



Appeal Decision

Hearing held on 12 November 2024

Site visit made on 13 November 2024

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2024

Appeal Ref: APP/M0655/W/24/3347543

The Former Utilities Pumping Station Site, Broad Lane, Collins Green, Warrington WA5 4AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr J Jenkins against the decision of Warrington Borough Council.
 - The application Ref is 2023/00029/FUL.
 - The development proposed is described as 'the change of use of land for use as a part family traveller site (4 trailer caravans/ 1 static & amenity blocks) and part transit site (3 trailer caravans), along with the keeping of horses landscaping with access off Broad Lane, following the removal of the pumping station building, concrete hardstanding's, storage sheds waste material and associated commercial paraphernalia.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. It is not a matter of dispute between the main parties that the development has commenced in that the site is occupied by members of the Gypsy and Traveller community. On site, I observed a static caravan, touring caravans, a motor home, a small brick building, containers and other structures sited on an area of loose stone hardstanding, outside storage and the former pumping station building. There were also various other structures that appeared to be of a moveable nature located in other parts of the site, and fencing. The development is not however as is shown on the submitted plans and in that sense it is far from being complete. What is for my consideration is as shown on the submitted plans and not any alternative development which has taken place. Accordingly, I have considered the appeal on this basis.
3. The appellant submitted an amended site layout plan for my consideration. The rationale for the submission of the plan was to address concerns that the Coal Authority had expressed during the planning application. Compared to the site layout plan that was before the Council at the time of its decision¹, the plan deletes the transit site part of the development and extends the family traveller site area further into the site and parallel to Broad Lane with the same number of pitches. It also deletes an area of landscaping and a play area, and retains the pumping station building.

¹ Clarified at the Hearing to be Drg No. 2 Revision A

4. While I note that the appellant considered this was a reduction in the amount of development in as far as the removal of the transit site and the development is for a change of use, the totality of the amendments represents a substantive difference compared to what was before the Council at the time of its decision. It would also not reflect the description of development. Nor is using the appeal process to evolve a development in order to try to address concerns expressed during the planning application a justified reason to accept an amended plan, when the amendment is itself substantive.
5. As a consequence, I have based my decision on the plans that were before the Council at the time of its decision. However, even if I was to accept the appellant's amended plan, it would not substantively address my concerns, for the reasons that I set out later in my decision.

Main Issues

6. The main issues are (a) whether the development would constitute inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (Framework) and the development plan policy; (b) the effect on the openness and purposes of the Green Belt; (c) the effect on the living conditions of the site occupiers with regard to land stability and safety; (d) the effect on highway safety by way of the proposed access arrangements; and (e) if it is inappropriate development, whether the harm by reason of inappropriateness and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

7. The site comprises an area of former colliery land that is accessed from Broad Lane. It is broadly split into two parts that consist of the hardstanding area including the pumping station and where most of the various structures are located, and separately an area of rough vegetation that extends up to a railway line to the south-east. There is a fence line in between the two areas. There are also a number of mine entries on the site where there are also signs of fencing. A recently planted hedge and a green mesh fence are found closest to the access. The site lies within the Green Belt.
8. Land in the immediate vicinity of the site consists of reclaimed former colliery land, fields and vegetation. There is occasional development along this part of Broad Lane, including dwellings opposite the site. As well as the railway line, there is a transmission line and pylons which lie close to the north-west boundary of the site. Built development associated with the settlement of Collins Green is found past the railway bridge and is accessed via a footway from the site, which is enclosed by a wooden post and rail fence. The edge of the built up area of St Helens lies in the opposite direction, further along Broad Lane.

Inappropriate Development

9. Policy GB1 of the Council's Warrington Local Plan (2023) (Local Plan), amidst other matters, sets out that the general extent of the Green Belt will be maintained, as defined on the Policies Map. Part 10 states that in accordance with national planning policy, within the Green Belt, permission will not be granted for inappropriate development, except in very special circumstances.

Policy DEV3 is the Local Plan's Gypsy and Traveller policy. The policy itself does not mention inappropriate development, but states that proposals will be favourably considered where they satisfy other relevant policies of the Local Plan.

10. Paragraph 152 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. This is re-iterated by Policy E of the Planning Policy for Traveller Sites (2015, updated 2023) (PPTS). Policy E goes on to state that Traveller sites (temporary or permanent) in the Green Belt are inappropriate development and that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.
11. None of the provisions in the Framework which concern exceptions to inappropriate development in the Green Belt can apply. Notwithstanding that part of the site includes previously developed land, this includes paragraph 154 g). This is because of the type of development, namely a Gypsy and Traveller site. Accordingly, when judged against the Framework, the PPTS and development plan policy, the development would be inappropriate development in the Green Belt.

Openness and Purposes

12. Openness is an essential characteristic of the Green Belt, as identified by paragraph 142 of the Framework. As the development would involve a static caravan, amenity buildings and a number of trailer caravans, it would alter the area of land on which it would be sited by virtue of the buildings and structures that would be on it. It would also increase the likelihood of vehicles being on the site and there would also be likely domestic paraphernalia. It would also cause some loss of openness because it would lead to a greater degree of consolidation between the sporadic forms of development there are along this part of Broad Lane. As the larger south eastern part of the site would be used as a paddock and for grazing, this would temper the effect to some degree.
13. In considering the visual impact of openness, screening would be afforded around much of the site either by boundary enclosure, vegetation or the railway line. Residual visibility would be afforded through filtered views from Broad Lane, in particular as it rises towards the railway line, and at the access point.
14. The Council's Green Belt reason for refusal includes Policy DC6, which concerns quality of place. It does not however reference Green Belt. Where it refers to visual matters, this is related to character and appearance and so has a limited bearing on this issue. The same applies where I was referred to further appeals² on this matter on a different site because each requires its own particular assessment on the effect on openness.
15. In considering these factors together, the proposal would result in a moderate adverse impact on the openness of the Green Belt. It would not therefore preserve the openness.
16. It is not in dispute between the main parties that the development would conflict with the Green Belt purpose of assisting in safeguarding the

² Appeal ref: APP/R0660/W/22/3308801

countryside from encroachment, under paragraph 143 of the Framework. This would occur because it would involve development in a location which has broader countryside characteristics. That it would not conflict with the remaining purposes of the Green Belt does not diminish from that it would conflict with this purpose.

Land Stability and Safety

17. The Desk Based Coal Mining Risk Assessment (CMRA) that was submitted with the planning application indicates there are 4 recorded mine entries (shafts) within the planning application boundary. The Coal Authority has also set out there is one mine gas site within the boundary. The site lies within a defined Development High Risk Area.
18. One of the recorded mine entries lies close to the pumping station building. The CMRA derives a Zone of Influence from this shaft of approximately 42 metres (m). This distance has regard to an assumed zone of collapse, departure distance and an assumed shaft diameter. Built parts of the development would be located within this Zone of Influence and as such there is the potential for the risk of collapse of this mine shaft affecting the development. This would have the potential to cause significant safety concerns, in particular as the development would be in residential occupation.
19. There are not sufficient engineering details before me that would demonstrate that the safety concerns would be adequately mitigated with regard to capping or incorporating geogrid/membranes. There is also some doubt over whether adequate capping and the use of such a membrane can be achieved, due to the depth of the rock head. In the absence of such details, it is also unclear whether the carrying out of periodic monitoring to identify any evidence of instability would be effective.
20. Whether the use of fencing to prevent access to the shaft would be effective is also open to question. With the proximity of this mine shaft, it may attract some attention as the site would be residentially occupied, especially with children in attendance at least some of the time. This may lessen the value of this method of mitigation.
21. Given the potential severe effect of a collapse or if access was gained to the shaft, there needs to be little doubt that the development can be implemented safely with its residential use. This has not been adequately demonstrated. That the site is already occupied does not mean the development that is the subject of this decision would not result in unacceptable safety effects in future. This is a matter which attracts significant weight in my decision.
22. I conclude that the development would have an unacceptable effect on the living conditions of the site occupiers with regard to land stability and safety. Consequently, it would not comply with Policies DEV3 and ENV8 of the Local Plan where they set out that the site is not to be subject to physical constraints or other environmental issues that cannot be mitigated to an acceptable level, or that would impact upon the health, safety or general wellbeing of residents on the site; and, that development on unstable ground or that has a sensitive use is suitable for its intended use. It would also not comply with Policy DC6 where it states development is to not result in unacceptable conditions for future users and occupiers of the development in accordance with Policy ENV8.

23. The development would also not comply with the Framework where it sets out in paragraphs 189 and 190 that decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability, including mining; and, that where a site is affected by land contamination responsibility for securing a safe development rests with the developer and/or landowner.

Highway Safety

24. The development would utilise the existing access off Broad Lane. This consists of a splayed junction up to a set of access gates that are set back. Broad Lane towards St Helens is a straight section of road where visibility is unimpeded. In the opposite direction, the road rises to the crest of the railway bridge. Fencing and vegetation would also be apparent, when observing vehicles in this direction. The road is fairly well trafficked by a range of vehicle types. I was informed at the Hearing that traffic does on occasion exceed the speed limit along this road, and this was not contested.
25. The Council require that visibility splays of 2.4 m x 70 m are made. The matter of dispute concerns whether this can be achieved in the direction of the railway bridge because of the fence and vegetation. While I heard that a relative of the appellant had erected this fence, it does not seem to be on land the appellant owns or is highway land, and at least part is outside of the red line site boundary.
26. A plan³ submitted during the course of the application shows the visibility splays, as are required. This would involve the removal of 16 m of the fence and vegetation, which the Council consider is needed to accommodate the splay satisfactorily. I concur from what I observed on the site visit.
27. There was some discussion at the Hearing whether in fact the plan showed this could be achieved without requiring incursion into the third party land. However, the plan shows what the situation would be after the removal of the fence and vegetation, and not before. If this was not the case, it would not be entirely accurate, compared to what is on the ground at present. It does not persuade me that third party land would not be involved.
28. While the appellant indicated the fence could be removed on the basis of whom had erected it, such a course of action cannot be condoned because it would be incurring into third party land. The likely level of traffic generation by the development would be fairly low, but nevertheless some harm would occur as the splay cannot be entirely achieved, based on the information before me. Adequate pedestrian access provision would be provided through the footway and a proposed tactile paving crossing on the opposite side of the access, but this would not address the potential for conflict between vehicles. It is a matter which attracts moderate weight in my decision.
29. I conclude that the development would have an unacceptable effect on highway safety by way of the proposed access arrangements. As a result, it would not comply with Policies INF1 and DC6 of the Local Plan where they refer to delivering the Council objective of improving safety and safe methods of transport, amongst other considerations. It would also not comply with the

³ Drg. No 5 Revision B

Framework in as far as it concerns safe access and avoiding unacceptable impacts on highway safety.

Other Considerations

Need and Supply of Pitches

30. The PPTS requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. The Council use the Cheshire East, Cheshire West and Chester, Halton and Warrington Gypsy Traveller and Travelling Showpeople Accommodation Assessment (2018) (GTAA) in relation to need and which covers the period up to 2032. A cultural need of 27 permanent pitches is identified in the GTAA.
31. The GTAA also forms the basis of the provision that is set out in Policy DEV3 and the tables in the supporting text, also accounting for permissions that were granted since the publication of the GTAA. However, Policy DEV3 does not account fully for need in these tables under the PPTS definition, because it utilises the narrower definition prior to the 2023 update of the PPTS. In this respect, the policy can be said to be 'out of date'. As the Local Plan period exceeds that of the GTAA, there will also be a further need over and above that identified in the GTAA.
32. While different ways of calculation were presented at the hearing, it is not in dispute that the Council cannot demonstrate a 5 year supply of deliverable sites in accordance with the PPTS. The Council has not allocated land for the provision of Gypsy and Traveller sites. Pending a Local Plan Review, this is dependent on Council decision-making on planning applications. Yet, based on the evidence before me, this has not addressed the shortfall against the required 5 year supply. This includes where the supporting text to Policy DEV3 states that the remaining need will come forward from within the existing urban area and/or on previously developed land within the Green Belt, as is of relevance in this case in terms of locational considerations.
33. The appellant is not required to prove that no other sites are available. However, whether there are alternative sites is useful in further understanding local provision in practical terms. The appellant has pointed to matters in relation to a lack of site availability and that other sites are full. The Council accept there is a lack of available sites. On this basis, there are no obvious alternative sites that the occupiers of the site could occupy.
34. The GTAA and Policy DEV3 also identify a need for transit pitches. Based on the evidence that I have, this need has also not been met, notwithstanding that I was informed at the Hearing that the Council has provisionally identified a site. Matters in relation to need and supply for both permanent and transit pitches carry significant weight in my decision.

Circumstances of the Appellant

35. The site is currently occupied by the appellant and his partner, due to a need for a pitch of his own. Previously, the appellant had shared the warden's bungalow at the Suez Street Caravan Park in nearby Earlstown, and so has local connections. Two school age children are currently residing elsewhere with their mother, but they visit and may reside on the site. The appellant's father is not residing on the site due to poor health, although he would do so in

due course according to the appeal submissions. He would be helped by his son, also in looking after horses.

36. The other occupiers include Mary Holden who is also in poor health and needs to be looked after by her adult daughter. Previous brick and mortar accommodation had caused mental health issues. Winnie Ayres also has health issues, has local connections to the area and has a daughter who is currently home tutored.
37. In the absence of alternative sites, the appellant and other occupiers could potentially be homeless and have to rely on a roadside existence. In taking these matters together, I am not unsympathetic to these circumstances and having such a base would clearly be advantageous to the occupiers, and their dependants, as well as serving the best interests of the children. This also carries significant weight in my decision.

Fallback Position

38. As the site has historically contained development, this amounts to a fallback position. This involves, amongst other development, the pumping station building, associated hardstanding and the access. It is also clear from photographic evidence submitted that the development on the site has built up over time. The appellant has suggested a later date of 2021 as a baseline, which shows various structures on the site, along with outside storage. I have also been referred to Heavy Goods Vehicle usage of the site.
39. It is not though apparent that the development currently on the site benefits from a planning permission and the Council has served an enforcement notice concerning caravan storage, engineering operations to form hardstanding and a brick service building. Moreover, what is proposed would consolidate development on the site through the introduction of the amenity buildings and change of use to permanent and transit pitches with the associated caravans. Accordingly, the fallback position carries limited weight.

Other Matters

40. The amended site layout plan does not alter that the development would be inappropriate development in the Green Belt and as it would extend further into the site while deleting the transit pitches, the effect on openness would also be moderate adverse. It would also conflict with the purposes of assisting in safeguarding the countryside from encroachment. While it would remove parts of the development nearest the mine shaft adjacent to the pumping station, it would still result in a residential development on a site where there are mine shafts and it does not adequately address matters over mitigation, in particular with the incursion of the permanent pitches and access further into the site. It also does not markedly change matters over the visibility splay at the access or the fallback position. It would lessen the contribution to meeting Gypsy and Traveller accommodation needs by deleting the transit pitches. Hence, it would not substantively address my concerns.
41. Interested parties have raised a number of other concerns. However, as I am dismissing the appeal on other grounds, such matters do not alter my overall conclusion and have therefore not had a significant bearing on my decision.

Balancing Exercise

42. The proposal would constitute inappropriate development in the Green Belt. It would also not preserve the openness of the Green Belt and it would conflict with the purpose to assist in safeguarding the countryside from encroachment.
43. Paragraph 153 of the Framework states that substantial weight is to be given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. I have also identified harm by way of the effect on both the living conditions of the site occupiers with regard to land stability and safety, and highway safety by way of the proposed access arrangements. There would be conflict with the policies of the development plan and the Framework in these respects.
44. Against the Green Belt and other harms that I have identified, it is necessary to balance the other considerations. In this case, these centre on the outstanding need and lack of supply of Gypsy and Traveller pitches, the use of previously developed land in the Green Belt, that alternative sites are not available, the failure of the Local Plan to bring forward sites and the personal circumstances of the appellant.
45. Where the development would comply with the remaining criteria of Policy DEV3, this attracts neutral weight. For it to be favourably considered under this policy, it must comply with its criteria and other relevant policies of the Local Plan. This is not the case for the reasons that I have already set out. This sets it aside from where I was referred to an appeal decision⁴ where compliance with the development plan attracted substantial weight.
46. In exercising my function on behalf of a public authority, I am also consciously aware of my duties under the Public Sector Equality Duty (PSED) contained within the Equality Act 2010 which sets out to eliminate discrimination, harassment and victimisation, advance equality and foster good relations, and the protected characteristics under the PSED, including for Gypsy and Traveller groups. I am also aware of my duties under Article 8 of the Human Rights Act 1998 (Article 8) that bestows the right to private and family life and for the home, and that the Article 8 rights of a child should be viewed in the context of Article 3(1) of the United Nations Convention on the Rights of the Child.
47. In considering these duties though, I have to also consider the wider public interest. Green Belt, safety issues arising from the mine shaft and highway safety are such legitimate matters of interest. The needs of the occupiers could also be jeopardised by in particular potential safety issues arising from the mine shaft, as well as highway safety. Taking into account all of the considerations, I am satisfied that this objective can only be adequately safeguarded if the development does not proceed. Not granting planning permission would therefore be a proportionate response that would not violate the appellant's human rights.
48. The application of a temporary permission in order for the Council to review its Local Plan so that more sites come forward would not satisfactorily overcome this harm. It would still result in harm to the Green Belt, and so there would

⁴ Appeal refs: APP/Q4625/A/2209776

still be conflict with the significant protection that is afforded to this designation. It would also not alleviate potential safety issues over this shorter time period related to the coal shaft, as well as over highways safety at the access.

49. Overall, the other considerations which arise do not clearly outweigh the totality of the harm. Consequently, very special circumstances do not exist. While Policy DEV3 is out of date in that it does not cater for the needs of all of the Gypsy and Traveller community, the presumption in favour of sustainable development, as is set out in the Framework, does not apply because the application of policies in the Framework that protect areas or assets of particular importance, related to the Green Belt, provides a clear reason for refusing the development proposed.

Conclusion

50. I have considered all matters that have been raised, but the benefits that would arise would not outweigh the harm caused by the development. For these reasons, I conclude that it conflicts with the development plan when taken as a whole and there are no material considerations to outweigh this conflict. Therefore, the appeal should be dismissed.

Darren Hendley

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Philip Brown	Managing Director, Philip Brown Associates Limited
John Jenkins	Appellant
Ryan Jenkins	Relative of the Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Gary Earnshaw	Team Leader, Development Management
Kevin Usher	Principal Planning Officer
Phil Peak	Principal Engineer

INTERESTED PARTIES:

Chris MacArthur	The Coal Authority
Douglas Owen	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

1 Drg 2A Existing and Proposed Site Plans, Aerial Imagery and Day Room(s) Details – Rev A

2 Summary of methods of calculating the 5-Year supply of Gypsy & Traveller accommodation needs from the data of the GTAA (2018) including those whose status is unknown and those that don't meet the planning definition.

3 The Coal Authority Policy for Building Over Or Within The Influencing Distance of a Mine Entry