

**TOWN AND COUNTRY PLANNING ACT 1990 SECTION 78 APPEAL AT
Land North West of the Barn, Cross Street, Pentre, Chirk, Wrexham, LL14 5AN**

**WREXHAM COUNTY BROUGH COUNCIL
STATEMENT OF CASE**

**PLANNING REF: P/2021/1184
PINS REF: CAS-02004-Y5ZOJ8**

1.0 PROPOSAL

- 1.1 The application sought planning consent for the proposed change of use of land from equine to residential to house static caravan. The application was retrospective in nature.
- 1.2 The application was received by Wrexham County Borough Council ('the Council') on the 08 December 2021 and made valid on the 20 December 2021.

2.0 HISTORY

- 2.1 There is no previous planning history relevant to the determination of this application. However, the application was submitted on the back of an enforcement complaint (ref: ENF/2021/00274), although this is not considered to be material to the determination of the planning application or to this appeal.

3.0 DECISION

- 3.1 This application was determined by the Council, under delegated powers in accordance with the Council's scheme of delegation on the 25 May 2022. A copy of the delegated report is attached to this appeal statement as Appendix A. The application was refused for the following reasons:

'1. The site is located outside of a settlement limit and within a Green Barrier, where there is a presumption against new residential development. The development does not accord with policies GDP1, PS2, H5 and EC1 of the Wrexham Unitary Development Plan.

2. The development will have a detrimental impact upon the setting of the World Heritage Site and therefore conflicts with policies GDP1 and EC11 of the Wrexham Unitary Development Plan.

3. Insufficient information has been submitted to demonstrate that the proposed development would not result in an increase in phosphate levels to the River Dee and Bala Lake Special Area of Conservation. The proposal is contrary to paragraph 6.4.18 of Planning Policy Wales and Policy EC6 of the Wrexham Unitary Development Plan.

- 3.2 The refusal notice was issued by the Council on the 24 May 2022. A copy of the refusal notice is attached as Appendix B to this statement.
- 3.3 There have been no material changes to the Development Plan for the Wrexham County Borough or to National Planning Policy and guidance since the time of the determination of this planning application.

4.0 COUNCIL'S CASE

- 4.1 The Council's reason for the refusal of this planning application, and the policy basis to support this decision are detailed in full within the decision notice attached as Appendix B to this appeal statement and also within the Delegated Report attached as Appendix A. It is noted that it on this ground that the appellant has submitted this appeal.
- 4.2 The Council does not wish to repeat or re-iterate the comments set out within the Delegated Report. However, there are a few matters that the Council would like to re-affirm and add further clarity.

Local Policy Position

- 4.3 Despite being time-expired, the Wrexham Unitary Development Plan 1996-2011 (UDP) remains the development plan for the area. The site subject of this application and appeal is considered to be an area of undeveloped land located outside of any recognised settlement limits as defined by the Wrexham UDP. As such, the Council considers that the application site to be located in the open countryside for the purposes of planning policy.
- 4.4 Within the Wrexham UDP, Policy PS1 generally directs development for new housing to areas within defined settlement limits. The Council notes that Policy H5 of the Wrexham UDP does comprise a criteria-based Policy which sets out certain circumstances where new dwellings would be permitted in such locations as an exception to Policy.
- 4.5 In the case of the current appeal site, whilst the Council notes the supporting information provided by the applicant at the time of the submission and consideration of this planning application, it contends that the proposal meets with any of the exceptions listed in Policy H5 and as such, cannot be considered to accord with the Development Plan. For the purpose of clarity this is assessed as such:

'Policy H5 – Outside defined settlement limits new dwellings will only be permitted where:

- a) *Proposals accord with Policies H3, H4 and H8' – the application does not involve the conversion of an existing building, the subdivision of an existing building and neither have the exceptional circumstances of the applicant being unable to compete in the local housing market been demonstrated by the applicant. Therefore, the proposal does not accord with Criterion A.*
- b) *'Proposals comprise infilling subject to Policy GDP1' – due to the isolated nature of the application site in the open countryside, the Council is of the opinion that this site cannot reasonably be considered to represent an infill development. Therefore, the proposal does not accord with Criterion B.*
- c) *'An essential need to house a full time agricultural or forestry key worker can be established' (subject to further criterion i – iv) – the applicant has*

not suggested or demonstrated that they are an agricultural or forestry key worker. Therefore, the proposal does not accord with Criterion C.

- 4.6 As the proposal cannot be considered to accord with any of the Criterion set out within Policy H5, the proposal would be contrary to the requirements of the Development Plan for Wrexham County Borough Council and would instead represent an unjustified departure from the Locational Strategy of the Wrexham UDP.
- 4.7 In addition, the Council can confirm that the application site is located within a Green Barrier designation as defined within Policy EC1 of the Wrexham UDP. In this regard Policy EC1 confirms that development within the Green Barrier will only be granted planning permission, *'...if it is for agriculture, forestry, essential facilities for outdoor sport and recreation, cemeteries and other uses of land which maintain the openness of the Green Barrier and do not conflict with the purpose of including land within it.'*
- 4.8 In the case of the current application, the Council contends that the proposal accords with any of the exceptions noted within Policy EC1 whereby development would be acceptable. As such, it can only be considered reasonable to conclude that the development must be considered to comprise inappropriate development within the Green Barrier and not one that is considered permissible by Policy EC1 of the Wrexham UDP.
- 4.9 For the reasons detailed above, it is considered that there is no local planning policy basis to support this appeal and the development of the site. The proposals fail to comply with any of the housing policies contained within the Wrexham UDP.

Site Considerations

- 4.10 When considering applications for planning permission within areas of Green Barrier designations, a presumption against inappropriate development will apply. Whilst the appellant's grounds for appeal are duly noted, the Council remains of the opinion that the proposed development would materially reduce the openness of the site. Therefore, due to this encroachment into an area of open countryside, the development would conflict with the purpose of the Green Barrier designation which essentially seeks to:
- i) prevent the coalescence of urban areas and villages with other settlements;
 - ii) assist in safeguarding the countryside and the County Boroughs undeveloped landscapes from encroachment;
 - iii) protect the setting of urban areas and villages; and
 - iv) assist in urban regeneration by encouraging the recycling of derelict and other urban land.
- 4.11 The Council remains of the opinion that the development would represent both a physical and visual incursion into what is currently an area of open countryside, particularly given the nature and appearance of the caravan

proposed, which is not considered to respect or reinforce the character and setting of the surrounding landscape. The sensitivity of the site is further enhanced by its openness and the intervisibility that exists between it and the surrounding countryside. In this regard, the application site is considered to make a positive contribution to the surrounding landscape and the Green Barrier designation contrary to the views of the appellant.

- 4.12 The development would urbanise and unjustifiably alter the rural characteristics of the appeal site, to the detriment of the character and appearance of its countryside setting. The development would therefore conflict with the general aims of Policy PS2, Policy PS3, Policy PS4 and Policy GDP1 of the adopted UDP which generally seek to protect the countryside. For the same reasons, it would also conflict with the general thrust of Planning Policy Wales.
- 4.13 The Council remains of the opinion that the development would unjustifiably alter the rural characteristics of the appeal site to the detriment of the appearance and character of its countryside setting. In addition to the building itself, parked cars and domestic paraphernalia both adds to and emphasises the loss of openness to the Green Barrier and the urban sprawl that would occur. In this regard, the development as a whole is considered to be inconsistent with the Countryside location.
- 4.14 The Council has fully considered the personal circumstances of the applicant, and contends that they represent the very exceptional circumstances required to justify the extent of identified harm that would arise to the Green Barrier and the wider character of the area, being open and largely undeveloped countryside. The proposal would result in the erection of an incongruous feature on otherwise undeveloped land, designated as such to protect this area of open countryside from adverse urban sprawl. Therefore, the Council remains of the opinion that the development unjustifiably runs counter to both Policy EC1 of the Development Plan and Planning Policy Wales relating to such designations.

Phosphates

- 4.15 In consultation with Natural Resources Wales, it was confirmed that the applicant had provided insufficient information in relation to the proposed new septic tank, to clearly demonstrate that the proposal would in an increase in phosphate levels into the River Dee and Bala Lake Special Area of Conservation (SAC), or at best result in a neutral impact.
- 4.16 Development proposals in the County Borough that have the potential to generate increased phosphate levels which would affect any tributary to or part of the River Dee and Baka Lake SAC, must provide alternative drainage solutions which can categorically demonstrate that they would be phosphate neutral or result in a betterment to existing phosphate levels.
- 4.17 As noted within the delegated report (Appendix A), the applicant provided limited information on this matter, and not to the satisfaction of the Local

Planning Authority. The appellant failed to demonstrate that there would not be an unacceptable impact or effect upon the SAC. Therefore, the Council considers that the applicant has failed to demonstrate that appropriate drainage for the site could be achieved, specifically in ensuring that the proposal would result in phosphate neutrality or betterment. This is particularly important given the proposal has the potential to result in an increase in an increase in phosphate discharges into the SAC.

- 4.18 As such, the Council remains of the opinion that the proposal is considered likely to contribute towards damaging effects on the SAC contrary to Policy EC6 of the Wrexham UPD. It is considered that the likely harm that would be caused in this regard, would outweigh the benefits of the scheme and the applicant's personal circumstances in the planning balance. The proposal is therefore contrary to paragraph 6.4.18 of Planning Policy Wales and Policy EC6 of the Wrexham Unitary Development Plan

Applicants Case

- 4.19 The Council is mindful of the personal circumstances of the applicant, which were set out within the supporting statement. The Council agrees that personal circumstances can on occasion be taken into account as material considerations in the determination of planning application. This is considered to be the case in this instance.
- 4.20 However, notwithstanding the personal circumstances of the applicant, the Council considers that they do not provide the very exceptional circumstances or justification required to warrant the extent of the harm being caused to the Green Barrier through this incongruous development.
- 4.21 The Council notes the general thrust of Planning Policy Wales and also Policy EC1 of the Wrexham UDP both of which confirm that developments should only be approved in very exceptional circumstances where other considerations clearly outweigh the harm. In this instance, the Council is of the opinion that the applicants personal circumstances do not merit sufficient justification, nor should the weight attached to these circumstances outweigh the harm that would be caused to the Green Barrier and that the development is contrary to Local and National Planning Policy.
- 4.22 In addition to their personal circumstances, the appellant contends the extent of harm that is caused to the character of the area and its openness. In this regard, the Council notes reference being made to nearby mature trees which restricts the openness of the site. Whilst the Council is aware of the presence of such trees, there is disagreement with the extent of the mitigation that they offer to the development. The trees referred do not restrict the intervisibility of the site with the surrounding countryside and landscape. Furthermore, the trees neither screen nor visually soften the visual appearance of the development to an acceptable degree. As such, it is considered that the presence of such trees do not decrease the harm to the openness and character of the area to an otherwise acceptable degree.

Summary

- 4.23 In the planning balance, the Council considered that the benefits of the scheme (which are solely to the applicant) and their personal circumstances would not outweigh the harm that would be created to Green Barrier for the reasons detailed above. Furthermore, the personal circumstances of the applicant are not considered to be afforded sufficient weight to warrant a departure from Local and National Policy. As such, in this instance the tilted balance warranted the refusal of this planning application. The Council is of the opinion that this is a correct planning judgement and decision that was reasonable to arrive at.
- 4.24 The principle of development would fundamentally conflict with the development strategy of the adopted development plan. The development would also cause material harm to the character and appearance of the area and fail to maintain the openness of the Green Barrier. The matters in favour of the development, that being the applicants personal circumstances, do not comprise the very exceptional circumstances necessary to clearly outweigh the harm to the Green Barrier or indeed the wider policies designed to protect the countryside, as set out with both Local and National Planning Policy.
- 4.25 The Council is not aware of any evidence put forward either at the time of the determination of this application, or subsequently through this appeal submission, which suggests that the decision that has been made was incorrect or should have been different. Furthermore, the Council is of the opinion that no planning conditions could be reasonably imposed within the decision notice, which would make the level of harm acceptable, or provide suitable mitigation to address the level of harm that would be caused by this proposed development - specifically in relation to the openness of the Green Barrier. This is irrespective of the temporary nature of the permission sought.
- 4.26 Therefore, the Council remains of the opinion that the correct decision was arrived at in refusing this planning application. No information or assessments have been provided by the applicant through this appeal to the contrary which demonstrates that this was an incorrect decision. The Council remains of the view that this incongruous development would have a detrimental impact on the appearance, openness and purpose of the designation of the Green Barrier were this appeal to be upheld. The Council remains of the opinion that the resultant harm that would be caused, would not be outweighed by the personal circumstances of the applicant. As such, the proposal continues to conflict with Policy EC1 of the Wrexham Unitary Development Plan and the Planning Policy Wales.
- 4.27 The Council is mindful of the applicants views on this proposal, and the comments submitted with this appeal. However, the Council disagrees that an incorrect decision was reached in refusing this application, and that the harm that would be caused outweighs the limited benefits of the scheme and the applicants personal circumstances.
- 4.28 Therefore, the Council respectfully requests that this appeal be dismissed.

5.0 CONDITIONS

- 5.1 In the event of the appeal being allowed the Council respectfully requests that the planning permission be subject to conditions and that it be provided with the opportunity to comment upon them prior to the decision being issued.

6.0 APPENDICIES

Appendix A: Planning Committee Report

Appendix B: Decision Notice dated 24 May 2022