6, as far as material, requires development to be sympathetic to environmental and landscape assets and to promote safe, secure environments and access routes. Policy DM 3 of the Local Plan (Part Two) Land Allocations and Detailed Policies (LP2) reinforces ENV 6 with particular reference to the characteristics of the site and its relationship with its surroundings; and creating safe environments and reducing the fear of crime.
54. From my consideration of the main issues, it is apparent that the proposal would cause limited harm to the character and appearance of the area. In this regard, there would be conflict with Policies ENV 6 (bullets 1 and 3) and DM 3 (4). I have also found that the site is not so far removed from Mickle Trafford to make it unacceptable in terms of accessibility to services and facilities; and there are appropriate opportunities to use sustainable modes of transport. In addition, there is nothing to suggest that the use of Plemstall Lane is likely to be unsafe. There would be no additional conflict with these policies.
55. In terms of Policy SOC 4, there would be conflict with bullet 2, taking '*environmental effects*' to include character and appearance, and with bullet 8 unless there are very special circumstances. There must also be conflict with STRAT 9 in light of the harm to the character of the countryside.
56. Overall, I attach substantial weight to the harm to the Green Belt by reason of inappropriateness and the effect on its spatial and visual openness; and moderate weight to the harm to the character and appearance of the countryside.

57. The extent of unmet need, arising from the concerns I have raised about the on-going efficacy of the GTAA, and the personal circumstances of the family each carry substantial weight. The best interests of the children, a primary but not necessarily a decisive consideration⁵, add forcefully to this. In my opinion, these in combination amount to very special circumstances to outweigh the harm to the Green Belt by reason of inappropriateness and the other harm that I have identified.
58. Although there would be conflict with the development plan when read as a whole, there are compelling material considerations in this case which indicate that determination of the appeal should be other than in accordance with the development plan.
59. In reaching my decision, I have had regard to the rights of the Appellant and his family under Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998.
60. Article 8 affords the right to respect for private and family life and home, including the traditions and culture associated with the Gypsy/Traveller way of life and the best interests of the children.
61. In addition, the Appellant and his family share the protected characteristic of race for the purposes of the Public Sector Equality Duty (PSED) under s149 of the Equality Act 2010.

Planning Conditions

62. As the Appellant's personal circumstances and the best interests of the children, in the round, contribute to my overall conclusion, I shall grant a personal planning permission. This is proportionate and will eliminate discrimination against, and advance equality of opportunity, for the Appellant.
63. I have considered whether the permission should also be time-limited, but given the age of the children, the significant medical needs of 2 of the residents, and the lack of any realistic alternative site or timescale for the formal review of the GTAA and/or the development plan, I agree with the parties that the grant of permission for a temporary period would not be appropriate.
64. In terms of other conditions, it is necessary to identify the approved plans for certainty. A site restoration scheme will be required in the event of the named persons ceasing to use the site. This should be in accordance with a scheme to be agreed with the Council as, with the passage of time and the works undertaken, '*restoration to its condition before the development took place*' lacks precision.
65. It is also necessary, to control the number of caravans and commercial vehicles permitted, and to preclude commercial activities and the storage of materials on the land, to regulate impacts on the Green Belt and on the character and appearance of the locality. Agreement on external lighting, other than amenity lighting related to the static caravans and the utility building, is required in order to minimise artificial light intrusion.

⁵ *Stevens v SSCLG [2013] EWHC 792 (admin) & Collins v SSCLG [2013] EWCA Civ 1193*

66. I shall also impose a landscaping condition to reinforce existing boundary planting. I am satisfied that the extent of planting required to 'close' significant gaps would be proportionate to the personal permission granted. A 'retrospective' condition to secure necessary works is required as the development has already taken place.
67. There is no evidence of previous problems with either surface water or foul drainage and, in any event, these are typically the subject of other legislation. The siting of non-recyclable and recyclable waste bins is normally a matter for the Caravan Site Licence. Conditions by way of duplication do not meet the test of necessity.
68. As to the provision of charging infrastructure for electric vehicles in new developments, as required by LP2 Policy T5 (6), in line with LP1 STRAT 10 and paragraph 107 e) of the Framework, I would have found this to be justified had the development not been subject to a personal permission requiring, in due course, the reinstatement of the land. Moreover, such infrastructure is likely to be more readily capable of retrofitting on a site of this nature, as and when required, compared to the installation of charge points for existing buildings. Details of secure storage for cycles would, however, be reasonable.
69. Finally, there is no need to impose a condition to require the site to be occupied by Travellers/Gypsies in light of the personal grant of permission and the acknowledged status of those named persons.

Conclusion

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

David MH Rose

Inspector

APPEARANCES

FOR THE APPELLANT:

Alison T Heine BSc MSc MRTPI	Agent for the Appellant
Albert Dunne	Appellant
Frank Dunne	Appellant's son

FOR THE LOCAL PLANNING AUTHORITY:

Edward Bannister MRTPI	Senior Planner
Cath Reay MSc	Principal Planning Officer
Beth Fletcher	Senior Planning Policy Officer

DOCUMENT SUBMITTED AT THE HEARING

Letter from Department for Work & Pensions dated 5 November 2022

ANNEX A – SCHEDULE OF PLANNING CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - (a) Site location plan;
 - (b) Site layout plan; and
 - (c) PL_01 – Rev A.
- 2) The use hereby permitted shall be carried on only by Albert and Agnes Dunne; Albert and Sally Anne Dunne; Frankie and Lisa Dunne; and Samantha Dunne; and their resident dependents.
- 3) When the site ceases to be occupied by those named in condition 2 above, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored in accordance with a scheme previously submitted to and approved in writing by the Local Planning Authority.
- 4) No more than 8 no. caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 4 no. shall be a static caravan) shall be stationed on the site at any time.
- 5) No more than one commercial vehicle per plot shall be kept on the land for use by occupiers of the caravans hereby permitted.
- 6) No commercial activities shall take place on the land, including the storage of materials.
- 7) 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 for:
 - (a) Proposed and existing external lighting of the boundary of, and within, the site.
 - (b) Tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities. The planting shall take place in the first available planting season in accordance with the approved details. Thereafter, any trees, shrubs, plants or hedges planted in accordance with the approved scheme which are removed die, or become diseased or seriously damaged within 5 years of completion of the approved scheme shall be replaced within the next planting season by trees, shrubs or hedges of a similar size and species to that originally approved.
 - (c) Details of secure storage for cycles.
 - (d) The restoration of the site to a condition to be agreed in writing by the local planning authority at the end of the period for which the site is occupied by those permitted to do so 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 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 retained and maintained as approved.

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.

End of Schedule