



Appeal Decision

Hearing held on 9 January 2024

Site visit made on 9 January 2024

by R C Kirby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2024

Appeal Ref: APP/A0665/W/23/3330039

Land at Tarporley Road, Duddon Heath, Tarvin CW6 0GU

- 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 Mrs M McDonagh against the decision of Cheshire West and Chester Council.
 - The application Ref 21/03690/FUL, dated 7 September 2021, was refused by notice dated 24 August 2023.
 - The development proposed is change of use of land from its lawful use for a stable building hard surface and parking area, for use as a family traveller site consisting of 1 static caravan, 3 trailer caravans, a day room, septic tank and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of land from its lawful use for a stable building hard surface and parking area, for use as a family traveller site consisting of 1 static caravan, 3 trailer caravans, a day room, septic tank and landscaping at land at Tarporley Road, Duddon Heath, Tarvin CW6 0GU in accordance with the terms of application Ref 21/03690/FUL, dated 7 September 2021 and the conditions listed in the attached Schedule.

Preliminary Matters

2. At the Hearing the parties confirmed that the post code of the appeal site was as set out above, and not that contained within the application form.
3. The parties also confirmed that the reference to trailer caravans above has the same meaning as touring caravans. I have proceeded on this basis.
4. The appellant confirmed that whilst development has been undertaken upon the appeal site that she wishes the submitted drawings to be considered rather than what is on site. The council assessed the proposal on this basis and so have I.
5. My attention has been drawn to the Tarvin Neighbourhood Development Plan 2018-2030 which was made (9 September 2019). As this forms part of the development plan I was provided with copies of the policies the Parish Council considered relevant to this appeal.
6. Both parties confirmed that the appellant and the intended occupiers of the site meet the Planning policy for traveller sites (PPTS) definition of "gypsies and travellers", and that the PPTS is relevant policy in this case.

Main Issues

7. The main issues are:

- The effect of the proposal on the character and appearance of the area;
- Whether the location of the appeal site is suitable for the proposed development, having particular regard to the development strategy for the area and the site's relationship and safe accessibility to services and facilities, by foot and public transport;
- The need for and provision of sites for gypsies and travellers and the availability of alternative sites;
- Personal circumstances and the best interest of the children.

Reasons

Character and Appearance

8. The appeal site is located between the settlements of Duddon and Tarvin, accessed from the A51 Tarporley Road within the countryside. The front of the appeal site is enclosed by a tall native species hedgerow, behind which is close boarded fencing. The access to the site is set back from the carriageway with tall gates and fencing to the site. Between the appeal site and the field outside of the appellant's ownership is a tall native species hedgerow which extends along the rear boundary of the site. On the opposite side boundary is a newly planted hedge, beyond which is a bund with an evergreen hedge upon it.
9. The site and surroundings are relatively flat with the land rising in the direction of Tarvin. The site is visually remote from the nearest settlements and is located within an area characterised by agricultural fields and paddocks which are set back from the highway behind hedgerows and trees with sporadic low density development on both sides of the road in between, including dwellings, farms and a garden centre. Single storey outbuildings and field shelters are a characteristic of the locality. The area has a rural character and appearance despite the presence of development.
10. Although single storey in form, the amount of development proposed on the appeal site would be uncharacteristic of the locality and would seriously erode the largely undeveloped nature of the site. Whilst viewed against a backdrop of landscaping and buildings nearby, including the garden centre, from the top of the hill near Tarvin the development would be prominent in the landscape, on account of the likely light colour of the caravans.
11. Given my findings, I conclude that the proposal would result in harm to the rural character and appearance of the area. Accordingly there is conflict with Policies STRAT 9, SOC 4 and ENV 6 of the Cheshire West and Chester Council Local Plan Part One: Strategic Policies (Part One Plan) and Policy DM 3 of the Cheshire West & Chester Council Local Plan (Part Two) Land Allocations and Detailed Policies (Part Two Plan) which collectively require the intrinsic character and beauty of the Cheshire countryside to be protected, ensuring that development proposals do not have unacceptable environmental effects, and respect local character. There would also be conflict with the National Planning Policy Framework (Framework) which requires developments to be

sympathetic to local character and history, including the surrounding built environment and landscape setting.

12. Whilst my attention has been drawn to other gypsy and traveller sites within the Council's administrative boundary and also to touring caravan sites, the evidence before me does not demonstrate that the sites' context are comparable. Accordingly, this does not alter the conclusion that I have reached on this matter.
13. The Council has referred me to paragraph 25 of the PPTS, however given the size of the appeal site, the nature of the proposal and the relationship to nearby development I find that the scheme would respect the scale of and would not dominate the nearest settled community.

Location

Development Strategy/Relationship/Accessibility/Safety

14. Policy C of the PPTS recognises that gypsy and traveller sites may be located in rural or semi-rural areas provided they are of a scale that does not dominate the nearest settled community. Policy H, paragraph 25 advises that local planning authorities should strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. To 'very strictly limit' does not have the same meaning as to prevent.
15. Policy STRAT 9 of the Part One Plan seeks to restrict development in the countryside to that which requires a countryside location and cannot be accommodated within identified settlements. It sets out a list identifying types of development that will be permitted. The proposal does not fall within the type of development listed, but this is not a closed list of permissible development in the countryside.
16. Part One Plan Policy SOC 4 adopts a criteria-based approach for private and public Gypsy, Traveller and Travelling Showpersons accommodation. Whilst seeking to direct such accommodation away from the Green Belt, there is no criteria preventing it within the countryside. The policy however requires accommodation to be well related to existing settlements, accessible to local services and facilities by walking and/or public transport and be well located to the highway network with adequate vehicular and pedestrian access, amongst other matters.
17. The nearest settlement to the appeal site is Tarvin, whose development boundary is approximately 800 metres distant, on the opposite side of the A51 to the appeal site, towards the brow of the hill. The shops and services within this village are located further away from the site but are within a reasonable walking or cycling distance. Duddon is located further away from the appeal site and other than a primary school, has limited services and facilities.
18. To access the services and facilities in both Tarvin and Duddon safely by foot, the A51 would need to be crossed. Within the vicinity of the appeal site the A51 has no street lighting, is covered by the national speed limit and has a pavement/cycleway on the opposite side of the road to the appeal site. The speed and volume of traffic on the A51 within the vicinity of the access to the appeal site, and the proximity to the bend in the road would make crossing the road unattractive at this location, particularly if accompanied by young

children. Accessing the nearby bus stop on the opposite side of the road would also be unattractive.

19. The bus stop outside the garden centre could be accessed by occupiers of the site via the grass verge on the same side as the road as the appeal site. This would be short walk along a well-maintained route. This is the route the appellant and her family uses when catching the regular bus to Chester. Buses from this stop also call at Tarvin.
20. Whilst some opportunities for cycling exist, including along the combined footway/cycleway on the opposite side of the A51, I consider that future occupiers of the site would be, for the most part reliant on the private car to meet their day to day needs. This would be particularly so after dark and in inclement weather.
21. Such reliance would not however be dissimilar to other residents in the locality, and the distances would not be excessive to access day to day services. In reaching this view I am mindful about what the Framework says about opportunities to maximise sustainable transport opportunities will vary between urban and rural areas. In any event, the provision of a settled base for 1 Gypsy family would facilitate their access to health services and education, in line with paragraph 13 of the PPTS. In this context the appeal site is in reasonable proximity to services and facilities and is well related to existing settlements. I am also mindful that the provision of a settled base for the appellant and her family would be likely to lead to a reduction in their need to travel or to move from site to site.
22. Whilst there would be conflict spatially in terms of the appeal site not being well related to existing settlements, in terms of accessibility, the appeal site would be well related, with a choice of transport modes for the occupiers of the site to use to access nearby services and facilities.
23. Before I can conclude on this main issue, I need to assess whether the proposal requires a countryside location and whether it can be accommodated within the identified settlements. This is considered below.

Need for and provision of sites

24. Along with nearby Councils, the Council commissioned a Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (GTAA) which was published in August 2018. The GTAA identified that within Cheshire West and Cheshire Council that between 2017 and 2030 there was an additional need for 21 pitches to be provided for those Gypsy and Travellers meeting the planning definition at that time, that up to 54 pitches were required for unknown households for the same period and that 56 pitches were needed for those households that did not meet the planning definition.
25. There is no dispute that 27 pitches have been delivered against a need of 21 for those Gypsy and Travellers meeting the planning definition, as it was prior to this being amended in the PPTS in December 2023. Of these 27 pitches, the occupation of 24 is limited to named individuals and their dependents and as such these pitches are not available for the general Gypsy and Traveller population.
26. Furthermore, as the planning definition for gypsies and travellers has been amended in the most recent revision to the PPTS, it is likely that a proportion

of households identified as not meeting the planning definition in the GTAA, or identified as 'unknown' households now fall under the planning definition. The GTAA recognises this scenario in paragraph 1.57 in considering implications of changes to government guidance.

27. The numbers of households that now fall within the planning definition are not known at this stage, but it is likely that the need set out in the GTAA is higher which is not disputed. It would be premature to pick a precise figure pending the publication of a new GTAA, but it is clear that there remains a need for additional pitches in the area, emphasised by the appellant's search for a site.
28. Taking account of the above, and in the absence of any updated report on need and supply since the GTAA was published in 2018, there is a high probability that there is likely to be a shortfall in the 5-year supply of pitches. The appeal site would assist in making up the shortfall in sites. In reaching this view I am mindful that the GTAA was found to be sound evidence in the examination of Warrington's plan in 2023. However, circumstances have changed since this time in terms of the PPTS revision. This matter does not lead me to conclude differently.

Alternative sites

29. The Council advised that its 2 No public sites at Kalewood Road and Barlow Drive, comprising 30 pitches have no vacancies. It also confirmed that there were no alternative pitches that are currently available.
30. There are no allocations for further public pitches either within settlements or within the countryside. The Council confirmed that any additional sites that are likely to come forward during the plan period would be windfall sites, such as that before me. These sites would be assessed against the criteria-based policy within the development plan.
31. My attention has been drawn to several planning applications pending consideration by the Council and the Planning Inspectorate, including a number of family and transit pitches. As these have not been determined to date they cannot be considered as alternative sites, because there is no certainty that planning permission would be granted for them.
32. The absence of any alternative, available, affordable, acceptable and suitable land to which the site occupants could move has to be afforded considerable weight in favour of the development.

Conclusion on Location

33. Given my findings in terms of need and alternative sites it is clear that the proposal cannot be accommodated within settlements at this time. As such, it is necessary to consider the suitability of sites outside of settlements within the open countryside. In this case the site is not located away from existing settlements in terms of accessibility. Local services and facilities are a short distance away and could be accessed by foot, public transport or cycle, albeit I acknowledge that there would be a high reliance on a private motor vehicle given the highway conditions on the A51.
34. Accordingly, in this regard the appeal site is suitably located for the proposal, in accordance with the locational requirement of Policy STRAT 9 of the Part One Plan, the transport and accessibility objectives of Policy STRAT 10 and criteria

based policy for Gypsy and Traveller accommodation set out within Policy SOC 4 of the Part One Plan.

Personal circumstances and best interest of children

35. The appellant has confirmed that herself, her husband and 5 of her 8 children would live on the appeal site. Her son who currently lives on the same site as her father in Warrington would also visit and stay on the site.
36. Prior to purchasing the appeal site, the appellant and her family were living on the road travelling for work and stopping at sites with friends and relatives. This had an impact on the children attending school on a regular basis and also disrupted health care provision as the family had no permanent address at which they were registered.
37. Amongst other things the PPTS seeks to promote access to appropriate health services and ensure that children can attend school on a regular basis. Since moving on to the appeal site the younger children and the appellant have been attending Duddon Primary School on a regular basis. One of the older children receives tuition at home. Now that an address for the site has been given the family can register with local health care providers and mail will no longer need to be sent to the appellant's father advising of medical appointments, including at hospitals for some of the family members.
38. A permanent address is advantageous for the general well-being and state of mind of the parents in being settled and providing a stable home, access to basic amenities and a secure living environment for the children. Similar benefits are likely to be achieved on another settled site but no suitable alternatives have been identified.
39. Having a settled base would be in the best interests of all of the children that live on the site, regardless of whether they attend school or not. In stark contrast the alternative of a life on the road would be damaging to the education, health and well-being of them. The consequence of dismissing this appeal is likely to result in the family having to leave the site and lead a road side existence moving from place to place.

Other Matters

40. Concern has been raised by interested parties in terms of the visibility at the access to the site, parking upon the site and accessibility for emergency vehicles. The access and visibility splays were approved as part of the planning permission for stable buildings¹ on the site and the Highway Authority considers that the splays provided are acceptable for the use of the site. Between the mobile homes and caravans the area would be hardsurfacing which would provide suitable space for the parking and manoeuvring of vehicles. In this regard the proposal accords with Policy T 5 of the Part Two Plan.
41. Traffic noise from the A51 is audible within the appeal site and would be within the caravans, mobile home and day room when the windows were open. Such a situation would be little different to the noise experienced from nearby dwellings fronting the road. A low level of traffic noise would also be likely to be heard from within the caravans, given their construction and levels of

¹ Ref 19/01028/FUL

- insulation, but this would be unlikely to be intrusive or disturb sleep of the occupiers.
42. The appellant advised that the site is suitably drained and that they have a mains power supply and water. Whilst they currently take their refuse to the local tip, the Council advised that having an address at the site would allow the occupiers to apply for refuse bins to be collected.
 43. Given the above, the use of the site as proposed would provide suitable living conditions for its occupiers in accordance with the health and wellbeing aims of Policy SOC 5 of the Part One Plan and Policy DM 2 of the Part Two Plan. Furthermore, the construction of the day room would need to comply with current regulations and the caravans would be constructed in accordance with industry standards, in accordance with the aims of Policy DM 4 of the Part Two Plan.
 44. I note the concern raised about the welfare of animals on the site but have received limited evidence to substantiate this. Accordingly, this is not a determining factor in this case.
 45. Whilst it is acknowledged that the site is already occupied, the position of the mobile homes and caravans are different to that proposed. The occupation of the site and any likely precedent has had no bearing on my consideration of this case.
 46. No evidence has been submitted to demonstrate that local health services would be unable to accommodate the needs of the occupiers of the site and this therefore carries very little weight in my assessment of this case.
 47. United Utilities has confirmed that it is satisfied that the proposal would not affect the trunk water main crossing site. On the basis of the evidence before me I have no reason to find differently.
 48. Part of the appeal site falls within a Mineral Safeguarded Area. The Council advised that the south east corner of the site is covered by this designation in terms of sand and gravel. Given the nature and scale of the development the Council has indicated it would be disproportionate to require a survey to be undertaken, particularly given that the only groundworks proposed would be in respect of the dayroom. In this regard the Council considered that there would be no conflict with Policy ENV 9 of the Part One Plan, or Policy M2 of the Part Two Plan. On the basis of the evidence before me, I have no reason to find differently in this regard.
 49. Development Plan policies have been brought to my attention which the Council did not refer to in its decision notice. Each of these policies were discussed at the Hearing and other than those referred to elsewhere in this decision, none were considered determinative in this case.

Planning Balance

50. At the start of the planning balance I have borne in mind the requirements of the Public Sector Equality Duty and not placed any single planning aspect above the best interest of a child.
51. The development of the site which is spatially not well related to settlements, would result in harm to the intrinsic character and appearance of this part of

Cheshire's countryside in conflict with policies of the development plan. This harm could be mitigated to a degree through additional landscaping on the site, and by controlling the number of caravans that can be sited on it as well as controlling external lighting to minimise artificial light intrusion. I attach moderate weight to the harm that would be caused to the character and appearance of the area.

52. The location of the appeal site is not unacceptable in terms of its relationship to existing settlements and the accessibility to services and facilities. There are opportunities for the occupiers of the site to use sustainable modes of transport to access them.
53. The lack of alternative sites for the family to occupy and the likely extent of unmet need for sites each carry substantial weight. The personal circumstances of the appellant and her family and their need for a settled base to access healthcare weighs in favour of the proposal. A settled base would allow the children to continue with their education and I am in no doubt that the best interests of the children would be to continue attending the local school for their individual and social development. Having to vacate the site and lead a roadside existence would be unlikely to provide for the health and educational needs of the family.
54. Taking the above into account the conflict with the development plan is outweighed by other considerations to the extent that planning permission should be granted.
55. I have considered whether this policy conflict and harm should only be accepted for a limited period with the grant of a temporary permission. However, in my mind there is considerable doubt over when and if lawful gypsy and traveller pitches will be established in the near future. The likely date for any review of the need for gypsy and traveller sites of 2025 does not reassure me that additional pitches will be provided soon. Moreover, a temporary permission is likely to result in uncertainty and disruption to the children's education and social development. A permanent permission is therefore justified.

Conditions

56. I have had regard to the conditions suggested taking into consideration the guidance contained within the Framework and the Planning Practice Guidance. A condition is necessary listing the approved drawings in the interest of certainty. My decision relies in part on the need for gypsy and traveller sites and the lack of alternative sites, so a condition limiting the occupancy of the site is necessary. The personal circumstances of the intended occupiers has not been a sole determining factor in this case therefore a personal occupancy is not reasonable or necessary. Given this, suggested condition 3 is not necessary, nor is the requirement to restore the site as suggested in the Council's suggested condition 7.
57. To protect the character and appearance of the area the number of caravans on the site should be limited. I am not able to alter the description of development by way of a planning condition, thereby am unable to incorporate the wording relating to 2 pitches as suggested at the Hearing. Commercial activity should be controlled on the site as well as the number of commercial vehicles that can be kept on it to protect the character and appearance of the

area. Likewise, conditions controlling landscaping and external lighting are also necessary.

58. In the interests of highway safety a condition is necessary requiring surfacing of the access.

Conclusion

59. For the above reasons the appeal is allowed.

RC Kirby

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drg no. 1 Site location plan; Drg no. 2 rev B Existing and Proposed Site plans and day room details; Drg no. 3 Site visibility splays.
- 3) 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).
- 4) No more than 4 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 1 no. shall be a static caravan) shall be stationed on the site at any one time.
- 5) No more than one commercial vehicle for use by occupiers of the caravans hereby permitted shall be stationed, parked or stored on the site.
- 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 shall be submitted to the local planning authority for written approval in respect of:
 - (a) Proposed and existing external lighting of 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. Any trees, shrubs, plants or hedges planted in accordance with the scheme which are removed, die or become diseased or seriously damaged within 5 years of completion of the approved scheme shall be replaced by trees, shrubs or hedges of a similar size and species to that originally approved.
 - (c) Details of secure storage for cycles.
 - ii) If within eleven months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained 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.
- 8) Within three months of the date of this decision details of the surfacing materials to be used in the construction of the access shown on Drg no. 3 shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in complete accordance with the approved details within six months of their approval and retained thereafter.

APPEARANCES

FOR THE APPELLANT

Mrs M McDonagh Appellant
Mr I McDonagh Appellant's husband
Mr Mike Carr Mat Design Ltd

FOR THE COUNCIL

Bethan Armstrong Principal Planning Officer
Gail Nickson Senior Planning Officer

DOCUMENTS SUBMITTED AT THE HEARING

DOC1 Email Exchange between Mr McDonagh and the Council's Senior Gypsy and Traveller Liaison Officer (April 2015)
DOC2 Agreed Statement of Common Ground
DOC3 Glossary to Part Two Plan
DOC4 Cheshire East, Cheshire West and Cheater, Halton and Warrington Gypsy, Traveller and Travelling Showpeople Accommodation Assessment Final Report (amended) August 2018