

Application No: 15/5579C

Location: Land on the south side of Dragons Lane, Moston, Sandbach, Cheshire, CW11 3QB

Proposal: Removal of condition 3 on application 12/0971C to make permission permanent and remove limitation on occupancy to named persons

Applicant: Mr Martin Smith

Expiry Date: 04-Feb-2016

## SUMMARY

Having regard to the rural location of the site, the distance from facilities and the absence of public transport the site is not considered to be in a sustainable location. This would have some adverse implications in terms of use of natural resources and movement towards a low carbon economy. In addition, there will be a limited adverse impact upon the character and appearance of this rural area to the same extent as there is for the existing development. The impacts from this proposal will of course be permanent. There is therefore conflict with the environmental role of sustainable development as set out in the Framework.

The Inspector on the original application on this site found that the identified harm must be balanced against the substantial current need for gypsy and traveller pitches in Cheshire East and the lack of alternative accommodation available to the appellant and his family. Due to the fact that it is likely that new pitches will become available through the development plan process, the Inspector considered that permission for a temporary period of five years was appropriate. The temporary permission was granted in February 2014 and runs until February 2019. The permission therefore still has over half its time to run, and will continue to provide the Council with reasonable time to still deliver site allocations through the development plan process. It is therefore considered that the timescale for the temporary permission should remain, and that a permanent permission is not justified at this time.

Turning to the occupancy of the site being restricted to the identified family members; the Inspector stated that the temporary period of 5 years would cater for the appellant's short term need and provide the Council reasonable time to deliver site allocations. However, in the Inspector's decision letter under the heading "*Need & Personal Circumstances*", all that is said about the appellant's needs is "*It is clear that, as a gypsy, the appellant is disadvantaged by the unmet need and that significant weight should be attached to the accommodation needs of the appellant and his family.*"

Furthermore, when considering the location of the site, the Inspector noted, *“Although it was claimed at the Inquiry that members of the family had a need for regular medical attention, no evidence of substance was provided to substantiate this or to indicate that the appellant’s family has any specific need to be accommodated on the appeal site specifically to access health, educational or other services, although at the time of the Hearing the appellant’s son and daughter-in-law were expecting the birth of their first child.”*

There was little or no evidence presented at the appeal to show a specific need for the applicant to be located on the application site, and therefore it is considered that less weight should be afforded to the personal needs of the applicant compared to the significant unmet need in general for gypsy and traveller sites within the Borough. These circumstances could therefore apply to any gypsy or traveller and not just the applicant and his family. Indeed, the Inspector on the adjacent site concluded along similar lines, the general need outweighed the harm to the character and appearance of the area and the unsustainable location, and the appellant’s needs in that case just added more weight in favour of the proposal. In summary, it is not considered to be the personal circumstances of the applicant that justify the granting of a temporary permission in this case. It is therefore considered that the condition 3 should be varied to allow occupation of the site by any gypsy / traveller.

### **SUMMARY RECOMMENDATION**

Temporary approval subject to conditions

### **REASON FOR REPORT**

The proposal was called to committee by Cllr Wray, the local ward member for the following reasons:

- 1. At the request of Moston Parish Council because of considerable public interest.*
- 2. The conditions that were applied at the time are still relevant today and there is no cogent reason to alter them.*

### **PROPOSAL**

The application seeks to remove Condition 3 on Application 12/0971C which stated:

*The use hereby permitted shall be carried on only by the following: Martin and Martina Smith; James Dean and Scarlet Smith; Emmanuel Smith; and Violet and Charlene Smith, and their respective resident dependants, and shall be for a limited period being the period of 5 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.*

The application therefore seeks to make the permission permanent and allow occupation by any gypsy / travellers, not just those listed in the condition.

## **SITE DESCRIPTION**

The application site is situated wholly within the open countryside as defined by Policy PS8 (Open Countryside) of the Congleton Borough Local Plan 2005. The site comprises an area of hardstanding upon which there are four gypsy pitches with associated caravans and vehicles.

## **RELEVANT HISTORY**

12/0971C – The use of land for the stationing of caravans for residential purposes for 4 no. gypsy pitches together with the formation of additional hard standing and utility/ dayrooms ancillary to that use – Refused 19.06.2012, Appeal allowed 13.02.2014

## **NATIONAL & LOCAL POLICY**

### **National Policy**

The National Planning Policy Framework (the Framework) establishes a presumption in favour of sustainable development. The Framework sets out that there are three dimensions to sustainable development: economic, social and environmental. These roles should not be undertaken in isolation, because they are mutually dependent.

Planning Policy for Traveller Sites (PPTS) 2015 sets out the Government's planning policy for traveller sites. It should be read in conjunction with the Framework. The overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.

### **Development Plan:**

The Development Plan for this area is the Congleton Borough Local Plan First Review 2005, which allocates the whole site as open countryside

The relevant Saved Policies are:

- GR1 (New Development)
- GR2 (Design)
- GR6 (Amenity and Health)
- GR9 (Accessibility, Servicing and Parking Provision)
- GR17 (Car Parking)
- GR19 (Infrastructure)
- GR20 (Public Utilities)
- PS8 (Open Countryside)
- H6 (Residential Development in the Open Countryside and the Green Belt)
- H7 (Residential Caravans and Mobile Homes)
- H8 (Gypsy Caravan Sites)

### **Cheshire East Local Plan Strategy – Proposed Changes Version (CELP)**

The following are considered relevant material considerations as indications of the emerging strategy:

SD1 Sustainable Development in Cheshire East  
SD2 Sustainable Development Principles  
PG5 Open Countryside  
SC7 Gypsies and Travellers and Travelling Showpeople

### **Other relevant documents**

Cheshire Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (March 2014)

Cheshire East Council Gypsy, Traveller and Travelling Showpeople Site Identification Study (April 2014)

## **CONSULTATIONS**

**Head of Strategic Infrastructure** - Comments not received at time of report preparation

**Brine Board** – No comments to make

**Moston Parish Council** – Object to the proposal on the following grounds:

This application seeks to remove a condition imposed less than 2 years ago by The Planning Inspectorate, an executive agency sponsored by The Dept. for Communities and Local Government. Moston Parish Council is not convinced such a condition decision should be removed by a local authority.

## **REPRESENTATIONS**

15 letters of representation have been received objecting to the proposal on the following grounds:

- Peter Brett report reconfirmed the unsuitability of this site for development
- Would add permanent addition to highways safety problem
- Sites should be allocated through local plan process
- Permanent loss of greenfield site
- Permanent harm to character and appearance of the area
- Too early to make permanent
- No change in personal circumstances outlined which would justify any removal of the prescribed limitation of occupancy
- No justification for permanent permission
- If pitches not needed, land should be restored
- Health & safety risk from gas pipeline

A letter from Fiona Bruce MP has also been received requesting that the following concerns raised by Mottram Parish Council are taken into account:

- Land has been consistently said to be unsustainable for
- Temporary permission granted on basis that it was a family site
- Site is still being developed and changes are being asked for less than 2 years into 5 year permission
- Recent application for permanent permission on adjacent site was not granted.

## **APPLICANTS SUBMISSION**

A statement has been submitted on behalf of the applicant, which summarises how the proposal satisfies relevant planning policies.

## **APPRAISAL**

The key issue in the determination of this application is whether the condition restricting the occupancy of the pitches and the duration of the permission is reasonable or necessary in the interests of the following matters:

- (a) Whether the site is in an appropriate location for the use proposed having particular regard to accessibility to services and facilities as well as other sustainability considerations referred to in the Local Plan and Planning Policy for Traveller Sites;
- (b) The effect of the proposed development on the character and appearance of the area;
- (c) Whether there is any harm and conflict with policy, there are material considerations which outweigh any identified harm and conflict with policy.

## **ENVIRONMENTAL SUSTAINABILITY**

### **Character and appearance**

There is a very strict limitation on new traveller site development in the open countryside that is away from existing settlements identified in Policy H of the PPTS. This policy states local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate the nearest settled community, and avoid placing undue pressure on the local infrastructure.

In his decision letter, when granting the original permission on this site, the Inspector identified *“ the introduction of 4 residential pitches would introduce development outside areas allocated in the development plan, contrary to PPTS paragraph 23 and undermining the effectiveness of policies aimed at protecting the Countryside”*.

Limited harm to the character and appearance of the countryside has resulted from the presence of the four pitches, which would remain in the event that the permission was made permanent. There would therefore still be some conflict with local plan policies H8, GR1 and GR2 of the local plan and national policy in the PPTS and NPPF. Given the nature of Moston Green as a dispersed settlement of individual and small groups of dwellings, the proposed development would form another small group of dwellings which would not dominate the settled community. This approach and identification of harm to the character and appearance of the countryside is consistent with previous Inspectors who have considered previous applications on this field. There would not be any further harm to the character and appearance of the area if the site was occupied by any gypsy or traveller rather than those named in condition 3.

### **Accessibility**

Policy H8 of the local plan set out criteria which proposals for gypsy caravan sites are expected to comply with. One of these is that, wherever possible, such sites should be within 1.6 kilometres of existing local shops, community facilities, a primary school and public transport facilities. The more recent PPTS does not provide any further guidance on acceptable distances between traveller sites and local facilities

The Inspector on this site and the Inspector who considered the appeal on the adjacent site both acknowledged that policy H8 in the local plan is consistent with the Framework and the PPTS. Both Inspectors also identified that most facilities are beyond the 1.6kms specified in the local plan, that most journeys to and from the site would be by private car, but that these journeys would be relatively short and limited in number. The current proposal would therefore conflict with the requirements of policy H8 of the local plan. It would not however be significantly affected, to a greater or lesser degree, by family members (as referred to in the condition) or non-family members.

### **Amenity**

No significant impact upon the living conditions of neighbours were identified at the time of the previous appeal, and no further amenity issues are raised with this proposal. The development is therefore considered to comply with policy GR6 of the local plan.

### **Highways**

The Head of Strategic Infrastructure (HSI) raised no objections to the original proposal. The Inspector was also satisfied that access and parking arrangements would be adequate and additional traffic generated by the proposed use would not result in any significant harm in terms of highway safety and traffic generation, in accordance with policies GR9 and GR17 of the local plan. Comments are awaited from the HSI on the current proposal; however, there would not be any additional traffic generation arising from a permanent permission or from non-family members being based at the site. No highways issues are therefore anticipated, but further clarification will be reported as an update.

### **SOCIAL SUSTAINABILITY**

The PPTS makes it clear that sustainability is important and should not only be considered in terms of transport mode and distance from services. But other factors such as economic and social considerations are important material considerations. It is considered that authorised sites assist in the promotion of peaceful and integrated co-existence between the site and the local community. A settled base ensures easier access to a GP and other health services and that any children are able to attend school on a regular basis. In addition, a settled base can result in a reduction in the need for long distance travelling and the possible environmental damage caused by unauthorised encampments. Furthermore, the application site is not located in an area at high risk of flooding. These are all benefits to be considered in the round when considering issues of sustainability.

### **Need**

The PPTS requires local authorities to identify and update annually, a supply of deliverable sites sufficient to provide five years worth of sites for gypsies, travellers and travelling showpeople against their locally set targets, and identify a supply of specific, developable sites or broad locations for growth for years six to ten and, where possible, for years 11-15.

In 2013 Opinion Research Services (ORS) was commissioned by the local authorities of Cheshire to undertake a Gypsy, Traveller and Travelling showpeople Accommodation

Assessment (GTTSA). The local authorities involved were: Cheshire West & Chester, Cheshire East, Halton and Warrington. Prior to this the last Gypsy and Traveller Accommodation and Related Services Assessment was published in 2007.

The study provides an evidence base to enable the Councils to comply with their requirements towards gypsies, travellers and travelling showpeople under the Housing Act 2004, the National Planning Policy Framework 2012 and Planning Policy for Traveller Sites 2015. It provides up-to-date evidence about the accommodation needs of gypsies, travellers and travelling showpeople in the study area up to 2028.

In terms of future need within Cheshire East, an extra provision totalling 69 pitches is required to 2028. Over 5 year periods, this translates to 32 pitches between 2013-2018, 17 pitches between 2018-2023 and 20 pitches between 2023-2028. There was also a recommendation within the GTTSA that the Council provide a transit site of between 5 and 10 pitches in order to address unauthorised encampments.

In June 2015, the Council granted approval for an additional 24 permanent pitches at Three Oaks Caravan Park, Booth Lane, Moston, which does go some way towards meeting the first five year requirement to 2018. This permission has been implemented, but the pitches have not been provided to date. Additionally a transit site comprising 9 pitches and a warden's pitch was granted approval at Cledford Lane in Middlewich in May 2015. This permission has not been implemented. It is however clear that the Council is taking steps towards addressing the need for additional traveller pitches within the Borough.

### **Site Identification Study**

Peter Brett Associates were appointed by the Council to carry out research to identify gypsy, traveller and travelling showpersons sites across the Borough. Sites have been assessed to determine if they are suitable, available and achievable. It is intended that the results of the study will be used to inform the development of relevant policies and allocations and to guide the consideration of planning applications.

Potential sites were established from a review of information relating to: a call for sites; existing authorised sites subject to full, temporary or personal consents or certificates of lawful use; existing unauthorised and tolerated sites and encampments; other sites owned by gypsies, travellers and travelling showpeople; surplus Council owned land; sites from previous and current land studies; housing allocations and potential urban extensions, and; sites owned by Registered Providers (housing associations).

It should be clarified that the site identification study does not allocate land for the proposed use, or confirm the acceptability in planning terms of the identified sites. It simply serves to highlight options available to the Council to meet the identified need for accommodation for gypsies, travellers and travelling showpeople within the Borough.

In terms of the application site, the Peter Brett report rejects the site as an option for permanent development stating that:

*The site would have an unacceptable impact on landscape character.*

### **ECONOMIC SUSTAINABILITY**

With regard to the economic role of sustainable development, the proposed development will make a very limited contribution towards bringing increased trade to local shops and businesses.

### **THIRD PARTY COMMENTS**

With regard to the comments received in representation, not addressed above, the proposal does not raise any additional health and safety issues relating to the gas pipeline to the east of the site beyond those on the existing permission.

### **PLANNING BALANCE**

Having regard to the rural location of the site, the distance from facilities and the absence of public transport the site is not considered to be in a sustainable location. This would have some adverse implications in terms of use of natural resources and movement towards a low carbon economy. In addition, there will be a limited adverse impact upon the character and appearance of this rural area to the same extent as there is for the existing development. The impacts from this proposal will of course be permanent. There is therefore conflict with the environmental role of sustainable development as set out in the Framework.

Balanced against this is the significant identified need for accommodation for gypsies and travellers in the Borough and the lack of available alternatives. A total of 69 additional plots are required within the Borough for the period to 2028. Whilst 24 additional permanent pitches have been granted planning permission since the publication of the GTTSAA, they are not currently available, and substantial weight should still be attached to this unmet need in favour of the application.

Alongside this the Council's site identification study rejects the application site as a potential site for additional provision noting that it would have an unacceptable impact upon landscape character. However, there are currently no alternative sites that are available to the applicants or any other gypsy or traveller. The lack of any alternative site now and at least for the immediate future also carries significant weight in favour of the proposal.

The Council does not have an adopted policy that is based on an accurate assessment of need in the Borough. A 5 year supply of deliverable sites cannot be demonstrated, which is matter that also weighs in favour of the application.

At the time of the original application, the Inspector concluded that the harm to the character and appearance of the countryside was sufficient to justify the refusal of a permanent planning permission. He also noted that policy H of the PPTS states that local planning authorities should strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan

The PPTS was revised in August 2015 and now policy H states that "Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan." The word "very" has now been inserted before "strictly limit" presumably to increase the protection given to open countryside locations, such as the application site. In addition, whilst the local



plan process has been subject to delay, there are clear indications of additional pitches coming forward (evidenced by recent planning permissions) and now that the local plan process has resumed, further new pitches are again likely to become available through the development plan process, in order to meet the identified need. However at this moment there remains a significant unmet need for gypsy and traveller pitches.

The Inspector found that the identified harm must be balanced against the substantial current need for gypsy and traveller pitches in Cheshire East and the lack of alternative accommodation available to the appellant and his family. Due to the fact that it is likely that new pitches will become available through the development plan process, the Inspector considered that permission for a temporary period of five years was appropriate.

The temporary permission was granted in February 2014 and runs until February 2019. The permission therefore still has over half its time to run, and will continue to provide the Council with reasonable time to still deliver site allocations through the development plan process. It is therefore considered that the timescale for the temporary permission should still remain, and that a permanent permission is not justified at this time.

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*for regular medical attention, no evidence of substance was provided to substantiate this or to indicate that the appellant's family has any specific need to be accommodated on the appeal site specifically to access health, educational or other services, although at the time of the Hearing the appellant's son and daughter-in-law were expecting the birth of their first child.*"

These circumstances could therefore apply to any gypsy or traveller and not just the applicant and his family. There was little or no evidence presented at the appeal to show a specific need for the applicant to be located on the application site, and therefore it is considered that less weight should be afforded to the personal needs of the applicant compared to the significant unmet need in general for gypsy and traveller sites within the Borough. Indeed, the Inspector on the adjacent site concluded along similar lines, the general need outweighed the harm to the character and appearance of the area and the unsustainable location, and the appellant's needs in that case just added more weight in favour of the proposal. In summary, it is not considered to be the personal circumstances of the applicant that justify the granting of a temporary permission in this case. It is therefore considered that the condition 3 should be varied to allow occupation of the site by any gypsy / traveller.

## **RECOMMENDATION**

It is recommended that the temporary permission remains, but that the restriction on occupation of the site by named family members is removed. Condition 3 should therefore be varied to:

3. *The use of the land as a residential caravan site shall be discontinued and the land restored to its former condition on or before 13 February 2019, in accordance with a scheme of work first submitted to and approved in writing by the local planning authority.*

Application for Variation of Condition

RECOMMENDATION: Approve subject to following conditions

1. Occupation by gypsies and travellers only
2. Temporary permission to 13 February 2019
3. At end of period for which planning permission is granted for the use, the site shall be restored in accordance with details approved under 14/1853D
4. The development hereby permitted shall be carried out in accordance with the approved plans
5. Landscaping to be carried out in accordance with details approved under 14/1853D
6. No fences, gates or walls other than those expressly authorised by this permission shall be constructed.
7. There shall be no more than 4 pitches on the site and on each of the 4 pitches hereby approved no more than 2 caravans
8. Foul and surface water drainage to be provided in accordance with the details approved under 14/1853D
9. Visibility splays to be provided / retained
10. No commercial activities shall take place on the land, including the storage of materials
11. No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.

