The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Penderfyniad ar yr Apêl

Gwrandawiad a gynhaliwyd ar 22/05/19
Ymweliad â safle a wnaed ar 22/05/19

gan A L McCooey BA MSc MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 04.07.2019

Appeal Decision

Hearing Held on 22/05/19
Site visit made on 22/05/19

by A L McCooey BA MSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 04.07.2019

Appeal Ref: APP/H6955/A/19/3221887

Site address: Land adjacent to Graig Wen Farm, off Brymbo Road, Bwlchgwyn, Wrexham

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 William Evans against the decision of Wrexham County Borough Council.
- The application Ref P/2018/0613, dated 24 July 2018, was refused by notice dated 18 September 2018.
- The development proposed is a change of use of agricultural land to residential accommodation for a Gypsy and Traveller site of 4 Pitches. Each pitch to include 1 no. static caravan, 1 no. touring caravan, 1 no. day room and 2 no. parking spaces.

Decision

1. The appeal is allowed and planning permission is granted for a change of use of agricultural land to residential accommodation for a Gypsy and Traveller site. Each pitch to include 1 no. static caravan, 1 no. touring caravan, 1 no. day room and 2 no. parking spaces at land adjacent to Graig Wen Farm, off Brymbo Road, Bwlchgwyn, Wrexham in accordance with the terms of the application, Ref P/2018/0613, dated 24 July 2018, subject to the conditions set out in the attached annex.

Background

2. The original description of the development did not refer to the proposed day room buildings associated with each of the four pitches. The parties agreed with me that the above description was more accurate and should be used.

3. Detailed information on the proposed occupants, who are all members of the Evans family, was provided. Most of the proposed occupants currently reside at the Council-owned Ruthin Road Gypsy/Traveller site. There was no dispute that the proposed occupants of the appeal site comprise gypsies and travellers. In the absence of any evidence to the contrary, I am satisfied that this is an appropriate basis upon which to determine the appeal and the national and local policy framework relating to gypsies and travellers is accordingly engaged.

Main Issues

4. The main issues are the need for the proposal, the effect on highway safety and the effect on the ecology of the site, with particular reference to the effect on protected species.

Reasons

5. The site lies in the open countryside on the outskirts of the small settlement of Bwlchgwyn. Access is from an un-adopted lane that runs from Glascoed Road to Brymbo Road (both these roads then connect to the A525 nearby). The Brymbo Road junction is close to the local primary school. Glascoed Road is a narrow rural road serving a limited number of dwellings. The site has been cleared and hardcore material deposited thereon to a significant depth. This has resulted in the loss of some trees and hedges from the site.

Need for the Proposal

6. The issue of the need for 4 pitches in the Council area was raised. The Housing (Wales) Act 2014 (and Welsh Government Circular 005/2018[1] [the circular]) requires all local authorities in Wales to identify the housing needs of Gypsies and Travellers in their areas and make provision for any identified needs. The Housing Act places a statutory duty on local authorities to provide sites where a need has been identified. All local authorities are required to complete a Gypsy Traveller Accommodation Assessment (GTAA) every 5 years, which identifies pitch requirements. The latest GTAA for Wrexham covering the period to 2020 was approved by Welsh Government in 2017. The GTAA identifies a need for 15 pitches up to 2020 and 28 pitches for the Local Development Plan (LDP) period (2013-28). Since the GTAA was approved 13 private pitches have been granted planning permission, which reduces the need to 2 pitches up to 2020 and 15 up to 2028. However, the GTAA also recommends that the number of pitches at the Council's Ruthin Road site should be reduced by 6 before the end of the LDP period. The Council has considered this evidence and decided that the approval of this proposal would meet the identified 5-year need. The Local Planning Authority concluded that substantial weight should be awarded to this element of the scheme and it was judged that this would constitute exceptional circumstances.

7. The objectors contend that there is currently no unmet need because the draft LDP proposals identify sites to provide additional pitches and meet the GTAA requirements. Whilst the preparatory studies have been completed, the LDP examination has only recently commenced. The proposals have not been subject to scrutiny for soundness and cannot therefore be given significant weight. I note that the number of pitches to be provided in the draft LDP has been reduced in the Council's Schedule of focussed changes. Allowing for the examination process and subsequent stages, the LDP is unlikely to be adopted before mid-2020. The Council accepts this and is in possession of all the relevant evidence on the need as part of the GTAA. I find no disagreement with the above figures, which have been quoted by both the Council and objectors in their evidence. There are currently no confirmed proposals to meet the identified need up to 2020 or beyond, given the current status of the LDP. I therefore conclude that the unmet need for additional pitches should be accorded substantial weight.

[1] 'Planning for Gypsy & Traveller Caravan Sites'

Planning Policy and Need

8. The current local planning policy is provided by the Wrexham Unitary Development Plan (UDP). The most relevant policy is Policy H9 (Gypsy Caravan Sites) which states that in exceptional circumstances, where sites for caravans for individual gypsy families cannot be accommodated within settlement limits, consideration will be given to other proposals, subject to compliance with Policy GDP 1[2]. I have considered the evidence and agree with the Council's conclusion that the need for additional pitches should be given significant weight. This need represents an instance of exceptional circumstances referred to in Policy H9, which could justify approval of the proposal for a site outside the development limits, subject to consideration of other UDP policies. Should planning permission be granted, a condition restricting the occupancy of the site to Gypsies and Travellers as defined by paragraph 2 of the circular would be necessary, given these exceptional circumstances.

9. I note that the circular and Planning Policy Wales acknowledge that strict adherence to policies that seek a reduction in travel by car would not be appropriate when considering proposals for Gypsies and Travellers development in the countryside. I therefore give the objections on the grounds of a lack of sustainability less weight. I conclude that the development could be acceptable in principle subject to the consideration of its impacts as defined in the main issues above.

Highway Safety

10. Policy GDP1 (d) requires safe access to and from development sites. The main access to the site will be from Glascoed Road. Concerns were expressed that the visibility at the junction of the access with Glascoed Road would not meet the required standards. This road is lightly trafficked. The objectors' survey[3] found a weekday average of 50-60 traffic movements in each direction. The same survey revealed that traffic speeds were below 30 mph and that corresponding "y" distances of 39.1m to the left on exit and 41.2m to the right would be appropriate. I have taken these figures to be the most accurate as they are based on an actual speed survey.

11. The normal "x" distance is 2.4m. Manual for Streets (MfS) recognises that this can be reduced to 2m in lightly trafficked and slow speed situations. Glascoed Road is single track and there is a passing bay near the proposed access. In these circumstances, I am satisfied that visibility splays of 2m by 39.1m to the left on exit and 41.2m to the right would be appropriate. I consider that drivers and cyclists using Glascoed Road would be aware of the slight overhang of waiting vehicles waiting to exit.

12. I have taken into account the points raised about the edge of the carriageway being difficult to identify. As part of the hearing I canvassed the parties' opinions with engineers representing the Council, appellant and objectors. I ascertained a level of agreement between the Council and the appellant's expert witnesses as to where the x distance should be measured. I am persuaded that this was a reasonable position having weighed all the evidence presented on site and in writing. From there it was clear that the appropriate visibility splays exist in both directions. It was also clear that the splays would be within highway land and so could be maintained free of obstructions by the Highway Authority. In these circumstances, there would be no need for planning conditions requiring the provision and retention of visibility splays.

[2] Policy GDP1 is a general policy that lists criteria to be met by all development proposals
[3] Highway Statement on behalf of Bwlchgwyn Residents Association by Mr Simpson

13. The second reason for refusal related to poor forward visibility on Glascoed Road. The concern was that the increase in traffic on this road would pose a risk of additional danger. Glascoed Road junction joins the A525 at a lay-by. There are three dwellings close to that junction with several sharp or right-angle bends that severely restrict forward visibility. Thereafter the road is relatively straight as far as the proposed access lane leading to the site. Measured traffic speeds are low, and vehicles must slow down to negotiate the bends referred to above. The road is lightly trafficked and there are no records of any accidents. The traffic movements associated with the proposal would be low[4]. The road is used by walkers and there are no footways. I have taken these factors into account in assessing the risk and conclude that the low levels and speed of traffic mean that the risk of danger would be low. Having driven the road several times, I judge that vehicles must proceed with caution around the bends and rarely meet another vehicle. There is no difficulty for vehicles in passing pedestrians on this road. I conclude that poor forward visibility on Glascoed Road would not justify the refusal of planning permission.

14. Concerns were raised about transporting static caravans to the site along Glascoed Road and the lane leading to the site. Only 4 static caravan movements would be involved. The delivery vehicles would be accompanied by marshals to ensure a safe passage along the public road. It was clear from my site visit that static caravans can be delivered to this lane. There were several in situ on the adjoining site and nearby. Any issues of damage to fences etc. along the route would be a private matter.

15. The other end of the site access lane provides access onto Brymbo Road near the local school. This access has poor visibility. The evidence was that it would not be used other than as a pedestrian access because the appellant does not have a right of way. The ownership of this portion of the lane is unclear and a gate has been erected close to Brymbo Road to prevent its use by the general public. In these circumstances, I consider that a condition preventing vehicles associated with the proposal from using this access would be unnecessary. It is very unlikely that this route would be used by traffic from the appeal site and so the proposal would not be detrimental to highway safety close to a school.

Impact on Ecology/ Protected Species

16. The application was accompanied by an Ecological Report[5]. The survey results show the presence of Great Crested Newt (GCN) in the immediate area. GCN are a European Protected Species and their breeding sites and resting places are protected under the Conservation of Habitats and Species Regulations 2017. Any development that would contravene the protection afforded to GCNs under the Regulations would require a derogation licence from Natural Resources Wales (NRW). The site has been cleared and hardcore deposited. The report takes this into account by recommending that an area of habitat compensation is provided. The report also recommends reasonable avoidance measures for GCN, reptiles, birds and bats.

17. The views of NRW were considered by the appellant's ecologist, and the report was revised in the light of the issues raised. NRW states that the "outline scheme" demonstrates that the proposal is not likely to be detrimental to the maintenance of the favourable conservation status of the local population of GCN and its concerns would be addressed by the imposition of conditions and a planning obligation to address habitat creation and enhancement measures for the proposed compensation

[4] A figure for each pitch of up to 9 movements per day was common ground
[5] Preliminary Ecological Appraisal, Pearce Environment Ltd v.3

area; and the provision and implementation of a long term management plan (this plan to cover management arrangements, funding, wardens and surveillance). NRW confirm that a European Protected Species licence will be required and that the above measures would be a requirement of the licence. Other conditions were considered to be necessary to control invasive species (known to be present) and to ensure that the implementation of all ecological avoidance and mitigation measures would be properly audited. The ecological report also recommended the installation of bat boxes and other measures which should be addressed by conditions. This evidence leads me to conclude that the proposal would be acceptable in relation to its impact on ecology and protected species subject to appropriate conditions and a planning obligation. These are discussed further below.

Other Matters

18. Policy EC5 of the UDP states that development will be strictly controlled, and that special attention will be paid to minimising the visual impact of proposals on Special Landscape Areas. Policy GDP1 a) also requires the impact on the character and appearance of the area to be positive. The site is seen in conjunction with the adjoining development on the Flash. The buildings and pens etc. on this site do not make a positive contribution to the appearance of the area. The proposal would sit in next to this development and as the site is better screened the eye would be drawn to the Flash rather than the appeal proposal. The views of the site from residential properties on Cefn Road and the nearby public footpath are filtered by existing trees. Screening would be less in winter when the trees are not in leaf. The provision of landscaping as part of the development would assist in further screening from these views. The views from the lay-by off the A525 are mostly screened by woodland with only a short stretch where the site is visible. Again, the dominant feature in this view is the development at the Flash. I note that the Council's assessment that the proposal would not have such significant harm as to justify the refusal of planning permission because of the limited extent of the available views and low-lying location of the site. I agree with this assessment and consider that the proposal would comply with Policies EC5 and GDP1 a) for these reasons.

19. NRW has confirmed that flooding would not be an issue because the site is outside the floodplain. It is at a low risk from surface water flooding, but the Council confirmed that a drainage details condition would address that matter. NRW consent would be required for the proposed package treatment plant. This matter could be addressed by a condition requiring the submission of drainage details for approval. The concerns of NRW could be resolved as part of that process. Objections raised the issue of potential contamination from the hardcore deposited on the site. NRW has advised that a use of waste in construction exemption has been registered for the site and that a visit to the site found that the waste being used falls within the conditions of the exemption.

20. The adjoining public footpath was clear and available for use at the time of my site visit. Any obstructions or other deterrents to its use can be raised with the Local Planning Authority. There was no convincing evidence that the impact on the living conditions of residents in the area would be adversely affected by the proposed residential use to a significant degree. Commercial activities on the site can be controlled by conditions. No evidence that demonstrates how the proposal would affect water supply, places in the local school or community facilities was supplied. The development must be considered on its own merits and the fact that development has taken place on the site in advance of planning permission being granted cannot justify a refusal. It does of course mean that potential conditions would have to be worded to reflect this fact.

Planning Obligation and Conditions

21. The proposed habitat compensation and mitigation area would be located on land adjoining the site, which is now in the appellant's family ownership. It is necessary that the mitigation area is provided and managed appropriately for the long-term as recommended in the report and required by NRW. The need for management arrangements to be secured by means of a Unilateral Undertaking (UU) (under s.106 of the Act) was agreed at the hearing. To this end a signed UU was submitted that takes the Local Planning Authority's comments on an earlier draft into account. It addresses the provision of a mitigation area in accordance with details to be submitted to and approved by the Local Planning Authority. The maintenance arrangements (including access to the site for maintenance) for the requisite period are set out. The UU is necessary, reasonable in scale and kind and directly related to the development. On this basis I am satisfied that the obligation meets national policy as set out in Circular 13/97[6] and the 3 statutory tests set out in Regulation 122 of The Community Infrastructure Levy Regulations 2010. Thus, I afford the submitted signed UU significant weight in my decision.

22. There is a history of mining in this area. The site may be contaminated as a result. A condition requiring appropriate site investigation and remediation measures is necessary. The risk is relatively low and the site has been infilled. I therefore consider that there is no necessity for the submission of a validation report as suggested by the Council. The suggested conditions controlling the use of and number of caravans on the site are necessary for the reasons given below. I do not consider that the suggested condition relating to the external appearance of the proposed static caravans and the means of attachment to the ground is necessary. Static caravans are relatively uniform in appearance.

Conclusion

23. The Local Planning Authority has submitted extensive information on the need for additional pitches to accommodate gypsies and travellers in the Council area. The objectors' claims that this need will be met is not supported by the evidence and the time it will take for adoption of the new LDP. The unmet need constitutes exceptional circumstances under Policy H9 of the UDP and I accord it significant weight. Adequate visibility is available at the junction of the access lane with Glascoed Road. The poor forward visibility on Glascoed Road would not justify the refusal of planning permission for the reasons given above. The effect of the proposal on protected species could be acceptable if the proposed mitigation measures are implemented. This includes the provisions of both the submitted UU and proposed suite of conditions. The visual impact of the proposal on the countryside within an SLA would not be so significant as to warrant the refusal of planning permission. I have carefully considered all the other matters raised in the submitted objections. None of these matters persuade me that planning permission should be refused on these grounds. This was the conclusion of the Local Planning Authority also. My overall conclusion having weighed all these matters is the proposal would accord with the relevant policies of the development plan and that planning permission should be granted.

[6] Circular 13/97 Planning Obligations

24. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective of supporting safe, cohesive and resilient communities, whilst maximising environmental protection.

A L McCooey

Inspector

Annex – conditions for Appeal Decision APP/H6955/A/19/3221887

1) The development shall begin not later than five years from the date of this decision.

   Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

2) The development shall be carried out in accordance with the following approved plans and documents:

   Drawing numbers 71047:001, 71047:1002 and 71047:1003

   Reason: To ensure that the development is carried out in accordance with the approved documents, plans and drawings submitted with the application

3) The occupation of the site shall only be by Gypsies and Travellers as defined by paragraph 2 of Circular 005/2018: 'Planning for Gypsy & Traveller Caravan Sites'.

   Reason: residential use of this site in the countryside has been allowed on the basis of the need for Gypsies and Travellers pitches and therefore the future occupation of the site accommodation must be controlled, as per Policy H9.

4) 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 shall be stationed at any time, of which only 1 caravan shall be a static caravan, as defined in the Caravan Sites and Control of Development Act 1990 and the Caravan Sites Act 1968.

   Reason: to define the extent of the planning permission and prevent over-development of the site in accordance with Policy H9.

5) No commercial activities shall take place on the land, including the storage of materials, or loading and unloading of vans or lorries. No more than one commercial vehicle per plot shall be kept on the land for use by the occupiers of the caravans hereby permitted, and commercial vehicles shall not exceed 3.5 tonnes in weight.

   Reason: to ensure that no commercial activities adversely affect the living conditions of residents of nearby properties, in accordance with Policy GDP1.

6) No caravan shall be brought onto the site or occupied until there has been submitted to and approved in writing by the local planning authority a scheme of hard and soft landscaping. The scheme shall include planting plans (using some native species), means of enclosure and retaining structures and an implementation programme with timescales.

7) The landscaping works shall be carried out in accordance with the approved details as per the agreed implementation programme. The completed scheme shall be maintained in accordance with an approved scheme of maintenance.

   Reason for conditions 6 and 7: To ensure that the development hereby permitted does not have a detrimental impact on the character and appearance of the area in accordance with Policy GDP1.

8) No caravan shall be brought onto the site or occupied until details of a scheme for the disposal of foul and surface water has been submitted to and agreed in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to the residential use of the development and retained in perpetuity.

Reason: To prevent pollution of the environment by ensuring the provision of adequate foul and surface water drainage in accordance with Policy GDP1.

9) No caravan shall be brought onto the site or occupied until a phased site investigation of the nature and extent of contamination has been carried out, submitted to and approved in writing by, the Local Planning Authority. If any contamination is found during the site investigation, no caravan shall be brought onto the site or occupied until a scheme specifying the measures that will be taken to remediate the site, has been submitted to and approved in writing by the local planning authority. The site shall thereafter be remediated in accordance with the approved scheme. If during the course of development any contamination is found that has not been identified in the site investigation, no further development shall take place on those parts of the site where that contamination has been found, until an additional scheme of remediation has been submitted to and approved in writing by the local planning authority for those parts of the site. The relevant parts of the site shall thereafter be remediated in accordance with the additional scheme of remediation.

Reason: In the interests of the amenities of future occupants of the buildings in accordance with Policy GDP1.

10) No caravan shall be brought onto the site or further site clearance shall take place until full details of the proposed reasonable avoidance and ecological mitigation measures to safeguard the populations of great crested newt, bats, birds and reptiles on the site and the timing of their implementation have been submitted and agreed in writing by the Local Planning Authority. These details shall accord with the recommendations of the submitted ecological report. The approved details shall be implemented in full.

Reason: In order to protect wildlife interests, which are afforded special protection in accordance with Policy GDP1.

11) No caravan shall be brought onto the site or occupied until a Biosecurity Risk Assessment shall be submitted to and approved in writing by the Local Planning Authority. The Assessment shall include:

(i) appropriate measures to control any Invasive Non-Native Species (INNS) on site; and,

(ii) measures or actions that aim to prevent INNS being introduced to the site for the duration of construction and operational phases of the scheme.

Reason: To control and mitigate against any potential nuisance that may arise from invasive species after the commencement and/or completion of development in accordance with Policy GDP1.

12) A compliance audit shall be carried out by a qualified ecologist, independently of the appointed principal ecologist, in accordance with details which have been submitted to and approved in writing by the Local Planning Authority. A copy of the completed audit reports should be submitted to and approved in writing by the Local Planning Authority after each phase of development.

Reason: In order to protect wildlife interests, which are afforded special protection in accordance with Policy GDP1.

13) The vehicular parking and turning areas as shown on approved drawing no. 71047:001 shall be fully laid out, surfaced and drained prior to first use of the development. These areas shall thereafter be permanently retained and kept free of any obstruction and made available solely for the parking and turning of vehicles at all times.

Reason: To provide for the parking and turning of vehicles clear of the highway in the interest of traffic safety and in accordance with Policy GDP1 (d).

ATTENDANCE

Appellant

Mr Wiliam Evans	Appellant
Mr Trevor Mennell	Agent
Andrew Gough	Highways - Woodsyde Developments Ltd

Local Planning Authority

Mrs Mared Rees-Jones MRTPI	Area Planning Officer
Mr Matthew Phillips MSc MRTPI	Planning Control Lead
Mr Peter Douthwaite	Highways
Ms Emma Broad	Ecologist
Mr Stephen Griffiths	Enforcement Officer
Cllr David Kelly	as Ward Member

Bwlchgwyn Residents Association

Mr T Stevens Dip EP MRTPI

Mr Colin Simpson BTech CEng MICE MCIHT