



Appeal Decision

Hearing Held on 19 August 2025

Site visit made on 19 August 2025

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 September 2025

Appeal Ref: APP/A0665/W/24/3353291

Saint Anthonys Park, Heath Lane, Childer Thornton, Ellesmere Port, CH66 7AB

- 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 S O'Doherty against the decision of Cheshire West & Chester Council.
 - The application Ref 24/01303/FUL, dated 6 May 2024, was refused by notice dated 13 September 2024.
 - The development proposed is described as "*material change of use of land for stationing of caravans for residential occupation by travellers with associated development (new access, utility blocks, septic tanks, hard standing) – part retrospective*".
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Decision

1. The appeal is allowed and planning permission is granted for a change of use of land for stationing of caravans for residential occupation by Travellers with associated development (new access, utility blocks, septic tanks, hard standing) – part retrospective at Saint Anthonys Park, Heath Lane, Childer Thornton, Ellesmere Port, CH66 7AB in accordance with the terms of the application, Ref 24/01303/FUL, dated 6 May 2024, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. At the time of my site visit, the proposed access point, fencing, and areas of hardstanding had been installed on the site. A number of caravans were also present, albeit in a different location to that indicated on the submitted plans. The appeal proposal is therefore partly retrospective in nature.
3. The appeal site is adjacent to a larger site that was subject to a recent dismissed appeal¹ for 8 Gypsy and Traveller pitches. I also determined that appeal. Given the proximity of that site and its proposed use, the findings of that appeal decision are clearly relevant to the current proposal.

Application for Costs

4. An application for costs was made by Mr S O'Doherty against Cheshire West & Chester Council. This application is the subject of a separate decision.

¹ APP/A0665/W/25/3360657

Main Issues

5. 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; and
- (c) 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

- 6. The revised Framework (December 2024) introduced a new category of 'grey belt' land. This is defined as land in the Green Belt that does not "*strongly contribute*" to Green Belt purposes a), b), or d), as set out at paragraph 143 of the Framework. The definition of 'grey belt' is not restricted to brownfield land, and it can also apply to undeveloped land. Where the criteria at paragraph 155 of the Framework are met, the development of 'grey belt' land is not regarded as inappropriate development in the Green Belt.
- 7. It is common ground that the site does not contribute to Green Belt purpose d) 'to preserve the setting and special character of historic towns' as it does not fall within the setting of a historic town. Similarly, it is common ground that the site does not strongly contribute to Green Belt purpose b) 'to prevent neighbouring towns merging into one another'. In this regard, it does not form a substantial part of the gap between Eastham and Little Sutton and would not result in a significant loss of visual separation.
- 8. The recent dismissed appeal on the adjacent site found that it contributed strongly to Green Belt purpose a), which is 'to check the unrestricted sprawl of large built-up areas'. That decision refers to the Planning Practice Guidance ('PPG') which states that in order to make a strong contribution to purpose a), sites are likely to be "*free of existing development, and lack physical feature(s) in reasonable proximity that could restrict and contain development*". 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*".² The adjacent site was found to be near to the edge of Little Sutton/Ellesmere Port to the south east, which is a large built up area. Moreover, it was found to be poorly contained by existing physical features and to result in an island of development within an open agricultural landscape. Accordingly, it was considered to result in an incongruous pattern of development.
- 9. The current appeal site is notably smaller and less visually prominent than the adjacent site and only a single pitch is proposed. However, it forms part of the same wider field as the adjacent site and it shares many of the same characteristics, including its proximity to Little Sutton/Ellesmere Port, and being poorly contained by existing physical features. Moreover, if the current

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site were considered to constitute 'grey belt' land simply due to its smaller size, then that would likely encourage smaller parts of the previous proposal to come forward as individual pitches. Under such an approach, there is a prospect that the entire field could be developed over time in a piecemeal fashion.

10. The current appeal site is near to the edge of a large built up area, and prior to the unauthorised development that has taken place, it was free of existing development. It would also be seen as an island of development in an open rural landscape and lacks physical features that could restrict and contain development. 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).
11. As the appeal site makes a strong contribution to this Green Belt purpose, it does not constitute grey belt land. Moreover, the proposal would not meet any of the other exceptions to Green Belt policy listed at paragraph 154 of the Framework.
12. In the hearing, it was put to me that the sections of PPG relating to 'grey belt' are intended to apply mainly to Local Plans, and the assessment of much larger parcels of land. However, this section of PPG (entitled 'Assessing Green Belt to identify grey belt land') contains an introductory paragraph that states:

"This guidance is relevant to those authorities performing a review of Green Belt boundaries to meet housing or other development needs (either prior to or as part of the plan making process), those authorities otherwise required to determine whether land constitutes grey belt in decision making, and others seeking to identify grey belt land." (my emphasis)

Accordingly, this guidance is also intended to apply to the decision making process, including the determination of planning appeals.

13. 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'.

Openness

14. The proposal would introduce caravans, a day room, fencing, hardstanding and domestic paraphernalia that would extend over an area of previously open land. It would therefore result in some loss of Green Belt openness, as is acknowledged by the Appellant. However, the pitch would be modest in scale, and it would be well screened by existing hedgerows, which could be supplemented with further planting. Its visibility from along Heath Lane and the A550 would also be limited and highly localised. In this regard, the proposal would be located in a discreet corner of the wider field.

Notwithstanding this, the proposal would encroach onto previously undeveloped land and would therefore fail to preserve the openness of the Green Belt. The Framework advises that openness is an essential characteristic of Green Belts.

Other considerations

Need for pitches

15. The most recent assessment of the need for new pitches in the Borough is the Gypsy, Traveller and Travelling Showpeople Accommodation Assessment published in 2018 ('the 2018 study'), which was undertaken jointly with neighbouring districts. That study is now of some age, and it is common ground between the Council and the Appellant that it is out of date. Whilst a new study has been commissioned to inform the emerging Local Plan, that is not expected to be published until later this year. Accordingly, the 2018 study remains the most up-to-date assessment of need that is currently available.
16. The 2018 Study found that there was a need for 21 additional pitches in Cheshire West and Chester to 2030. However, it also found that a further 56 pitches were needed for households that did not meet the then planning definition of 'Gypsies and Travellers', and a further 54 pitches for households that may have met the then planning definition. Importantly, the planning definition of 'Gypsies and Travellers' has changed since the 2018 study was undertaken. The current 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 pitches 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+56+54) based on the 2018 study. At the hearing, the Council stated that it couldn't disagree with the logic of that approach.
17. Whilst the precise number of pitches needed in the Borough will be established by the forthcoming study, it is clear from the evidence before me that this need is significantly higher than the 21 pitches identified in the 2018 study. In this regard, I concur that a need of 131 pitches is a reasonable estimate of need based on the findings of the 2018 study. This is far in excess of the number of pitches delivered in the Borough since 2018.
18. 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 Planning Policy for Traveller Sites ('PPTS'). I concur with that view. This is a material consideration that weighs significantly in favour of the appeal proposal.

Policy failure

19. My attention has been drawn to a number of appeal decisions that have considered whether there has been a history of policy failure in the Borough in relation to Gypsy and Traveller site provision. In this regard, a recent appeal decision⁴ dating to April 2024 found that the Council's record in recent years did in fact constitute a failure of policy. That Inspector stated that since the Lisa Smith judgement⁵ in late 2022 it has been clear that the needs of Gypsies and Travellers who previously did not meet the planning definition would need to be addressed. That has particular implications here given the 2018 study's findings in relation to need arising from households that either did not meet, or may not have met, the previous planning definition.

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

⁴ APP/A0665/C/23/3325120 & APP/A0665/C/23/3325122

⁵ Lisa Smith v Secretary of State for Levelling Up, Communities and Housing [2022] EWCA Civ 1391

20. Whilst this need for additional pitches has been apparent since 2022, the Council has only recently commissioned an assessment to replace the now out-of-date 2018 study. It is also in the early stages of preparing a new Local Plan. Whilst I acknowledge that Plan preparation is a complex and time-consuming process, the Council has sought to rely solely on windfalls for a number of years now, many of which have come forward through the appeal process. Moreover, the earliest date at which the Local Plan is likely to be adopted is late 2027, which means that this situation will persist for at least another 2 years, and possibly much longer. Moreover, the Council stated that it intends to require larger housing allocations in the new Local Plan to provide Gypsy and Traveller pitches. However, that approach is likely to further delay the provision of new sites as large housing allocations typically have significant lead in times and are built out over several years.
21. Taking these matters together, it is difficult to disagree with the previous Inspector that there has been a record of policy failure in the Borough. Whilst another appeal decision⁶ has been drawn to my attention dating to July 2024 that did not find a failure of policy, it is unclear what evidence was put before that Inspector. In this regard, the section of that decision relating to policy failure is brief, which implies that limited evidence was presented in support of that contention. That is not the case here.
22. The failure of policy in relation to the provision of Gypsy and Traveller sites is another matter which attracts significant weight in favour of the appeal proposal.

Alternative sites

23. It is common ground between the Council and the Appellant that there are currently no suitable alternative sites in Cheshire West and Chester that could accommodate the appeal proposal. As set out above, there is also a significant shortfall of pitches in the Borough. 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 weight.

Personal circumstances

24. A number of children who currently live at the site attend nearby primary and secondary schools. Supporting letters from those schools indicate that they are settled and making good progress in their learning. The availability of a settled base from which to access schooling is clearly in the best interests of these children. Were the Appellant and his family required to leave the site, then it is likely they would have to live in temporary or unauthorised locations. Given the lack of alternative sites in the Borough, it is also likely that they would have to seek accommodation elsewhere. This would inevitably disrupt the schooling of the children and could significantly harm their education. I attach substantial weight to the best interests of the children in this case.
25. Prior to moving on to the appeal site, the Appellant and his family lived in a temporary location that lacked basic facilities. As set out above, were the family required to leave the appeal site then it is likely that they would have to

⁶ APP/A0665/C/22/3307792

live either in temporary or unauthorised (including roadside) locations. This would result in poor living conditions and difficulty in accessing GP and other medical appointments. This is of particular relevance in this case as the Appellant's wife is currently expecting a baby. In my view, significant weight should be attached to these other personal circumstances.

Intentional unauthorised development

26. 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. This WMS is still extant. In this regard, the site has been 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. However, the Appellant has only partly implemented the proposal, and this breach would therefore be readily reversible. Moreover, there are no alternative sites available in the Borough, and an application for planning permission was made promptly after the breach occurred. In these circumstances, I attach only limited negative weight to the intentional unauthorised development that has taken place.
27. The wider field that encompasses the appeal site is subject to a High Court injunction that prohibits any further development from taking place. In this regard, it was alleged at the hearing that works have been undertaken in breach of this injunction. However, even if that were the case, I consider that this matter would at most attract moderate negative weight. That would not be sufficient for me to reach a different decision regarding the outcome of this appeal.

Other Matters

28. The recent appeal decision at the adjacent site found that it had reasonable accessibility to services and facilities and that the presence of the A550 would not result in an unsafe route for pedestrians. It also found that the site is not 'away from existing settlements' for the purposes of PPTS paragraph 26. These findings apply equally to the current appeal site.
29. The appeal decision at the adjacent site was dismissed, in part, due to the lack of an ecological assessment or any ecological survey work. In this regard, the Council's Biodiversity Team objected to that development and stated that it was reasonably likely that protected species and priority habitats would be affected. However, the Council do not object to the current appeal proposal on ecology grounds, and its Biodiversity Team state that this matter is capable of being addressed by condition. In this regard, the current appeal proposal is significantly smaller in size and proposes only limited hedgerow removal, which is capable of being compensated for within the site.
30. The current appeal proposal is relatively small, and it occupies a discreet part of the wider field. It is located away from the A550, is well screened by boundary hedgerows, and additional screening could be secured by condition. Whilst around 5 metres of hedgerow fronting onto Heath Lane have been removed, the visual impact of this is limited and highly localised. Accordingly, I do not consider that the development would result in significant harm to the character and appearance of the area.

31. The appeal site is located approximately 80 metres to the west of the Grade II listed White Lodge. This is a Victorian former gate lodge positioned on the other side of the A550 that is finished in white render. It is an attractive characterful building with steep cruciform roofs, shaped purple slating, ornate timber finials, and a central chimney. Its significance derives primarily from its architectural interest and its historic association with Thornton Lodge. Thornton Lodge itself is also Grade II listed and is located further to the east. It is a 1840s lodge with attractive period detailing and prominent chimneys, and its significance derives mainly from its architectural interest. It is largely screened in public views by high boundary walls, trees and intervening buildings.
32. Due to the presence of intervening hedgerows and trees there is only a limited visual relationship between the appeal site and either White Lodge or Thornton Lodge. The A550 also acts as a strong visual barrier separating the listed buildings from the appeal site. In my view, the development would not harm views of, or an understanding of, the significance of either listed building. Accordingly, there would be no harm to their respective settings.
33. It is asserted that the appeal site may constitute 'best and most versatile' agricultural land. However, even if that were the case, only a very small area of arable land would be lost. Accordingly, this matter would only attract limited negative weight, which would not be sufficient to alter the outcome of this appeal.
34. It is also asserted that the development has negatively affected views across the site from neighbouring properties. However, a change of view from a private window is not in itself regarded as a planning consideration.

Planning Balance

35. The proposal constitutes 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. I also attach limited negative weight to the intentional unauthorised development that has taken place and to the removal of part of the hedgerow fronting Heath Lane.
36. Set against this are the best interests of the children to which I attach substantial weight, and the other personal circumstances to which I attach significant weight. The unmet need for Gypsy and Traveller sites, a lack of alternative sites, and a history of policy failure also attract significant weight in favour of the appeal proposal. Moreover, the site is in a relatively accessible location for a rural Gypsy and Traveller site.
37. When taken together, these other considerations clearly outweigh the harm to the Green Belt, the minor loss of hedgerow, and the intentional unauthorised development that has taken place. I therefore consider that very special circumstances exist to justify the granting of planning permission. The proposal would therefore accord with Policy SOC 4 of the Cheshire West and Chester Local Plan (Part One), and guidance contained in PPTS and the Framework relating to Green Belts. Whilst there would be some conflict with Policy STRAT 9 of the Local Plan (Part One), that conflict is outweighed by the other considerations in this case.

Conditions

38. The Council suggested a number of conditions, some of which I have edited for clarity and enforceability. I have imposed a condition that requires the development to accord with the approved plans, which is necessary in the interest of certainty. A condition restricting the occupancy of the site to the Appellant and his family is necessary given the weight I have attached to personal circumstances in this case. Further conditions restricting the number of caravans that can be stationed at the site, restricting commercial activities and vehicles, and requiring the submission of a Site Development Scheme, are necessary in order to protect the character and appearance of the area and to provide ecological mitigation.
39. During the hearing, the Appellant suggested that the location of the proposed hardstanding and caravans could be relocated from the south west corner to the north west corner of the site. However, the Council objected to this proposed change and there would be no opportunity for interested parties to comment on this. Moreover, I note that the south west corner is the most discreet and well screened part of the site. Accordingly, I do not consider that a condition to allow for such a change would be appropriate here.
40. A condition that would make the permission temporary for a period of 5 years was also discussed at the hearing. However, I consider that the circumstances in this case, when taken together, justify a permanent permission.

Conclusion

41. 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 be carried out in accordance with the following approved plans: Site Location Plan; Proposed Site Plan, Day Room and Fencing Details Rev A.
- 2) The development hereby permitted shall be occupied only by Mr and Mrs O'Doherty and their resident dependants. When the pitch ceases to be occupied by those named persons the use hereby permitted shall cease and all caravans, materials and equipment brought on to the premises in connection with the use shall be removed.
- 3) No more than 3 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 static caravans) shall be stationed on the site at any time.
- 4) No more than one commercial vehicle shall be kept on the land for use by occupiers of the Gypsy and Traveller pitch hereby permitted.
- 5) No commercial activities shall take place on the land, including the storage of materials.
- 6) The use hereby permitted shall cease and all caravans, structures, equipment, and materials brought onto the land for the purposes of the use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to v) below:
 - i) Within 3 months of the date of this decision a Site Development Scheme for the site ('the SDS') shall have been submitted for the written approval of the Local Planning Authority and the scheme shall include a timetable for its implementation. The scheme shall include the following details:
 - External lighting of the site;
 - Proposed and existing electricity generators within the site;
 - Tree, hedge and shrub planting in order to provide screening and ecological mitigation, including details of species, plant sizes and proposed numbers and densities. The planting shall take place in the first available planting season in accordance with the approved details. Thereafter, any trees, shrubs, plants or hedges planted in accordance with the approved scheme which are removed, die, or become diseased or seriously damaged within 5 years of completion of the approved scheme shall be replaced within the next planting season by trees, shrubs or hedges of a similar size and species to that originally approved;
 - Notwithstanding Condition 1, details of the proposed boundary treatments; and
 - Details of secure storage for cycles.
 - ii) If within 11 months of the date of this decision the Local Planning Authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted SDS shall have been approved by the Secretary of State.

- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved SDS specified in this condition, that scheme shall thereafter be retained and maintained as approved.
- v) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

APPEARANCES

FOR THE APPELLANT:

Alison Heine BSc MSc	Planning Consultant
Simon O'Doherty	Appellant
Santana O'Doherty	

FOR THE LOCAL PLANNING AUTHORITY:

Bethan Armstrong MRTPI	Cheshire West and Chester Council
Edward Bannister MRTPI	Cheshire West and Chester Council
Gill Smith MRTPI	Cheshire West and Chester Council

INTERESTED PERSONS:

Dr Simon Oliver	Hooton and District Residents Association
Sion Roberts	Hooton and District Residents Association
Les Deegan	Hooton and District Residents Association
Mark Turner	Solicitor for Hooton and District Residents Association
Rosie Cooper	Local resident
Philip Jarvis-Hughes	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Supporting letters from 2 local schools