



Appeal Decision

Site visit made on 6 May 2025

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 July 2025

Appeal Ref: APP/A0665/W/25/3360657

Land at Junction of Welsh Road and Heath Lane, Welsh Road, Childer Thornton, Ellesmere Port

- 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 Michael McGinley and Others against the decision of Cheshire West & Chester Council.
 - The application Ref 24/02038/FUL, dated 1 August 2024, was refused by notice dated 29 November 2024.
 - The development proposed is described as "*the change of use of land to form a 8 pitch caravan site, each comprising a static caravan, a touring caravan and a brick built day room with associated parking and amenity space, to be occupied by Gypsies and Travellers, with the formation of a new access from Heath Lane, closing of an existing access on to Welsh Road (part retrospective)*".
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. At the time of my visit, fencing and areas of hardstanding had been installed on the site and a number of caravans were present. The appeal proposal is therefore partly retrospective in nature.

Main Issues

3. The main issues are:
 - (a) Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework ('the Framework') and development plan policy;
 - (b) The effect of the proposal on the openness of the Green Belt;
 - (c) The effect of the proposal on the character and appearance of the surrounding area;
 - (d) The effect of the proposal on protected species and biodiversity;
 - (e) Whether the proposal would have adequate accessibility to local services and facilities by walking and/or public transport;
 - (f) Whether the proposal would be served by a safe and suitable access; and

- (g) If the proposal 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

Inappropriate development in Green Belt

4. The revised Framework (December 2024) introduced a new category of 'grey belt' land. This is defined as "*land in the Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) in paragraph 143*". This definition excludes land where the application of policies referred to at footnote 7 of the Framework (other than Green Belt) would provide a strong reason for refusing permission. However, none of those footnote 7 policies apply here.
5. Whilst the appeal site is not previously developed land, the definition of grey belt also extends to land that does not strongly contribute to Green Belt purposes a), b), or d). In this regard, it is common ground that the site does not contribute to purpose d) 'to preserve the setting and special character of historic towns' as it does not fall within the setting of a historic town.
6. In terms of purpose b) 'to prevent neighbouring towns merging into one another', the appeal site is located in a gap between Eastham and Little Sutton that is approximately 1 mile across. Planning Practice Guidance ('PPG') states¹ that in order to make a strong contribution to this purpose, sites are likely to form "*a substantial part of a gap between towns*", and "*result in the loss of visual separation*". However, given the size of the appeal site relative to the gap between Eastham and Little Sutton, I do not consider that it forms a "*substantial*" part of this gap. Accordingly, the appeal site does not make a strong contribution to Green Belt purpose b).
7. In terms of purpose a), this is 'to check the unrestricted sprawl of large built-up areas'. PPG states that in order to make a strong contribution to this purpose, sites are likely to be "*free of existing development, and lack physical feature(s) in reasonable proximity that could restrict and contain development*". That is the case here. Moreover, PPG states that such sites are likely to be both "*adjacent or near to a large built up area*", and "*if developed, result in an incongruous pattern of development*". In this case, the appeal site is near to the edge of Little Sutton/Ellesmere Port to the south east, which is a large built up area. However, it is detached from the settlement edge and is largely surrounded by open countryside. In this regard, the proposal would be seen as a large island of development in an open rural landscape that would be poorly contained by existing physical features. This would result in an incongruous pattern of development, and it therefore follows that the site makes a strong contribution to Green Belt purpose a).
8. As the appeal site makes a strong contribution to this Green Belt purpose, it does not constitute grey belt land. Moreover, it would not meet any of the other exceptions to Green Belt policy listed at paragraph 154 of the Framework.

¹ Paragraph ID: 64-005-20250225

9. For the above reasons, I conclude that the proposal would be inappropriate development in the Green Belt, which Paragraph 153 of the Framework states is harmful by definition and should not be approved except in very special circumstances. The proposal would also be at odds with Policies STRAT 9 and SOC 4 Cheshire West and Chester Local Plan (Part One) (2015) in this regard.
10. It is argued that Policy SOC 4 is 'out of date' as it does not refer to grey belt land, and simply states that Gypsy and Traveller pitches should "*be located outside the Green Belt except in very special circumstances*". However, given that I have found the appeal site does not constitute grey belt land that omission has little bearing on the outcome of this appeal. Moreover, even if this policy were considered to be 'out of date' for the purposes of paragraph 11 of the Framework, Green Belt is a policy "*that protects areas or assets of particular importance*" for the purposes of paragraph 11 d) i. In the context of this appeal, I therefore attach full weight to Policy SOC 4.

Openness

11. The proposal would introduce new buildings, caravans, fencing, hardstanding, and domestic paraphernalia that would extend over a large area of previously open land. It would be visible in views along both the A550 and Heath Lane, from both the south and east, even if it were partially screened by new and existing landscaping. The proposal would therefore fail to preserve the openness of the Green Belt. In this regard, the Framework advises that openness is an essential characteristic of Green Belts.

Character and appearance

12. The appeal site is located on the western side of the A550 and consisted of open land before the development was partly implemented. The surrounding area is predominantly rural in nature and is characterised by agricultural fields bound by mature hedgerows. Whilst there are 2 large historic dwellings in generous plots immediately to the north of the site, these are set back from the road and are partly screened by mature trees and planting. The presence of these and other nearby properties, and of street furniture associated with the road, do not serve to urbanise the area to any significant degree.
13. The proposal would introduce new buildings and caravans onto the site, as well as associated vehicles, fencing, and domestic paraphernalia. These elements would extend along the A550 for around 100 metres, would have a strong urbanising effect on the site, and would significantly erode both its openness and rural character. In this regard, the proposal would appear at odds with its surroundings and would harm the rural character of the area. Whilst the finish of the buildings could be controlled by condition, that would not significantly alter the harm that would arise in my view.
14. The proposal would be in a prominent location and would be seen by a large number of passing motorists every year. In these views, the existing hedgerow along the site's eastern boundary would provide some visual screening, and this could be supplemented with additional planting. However, the amount of screening that would be provided would vary throughout the year. In this regard, it is likely that the proposed caravans and buildings would be at least partially visible, and the development would also be seen through the proposed access points. Moreover, the level change between the A550 and the appeal site is limited, and this would be unlikely to provide any significant

screening in my view. The proposal would also be visible to pedestrians walking along Heath Lane, particularly around the junction with the A550 from where its effect on the open countryside would be apparent.

15. It has been highlighted that the proposed access point and visibility splay would be likely to necessitate the removal of a significant section of hedgerow and could also have implications for 2 mature trees along the Heath Lane frontage. In this regard, it is unclear whether these trees are correctly plotted on Plan Ref 2405070-01 Rev P0, and this plan also implies the loss of a large section of mature hedgerow. The removal of a large section of hedgerow and/or loss of the mature trees would have a further harmful effect on the character and appearance of this part of Heath Lane, which is a quiet rural lane characterised by mature roadside hedgerows and trees.
16. Whilst it is argued that the fencing that has been installed on the site would qualify as permitted development, this appears to have been installed to facilitate the appeal proposal, which does require planning permission. In this regard, the fencing appears to follow the plot boundaries indicated on the Block Plan (Ref GP/01/24 Rev E). In any case, the effect of the fencing in isolation would be less significant than that of the entire appeal proposal, including the proposed buildings, caravans, and associated vehicles and activity.
17. For the above reasons, I conclude that the proposal would result in harm to the character and appearance of the surrounding area. It would therefore be contrary to Policies STRAT 9 and ENV 6 of the Cheshire West and Chester Local Plan (Part One) (2015), and Policies GBC 2 and DM 3 of the Cheshire West and Chester Local Plan (Part Two) (2019). These policies seek to ensure, amongst other things, that new development respects local character, protects visual amenity, and does not harm the character of the countryside.

Protected species and biodiversity

18. The boundaries of the appeal site comprise mature hedgerows and trees, which connect the site to nearby ponds, woodland, and other habitats in the vicinity. The Council's Biodiversity Team state that it is reasonably likely that protected species and priority habitats are present and would be affected by the proposal. In this regard, they highlight the potential for the development to affect great crested newts, badgers, bats, and nesting birds. Based on the information before me, the proposed access point and visibility splay onto Heath Lane would also be likely to necessitate the removal of a significant section of the boundary hedgerow, which is a priority habitat.
19. Policy DM 44 of the Cheshire West and Chester Local Plan (Part Two) states that where development is likely to have an impact on protected sites, protected/priority species, or priority habitats, it must be accompanied by an ecological assessment. However, no such ecological assessment has been submitted in support of the current appeal proposal. Moreover, Circular 06/2005 (which remains extant) states that it *"...is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision"* (Paragraph 99). The Circular further advises that surveys should only be required by condition in *"exceptional circumstances"*. British Standard BS 42020:2013 echoes this guidance and identifies 'exceptional circumstances' that may apply - none of which are

- relevant to this case. Accordingly, 'exceptional circumstances' do not exist here and dealing with this matter by condition would not be appropriate.
20. In the absence of an ecological assessment or any survey work, the effect of the development on protected species and habitats, and the ability to mitigate any harm, is unknown. Moreover, no reason is given for why this assessment work has not been undertaken.
21. Separately, Policy DM 44 of the Cheshire West and Chester Local Plan (Part Two) also states that "*development will be supported where there is no net loss of natural assets and, wherever possible, it delivers net gains within the borough*". It further requires that development "*identifies the net losses and gains for biodiversity/geodiversity, using a biodiversity metric calculation*". Policy DM 44 applies regardless of whether the development is subject to the national mandatory requirement for biodiversity net gain.
22. A Biodiversity Net Gain Assessment Report and associated Biodiversity Metric (Tunley Environmental, 2024) were submitted at application stage. However, these documents assess a different red line boundary and site area to the appeal site and fail to account for the proposed loss of hedgerow around the access point. In addition, an area of 'artificial unvegetated unsealed land' is identified which is not visible on any aerial image, and which if present, is likely to have arisen as a result of unauthorised development. Moreover, little justification is provided to substantiate how retained areas of grassland could be enhanced to a 'good' condition. Accordingly, this document does not correctly identify the baseline conditions, nor does it demonstrate that the development would be capable of resulting in "*no net loss of natural assets*". In these circumstances, it is unclear whether this can be achieved, and I therefore do not consider that this matter can be dealt with by condition.
23. For the above reasons, there is insufficient information before me to conclude that the proposal would not significantly harm protected species within the site or that it would result in no net loss of natural assets. The proposal would therefore be contrary to Policy ENV 4 of the Cheshire West and Chester Local Plan (Part One) (2015), and Policies DM 44 and DM45 of the Cheshire West and Chester Local Plan (Part Two). These policies seek to ensure, amongst other things, that development results in no net loss of natural assets, that biodiversity is safeguarded and enhanced, and that existing trees and hedgerows are conserved wherever possible.

Accessibility to services and facilities

24. The appeal site is located on the edge of the village of Childer Thornton, which is identified as a local service centre in Policy R1 of the Cheshire West and Chester Local Plan (Part Two) (2019). The village contains some services and facilities, including a primary school, a play area, a pub, bus stops and a small convenience store attached to a petrol filling station. The bus stops are served by relatively frequent services to both Liverpool, Chester, and Ellesmere Port. However, the convenience store serves only a limited range of goods and mainly caters to passing motorists. A wider range of facilities are located in both Little Sutton and Ellesmere Port, approximately 1 mile to the south east. Hooton Railway Station is also located around 1 mile to the north west.
25. The facilities within Childer Thornton are around 700-800 metres from the appeal site by foot. The most direct route to these facilities would include a

short section of Heath Lane and Orchard Lane that is unlit and only partly served by a narrow footway. However, these are lightly trafficked lanes that are subject to a 20 mph speed limit, and the footway would provide some refuge for pedestrians. I further note that the remainder of the route along Orchard Lane and School Lane is lit and served in the main by adequate footways. Whilst this route would involve crossing the A550, which is a busy and fast moving road, I was able to achieve this without difficulty on my site visit and there is good visibility in both directions. In my view, this would not be an unsafe route for pedestrians, nor would it be likely to unduly deter journeys to Childer Thornton.

26. Paragraph 110 of 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 only a relatively short distance from nearby services and facilities, and public transport connections, considering that it is a rural Gypsy and Traveller site. In this regard and given the site's position on the edge of Childer Thornton, I do not consider that the site is 'away from existing settlements' for the purposes of paragraph 26 of Planning Policy for Traveller Sites ('PPTS').
27. For the above reasons, I conclude that the proposal would have adequate accessibility to local services and facilities by walking and/or public transport. It would therefore accord with Policies STRAT 9 and SOC 4 of the Cheshire West and Chester Local Plan (Part One) (2015) in this regard.

Access

28. The access route between the proposed pitches and Heath Lane to the south would cross land that is in a separate ownership. In addition, another landowner controls part of the proposed visibility splay. At present, it is unclear whether the agreement of either of these landowners has been secured to deliver the proposed access route and visibility splay. However, one landowner is a relative of the Appellant, and the other has made a representation to this Appeal that does not rule out facilitating the visibility splay. In these circumstances, I consider that a Grampian condition would be an appropriate way to address this matter. In this regard, whilst PPG states² that a Grampian condition should "*not be used where there are no prospects at all of the action being performed within the time-limit imposed by the condition*" (my emphasis), I do not consider that to be the case here.
29. For the above reasons, I conclude that the development would be capable of being served by a safe and suitable access. It would therefore accord with Policy STRAT 10 of the Cheshire West and Chester Local Plan (Part One) (2015) and Policy T 5 of the Cheshire West and Chester Local Plan (Part Two) (2019). These policies seek to ensure, amongst other things, that new development makes appropriate provision for access.

Other considerations

Need for pitches

30. The Council's most recent assessment of the need for new pitches is the Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (2018), which was undertaken jointly with several neighbouring districts. That study,

² Paragraph ID: 21a-009-20140306

which is now of some age, found that there was a need for 21 additional pitches in Cheshire West and Chester to 2030. However, it also found a further need of 56 pitches for households that did not meet the then planning definition of 'Gypsies and Travellers', and a need of 54 pitches for households that may have met the then planning definition.

31. Importantly, the planning definition of 'Gypsies and Travellers' has changed since the 2018 study was undertaken. The current PPTS definition now includes those who have ceased to travel temporarily or permanently due to their family's or dependants' educational or health needs, or old age. Accordingly, the need for Gypsy and Traveller pitches against the current definition is likely to be significantly higher than the 21 identified in the 2018 study. In this regard, my attention has been drawn to a recent appeal decision³ that suggested 131 pitches would be a reasonable estimate of need in the period 2017-2030 (21+54+56) based on the 2018 study. Other recent appeal decisions⁴ have also concluded that the need is likely to be significantly higher than 21 pitches.
32. The Council acknowledges that there is a high probability that it is unable to demonstrate a 5-year supply of pitches, as is required by PPTS. Based on the evidence before me, I concur with that view. In addition, previous appeal decisions⁵ refer to an ongoing failure of policy to meet the need for Gypsy and Traveller pitches in the area. Overall, the inability to demonstrate a 5 year supply, and the failure to identify sites to meet the need for pitches, are material considerations that attract significant weight in favour of the proposal.

Alternative sites

33. In terms of alternative sites, there are currently no available allocations in Cheshire West and Chester, and the Council accepts that there are no other authorised sites that could accommodate the appeal proposal. Moreover, the emerging Local Plan update is at an early stage of preparation and so any new Gypsy and Traveller site allocations are likely to be some way off. In this regard, the lack of alternative sites to accommodate the appeal proposal is another factor to which I attach significant positive weight.

Personal circumstances

34. A number of children either currently live at the site or would move onto it were permission to be granted. The appellant states that a number of these children have been unable to access education due to their current living arrangements. One child also has particularly complex healthcare needs. The availability of a settled base from which to access educational facilities and care arrangements would clearly be in the best interests of these children, and I attach substantial weight to this matter. In addition, the Appellant states that some of the proposed occupants are currently living on unauthorised sites or in roadside locations. The lack of a settled base has resulted in poor living conditions and difficulty in accessing GP and dentist appointments. If the current occupiers were required to leave the site, then it is likely that they would also have to live in temporary unauthorised locations. In my view, significant weight should be attached to these other personal circumstances.

³ APP/A0665/C/23/3325120 & APP/A0665/C/23/3325122

⁴ APP/A0665/W/23/3330039, APP/A0665/W/22/3294710

⁵ APP/A0665/W/15/3129221, APP/A0665/W/16/3161027, APP/Q3115/C/19/3238398, APP/A0665/C/23/3325120 & APP/A0665/C/23/3325122

Other appeal decisions

35. A number of other appeal decisions⁶ have been drawn to my attention in both Cheshire West and Chester and elsewhere. However, those cases turned on the particular personal circumstances of those Appellants. Moreover, appeal Ref APP/Q3115/C/19/3238398 related to a site South Oxford and it is unclear whether the circumstances facing that authority are comparable to those here.

Closure of existing access onto the A550

36. It is argued that the closure of the existing access onto Welsh Road would be a significant benefit of the proposal. However, prior to the unauthorised works that have taken place, this was a field access that would have been used by agricultural vehicles on an occasional basis only. Accordingly, any highway safety benefit arising from the closure of this access would be modest, and I consider that only limited positive weight should be attached to this.

Intentional unauthorised development

37. A Written Ministerial Statement ('WMS') was made on 27 December 2015 which confirmed that 'intentional unauthorised development' is a material consideration in the determination of planning applications and appeals. The WMS is still extant. In this regard, the site has been partly developed and occupied in the knowledge that planning permission did not exist. In view of the WMS, this is a material consideration that weighs against the granting of planning permission. In the circumstances of this appeal, and given the lack of available alternative sites, I attach limited negative weight to the intentional unauthorised development that has taken place.

Other Matter

38. It is asserted that the Council has taken an inconsistent approach between this site and an adjacent Gypsy and Traveller site proposal. However, any concerns regarding due process and consistency at planning application stage fall outside of the remit of this decision. In any case, I have determined the appeal on its own merits having regard to the evidence before me and my observations on site.

Planning Balance

39. The proposal would constitute inappropriate development in the Green Belt and would reduce openness in this location. The Framework states that substantial weight should be given to any harm to the Green Belt. The proposal would also result in harm to the character and appearance of the surrounding area, and I attach negative weight to the intentional unauthorised development that has taken place.
40. Set against this are the factors described above, including the best interests of the children and the other personal circumstances of the proposed occupiers. There is also a significant unmet need for Gypsy and Traveller pitches in the area, a lack of a 5 year supply, and an absence of alternative sites. Together, these considerations carry substantial weight in favour of the proposal.
41. However, insufficient information has been submitted to demonstrate that the proposal would not significantly harm protected species or that it would result

⁶ APP/Q3115/C/19/3238398, APP/A0665/C/10/2135934

in no net loss of natural assets. Moreover, the full extent of hedgerow and tree loss that would result from the proposed access point and visibility splay is also unclear.

42. In the circumstances of this appeal, I am therefore unable to conclude that the other considerations clearly outweigh the harm in this case as the full extent of that harm is unknown. Consequently, the very special circumstances necessary to justify the development do not exist. The proposal would therefore be contrary to Policies STRAT 9 and SOC 4 of the Cheshire West and Chester Local Plan (Part One), and guidance contained in PPTS and the Framework relating to Green Belts.
43. I am mindful of the Appellants' personal circumstances and the effect that dismissing this appeal is likely to have. I have also carefully considered the Human Rights issues that are pertinent to the appeal.
44. I have also had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment, and victimisation, and to advance equality of opportunity. However, the protection of the public interest cannot be achieved by means which are less interfering of the Appellants' rights and I consider that dismissing the appeal is both proportionate and necessary in this case.

Conclusion

45. For the reasons given above I conclude that the appeal should be dismissed.

Thomas Hatfield

INSPECTOR