

Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 04/06/14
Ymweliad â safle a wnaed ar 04/06/14

**gan K Nield BSc(Econ) DipTP CDipAF
MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 22 Gorffennaf 2014

Appeal Decision

Hearing held on 04/06/14
Site visit made on 04/06/14

**by K Nield BSc(Econ) DipTP CDipAF
MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 22 July 2014

Appeal Ref: APP/H6955/C/13/2210461

Site address: land off the B5101, Southsea, Wrexham, LL11 5NS

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

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Andrew Cash against an enforcement notice issued by Wrexham County Borough Council.
- The Council's reference is PG/2011/20036¹.
- The notice was issued on 11 November 2013.
- The breach of planning control as alleged in the notice is "Without planning permission the change of use of the land from use for agriculture to a mixed use for agriculture and for the provision of gypsy/traveller residential caravan accommodation, a chalet, the parking of vehicles, the erection of walls, ornate metal gates, fences, a mobile utility and laundry building and associated domestic paraphernalia, the installation of a liquefied petroleum gas tank and the importation of waste materials and tarmac to form a hardstanding for the caravans and chalet".
- The requirements of the notice are:
 - (i) Stop using any part of the land edged red (on the plan attached to the notice) for the provision of gypsy/traveller residential caravan accommodation and/or the parking of vehicles.
 - (ii) Remove from the land edged red (on the plan attached to the notice) all caravans, sheds, amenity blocks, chalet and any other structures associated with the residential use of the land.
 - (iii) Remove the liquefied petroleum gas tank from the land edged red (on the plan attached to the notice).
 - (iv) Reduce the height of the boundary walls at the Southsea Road access to a height of no greater than 1 metre.
 - (v) Remove all tarmac and hardstanding from the land edged red (on the plan attached to the notice) other than that shown cross hatched in blue.
 - (vi) Restore the land edged red (on the plan attached to the notice), (excluding the area cross hatched in blue), to its condition before the laying of hardbound materials and tarmac imported to the site, used to create a hardstanding area for the caravans and chalet.
- The periods for compliance with the above listed requirements are:
 - (i) Nine months after this Notice takes effect.

¹ Taken from the Council's Statement of Case

- (ii) Nine months after this Notice takes effect.
 - (iii) Twelve months after this Notice takes effect
 - (iv) Twelve months after this Notice takes effect.
 - (v) Twelve months after this Notice takes effect.
 - (vi) Twelve months after this Notice takes effect
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeal is dismissed with variation and the enforcement notice upheld as set out in the Formal Decision below.

Preliminary matters

2. The Council refused a planning application² for development described as a traveller's chalet and caravan park for one plot (one chalet and two caravans) plus an amenity building at the appeal site in February 2012. An appeal³ against the refusal was considered at a Hearing in July 2012 and the appeal was subsequently dismissed. At the time of the Hearing the Inspector noted that the development referred to in the appeal scheme had commenced.
3. The Council served an enforcement notice against the alleged breach of planning control and an appeal against that was submitted and a Hearing was opened in January 2013. However, the Council withdrew the notice at the Hearing. A further enforcement notice was subsequently issued which is the subject of the current appeal.
4. Although the application is for a permanent consent the Appellant has provided details of the personal circumstances of his family group co-occupying the site as part of the justification for the proposed development. The personal circumstances advanced are also relevant to a consideration of a possible temporary planning consent. Consequently, I will consider the appeal on the basis that the scheme is required for the particular persons identified.

The site, surroundings and background

5. The appeal site is located in open land to the north of the settlement of Southsea. The Appellant owns a narrow, irregularly shaped tract of land between Southsea Road (B5101) to the west and the Brymbo Link Road to the east. This is split by a public footpath linking the two roads. The enforcement notice attacks the use of the land to the north of the footpath. Land to the south of the footpath is used by the Appellant for the grazing of horses.
6. The appeal site is occupied by an extended family group in a number of mobile homes and caravans. A substantial twin unit mobile home⁴, referred to by the parties and in

² Application Ref: P/2011/0670 dated 12 September 2011 was refused dated 6 February 2012

³ Appeal Ref: APP/H6955/A/12/2172149 dated 13 August 2012

⁴ Some doubts were expressed by interested parties as to whether the large mobile home falls within the definition of a caravan due to its size. The Appellant states that it is within the definition (as defined in the Caravan Sites and Control of Development Act 1960 and the

the notice as a "chalet", is occupied by the Appellant and his three children at weekends and school holidays. For consistency with the principal parties and the previous Inspector I will refer to this large mobile home as "the chalet". It is also indicated that Mr Cash occupies a touring caravan at the site at times.

7. There is also a smaller mobile home at the site occupied by Margaret Delaney, (the Appellant's sister) with her husband Edward (known as Ned) and their youngest son. Their elder son, Jonny, his wife Mary and young child live in a touring caravan at the site. A second sister, Mary, also lives at the site with her son. Mary's daughter lives in a touring caravan at the site with her young child. In addition to the above caravans there is a "mobile" laundry/utility unit, hut, LPG⁵ tank, stables, items of domestic paraphernalia and vehicles (including the Appellant's camper van) within the site which is now enclosed by wooden fencing with a concrete base and posts.
8. I noted at my visit that the ground is partly covered with loose hardcore material. At the original site entrance (which provided access to the stables and agricultural land) from Southsea Road a splayed brick entrance, with metal gates and ornamental features, has been constructed. A short section of tarmac surface leading from the highway into the site has been provided.

Common ground

9. The Council does not dispute that the Appellant and other co-occupants of the site are gypsies as defined in Welsh Assembly Government Circular 30/2007: *Planning for Gypsy and Traveller Caravan Sites* (WAGC 30/2007). On the basis of the evidence before me of their cultural background and nomadic lifestyle I am also satisfied that they come within the definition and, consequently, the policy regime that applies to gypsies and travellers is engaged.
10. The appeal site and adjacent land to the south owned by the Appellant are within an area designated in the UDP⁶ as "Green Barrier". The UDP points out (section 5.2) that, in Wrexham, Green Barriers possess the same characteristics as and purposes of formal Green Belts, except for their long term permanency.
11. Planning Policy Wales (PPW) explains (paragraph 4.8.1) that around towns and cities there is often a need to protect open land and local planning authorities need to consider establishing Green Belts and making local designations, such as green wedges. In this case the term "Green Barrier" applied in the UDP is the Council's local designation for, and is synonymous with, the term green wedge used in PPW. PPW indicates that green wedge policies should be reviewed as part of the development plan review process but until that time should serve the same purpose as a Green Belt (paragraph 4.8.1 and 4.8.3).

Caravan Sites Act 1968 (as amended)) and it is not disputed by the Council. I have no reason to reach a different view.

⁵ Liquefied petroleum gas (LPG)

⁶ Wrexham Unitary Development Plan 1996 – 2011 Adopted 14 February 2005 (UDP)

Appeal on ground (a)

Main issues

12. It was agreed at the Hearing that the main issues in the ground (a) appeal are:

- (i) whether the development is inappropriate development in the Green Barrier;
- (ii) the impact of the development on the Green Barrier in terms of its openness and the purposes of including land within it;
- (iii) the effect on the character and appearance of the site and the surroundings;
- (iv) the effect on highway safety, and
- (v) whether the harm to the Green Barrier by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations which amount to very exceptional circumstances to justify the development.

The other considerations are:

- (a) the general need for and supply of gypsy sites in the area taking into account national and local planning policy;
- (b) the accommodation needs of the Appellant and those residing on the appeal site and their personal circumstances, and
- (c) whether a grant of temporary planning permission would be appropriate in the event that it is found that a permanent permission would not be.

I shall also refer to the human rights of the Appellant and those residing on the appeal site.

What are the changes since the previous appeal?

13. As the issues in this ground (a) appeal are similar to those in the 2012 s78 appeal I asked the principal parties at the Hearing for a summary of any significant changes in circumstances since the previous appeal that might be regarded as significant material considerations in the present appeal.

The Appellant

14. The Appellant states that this appeal has provided evidence from a qualified highway engineer and a landscape consultant to deal with disputed matters. There are now more occupants at the site for which health and other personal circumstances are advanced to support their case. Additional evidence regarding the need for gypsy and traveller sites has been made available and accepted by the Council. In addition, there has been the issue of a Welsh Government paper: *Travelling to a Better Future* together with the stated intention of the Welsh Government to re-introduce the statutory duty for local authorities to provide gypsy and traveller sites which, it is contended, supports the Appellant's position. Finally, recent case law, in particular in relation to the best interests of children, weighs in favour of the proposal.

The Council

15. The Council, whilst accepting recent case law, the availability of new information regarding the need for sites and the current position of the Welsh Government, does

not consider there has been significant material change to the main issues that were the subject of the previous appeal.

Reasons

Does the proposal constitute inappropriate development in the Green Barrier?

16. As I indicate above there is no dispute that the appeal site is within the Green Barrier. UDP policy EC1 follows the thrust of PPW and states that within such areas development will only be granted planning permission if it is for specified forms of development which maintain the openness of the Green Barrier and do not conflict with the purpose of including land within it. The development alleged in the notice does not fit any of the permitted forms of development and therefore it would be inappropriate development in the Green Barrier which conflicts with UDP policy EC1.
17. The Appellant accepts that the development within the Green Barrier is inappropriate development for the purposes of UDP policy EC1. However, it is argued that its designation as Green Barrier "is not the same thing as treating the site as being within the Green Belt"⁷. The inference by the Appellant is that being sited within the Green Barrier would carry less weight than location within the Green Belt. However, paragraph 4.8.14 of PPW states that "when considering applications for planning permission in Green Belts or green wedges, a presumption against inappropriate development will apply".
18. PPW also states that substantial weight should be attached to any harmful impact which a development would have on such designated areas. Paragraph 4.8.15 states that inappropriate development should not be granted planning permission except in very exceptional circumstances where other considerations clearly outweigh the harm which such development would do to the Green Belt or green wedge and any other identified harm. Consequently, I attach little weight to the Appellant's contention with regard to this matter.

The impact of the development on the Green Barrier

19. One of the stated purposes of the Green Barrier is to assist in safeguarding the countryside from encroachment. The development that has taken place conflicts with that stated purpose as it encroaches into the mainly open area of land between Southsea Road (which is at the edge of built development) and the Brymbo Link Road.
20. The siting of the chalet, caravans and structures (as indicated in the notice) within the site occupy a significant part of the notice land and serve to reduce the openness of the site within the Green Barrier. The site is enclosed to a large extent by mature hedgerows at the site boundaries to both Southsea Road and the Link Road and by fencing (about 1.8m in height) around the majority of the appeal site erected by the Appellant which, taken together, limit views into the site from public view points. Notwithstanding those matters, I noted at my visit that views into the site of the development that had taken place could clearly be obtained at the site entrance from Southsea Road and at the position of a gate providing access to the site from the public footpath to the south of the site.
21. I accept that a previously existing stable itself led to some loss of openness of the site but that occupies only a small area compared to the extent of development that is

⁷ Appellant's Written Statement paragraph 16.

being enforced against. Consequently, that does not alter my view as to the overall loss of openness that results from the development that has taken place.

22. Taking these factors into account I conclude on this issue that the development would be harmful to the Green Barrier in terms of its openness and the purposes of including land within it contrary to UDP policy EC1 and national policy in PPW.

Effect on character and appearance

23. Amongst other matters UDP policy GDP1 requires that all new development should make a positive contribution to the appearance of the nearby locality. The Appellant has submitted a Landscape Design Statement to support his case. That document argues that the landscape in this area is of a fragmented character and does not relate well to other areas of open land within the Green Barrier. It is contended that the development serves to improve the character of an otherwise untidy area. It is further indicated that the visual envelope of the site is constricted by landscape features as it sits below a large, well vegetated highway embankment which provides effective screening to its eastern periphery, is below the level of the field to the south of the site and is defined by a tall hedgerow to the west. Consequently, the Appellant argues that the appeal site is neither prominent nor visually intrusive within the wider landscape. Schemes to provide landscape enhancement are suggested by the Appellant in the appeal evidence and it is indicated that the proposed measures would serve to promote habitats and biodiversity.
24. The Council points out that the site is located in the Wrexham Ridges and Valley Landscape Character Area within the adopted Wrexham LANDMAP SPG⁸ where the proposed management structure is for conservation and maintenance of the Green Barrier between villages and avoiding proliferation of fences are stated aims. A number of interested parties noted that the site had a different character now to that which existed prior to the development alleged in the notice taking place. It was previously agricultural land but now it has an enclosed domestic quality and views across it have changed.
25. The Appellant suggests that the site (or at least a significant part of it) should be regarded as previously developed land prior to its occupation by the Appellant and other co-occupants. Aerial photographs (Photograph P1) submitted by the Appellant showing the site at 2006, 2007 and 2009 appear to indicate some limited use of the land as the vegetation is denuded and there are some items⁹ sited on it. Nevertheless, in the photographs it still retains an open verdant quality.
26. A number of interested parties made reference either at the Hearing or in written representations that prior to the alleged development taking place the site had provided a degree of visual amenity for local residents particularly when viewed as an open area from the public footpath. There is also some evidence that the site had been used in the past for some community activities (Photograph P4) although the circumstances around that use are not clear.
27. The stable building, which was granted planning permission in 1994, would no doubt have had some form of limited surfacing adjacent to it and access from Southsea Road in connection with the stables and other agricultural use of the land within the current

⁸ Wrexham LANDMAP Supplementary Planning Guidance (SPG)

⁹ It is not clear from the photographs but appear to be vehicles or some form of storage

appeal site and further to the south. However, apart from the small area permitted for the stables it appears to me that the authorised use of the remainder of the site would remain as agricultural use since there has been no planning permission for an alternative use and as such would not meet the definition of previously developed land in PPW. I have no reason to consider that the authorised use of the land for stables and agriculture led to material harm to the character of the notice land and it is likely to have been significantly less than that which has occurred from the alleged development. Consequently, I attach little weight to the Appellant's contentions in this regard.

28. I regard the site as being an important component of the open area between the edge of the settlement and the raised Brymbo Link Road. The residential use that has been introduced has led to a significant change in the local landscape character. In addition, the enclosure of the site with fences has led to greater fragmentation of the landscape in this area. Taking all the above into consideration I conclude on this issue that the significant harm I have identified to the character and appearance of the site and the surroundings, in conflict with the objectives of UDP policy GDP1, has added to the harm I found to the Green Barrier.

Effect on highway safety

29. UDP policy GDP1(d) requires all new development to ensure safe and convenient access to and from development sites both on site and in the nearby locality. WAGC 30/2007 requires local authorities to take highway considerations into account in respect of the identification of new gypsy and traveller sites. It further indicates that projected vehicle movements for gypsy and traveller sites should be assessed on an individual basis for each site.
30. The appeal site entrance is located at the inside of a curve of Southsea Road. In the vicinity of the site the highway has a 30mph speed limit although that changes to the national speed limit some short distance to the north. Traffic speed¹⁰ (which is not disputed) measured in the vicinity of the site entrance for traffic approaching from the north is 38mph whilst from the south is 37mph. In both cases these exceed the speed limit for this section of road.
31. I visited the site twice, once informally in the late afternoon prior to the Hearing and again after the Hearing in early afternoon as an accompanied visit. At my first visit the road had a steady flow of traffic in both directions at a time around the end of the school day. At my accompanied visit the traffic was much lighter often with lengthy gaps between passing vehicles. I noted that the hedgerow along the verge to Southsea Road had recently been cut back¹¹ to increase the extent of visibility. I was informed by the Appellant at my site visit that he had undertaken that work.
32. Guidance on the provision of safe visibility at junctions is provided in TAN 18¹² which applies data from MfS1¹³. Both MfS1 and MfS2 suggest a pragmatic approach to the application of highway design standards taking account of local context.

¹⁰ 85th percentile speeds

¹¹ I was informed by the Council representative at the site visit that hedge maintenance along this part of Southsea Road is the responsibility of the local highway authority

¹² Technical Advice Note 18: Transport (TAN 18)

33. There is no dispute that visibility from the site entrance to the north is acceptable. The Council's concern is with traffic approaching from the south on the opposite side of Southsea Road to the site entrance. The guidance in both MfS1 and MfS2 indicates that some circumstances make it unlikely (my emphasis) that vehicles approaching from the left on the main arm will cross the centreline of the main arm and opposing flows may be physically segregated at that point. If that is the case MfS suggests that the visibility splay to the left can be measured to the centreline of the main arm.
34. In this case I noted that in the vicinity of the site entrance Southsea Road has a reasonable width to allow vehicles to pass easily. The Appellant contends that it is unlikely (in terms of the test required by MfS) that vehicles approaching the site entrance from the south would cross the centreline of the main arm. In response to my direct questions at the Hearing the Council officer would not offer a definite view as to whether it was unlikely that vehicles would cross the centreline merely indicating it was "possible" and referred to the comments of the previous Inspector regarding this matter. Notwithstanding the Council's reticence to state a clear view, on the basis of my site observations at my two site visits, I consider it is very unlikely that drivers would seek to overtake in this section of highway. However, I accept that a few drivers may seek to narrow their line around the bend and in so doing encroach to the centreline or slightly over but that would be an unlikely occurrence. In that situation drivers approaching from the south would have a good view of oncoming traffic along Southsea Road and also of the possibility of traffic emerging from the site access into it. Consequently, I reach a view that it would be appropriate in this case to take the visibility splay measurement to the south to the centreline of the road.
35. Applying the guidance in TAN 18 and MfS1 a stopping sight distance (SSD) of 59m for a level road is appropriate for the design speed of 37mph. As there is a slight uphill gradient for northbound traffic at this point an adjustment in accordance with MfS guidance can be applied such that a SSD of 54.550m¹⁴ is obtained. This is applied as the Y distance for assessing the visibility splay.
36. The Council suggests that the visibility splay should be taken from a point 2.4m back from the highway (X distance) to comply with the guidance in TAN 18 as it is indicated that that distance represents a reasonable maximum distance between the front of the car and the driver's eye. Such a degree of visibility from the appeal site entrance to traffic approaching from the north can be obtained and maintained with minor hedge trimming. However to obtain that degree of visibility to the south the Council contends that it would be likely to require some removal of the existing mature hedgerow.
37. Notwithstanding the above, MfS2 suggests that a minimum X distance of 2m may be considered in some "slow speed"¹⁵ situations when flows on the minor road are low, but using this value will mean that the front of some vehicles will protrude slightly into the running carriageway of the major arm and many drivers will tend to cautiously nose out into traffic. The ability of drivers and other road users to see that overhang should be considered in that situation.

¹³ Manual for Streets (MfS1) and Manual for Streets 2: Wider Application of the Principles (MfS2)

¹⁴ Including a 2.4m bonnet length correction

¹⁵ The Appellant's consultant referred to guidance in respect of traffic speeds in Design Manual for Roads and Bridges

38. In the previous appeal the Inspector accepted the Council's evidence that the best visibility splay that can be achieved from the site entrance to the south by the trimming back of the hedge would be 25m (measured to the nearside edge of the carriageway) or 42m (if measured to the centreline of the carriageway)¹⁶. However, those stated measurements appear to underestimate the actual visibility from the entrance. Measurements provided for this appeal by the Appellant's consultant¹⁷ (and cross checked with measurements taken at the site at the accompanied visit) indicate that at an X distance of 2.4m, a visibility splay of approximately 37.5m to the kerb edge was obtained and 47m to the centreline. However, at an X distance of 2m the visibility south from the access increased to about 40m to the near edge and approximately 50m¹⁸ to the centreline.
39. However, in view of my comments above I consider that an X distance of 2m would be appropriate in this case as traffic flows are for the main part light and can be considered as being of reasonably slow speed. Vehicles slightly protruding from the site access would be visible to traffic in both directions and the road is wide enough to allow the free flow of traffic if that did occur.
40. Taking all the above factors into account a visibility splay to the south of some 2m x 50m to the centreline of the road can be achieved. That would be only slightly less than the application of TAN 18 guidance. Nevertheless, taking into account the local context I have described I consider that the degree of visibility along Southsea Road that can be achieved with a 2m x 50m splay in both directions is acceptable. In addition, the achievement of that visibility splay would not require the removal of the hedgerow along the site frontage.
41. I have taken into account comments from some interested parties at the Hearing that referred to "near misses" along this section of road. However, no actual accidents appear to have been reported either to the police or to the local highway authority and brought to my attention as substantive evidence and that has reduced the weight I can attach to those comments.
42. To the extent that my views on this issue differ from those of the previous Inspector I have relied to a large extent on my own observations and the measurements provided and validated at the site visit.
43. I conclude on this issue that the appeal scheme would not be materially harmful to highway safety and would accord with guidance in TAN 18 and MfS.

Other considerations

Need for gypsy and traveller sites

44. It is not disputed that there is a shortage of sites for gypsies and travellers in the Wrexham area. A recent GTAA¹⁹ has updated the information base. Taking into

¹⁶ In both cases an X distance of 2.4m is applied as indicated in paragraph 36 of the appeal decision

¹⁷ Hearing statement of Jeremy Hurlstone and attached documents. I have applied the measurements from the written evidence

¹⁸ A measurement of 52.6m for this was obtained at the site visit

¹⁹ Wrexham Gypsy and Traveller Accommodation Needs Assessment 2013 – 2018 (GTAA)

account the GTAA the Council stated at the Hearing that there is a need for 27 pitches required in total for Wrexham. Of that figure 15 are for socially rented pitches and 6 are for private pitches. The remainder are required to enable an upgrading of the Council's Ruthin Road site.

45. The Council pointed to a number of unauthorised developments in the Wrexham area some of which are "tolerated" by the Council without enforcement action being taken. Nevertheless, as the Appellant pointed out, there has been a shortage of sites for a lengthy period and that is referred to in a number of previous appeal decisions provided to me. He contends that there is no current mechanism in place by the Council to deliver new sites. The Appellant also referred me to recent initiatives of the Welsh Government in the publication of "Travelling To A Better Future" and the intention to re-introduce the statutory duty on local authorities to provide gypsy/traveller sites. These factors serve to emphasise the current shortage of sites in the Wrexham area.
46. The Council has accepted the GTAA as a basis for site allocation in a forthcoming development plan which it indicated could be adopted during 2016. Nevertheless, even if that transpires it is likely to be in the region of some 3 years before allocated and deliverable sites will be available. In the meantime sites would come forward only as "windfall" developments. In conclusion, there is a clear current need for additional pitches which is unlikely to be met in the short term by planned deliverable sites. These factors, taken together, significantly weigh in favour of the proposed development.

Accommodation needs and personal circumstances

47. The appeal site is occupied by a single family of Irish Travellers. I have outlined earlier the family members residing at the site.
48. There is little substantive evidence before me that a robust search for sites was undertaken by the Appellant before choosing to locate at the appeal site. It is indicated that the family group would not consider location at the local authority site at Ruthin Road due to disputes with some of the other occupants. In addition, it is not clear to me that the Council owned site could accommodate the family group as a whole and offer land to accommodate their horses even if some pitches there became available.
49. Unless the family group can find a suitable, alternative site, which, given the present need for sites in the area, may be difficult, the likelihood is that the extended family would have to resort to living on the road or on land where gypsy and traveller use is unauthorised. This would no doubt lead to some hardship and be likely to undermine the opportunities for regular education for children and access to health care.
50. Little evidence of the personal circumstances of the family group was submitted in connection with the earlier application and, consequently, detailed information in respect of their personal circumstances was not before the Council when it resolved to issue an enforcement notice.
51. Additional information was submitted at the Hearing (Document 5) in respect of medical conditions of two of the site occupants. In addition, information regarding social problems encountered by a further occupant was provided. Oral evidence was

provided at the Hearing by the operator of a Help Centre²⁰ regarding the educational progress of another occupant since attending a Horse Care course in the locality.

52. There are children currently at the site and who would occupy the proposed development. The Courts²¹ have established that the best interests of children are a primary consideration so that it is necessary to identify those best interests and then continue by "*assessing whether the strength of any other consideration, or the cumulative effect of other considerations, outweighed the child's best interests*".
53. I have no doubt from the evidence and my site visit that access to education and health facilities from a site offering stability would be more advantageous than from an unauthorised one if all other matters are acceptable. Although little evidence was provided of a robust search for alternative sites at which to locate the personal circumstances of the Appellant and co-occupants weigh in favour of the development.

The balance of considerations – permanent planning permission

54. The use of the site for the alleged development constitutes inappropriate development in the Green Barrier which, by definition, is harmful. The development would cause significant harm to the openness of the Green Barrier and lead to encroachment into the countryside beyond the well established settlement edge of Southsea, currently provided by the B5101, contrary to one of the defined purposes of the Green Barrier. PPW requires substantial weight to be afforded to any harm to the Green Barrier and there is conflict with UDP policy.
55. The appeal scheme would also lead to harm to the character and appearance of the site and its surroundings which would not be fully mitigated by additional planting and the imposition of conditions. The development also runs counter to the management theme of conservation for the LCA. Whilst this area is only of low landscape importance at a local level, the harm to the landscape character and appearance is another factor which weighs against the grant of permanent planning permission.
56. Set against this cumulative harm there is a general need to provide additional pitches for gypsies and travellers in the District. From the evidence before me, the level of need is significant and there has been no recent provision other than on unauthorised sites. The forthcoming development plan will seek to address this situation for Wrexham but it will not be completed and adopted for some time. No firm date for that was provided by the Council but it appeared to be at least 2 years away. It will be longer before deliverable sites are available for development.
57. The Appellant has undertaken a search for alternative sites although the evidence that that was of a robust nature is very limited. The personal accommodation needs of the named family members are significant and finding a suitable, available and affordable alternative site for the group is no doubt likely to be difficult in advance of the new development plan and given the Green Barrier constraints applying to parts of the District. The benefit of continuity of education for school age children resident at the site is also a point in favour as are the treatment of medical conditions of the occupants. In addition, I found that the development would not be harmful to highway safety. Taken together, these are significant factors weighing in favour of the development scheme.

²⁰ Oral evidence of Michelle Crowther: Yard Manager of The Horse and Owner Help Centre

²¹ A leading case is ZH (Tanzania) v Secretary of State for the Home Department [2011] 2AC 166

58. However, the harm I have identified to the Green Barrier and the added harm to the character and appearance of the site and its surroundings is considerable and this outweighs any of the other considerations in favour of granting permanent planning permission, whether taken individually or cumulatively. Therefore I conclude that no very exceptional circumstances prevail to warrant the granting of permanent planning permission.

The balance of considerations –temporary planning permission

59. Welsh Office Circular 35/95 (WOC 35/95) states that a temporary permission may be justified when it is expected that the planning circumstances will change in a particular way at the end of the temporary period. WAGC 30/2007 indicates that, where there is an unmet need but no available alternative gypsy and traveller site provision in an area but there is a reasonable expectation that new sites are likely to become available at the end of that period in the area which will meet that need, decision makers should give consideration to granting temporary permission where there are no overriding objections on other grounds. Paragraph 14 of WAGC 30/2007 states that such circumstances may arise in a case where a local planning authority is preparing its sites allocation as a part of the LDP, and that in such circumstances, decision makers are expected to take into account the consequences of the unmet need in considering whether a temporary planning permission is justified.
60. I have given significant weight to the lack of available pitches in the area and taken into account the time that it will take for the Council to bring forward sites in a development plan. Windfall sites that come forward in the intervening period may help to alleviate some of the current need. There is a degree of uncertainty regarding the Council's programme for the provision of a plan which allocates sites for gypsies and travellers, though it could be the case that allocated and deliverable sites will be available in, say, three years' time. I therefore accept that planning circumstances could change as referred to in paragraph 14 of WAGC 30/2007. I am also appreciative of the personal circumstances of the family group occupying the site, particularly with regard to the medical conditions of those occupants that have been notified to me, and also those concerning the welfare and well-being of the children on the site.
61. However, in this case, I consider that the harm caused to the Green Barrier (and the additional harm I have identified) even for the short term if a temporary planning permission was granted would be substantial and would not be outweighed by the considerations weighing in favour of allowing the appeal development for a temporary period pending the provision of sites through the development plan process. The harm cannot be adequately mitigated through the use of planning conditions.
62. After taking all matters into account (including the case law and various appeal decisions referred to by the Appellant and the Council), I am of the view that the legitimate aim of the protection of the Green Barrier in this area can only be safeguarded by the dismissal of the appeal. Consequently, I consider that it would not be appropriate to grant temporary planning permission in this particular case.

Human rights

63. I appreciate that my decision results in an interference with the rights of the intended occupiers and their families in respect of private and family life and their home, and that Article 8 of the European Convention on Human Rights is engaged. I am aware

that incorporated into my obligations under Article 8 are the obligations under the United Nations Convention on the Rights of the Child including Article 3.

64. The needs of the children who would be on the site is a primary consideration and the Children's Act 2004 requires that in discharging my functions I must have regard to safeguarding and promoting the welfare and well-being of the children. However, I consider that my response is proportionate after taking into account the conflicting matters of public and private interests so that there is no violation of human rights.

Other matters

65. Some concerns were expressed by interested persons at the Hearing regarding flooding. Photographs were submitted (Photograph P5) which indicated flooding on Southsea Road in the vicinity of the site. However, there is no evidence before me that the appeal site itself was liable to flood.
66. I have had regard to all other matters raised but none leads me to a different view as to the main issues on which the appeal turns.

Overall conclusion on the ground (a) appeal

67. Bringing the conclusions together, I consider that the substantial harm that would result from the appeal scheme is not clearly outweighed by other considerations. None of the other considerations put forward by the Appellant either individually or cumulatively amount to very exceptional circumstances that clearly outweigh the harm to the Green Barrier and the harm I have identified to the character and appearance of the site and the surroundings to justify this inappropriate development in the Green Barrier on either a permanent or temporary basis. I conclude that the appeal should not succeed.
68. The appeal on ground (a) fails.

Appeal on ground (g)

69. The purpose of the compliance period is to give a reasonable time to meet the requirements. The notice requires the residential use to cease and the caravans and related structures to be removed within 9 months with a further 3 months allowed for other site restoration works.
70. Whilst the Appellant and family members have occupied the site since 2011 they should still be given a reasonable period of time to comply with the requirements of the notice and seek alternative accommodation. The Appellant has suggested a period of 2 years. Given the harm I have found, particularly to the Green Barrier, I do not consider that an extension of the period of occupation to 2 years is appropriate in the public interest. As a compromise between the two positions and in order to provide additional time to search for and secure an alternative site I find that a period of 15 months would be reasonable (for requirements (i) and (ii)) and an additional 3 months (that is a total of 18 months) for the remaining requirements (requirements (iii), (iv), (v) and (vi)).

Formal decision

71. The enforcement notice is varied by:

(i) the deletion from paragraph 6 "Time for Compliance" of the words "Nine months" in requirements (i) and (ii) and their substitution therefor of the words "Fifteen months", and

- (ii) the deletion from paragraph 6 "Time for Compliance" of the words "Twelve months" in requirements (iii), (iv), (v) and (vi) and their substitution therefor of the words "Eighteen months"

Apart from the partial success on ground (g) the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Kevin Nield

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Angus Murdoch	Planning consultant
Rhodri Crandon	Landscape consultant
Jeremy Hurlstone	Highways consultant
Andrew Cash	Appellant
Trevor Mennell	Consultant
Margaret Delaney	Appellant's sister
Michelle Crowther	Yard Manager, The Horse and Owner Help Centre

FOR THE LOCAL PLANNING AUTHORITY:

J S Sutherberry	Senior Planning Officer
Stephen Griffiths	Planning Officer
Peter Douthwaite	Highways Officer

INTERESTED PERSONS:

Fred Derbyshire	Chairman of the Southsea Action Committee
Jo Prince	Secretary of the Southsea Action Committee
Fred Prince	Community Councillor for Broughton
Debbie Davies	Community Councillor for Vron
Alexandra Gomer	Local resident
Tony Gomer	Local resident
Chris Lloyd	Local resident

DOCUMENTS

- D1 Copy of the Council's letter of notification of arrangements for the Hearing
- D2 Copy of e-mail from Janet Sutherland to Trevor Mennell dated 7 December 2011
- D3 Extract from Wrexham Unitary Development Plan 1996 -2011 - Policy H9: Gypsy Caravan Sites
- D4 Extract from Countryside Council for Wales LANDMAP study for Wrexham
- D5 Bundle of (original) documents submitted by the Appellant relating to personal circumstances of occupants of the appeal site

PHOTOGRAPHS

- P1 Aerial photographs of the site from 2006, 2007 and 2009 submitted by the Appellant
- P2 Photographs of a landscape scheme at Bridgend submitted by the Appellant
- P3 Photographs dated June 2009 (from Google Maps) showing the site entrance and the view into the appeal site submitted by a local resident
- P4 Photographs of community event at the appeal site undated but said to be from 1995 submitted by Fred Derbyshire
- P5 Photographs (undated) of flooding of the B5101 in the vicinity of the site