



Appeal Decision

Site visit made on 21 January 2025

by T Bennett BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th February 2025

Appeal Ref: APP/R0660/W/24/3349158

Lazarus Farm, Dragons Lane, Moston CW11 3QB

- 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 A Sharp and Ms D Smith against the decision of Cheshire East Council.
 - The application Ref is 24/0553C.
 - The development proposed is material change of use of land for Traveller site with new access from Dragons Lane, additional hard standing, utility block and shed.
-

Decision

1. The appeal is allowed and planning permission is granted for the material change of use of land for a Traveller site with new access from Dragons Lane, additional hard standing, utility block and shed at Lazarus Farm, Dragons Lane, Moston CW11 3QB in accordance with the terms of the application, Ref 24/0553C, subject to the conditions in the attached schedule.

Preliminary Matters

2. I have amended the description used in the banner heading and decision, removing the word retrospective as this does not describe an act of development.
3. Since the determination of the original application a revised version of the National Planning Policy Framework (the Framework) was published on 12 December 2024. However, the parts relevant to this appeal have not been amended. Therefore, in this case I consider it has not been necessary to consult the parties on the revised Framework as no parties would be prejudiced by this approach.
4. I observed on my site visit that parts of the development had already been constructed, including the access and the utility building. I observed some differences between the plans and what I saw on site, including the position of the septic tank and the presence of low level brick piers. Notwithstanding the differences, the application overall has been assessed based on the submitted plans.

Background and Main Issues

5. The site relates to an approved Gypsy and Traveller pitch off Dragons Lane granted on appeal in 2020¹, the proposal seeks to extend the pitch to the east and west of the site with a new access off Dragons Lane.

¹ Ref: APP/R0660/W/19/3240007

6. The Council has confirmed that it considers the use of the land for Gypsy and Traveller accommodation to be acceptable, and raises no issue with the hardstanding, utility block and shed. In that context, the main issues are:
- the effect of the access on the character and appearance of the surrounding area, and;
 - whether the development would provide suitable drainage.

Reasons

Character and appearance

7. Access to the appeal pitch was previously through an established shared access. The appeal scheme proposes the creation of a new access into the appeal site from Dragons Lane, located between the existing shared access to the west and an access point to a Gas Governor to the east. Another access point into a separate site is located a short distance further west of the shared access.
8. Dragons Lane is predominantly rural in character, lined with hedgerows on both sides of the road and with open countryside to the north. The majority of the hedgerows make a positive contribution to the rural character and appearance of the area.
9. The creation of the access point has resulted in a small section of hedging being removed. Given the use of the land, the Council confirm that the hedgerow regulations do not apply to this section of hedgerow. This section of hedging would have been part of a longer run of hedging between the existing shared access and the access point for the Gas Governor. A section of hard surfacing running over a culvert has been introduced, along with low level post and rail fencing, brick pillars and a gate.
10. The appeal scheme is similar in appearance to the existing shared access point, which features tall brick pillars and a gate. It is viewed against this existing access on approach from both the west and east along Dragons Lane. I observed that the hedgerow between the new access and the Gas Governor did not appear well-maintained, appearing overgrown and with frequent gaps. These gaps make the timber panel fencing bordering the appeal site, located behind the hedging, highly visible and a prominent feature. This fencing was approved as part of the previous approval. The prominence of the fencing is exacerbated by a level change between the road and the appeal site. Consequently, the existing mobile home on the appellant's pitch, although only single storey, is highly visible above the fencing, with the gaps in the hedging contributing to this. Therefore, this section of road closest to the access point has a more urbanised character, in contrast to other parts of Dragons Lane.
11. I also observed a culvert running along the section of hedging adjacent to the access point. This, along with the banking, likely makes maintaining the hedge difficult. While I cannot be certain that the removed hedging was in the same condition as the remaining section, it was directly adjacent to it, where the culvert is also present and timber panel fencing was located behind the hedging where the access point has been constructed. Therefore, it is highly likely that the removed hedging would have been of a similar condition, particularly given the short length that has been removed. I have no substantive evidence to suggest otherwise.

12. Given the above, and whilst I note that hedgerows are generally recognised as a significant and important characteristic within Cheshire East, I find that this section of hedging adjacent to the access point does not make a significant contribution to the character and appearance of the rural landscape, with the importance of this section of hedgerow greatly reduced. It contrasts sharply with the more continuous, unbroken, thick and seemingly well-maintained hedgerow on the opposite side of the road and west of the existing shared access point, which is more characteristic of the wider hedgerow I observed along Dragons Lane. Moreover, at least two large mature trees are sited within the section of broken hedgerow adjacent to the new access point. These appear as more prominent natural features within that section of hedgerow and do not appear to have been adversely affected by the proposal.
13. The loss of the hedgerow may have resulted in a loss of biodiversity. However, given the likely low quality of the hedging, any loss is likely to be minor. Notwithstanding this, I consider that there are opportunities to enhance biodiversity and natural features through appropriate additional planting and soft landscaping within the site which could mitigate against any biodiversity loss from the removal of the short section of hedgerow. This could be secured using a suitably worded condition.
14. Drawing the above points together, I find that the loss of a limited section of hedgerow and the introduction of the access point, does not unacceptably undermine the rural landscape character and appearance of the wider area. Moreover, any urbanising effect resulting from the introduction of the access is very limited.
15. My attention has been drawn to a previously dismissed appeal concerning a proposed access off Dragons Lane, near the appeal site.² In that appeal, the access was located west of the existing shared access point. The Inspector in that appeal noted that the proposal would result in the loss of a significant section of established hedgerow, part of a continuous, unbroken section. Thus, the hedging in that appeal is not comparable to the hedging in this appeal. The site-specific characteristics also differ. That Inspector noted that the existing hedging was effective in screening the development that was set behind the hedgerow. In this appeal, the land levels are higher, and coupled with the gaps in hedging, the development behind is more prominent. Consequently, I consider there are sufficient differences to come to a different view to the Inspector in that appeal.
16. Limited details of the brick pillars and large wooden gate in relation to the access point have been submitted. However, I am satisfied that details could be secured through the use of an appropriately worded planning condition.
17. I acknowledge that the previous single shared access into the Meadow View site had been highlighted as a benefit of the scheme, reducing its overall impact on the streetscene. However, as I have found that the scheme before me does not unacceptably erode the rural character, this does not alter my view.
18. For the reasons above, I conclude that the access does not have an adverse effect on the character and appearance of the surrounding area. It therefore accords with Policy SE3 and SE4 of the CELPS. Together, these seek to ensure, amongst other matters, that development positively contributes to the enhancement of biodiversity

² Ref: APP/R0660/W/20/3264466

and conserves the high quality natural environment, providing appropriate suitable mitigation, including through provision of new planting.

19. Policy SE5 of the CELPS relates to trees, hedgerows and woodland that provide, amongst other matters, a significant contribution to amenity and landscape character. However, I have found the hedgerow concerned does not make a significant contribution to amenity and landscape character, therefore the development does not conflict with this policy.
20. The development does not conflict with Policy ENV 2 of the Moston Neighbourhood Plan 2018-2030 (NP) which seeks to prevent the loss of important natural features nor Policy LCD1 of the NP which requires development to not have a significantly negative effect on rural country lanes nor inappropriately urbanise.
21. The proposal also does not conflict with Policies ENV 2, ENV 5 and ENV 6 of the Site Allocations and Development Policies Document (2022) (SADP). Policy ENV2 amongst other matters, require proposals to provide a net gain in biodiversity. Policy ENV5 requires, where appropriate, proposals to include and implement a landscape scheme. Given I consider this can be conditioned, I find there would be no conflict with this policy. Policy ENV 6 of the SADP seeks the retention and protection of trees, woodlands and hedgerows. However, it also requires replacement hedgerows to be integrated in to development schemes. As I have already set out, I find this can be conditioned. As such, I find the development accords with the thrust of the policy which is focussed on trees, hedgerows and woodland implementation. Furthermore, the supporting text of the policy at 4.37 explains that the Council seek to retain hedgerows that are significant in terms of their amenity and landscape value. As I have stated, I consider the hedgerow affected by this scheme does not accord with that criteria.
22. Policy ENV 1 has also been cited on the decision notice. This relates to ecological networks. The Council state the site falls within the CEC ecological network, but have not advanced any further reasoning in respect of the network or which area it falls within. It has therefore not been determinative in my decision.
23. Separately, Policy PG6 of the CELPS is referred to in the reason for refusal. This Policy refers to other uses appropriate to a rural area. The Council have confirmed that the principle of Gypsy and Traveller accommodation on the site and the use of the land for this purpose is acceptable as it has been previously approved.³ The access would facilitate this use, the access is not a use in itself. As such, I find that there is no conflict with Policy PG6 in this particular case.

Drainage

24. The retrospective consent granted in 2020, permitted two caravans and a utility block for a single household served by a septic tank. The appellant states that the site is still occupied by the same household using the same septic tank, with no increase in the number of households. I have no reason to come to a different view on this. The utility block, as built, is in a similar position to that approved in 2020. This application is seeking to regularise the actual built position of the utility block.
25. Drainage conditions were attached to the 2020 approval. No details were requested for any foul drainage assessment. It did require details to be submitted on surface

³ Ref: 18/2413C

water drainage. The relevant conditions were discharged in 2021, with no issues raised with the site development scheme which set out the location of the septic tank and set out details of surface water drainage.

26. There is no evidence before me to suggest that foul drainage has been an issue on the site. Although the septic tank is shown incorrectly on the submitted block plan, the appellant has confirmed that it is in the same location as detailed in the application to discharge condition 6 of the previously approved scheme. That application explained that the septic tank's manhole cover is located on a section of block paving next to the mobile home. This condition was discharged. However, there is no plan before me showing the precise location of the septic tank. Nevertheless, the appeal scheme has not resulted in any change to the septic tank; no additional discharges into the foul system would result from this scheme; and the new access would not interfere with the septic tank. If the appeal were to be dismissed, the approved drainage system would remain in place. I thus give substantial weight to the previous permission and approved conditions discharge in that case.
27. I note that The Environment Agency have objected to the application on the grounds that the proposed development involves the use of a non-mains foul drainage. They considered insufficient information had been provided in relation to pollution risks to ground and surface waters and that the applicant had failed to show that disposal of foul effluent to the ground from the proposed package treatment plan would be effective at this location. However, from the evidence before me, including the previous permission, and because no changes are being made to foul drainage in this scheme, I do not find it necessary for the appellant to submit any further information on foul water drainage.
28. I also note that the Local Flood Risk Authority raised no objections subject to a condition requiring a detailed drainage strategy. However, following receipt of further information provided by the appellant, they considered the developed area of hardstanding falls below their threshold for comment and stated that they have no objections.
29. A grassed amenity area was proposed to the east of the site as part of the approved permission, this also acts as a drainage field. The Council have stated that the grassed area was not implemented and was instead laid to hardstanding. I am aware of a breach of conditions notice that has been served. I observed on my site visit that works were underway to reinstate the grassed area. Notwithstanding this, the grassed amenity area which acts as a drainage field can be secured through a plans and landscaping condition which could be enforced against.
30. Regarding surface water, the appellant states that the land drains towards the roadside ditch, which then drains east, following the gradient of the road. Whilst little may have changed to the existing drainage system within the site as a result of this scheme, the access point has introduced hard surfacing at a point where water may have drained into the roadside ditch. Given this, and that the access from the pitch onto Dragons Lane slopes down towards the road, surface water could run onto the highway. Thus, despite previous submissions on surface water related to the approved scheme, the access is a material change. Therefore, I do not consider it unreasonable to request details to be submitted again. The submission of such details can be secured by a condition.

31. For these reasons, I conclude that the development would provide suitable drainage and does not conflict with Policy SE12 of the CELPS and ENV 17 of the SADAP. Taken together, these seek to ensure development does not result in a harmful impact on surface water or groundwater.

Other Matters

32. In the submissions, reference is made to low level brick plinths sited directly adjacent to the highway and low level fencing. The appellant has said that the low level brick plinths have been removed. However, for certainty, a condition could be imposed requiring that these are removed.
33. I note issues over land ownership have been raised. Notwithstanding this, the pillars and low level fencing appear to be within the red line of the site location plan. Matters of land ownership are a private matter between the parties involved.
34. In the officer report when discussing the principle of development, conflict has been found with Policy HOU7 of the SADP. However, this has not been cited on the decision notice. Notwithstanding this, and given my findings above, there would be no conflict with the policy which seeks to ensure appropriate levels of essential utilities including appropriate landscaping.

Conditions

35. I have considered conditions suggested by the Council and appellant having regard to the tests in the Framework and the advice in the Planning Practice Guidance. Where necessary I have made changes to the wording of conditions in the interests of precision and clarity.
36. As the development has largely been carried out, the standard time limit condition is not required. A condition requiring the development to be carried out in accordance with approved plans is needed for the avoidance of doubt. An exception to this is the location of the septic tank and 0.6metre brick piers. For clarity, a condition requiring the submission of a plan showing the location of the septic tank is necessary.
37. A condition requiring the submission and implementation of hard and soft landscaping is necessary in the interests of the character and appearance of the area and to provide ecological mitigation against the loss of the hedgerow. As parts of the timber fencing were not present on site, I have included details to be submitted of the boundary treatments for certainty.
38. A condition is necessary requiring the removal of the low level fence and low level brick pillars in the interests of highway safety and character and appearance of the area.
39. In the interests of flood prevention and highway safety, a condition requiring details of surface water drainage is necessary.
40. Condition 2, 3,4 and 5 all have a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of these matters before the development takes place. The conditions ensure that the actions can be enforced against if the requirements are not met.

41. To ensure the site is safeguarded as use for Gypsy and Travellers, in the interests of certainty I have attached a condition ensuring the occupation of the site is limited to those meeting the planning definition of the term “gypsies and travellers”.
42. As no further caravans are proposed as part of this scheme, for certainty to ensure no additional caravans are sited above what was previously permitted, a condition is attached restricting the number of caravans that could be stationed at the site. Similarly, as this is a residential site, conditions are imposed which restrict the conduct of commercial activities, and the stationing, parking or storage of vehicles of over 3.5 tonnes.

Conclusion

43. For the reasons given above I consider that the appeal should be allowed.

T Bennett

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following drawings: Plan 1 Location Plan, Plan 2 Proposed Site Layout Plan, Plan 3 New access details, Plan 4 utility building plans and elevations and Plan 5 shed plans and elevations, except in respect of the location of the septic tank shown on Plan 2 Proposed Site Layout Plan and the 0.6m brick piers and low level wooden fence both shown on Plan 3.
- 2) Notwithstanding Condition No 1, a revised Plan 2 showing the location of the septic tank shall be submitted in writing to the Local Planning Authority within 3 months of the date of this permission. The approved location of the septic tank shall be retained in this position thereafter.
- 3) Within 3 months of the date of this permission, a scheme for the landscaping of the site shall be submitted in writing to the Local Planning Authority. The landscaping scheme shall include details of hard surfacing materials, boundary treatments, the gates, gate pillars and materials used, 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 program.

The approved landscaping works shall then be carried out in accordance with the following:

- a) All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of the development hereby approved.
 - b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428(1989) Code of Practice for General Landscape Operations (excluding hard surfaces).
 - c) All new tree plantings shall be positioned in accordance with the requirements of Table 3 of British Standard BS5837: 2005 Trees in Relation to Construction: Recommendations.
 - d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.
- 4) Within 3 months of the date of this permission, the low level wooden fence lining the access and low level brick pillars located directly adjacent to the highway shall be removed.

- 5) Within 3 months of the date of this permission, full details of the proposed surface water drainage from the site, including an implementation timetable, shall be submitted in writing to the Local Planning Authority. The approved details shall be implemented in accordance with the approved timetable and shall be retained thereafter.
- 6) 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 2024 (or its equivalent in replacement national policy).
- 7) There shall be no more than 1 pitch on the site, and 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, shall be stationed at any time, of which only 1 caravan shall be a static caravan.
- 8) No commercial activities shall take place on the land, including the storage of materials.
- 9) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.

****End of Conditions****