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## Appeal Decision

Hearing Held on 14 May 2024

Site visit made on 14 May 2024

**by Thomas Hatfield BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 June 2024**

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**Appeal Ref: APP/R0660/W/23/3334296**

**Land north of Horseshoe Farm, Warmingham Lane, Middlewich, Cheshire, CW10 0HJ**

- 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 Oliver Boswell against the decision of Cheshire East Council.
  - The application Ref 21/5187C, dated 5 October 2021, was refused by notice dated 25 September 2023.
  - The development proposed is change of use of land to use as residential caravan site for one Gypsy/Traveller family with 2 No caravans including no more than one static caravan/mobile home together with erection of day room.
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### Decision

1. The appeal is allowed and planning permission is granted for change of use of land to use as residential caravan site for one Gypsy/Traveller family with 2 No caravans including no more than one static caravan/mobile home together with erection of day room at land north of Horseshoe Farm, Warmingham Lane, Middlewich, Cheshire, CW10 0HJ in accordance with the terms of the application, Ref 21/5187C, dated 5 October 2021, subject to the conditions set out in the attached schedule.

### Procedural Matter

2. At the hearing, the Council stated that the access point that has been created into the site differs from that shown on the submitted drawings. However, the proposed site layout plan was considered by the Council in determining the application and it was also submitted with the appeal documentation. In these circumstances, I am required to determine the appeal based on the submitted drawings.

### Main Issues

3. The main issues are:
  - (a) Whether this is a suitable location for a new Gypsy and Traveller pitch having regard to its accessibility to services and facilities, the provisions of development plan policy, and Planning Policy for Traveller Sites ('PPTS'); and
  - (b) The effect of the development on the character and appearance of the countryside.

## Reasons

### *Location of development*

4. The appeal site is located in the open countryside around 1.5 km to the south of Middlewich and around 3 km north west of Elworth. The village of Warmingham, which contains a primary school, church, and a village hall, lies around 1.5 km to the south.
5. Policy HOU 5 of the Cheshire East Site Allocations DPD (2022) complements Policy PG 6 of the Cheshire East Local Plan Strategy (2017) in setting criteria for new Gypsy and Traveller pitches in the open countryside. With regard to part 3 of Policy HOU 5, it is common ground that the appellant and his family meet the definition of "*gypsies and travellers*" set out at Annex 1 of PPTS and that they have a genuine need for culturally appropriate accommodation in Cheshire East. It is also common ground that the appellant and his family cannot meet their accommodation needs by occupying an existing pitch or a new pitch on an allocated site. In these circumstances, part 4 of Policy HOU 5 states that new pitches should be provided within an established Gypsy and Traveller site wherever possible, or, if not, as a small extension to it. A new pitch on a standalone site will only be permitted where it is demonstrated that neither of these options are feasible.
6. A key point of contention is whether the appeal site should be considered as an extension to the existing Gypsy and Traveller site to the south. In this regard, a barn building is positioned between the appeal site and the boundary of the permission for the existing site. However, this barn is relatively small and only extends across part of the land between the appeal site and the existing site. In this regard, it is not a large enough feature to effectively sever the existing Gypsy and Traveller site from the appeal site. I further note that the barn is used for storage in conjunction with the existing site. In these circumstances, and given their proximity to one another, I consider that the appeal site would comprise an extension to the existing site rather than a new standalone pitch.
7. Having viewed the existing site to the south, it does not appear that there is space to accommodate an additional pitch without displacing existing transit pitches. In this regard, the transit pitches are significantly smaller than a permanent residential pitch and were the appeal proposal to be located here then it would likely displace at least 2 transit pitches. Moreover, any loss of transit pitches would need to be replaced elsewhere given the need for such pitches identified in the latest Gypsy and Traveller Accommodation Assessment (2018). In any case, Policy HOU 5 allows for a small extension to an existing site, which is what is proposed here.
8. In terms of accessibility to services and facilities, the nearest convenience stores, GP surgeries, and primary schools are located in Middlewich, Elworth, and Warmingham. There is no footpath along Warmingham Lane and so most journeys to and from the site would be by private car. However, Paragraph 108 of the National Planning Policy Framework ('the Framework') recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. In this regard, the appeal site is located a relatively short distance from nearby services and facilities, and public transport connections, considering that it is a rural Gypsy and Traveller site. Whilst future occupiers would be reliant on the use of a private car, this would not be disproportionate given the relative proximity of services and facilities.

9. I further note that the existing site to the south was granted permission in 2 separate appeal Decisions dating from 2008 and 2018. The most recent of these Decisions<sup>1</sup> did not find any conflict with the development plan with regard to the site's accessibility to services, facilities, and public transport. Whilst Table 9.1 of the Cheshire East Local Plan Strategy (2017) provides a guide to the appropriate distances for access to services and amenities, adherence to these distances is not a requirement of any development plan policy. In any case, I note that the appeal site is comparably accessible to other Gypsy and Traveller allocations in the plan area. In view of these factors, I am satisfied that the site would have adequate access to services, facilities, and public transport. It would accord with Local Plan Policy SC 7 in this regard.
10. For the above reasons I conclude that the development would be in a suitable location for a new Gypsy and Traveller pitch having regard to its accessibility to services and facilities, the provisions of development plan policy, and PPTS. It would therefore accord with Policies PG 6 and SC 7 of the Cheshire East Local Plan Strategy (2017), Policy HOU 5 of the Cheshire East Site Allocations DPD (2022), and national guidance set out in PPTS.

#### *Character and appearance*

11. The appeal site consists of an area of hardstanding and pasture on the western side of Warmingham Lane. It is located in the open countryside in close proximity to existing Gypsy and Traveller pitches to the south. The surrounding landscape is typical of the Cheshire Plain, with small irregular shaped fields lined by hedgerows and trees.
12. The most prominent part of the development would be the 4.4 metre high amenity building that would be positioned next to the road. This would project above the height of the boundary hedgerow and would be visible from along nearby sections of Warmingham Lane. However, it would be lower in height than the adjacent barn and would be seen against the backdrop of that building in views from the north. Its roof pitch would also slope away towards the road which would soften its impact, and its materials could also be controlled by condition to ensure they were sympathetic. Views of the lower part of the amenity building and of the proposed caravans would be largely obscured by a mature hedgerow running along the site frontage, and this could be supplemented by further planting and landscaping. Views of the site through the access point would only be available along a short section of the road. I further note that Warmingham Lane is a national speed limit road that does not have a footway, and any views of the development from passing vehicles would therefore be fleeting in nature.
13. Views of the site from along Forge Mill Lane would be blocked by the existing barn and conifers, and views from a footpath to the east would be more distant in nature and partially obscured by existing trees and hedgerows. Any visual impact from these vantage points would be limited. Longer views of the development from along Warmingham Lane would also be obscured by the bend in the road, intervening trees and hedgerows, and the existing barn.
14. For the above reasons, I conclude that the development would not significantly harm the character and appearance of the countryside. It would therefore accord with Policies SC 7 and SD 2 of the Cheshire East Local Plan Strategy

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<sup>1</sup> APP/R0660/W/18/3204676

(2017), Policy HOU 7 of the Cheshire East Site Allocations DPD (2022), and national guidance set out in PPTS. These policies and guidance seek to ensure, amongst other things, that development respects the character and appearance, and landscape character, of the surrounding area.

### **Other Matters**

15. As set out above, I consider that the development would be in an appropriate location for a new Gypsy and Traveller pitch, and that it would not significantly harm the character and appearance of the countryside. There would be no conflict with the development plan in these respects. In such circumstances, the Framework advises at Paragraph 11 that development should be approved "*without delay*". It is therefore unnecessary for me to consider whether the Council is able to demonstrate a 5 year supply, or the extent of need for new pitches, as these matters would not affect the outcome of the appeal.
16. It is argued that there has been a pattern of first seeking planning permission for stables in this location, and then using such permissions to help justify additional Gypsy and Traveller pitches. However, each application must be determined on its own merits, and that is the approach I have taken here.
17. It is also asserted that the site has been used for storage of building waste and parking without planning permission for those uses. However, my remit extends solely to the application that is subject to this appeal.

### **Conditions**

18. The Council suggested a number of conditions, some of which I have edited for clarity and enforceability. In addition to the standard time limit condition, I have imposed a condition that requires the development to accord with the approved plans. This is necessary in the interest of certainty. I have also imposed a drainage condition to ensure that the site is served by appropriate foul and surface water drainage arrangements. This condition is pre-commencement in nature as it will inform the construction process and relates to works below ground level. As required by Section 100ZA(5) of the Town and Country Planning Act 1990, the appellant has given consent to the imposition of this condition.
19. A condition restricting the occupancy of the site to Gypsies and Travellers is necessary given that I have found the development complies with local planning policies relating to Gypsy and Traveller sites. Further conditions restricting the number of caravans, the stationing of larger vehicles and commercial activities, removing certain permitted development rights, and requiring the submission and approval of a scheme of landscaping and samples of external materials, are necessary in order to protect the character and appearance of the area. A condition relating to external lighting is also necessary to comply with Policy LCD2 of the Moston Neighbourhood Plan relating to dark skies. Another condition restricting the use of the proposed amenity building is necessary to ensure those facilities are available to future occupiers and to prevent it being used as separate accommodation. Finally, conditions relating to unanticipated contamination and imported soils are necessary in order to ensure that the site is safe for future residential occupiers.

**Conclusion**

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

*Thomas Hatfield*

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: Location Plan 1:2500; Site Layout 1:500; Amenity Block.

#### *Pre-commencement conditions*

- 3) No development shall take place until a drainage scheme for foul and surface water, and an implementation timetable, has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in accordance with the approved timetable.

#### *Pre-occupation conditions*

- 4) Prior to the first occupation of the development, a scheme for the landscaping of the site shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include details of hard landscaping, planting plans, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes, the proposed numbers and densities, and an implementation programme. The landscaping shall be planted/installed in accordance with the approved implementation programme. Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become seriously damaged or diseased within a period of 5 years from the completion of the development shall be replaced in the next planting season with others of similar size and species.

#### *Other conditions*

- 5) No development involving the use of any facing or roofing materials shall take place until samples of the materials to be used in the construction of the external surfaces of the amenity building hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 6) Prior to its installation, details of any external lighting shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details, which shall thereafter be retained.
- 7) 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).
- 8) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 1 shall be a static caravan) shall be stationed on the site at any time.
- 9) No commercial activities shall take place on the land, including the external storage of materials.
- 10) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.

- 11) The amenity building hereby approved, shall not at any time be used as overnight accommodation.
- 12) Any soil or soil forming materials to be brought onto the site for use in garden areas or soft landscaping shall be tested for contamination and suitability for use prior to its importation onto the site. Prior to the first occupation of the development, evidence and verification information (for example, laboratory certificates) shall be submitted to, and approved in writing by, the Local Planning Authority.
- 13) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the development is resumed or continued.
- 14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), no fences, gates or walls other than those expressly authorised by this permission shall be constructed.

## **APPEARANCES**

### FOR THE APPELLANT:

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| Mr Boswell             | Appellant           |
| Philip Brown BA (Hons) | Planning Consultant |

### FOR THE LOCAL PLANNING AUTHORITY:

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| Gemma Horton BA (Hons) MCD | Senior Planner, Cheshire East Council |
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### INTERESTED PERSONS:

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| Dave Nixon | Moston Parish Council |
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