



Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 11/05/11
Ymweliad â safle a wnaed ar 11/05/11

gan T J Morgan LLB SOLICITOR

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 27/05/11

Appeal Decision

Hearing held on 11/05/11
Site visit made on 11/05/11

by T J Morgan LLB SOLICITOR

an Inspector appointed by the Welsh Ministers

Date: 27/05/11

Appeal Ref: APP/H6955/A/10/2143180

Site address: Land at Roseacre Caravan Park, Daisy Lane, Rossett, Wrexham LL12 0BE

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 O Lee and J Wells against the decision of Wrexham County Borough Council.
 - The application Ref ROSP/2010/0834, dated 27 September 2010, was refused by notice dated 12 November 2010.
 - The development proposed is: change of use of agricultural land to mixed use for agricultural land with caravan site for two pitches for occupation by Gypsy-Traveller families with hard standing, fencing, stone wall at entrance, cess pits and sheds for a temporary period.
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Decision

1. I dismiss the appeal.

Background

2. The appeal site was originally occupied as a caravan site by a group of 6 Gypsy/Traveller families including the present appellants, who moved onto the land in May 2008. An application for planning permission was submitted retrospectively. This was refused on 28 July 2008 and an enforcement notice served on 29 September 2008. A subsequent appeal against the decision was dismissed and the enforcement notice upheld on appeal on 9 September 2009, although the period of compliance with the notice was extended from 3 months to 12 months.
3. Four of the families have left the site and the appellants now seek temporary planning permission for two plots with the remainder of the land lowered both to ensure compliance with the enforcement notice and the need to remove imported stone that had been used to raise the northern end of the site and because scope exists to additionally reduce land levels to offset the 20mm depth of stone laid on the southern end of the site where the plots to remain are sited.
4. The appellants have been prosecuted for failure to comply with the enforcement notice. I was told at the Hearing that they had pleaded guilty and the case had been adjourned for sentence until later in the year.

Main Issues

5. Although there had been an objection to the development from the Environment Agency Wales [EAW] based on the adequacy of a cesspool to provide foul drainage, its representative at the Hearing produced a letter dated 9 May 2011 in which it withdrew that objection subject to a suggested condition being imposed in the event that permission was granted. This change had resulted from discussions with the appellants and bore in mind the temporary nature of the permission sought. The Council were satisfied that this was an acceptable way to deal with foul drainage and I find no reason to disagree.
6. It was common ground that the Council's objections at the earlier appeals relating to harm to the character and appearance of the countryside, distance from services and facilities and highway safety were no longer an issue. Accordingly, the main issue in the appeal is the consequences of flood risk in respect of the development for which permission is sought, having regard to the need for, and supply of, gypsy and traveller residential accommodation in the area and the personal circumstances of the appellants' families including their Human Rights.

Reasons

7. The development plan for the area consists of the Wrexham Unitary Development Plan ["the UDP"] adopted in February 2005. Policy GDP1 of the UDP states:

"All development should

 - (b) take account of personal and community safety and security in the design and layout of development and public/private spaces
 - (i) ensure that development does not result in, or is subject to, flooding either on or off the site
8. Policy EC 12 states that development (including the raising of land) within defined flood plains will only be permitted if it:-
 - (a) would not be subject to an unacceptable risk of flooding on-site; and/or
 - (b) does not result in an unacceptable risk of flooding on or off-site; and/or
 - (c) does not adversely affect flood management or maintenance schemes".
9. National guidance for development in areas at risk of flooding is to be found in Planning Policy Wales Edition 4 [PPW4] paras 13.2 -13.4 and Technical Advice Note 15 – Development and Flood Risk [TAN 15]. The general approach of PPW4 supported by the TAN is to advise caution in respect of new development in areas at high risk of flooding by setting out a precautionary framework to guide planning decisions. The overarching aim of the precautionary framework is firstly and preferably to direct new development away from those areas which are at high risk of flooding. Where development has to be considered in high risk areas (Zone C), only those developments which can be justified on the basis of tests set out in the TAN are to be located within such areas.
10. Tan 15 advises that particular flooding consequences may not be acceptable for particular types of development. For example, allowing residential development in areas which are subject to high risks of flooding can result in traumatic impact on people's lives. The precautionary framework identifies the vulnerability of different

land uses to flooding. All residential development including caravan parks (which encompasses the appeal development) are defined as highly vulnerable development.¹

11. The whole of the appeal site lies within Zone C2 as shown on the latest edition of the Development Advice Map [DAM] referred to in TAN 15. The TAN makes it clear that highly vulnerable development should not be considered or permitted in Zone C2². Such development does not fall within the ambit of the justification tests mentioned above and, as was pointed out in the previous appeals, a flood consequences assessment is not relevant in considering national flooding policy in these circumstances. The development is one that should be directed away from an area like this which is within Zone C2 and is clearly at odds with national policy and conflicts with the UDP policies already referred to.
12. Turning to Gypsy and Traveller considerations, I note that the evidence collected to inform the preparation of the Deposit Local Development Plan ["the LDP"] involved research³ carried out that indicates a need for 15 extra pitches in the area for the period 2008 to 2013 rising to 27 pitches for the plan period up to 2021. At the inquiry it was agreed that there was a current need for 23 pitches. The Council anticipate that the deposit LDP will safeguard land for 15 new socially rented pitches at Ruthin Road and privately owned single sites up to a maximum of 7 pitches. It was clarified at the Hearing that this latter provision was not a site allocation but would be on a first come, first served basis governed by a criteria based approach to applications. It was pointed out that this does not accord with guidance in Circular 30/2007 *Planning for Gypsy and Traveller Caravan Sites* that sites should be identified in the LDP.
13. It is clear that there is an unmet need for Gypsy and Traveller accommodation in the area that includes the appellants and their families. It was suggested that their needs could be accommodated at the Ruthin Road site where there are currently 6 empty pitches and no pending applications for them. Having inspected this site I do not consider it can be considered as a realistic alternative. It has been found necessary to amalgamate and refurbish other pitches on the site to provide a reasonable standard of accommodation. The remaining empty pitches would need similar treatment to render them suitable for future use and their size makes their adequacy questionable, particularly for the Wells family with 6 children and I am not satisfied that it has been shown that there is available funding to carry out such refurbishment.
14. There is, in addition, the problem of potential incompatibility and resultant tension between the existing occupiers who are Irish Travellers and the appellants who are Romany Gypsies. As the appellants have pointed out such incompatibility has been recognised in other appeal situations⁴. I do not consider there is a realistic alternative site for the appellants and Mr Wells indicated that if unsuccessful in the appeal his family would resort to camping on the roadside in the locality, particularly as he wished to continue to send his children to the local school they currently attend.

¹ TAN 15 Chapter 5 Figure 2

² TAN 15 Page 5 Figure 1, and paragraph 6.2

³ Wrexham Gypsy and Traveller Accommodation Assessment & Fordham's Potential Sites Study

⁴ Appeal ref. APP/U2805/A/09/2099292

15. Circulars 30/2007 and 35/95⁵ advise that a temporary permission may be justified where it is expected that the planning circumstances will change in a particular way at the end of the period of the temporary permission. In cases where there is unmet need and no available alternative Gypsy and Traveller site provision in an area and a reasonable expectation that new sites are likely to become available at the end of the period in the area which will meet that need; local planning authorities should give consideration to granting a temporary permission. Although there is some doubt that, given the lack of identification of the proposed 7 privately owned sites, the present proposed provision in the emerging LDP fully meets the advice in Circular 30/2007, the Plan when adopted (which the parties agreed could be achieved in 3 years time) should make available a new site or sites.
16. This is a situation where temporary permission could be granted based on the unmet need and lack of alternatives and bearing in mind the educational and health needs of the families. Importantly, it must be borne in mind that refusal of permission would result in the loss of the families present homes and as such engage their Human Rights. These factors give weight to the case for the appellants that temporary permission should be granted in accord with the Circular advice. However, the advice that temporary planning permission may be justified is contingent on there being no overriding objections on other grounds.
17. I have identified a fundamental planning objection based on flood risk which weighs heavily against a grant of planning permission even for the reduced period of three years suggested at the Hearing. Notwithstanding the obvious conflict with local and national policy and guidance, I have had regard to the factors put forward in the FCA report and in evidence submitted to the Hearing in considering the case for a temporary permission for Gypsy and Traveller reasons. The report and much of the evidence was considered at the previous Hearing and not held to be persuasive when balancing the flooding objection against other material considerations.
18. This development is for only two pitches involving two rather than six families. While there may be less people at risk from flooding the reduction in numbers on its own does not lessen the risk to them. I note what was said about lowering the level on the remainder of the site but this would not remove the site from a Zone C2 classification and there is little technical detail of the extent to which it would affect the capacity of the site to flood or the consequences for other surrounding land and houses of the loss of flood storage and surface water run off; a concern addressed by local residents at the Hearing. I note also what is said about the site being on the outer fringe of the potential flood area and the source and velocity of flooding, but the fact remains that it is wholly within Zone C2 where there is a compelling policy argument that such highly vulnerable development should not be permitted.
19. It was conceded that the whole of the site has been flooded in the past, but argued that access and egress was not prevented and flood warning would provide an opportunity to evacuate to high ground for the duration of any flooding in accordance with a flood evacuation plan attached to the application. Predictions of likely flood levels in relation to the freeboard of caravans based on past flooding were argued to illustrate acceptable consequences, but bearing in mind climate change and the need for a precautionary approach, I do not consider much reliance can be attached to such predictions. The EAW submission, while accepting that lowering the land may reduce

⁵ Welsh Office Circular 35/95 *The Use of Conditions in Planning permissions*

off-site impacts and velocity of flood water would be low, points out that the video footage of the 2000 flood event shows access and egress to and from the site would be compromised by flood waters and there is no detailed scheme to assess the impact of land reduction. The flotation devices could be beneficial in a flooding situation and, as the EAW representative accepted, could be effective and useful in existing authorised caravan sites. However, I accept, as he also submitted, that they would not justify granting permission for the creation of a new site in such a high risk zone.

20. In reaching my decision I have borne in mind the educational and health needs of the families involved and their integration into the community as supported by Rev. Canon Suter, Vicar of the Parish at the Hearing. I am conscious of the loss of their homes that would ensue if permission is not granted and the enforcement action instigated by the Council continues resulting in the cessation of their occupation. These are weighty factors which together with the need for and lack of alternative Gypsy and Traveller accommodation would, in more acceptable locations, count strongly in favour of a grant of permission. However, when balanced against the conflict with national and local policies and guidance that seeks to protect both the appellants and other residents and responding services from unacceptable risks to life and property arising from flooding, they are overridden by the harm arising from this conflict. In addition, to permit development in such circumstances would weaken the effectiveness of such policies and prejudice the interests they seek to protect.
21. I consider a refusal of permission, even with the likely consequences described for the appellants' Human Rights, to be a fair and proportionate action when looked at in relation to the planning harm identified and would not result in a violation of those rights. I have also borne in mind the duties prescribed by Equality and Racial Discrimination legislation, but do not consider the consequences of my decision to be discriminatory. The previous Inspector extended the period for compliance with the notice to give the appellants a reasonable time to comply with the requirement to cease the use, but I do not consider any further temporary period of occupation is justified; nor are there any conditions that I can envisage that would overcome the harm I have identified.
22. I have noted the other appeal decisions with flooding considerations produced by the appellants, but do not consider them comparable to the present appeal. The site in Wentlooge Cardiff⁶ involved land in Zone C1 where, unlike Zone C2, highly vulnerable development may be justified by tests set out in TAN 15. Even if those tests were applied in this case, I do not consider the FCA shows that the risk of flooding can be adequately managed. The site in Paddock Wood⁷ was assessed against an English policy and guidance base which differs both in form and criteria from the Welsh policy and guidance that has to be applied in this case.
23. In the circumstances I conclude the appeal should not succeed and planning permission should not be granted.

TJ Morgan

INSPECTOR

⁶ APP/G6935/A/08/2078202

⁷ APP/M2270/C/09/2101094

APPEARANCES

FOR THE APPELLANT:

Mrs A T Heine BSc MSc MRTPI	Planning Consultant
Mr J Wells	One of the Appellants
Mr L Lee	Son of One of the Appellants
Rev Canon A Suter	Vicar of Rossett Parish, and Governor of St Peter's School

FOR THE LOCAL PLANNING AUTHORITY:

Mr M Phillips MSc MRTPI	Planning Officer with the Council
Mr D Lloyd	Planning Enforcement Officer with the Council

INTERESTED PERSONS:

Mr H Jones	County Borough Councillor for the ward
Mr N Taunt	Representing Environment Agency Wales
Mr I Sharples	Local resident
Ms S Barriga	Local resident

DOCUMENTS SUBMITTED AT HEARING

- 1 Notification of Hearing and list of those notified
- 2 Letter from Environment Agency Wales 9 May 2011
- 3 Details of occupancy and plan of Ruthin Road Caravan Site
- 4 WAG Gypsy and Traveller Caravan Count Details January 2011
- 5 Letter from Traveller Education Service Wrexham CBC 18/11/10