

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **PLANNING COMMITTEE**

DATE: **6th JULY 2022**

REPORT BY: **CHIEF OFFICER (PLANNING, ENVIRONMENT AND ECONOMY)**

SUBJECT: **CHANGE OF USE OF LAND TO RESIDENTIAL (GYPSY TRAVELLER COMMUNITY). THE SITE TO CONTAIN ONE STATIC CARAVAN, ONE TOURING CARAVAN, A WATER TREATMENT PLANT, AND PARKING FOR TWO CARS WITH ASSOCIATED HARDSTANDING AND INFRASTRUCTURE.**

APPLICATION NUMBER: **061368**

APPLICANT: **JAMES DORAN**

SITE: **LAND SIDE OF ASHWOOD HOUSE, CHURCH LANE, ASTON HILL, EWLOE, DEESIDE, CH5 3BF**

APPLICATION VALID DATE: **04/06/2020**

LOCAL MEMBERS: **CLLR H BROWN**
CLLR G BROCKLEY

TOWN/COMMUNITY COUNCIL: **HAWARDEN COMMUNITY COUNCIL**

REASON FOR COMMITTEE: **CLLR REQUEST – HIGHWAYS SAFTEY, NEED, AND VISUAL IMPACT**

SITE VISIT: **YES**

1.00 SUMMARY

1.01 This is a full application for the Change of use of land to provide 1 Gypsy Traveller Pitch at Land Side of Ashwood House, Church Lane, Aston Hill, Ewloe, Deeside, CH5 3BF

The main planning issues are considered to be:

- i. Principle of Development

- ii. Best Interests of the Child
- iii. Adequacy of Access
- iv. Character and Appearance
- v. Living Conditions
- vi. Ecology

2.00 RECOMMENDATION: TO GRANT PLANNING PERMISSION, SUBJECT TO THE FOLLOWING:-

2.01 Conditions to include:

- 1. Time Limit on commencement
- 2. In accordance with approved plans
- 3. Occupation restricted to Gypsies and Travellers as defined by para 2 of Circular 005/2018
- 4. No more than 1no static pitches to be on site
- 5. Details of static units to be submitted and approved
- 6. No caravan to be brought on site until hard /soft landscaping scheme has been submitted and approved
- 7. Submission and implementation of landscaping scheme
- 8. No caravans / materials to be stored within 3m of site boundaries
- 9. Details of external lighting to be submitted and approved
- 10. Parking / turning facilities to be provided /retained
- 11. No commercial activities shall take place on the site.

3.00 CONSULTATIONS

3.01 Local Members

Cllr Helen Brown raised the following points:

- 1. Church Lane is un-adopted and extra vehicles will have a detrimental impact on the already substandard road surface
- 2. There's no unmet need within Flintshire, we currently have 14 sites within Flintshire and there are currently 2 separate planning applications to extend sites in Hope and in Ewloe. We believe there is a full planning application for the Holywell area. Also, the council will be extending its own site in Queensferry by up to 30 plots
- 3. The design is not in keeping with the other properties within the area
- 4. The point of access at Church Lane, the nearest public highway is via an unmade and un-adopted track, it's substandard at the junction layout to serve as a means of access for any further developments.

Cllr Gillian Brockley made no comment at the time of writing.

Hawarden Community Council - Supports the objections made by Cllr Brown.

Highways Development Management – The additional information provided by the Agent confirms their view that the proposal will not result in a significant increase in use of the access from Aston Hill by vehicular traffic. Therefore, on the basis that the existing equestrian use is limited to a personal permission associated with the residential use, as the Highway Authority confirm that they have no objection to the proposal and that they do not wish to make a further recommendation on highway grounds.

Housing Strategy – The Flintshire Gypsy and Traveller Accommodation Assessment (final report) April 2016 refers to an unmet accommodation need over the Plan Period for 19 additional pitches.

The Flintshire Housing Strategy states one of its priorities is “To provide the right type of accommodation for the Gypsy and Traveller community through: Ensuring the need for residential pitches are met in Flintshire working with the community”

Housing Strategy supports this application in principle as there is unmet need for gypsy/traveller pitches within Flintshire. The Council’s Gypsy Traveller Liaison Officer has not had any previous contact with this applicant so little is known about them or whether they have any local connection or long term intentions to reside in the area.

Rights of Way – Public Footpath 25 abuts the site but appears unaffected by the development. The path must be protected and free from interference from the construction.

Ecology – Agrees with the conclusions of the Ecological Report submitted that the site itself has little ecological value and the interest is limited to the hedgerow boundaries and their connectivity to other habitats. The lack of habitat within the site means it does not have value for protected species such as great crested newts and the stable block does not have potential for nesting birds or roosting bats.

The ecological management recommendations are generally acceptable particularly planting of native species such as hawthorn to bolster the existing boundary hedges, which will benefit nesting birds, although I would also recommend that soil is graded back against the steep banks where the existing roots have been exposed.

Since the site has low value for great crested newts and other amphibians I would avoid the installation of amphibian fencing which could result in further degradation of the hedgerow and to be effective requires constant maintenance and needs to surround a site. If needed reasonable avoidance measures can be undertaken during

construction. As recommended, the hedgerow corridors should be maintained as dark features and any lighting minimized.

In line with WG policy, Biodiversity enhancements need to be incorporated into the scheme. The enhancements recommended here namely bird and bat boxes and insect hotels are minor but reasonable for the scale of the proposal. However, their value will ultimately depend on the hedgerow enhancement and subsequent management and continued grazing within the paddock.

Welsh Water/Dwr Cymru – No objection to the proposed private water treatment works

Natural Resources Wales – Do not consider that the proposed development affects a matter listed on our Consultation Topics, Development Planning Advisory Service: Consultation Topics (September 2018) therefore do not have any comment to make on the proposed development. Note that the ecological report submitted in support of the above application (Phase 1 Ecology Survey, Andrassy Ecology and Land Restoration, Undated) has concluded that there is not a reasonable likelihood of protected species being present. We advise that you seek guidance from your Authority's ecologist on the findings of the report.

Septic tanks and small sewage treatment works may be registered as exempt from the requirement to obtain an environmental permit if certain criteria are met. Please note, should a permit be required, further information may be required as part of that application and the Applicant is therefore advised to hold pre-application discussions with our Permitting Team on 0300 065 3000, at the earliest opportunity, to try to ensure that there is no conflict between any planning permission granted and the permit requirements.

Welsh Government Department for Economy and Infrastructure – Welsh Government as highway authority for the A494 trunk road does not issue a Direction in respect of this application.

Airbus – Hawarden Aerodrome Safeguarding has assessed against the safeguarding criteria as required by DfT/ODPM Circular 1 / 2003: Safeguarding of Aerodromes and the Commission Regulation (EU) No 139/2014 and has identified that the proposed development does not conflict with their safeguarding criteria.

Clwyd Powys Archaeological Trust – Confirm that there are no archaeological implications for the proposed development at this location. The site is close to a former tramroad which lies to the south of the application boundary and will not be affected. The site has already been heavily topsoiled and ground levels altered for the existing building on this site and the access.

4.00 PUBLICITY

4.01 This application was advertised by way of Site Notices and Neighbour Notification letters to the nearest properties. In response to the public consultation exercise; the application received 95 letters of objection and 103 letters of support. In addition, a planning consultant acting on behalf of a number of local residents has submitted a number of responses including technical highways statements and legal comments from a barrister. The comments are summarised below:

4.02 Highway safety and inadequate access

In response to the original application and subsequent additional information, three Technical Note have been submitted by SCP on behalf of residents. They raise the following:

The acceptability of this access is a critical planning issue. The applicant's Access Review makes extensive reference to the guidance contained in Manual for Streets in suggesting that a more flexible approach should be taken to visibility requirements. In particular however SCP highlight that this guidance is applicable to "roads in built up areas where actual or design speeds are 60km/h (37mph) or below". A speed survey was undertaken by SCP of vehicles passing Church Lane along Old Aston Hill and 85th percentile speeds of 40.14mph was recorded for southbound traffic, with 40.44mph was recorded for northbound traffic. There is no evidence submitted by the applicant in respect of vehicle speeds.

4.03 Harm to the Open Countryside

The proposed developed does not accord with any of the listed exceptions and therefore must be considered contrary to FUDP policy GEN3. It is considered that the proposed development would have an unacceptable impact on the open countryside and is clearly contrary to FUDP policy GEN3. The Applicant has provided no evidence at all to demonstrate that this development is required in an open countryside location outside of the settlement boundary.

4.04 Gypsy and Traveller site policies and the lack of demonstrable need for the development

FUDP policy HSG14 criterion 1, which requires demonstrable need to be evidenced, is not satisfied. We would therefore expect a detailed update of the need and supply of gypsy and traveller pitches to be made available by the Council in order to inform the determination of this application.

4.05 Unsustainable location

It is apparent that the proposed development site is not sustainably located. Church Lane itself is lacking in footways and, given the absence of a northward footway alongside Old Aston Hill, the lack of pedestrian crossing here is a material safety concern. In any event the site is not close to services and amenities. These are generally beyond the 800m / 10 minute walking distance seen in Manual for Streets¹ as required for walkable neighbourhoods. The nearest primary school is located at Ewloe Green around 1.2 km away and the nearest secondary school is further still at around 1.6km away. Apart from the Church nearby all other facilities are at distances that are likely to leave dependant on car travel. As such the proposed development cannot be considered to be sustainably located.

4.06 Landscape harm

Church Lane has a quiet rural feel. There is currently a wooden stable building on site, which is relatively small at 10m long by 3.9m wide, a total of 39sqm. There are no details available of the proposed extent of hardstanding, but the static caravan alone would comprise around 6m by 14m, a total of 84sqm. The proposed development would therefore greatly increase the built footprint and would extend built development out further into the open countryside. FUDP policy D3 Landscaping states that new development will be required to include a hard and soft landscaping scheme and sets out a range of key considerations applying. The accompanying text advises "Good landscaping is an essential component of successful development". The application does not include a landscape plan. The application is therefore contrary to policy D3 – Landscaping.

4.07 Impact on protected species

The application is not accompanied by a tree survey / ecological report and therefore it is not possible to be clear on the likely ecological impacts. These reports should be provided. In their absence, the LPA cannot lawfully engage with the relevant statutory and planning policy tests, regarding European protected species, such as Great Crested Newts.

4.08 Loss of amenity for residents including privacy and overlooking issues

There are a number of windows in the adjacent dwelling which have an outlook facing towards the application site. This will lead to a loss of privacy for the existing dwelling along.

5.00 SITE HISTORY

5.01 032791 – Outline erection of a dwelling – refused 17.09.2001

057618 - Erection of a stable block and tack room – granted
24.11.2017

058130 - Non material amendment to planning permission ref
057618 – Granted 13.03.2018

6.00 PLANNING POLICIES

6.01 Flintshire Unitary Development Plan

Policy STR1 – New Development

Policy GEN1 – General Requirements for Development

Policy GEN3 – Development in the Open Countryside

Policy D1 – Design Quality, Location and Layout

Policy D2 – Design

Policy D3 – Landscaping

Policy AC13 – Access and Traffic Impact

Policy AC18 – Parking Provision and New Development

Policy HSG14 – Gypsy Sites

Policy WB1 - Species Protection

Policy WB6 - Enhancement of Nature Conservation Interests

Additional Guidance

Planning Policy Wales (PPW) – Edition 11

Future Wales Development Plan 2020-2040

Technical Advice Note 6 – Planning for Sustainable Rural
Communities

Technical Advice Note 12 – Design

Technical Advice Note 18 – Transport

Circulars

Designing Gypsy and Traveller Sites May 2015.

Circular 005/2018 – Planning for Gypsy Traveller and Showpeople
Sites

7.00 PLANNING APPRAISAL

Introduction

- 7.01 This full application proposes the change of use of approximately 0.05 hectares of land adjacent to Land Side of Ashwood House, Church Lane, Aston Hill, Ewloe, for the siting of 1 No Gypsy/Traveller pitch and 1 No communal Amenity Block/Dayroom.

Site Description

- 7.02 The site is located adjacent to the settlement boundary of Ewloe between the A494 and Old Aston Hill. Access into the site would be from the existing gateway off Church Lane, which is a private road off Old Aston Hill. The access is already in use in connection with the stable building on site.

- 7.03 The site currently consists of an area of hardcore, with a stable building sited along the north west boundary. The site is bounded by fencing and intermittent hedgerows.

Proposed Development

- 7.04 The application is for the siting of one pitch. The pitch would have a space for a static caravan, a touring caravan and hardstanding for two vehicles. It is proposed that the pitch would be occupied by a mother and son related to the applicant.

Main Planning Considerations

- 7.05 It is considered that the main issues to be taken into account in determination of this application include:

- i. Principle of Development
- ii. Best Interests of the Child
- iii. Adequacy of Access
- iv. Character and Appearance
- v. Living Conditions
- vi. Ecology

Principle of Development

- 7.06 The Housing (Wales) Act 2014 places a legal duty upon local authorities to ensure that the accommodation needs of Gypsies and Travellers are properly assessed and that the identified need for pitches is met. More recently Welsh Government have published a Circular 005/2018 Planning for Gypsy, Traveller and Show people Sites which reflects provisions contained in the Housing (Wales) Act 2014, to ensure local authorities meet the accommodation needs and provide sites for Gypsies and Travellers through the planning system.
- 7.07 Flintshire Unitary Development Plan Policy HSG14 also acknowledges the requirement for development plans to make adequate provision for the accommodation needs of gypsy families, but this policy predates the 2014 Act as well as Circular 005/2018, both of which place a different emphasis on assessing applications for Gypsy and traveller sites. The LDP has a similar criteria based policy to the UDP, and having been through the LDP Examination has resulted in its two criteria a. and b. being deleted as they do not comply with the guidance in the above Circular.
- 7.08 As these criteria relate to the need to demonstrate a proven need for a Gypsy and Traveller site, as well as there being no suitable alternatives elsewhere, and as these are also the first two criteria in UDP policy HSG14 they are no longer valid considerations and cannot be taken into account. Welsh Government raised this matter

in their representations to the LDP Examination Inspector, highlighting that the Circular notes that policy requirements to 'demonstrate unmet need' would act against freedom of movement for gypsies and travellers who may wish to develop their own sites. Such restrictions should not be placed on Gypsies and Travellers. The Circular clearly states that criteria based policies must be fair, reasonable, realistic and effective in delivering sites and must not rule out or place undue constraints on the development of Gypsy and Traveller sites.

- 7.09 The Council has an approved Gypsy and Traveller Accommodation Assessment (2016) that is still extant for the purposes of the LDP Examination evidence base and for Development Management purposes. This shows a plan period need for 19 additional pitches. In addition the LDP has made suitable site specific provision to meet this need, made via site allocations as extensions to three existing Gypsy and Traveller sites, 1 of which is Council owned and the others in private ownership. None of these allocations have yet been confirmed by the LDP Examination Inspector and neither do they have planning permission, although applications are under consideration for the two privately owned sites, and a further application is being prepared for submission on the Council owned site.
- 7.10 Suitable provision to meet this level of identified need has therefore been identified in the LDP in compliance with the requirements of PPW, however this does not mean that newly arising need such as that presented in this application should not be considered favourably. Circular 005/2018 states that criteria based policies are required in development plans, to cater for what is in effect new or windfall demand for pitches, and the UDP and LDP have similar criteria based policies to cater for such newly arising need.
- 7.11 Paragraph 7 of the Circular advises that the Well-being of Future Generations (Wales) Act 2015 sets a framework for local authorities to ensure the sustainable development principle is met. In terms of wellbeing goals the guidance reference a '*Wales of cohesive communities*'. Paragraph 8 goes on to advise that '*Housing is a fundamental issue that affects the lives of people across Wales, including our Gypsy and Traveller communities*'. In particular the guidance requires that '*...Gypsies and Travellers should have equal access to culturally appropriate accommodation as all other members of the community*'. Paragraph 12 recognises that '*Some Gypsies and Travellers may wish to find and buy their own sites to develop and manage*'.
- 7.12 Paragraph 14 explains that the Housing (Wales) Act 2014 places a legal duty upon local authorities to ensure 'that accommodation needs of Gypsies and Travellers are properly assessed and that the identified need for pitches is met'. Paragraph 36 explains that '*when*

identifying sites the planning authority should work with the Gypsy and Traveller Community'. Paragraph 37 explains that 'issues of site sustainability are important for the health and well-being of Gypsy and Travellers not only in respect of environmental issues but also for the maintenance and support of family and social networks'.

- 7.13 Whilst the Circular advice supersedes criterion a. and b. of policy HSG14 of the UDP, on the basis that this would be unduly restrictive to applications such as this, the other UDP policy criteria are still relevant. These are in line with the Circular and essentially seek to assess the suitability of the location of the proposed gypsy and traveller site by ensuring that in a sequential sense, sustainable locations within or adjacent to existing settlements with access to local services are considered first. That said, the Circular goes on to state that *'Sites in the countryside, away from existing settlements, can be considered for Gypsy and Traveller sites if there is a lack of suitable sustainable locations within or adjacent to existing settlement boundaries'*
- 7.14 The circular itself provides expanded guidance at paragraph 37 in respect of the sustainability of sites and the site should be assessed in this context. Whilst not an exhaustive list, the items to consider when assessing whether or not a site is suitable includes:
- opportunities for growth within family units; the promotion of peaceful and integrated co-existence
 - between the site and the local community;
 - access to health and education services;
 - access to utilities including water, waste water disposal and waste collection services;
 - access by walking and cycling, public transport and private motor vehicles (including emergency vehicles);
 - suitable nearby or on-site safe play areas;
 - contribution to a network of transit sites which reduce the need for long-distance travelling or unauthorised encampments;
 - not locating sites in zone C2 risk of flooding and only considering sites for location within zone C1 risk of flooding in
 - line with guidance contained in TAN 15, given the particular vulnerability of caravans; and
 - regard for areas designated as being of international, national and local importance for biodiversity and landscape
- 7.15 I consider that the site meets the specified criteria listed as the proposal represents development on a site in an appropriate sustainable location, on the edge of a settlement, in close proximity to a range of facilities and with access to bus transport links on a key distributor route within Flintshire.

- 7.16 The advice and guidance within this Circular provides the framework when determining this types of planning application. In my view the principle of this development is acceptable with due regard to all relevant National and Local policies and advice. The site represents a sustainable location, appropriate for the level of development proposed and in addressing a specific housing need.

Best Interests of the Child

- 7.17 As the residents of the site will include a child the proposal has been assessed with due regard to their best interests. The agent has advised that there is one child currently aged 13 who requires access to regular schooling and is in need of constant medical care.
- 7.18 It is considered that the proposal would offer the consistent access to education and health care which would be in the best interests of the child. The benefits of enabling the provision of a stable and secure environment is a material consideration of significance in the planning balance. It has been accepted by planning inspectors with rights to respect for family and private life as identified in Article 8 and Article 1 of Protocol 1 of the European Convention on Human Rights.
- 7.19 It is acknowledged that a child would live on the site were permission to be granted, and the Local Planning Authority has a statutory duty under the Children's Act 2004, to safeguard and promote the welfare and well - being of the children. There is also a national and international obligation contained in article 3(1) of the united nations Convention on the Rights of the Child (UNCRC) "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration"
- 7.20 These considerations are material in the assessment process the implications of the applicant /family of having a settled base for educational /health needs of the children needing to be considered and weighed in the balance as a primary consideration. In these circumstances the best interests of the children would be best served by occupation of the site.

Adequacy of Access and Parking

- 7.21 Consultation on the application has been undertaken with the Highway Development Control Manager who, in progression of the application, has sought additional information to ensure that there is no impact on the adopted highway.
- 7.22 The additional information provided by the Agent confirmed the Highways Officers view that the proposal will not result in a significant

increase in use of the access from Aston Hill by vehicular traffic. The site currently has permission for an unrestricted equestrian use which could result in 8 vehicle movements per day. This is comparable to residential trip rates which can vary significantly between 4 and 10 movements per day.

- 7.23 Objections have been received relating to a previous application for residential development of the site being refused on highways grounds in 2001. During the course of previous consultations for other proposed development off Church Lane, Highway consultation responses have made a specific distinction that any increase in use of the access is unacceptable. However, these comments were offered pre 2007 before the relaxation of guidance in Manual for Streets and TAN18.
- 7.24 Therefore, on the basis that the existing equestrian use is limited to a personal permission associated with the residential use, the Highway Authority, take the view that the proposed development will not result in a significant increase in the use of the access, and confirm that they have no objection to the proposal and that I do not wish to make a further recommendation on highway grounds.

Character and Appearance

- 7.25 Policy HSG14 (c) sets out that a gypsy and traveller site can only be permitted where there is natural screening or the site can be screened. The more recently published advice in the Circular sets out that sites should not be deliberately heavily screened as this gives rise to a sense of separation.
- 7.26 The site benefits from established screening to the north and west of the site, with the boundary to the east consisting of a post and rail fence. The proposal seeks to improve all boundary treatments with both hard and soft landscaping. Whilst some details have been submitted it is considered that a comprehensive landscaping scheme should be secured via condition and submitted prior to commencement of development.

Living Conditions

- 7.27 "Designing Gypsy and Traveller Sites 2015", establishes the framework for the design /layout of sites, although it does reference that this guidance is aimed at Local Authority owned or leased traveller sites. As previously indicated the site the subject of this application is promoted in a private capacity but the site layout proposed does use the basis of this guidance in designing the layout and provision of associated facilities.
- 7.28 The amended plans submitted show the location of the static and touring caravan in relation to the boundary of Ashwood House. Whilst

there is no direct interface relationship between the dwelling and proposed static unit the proposal is in accordance with the above guidance a stand-off of at least 3m from the associated curtilage boundaries

- 7.29 The proposed caravans are located away from the boundary with Ashwood House Bungalow and an enhanced boundary treatment could be secured by condition to introduce additional screening along this common site boundary which would help to safeguard the living conditions of both existing residents and proposed occupants at this location. These can be secured by the imposition of conditions if Members are mindful to grant permission for the development. This ensures that the criterion E of Policy HSG14 is met.

Ecology

- 7.30 The application is supported by an Ecological Report which concludes the site has little ecological value and the interest is limited to the hedgerow boundaries and their connectivity to other habitats. The lack of habitat within the site means it does not have value for protected species such as great crested newts. The stable block does not have potential for nesting birds or roosting bats. The application has been subject to consultation with the County Ecologist.
- 7.31 The ecological management recommendations are generally acceptable particularly planting of native species such as hawthorn to bolster the existing boundary hedges, which will benefit nesting birds. Since the site has low value for great crested newts and other amphibians the Ecologist would not recommend the installation of amphibian fencing which could result in further degradation of the hedgerow and to be effective requires constant maintenance and needs to surround a site. As recommended, the hedgerow corridors should be maintained as dark features and any lighting minimized.
- 7.32 In line with WG policy, Biodiversity enhancements need to be incorporated into the scheme. The enhancements recommended here namely bird and bat boxes and insect hotels are minor but reasonable for the scale of the proposal. In light of the above it is considered that the proposal complies with policy WB1 and WB4 subject to the inclusion of appropriate conditions as outlined above.

Hynet North West Energy Project

- 7.33 The proposal falls within the proposed Development Consent Order limit for the Hynet North West energy project. Given the footprint and type of development, the impact is a relatively minor intrusion into the Development Consent Order limit. It is considered that it is unlikely to have a significant impact on the Hynet North West project.

8.00 CONCLUSION

- 8.01 The application has been considered having regard to the relevant National and local planning policy framework and advice, it being my view that there are significant material considerations weighing in favour of the proposal and no planning policy grounds on which to oppose the principle of development at this location.
- 8.02 Subject to controls over the siting of pitches and boundary treatment associated with the proposal which can be secured by conditions, I consider the proposal is acceptable and therefore recommend accordingly.

Other Considerations

The Council has had due regard to its duty under Section 17 of the Crime and Disorder Act 1998 and considered that there would be no significant or unacceptable increase in crime and disorder as a result of the recommended decision.

The Council has acted in accordance with the Human Rights Act 1998 including Article 8 of the Convention and in a manner which is necessary in a democratic society in furtherance of the legitimate aims of the Act and the Convention.

The Council has had due regard to its public sector equality duty under the Equality Act 2010.

The Council has had due regard to its duty under Section 3 of the Wellbeing of Future Generations (Wales) Act 2015 and considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the recommended decision.

LIST OF BACKGROUND DOCUMENTS

Planning Application & Supporting Documents
National & Local Planning Policy
Responses to Consultation
Responses to Publicity

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