
Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 26/04/17

Ymweliad â safle a wnaed ar 26/04/17

**gan Melissa Hall BA(Hons), BTP, MSc,
MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 13.06.2017

Appeal Decision

Hearing held on 26/04/17

Site visit made on 26/04/17

**by Melissa Hall BA(Hons), BTP, MSc,
MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 13.06.2017

Appeal Ref: APP/H6955/A/17/3166718

Site address: Land adjacent to The Bungalow, Halton, Chirk, Wrexham LL14 5BG

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 Mrs M Berry against the decision of Wrexham County Borough Council.
 - The application Ref P/2015/0225, dated 4 January 2015, was refused by notice dated 4 August 2016.
 - The development proposed is the change of use of land to provide residential gypsy / traveller pitches (7 plots) and erection of communal utility building.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to provide residential gypsy / traveller pitches (7 plots) and erection of communal utility building on land adjacent to The Bungalow, Halton, Chirk, Wrexham LL14 5BG in accordance with the terms of the application, Ref P/2015/0225, dated 4 January 2015, and the plans submitted with it, subject to the conditions set out in the schedule attached as Annex A.

Procedural Matters

2. The description of development shown on the planning application form was amended by the Council prior to determination to refer to 7no plots and a communal building (rather than a day room). I have used the Council's description of development as it accurately describes that proposed. No party would be prejudiced by my doing so.
 3. Although the submissions refer, in part, to the retention of the access in its existing position, both parties confirmed at the Hearing that the amended Proposed Illustrative Site Plan shows a new site entrance towards the eastern end of the site. This corresponds with the drawing showing Visibility Splays, dated April 2016. It is on this basis that the Council considered the application and on which I determine the appeal.
 4. At the Hearing, an interested party requested to submit late written representations. The Council stated that it had notified the interested party of the appeal, that there had been ample opportunity to submit written representations and that their earlier comments had already been provided. I understand that the author of the additional
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late representations was intending to appear at the Hearing to speak on behalf of the interested party, but I was told that intimidation prevented him from doing so.

5. The appellant objected to the submission of the late representations on the basis that the main parties were required to keep to the timetable for making representations, and that it would be prejudicial for me to accept the submissions. The interested party confirmed that the late representations were concerned with highway safety and procedural matters.
6. Procedural matters regarding the manner in which the application was processed by the Council are not for me to consider in my determination of the appeal. It was agreed by the interested party that the highway safety matters contained in the late representations could be discussed verbally in the Hearing, thereby giving the appellant an opportunity to respond.
7. Residents also proposed to put before me an additional speed survey, which they claimed updated the surveys carried out by the appellant. I do not know from where the survey is derived, the basis on which it was carried out, its accuracy or reliability. In any event, the first survey carried out by the appellant was based on one traffic counter which was updated with a second survey with two traffic counters, which led to the Council accepting that the reason for refusal had been overcome. I was told that the third survey referred to by the interested parties recorded speeds in one direction only and would not therefore advance the position established by the second survey carried out by the appellant. For these reasons, I did not accept the third speed survey as additional late evidence.

Preliminary Matters

8. Following the refusal of planning permission which related only to inadequate access due to substandard visibility, the appellant reviewed the Highway Authority's consultation response which referred to observed 85th percentile speeds obtained from a single Automatic Traffic Counter (ATC) fixed to a lamp column on the opposite side of the road to the site and to the east of the proposed access. This recorded average speeds of 39mph westbound and 42mph eastbound. As a result of concerns regarding the accuracy of the speeds recorded based on the location of the single count site, two ATC's were installed to record the traffic speeds approaching the site from each direction. This revealed that the correct 85th percentile speeds upon which the visibility splays should be assessed were lower than that previously recorded at 39.1mph westbound and 38.1mph eastbound.
9. In advance of the Hearing I was provided with a Statement of Common Ground between the appellant and the Highway Authority agreeing that, as a result of this new information, a safe access can be provided subject to a condition requiring visibility splays extending a minimum of 67.5 metres to the west and 70.5 metres to the east from a 2.4 metre set back at the access centreline.

Main Issue

10. Against this background, the main issue is the effect of the proposed development on highway safety, with particular regard to the proposed means of access and visibility.

Reasons

11. The appeal site is a roughly rectangular parcel of land located to the north of Old Black Park Road. It lies in close proximity to the junction with the A5 to the east. It is

situated opposite a Council Highway Depot and the vehicular entrance to the site of a weekly car boot sale.

12. Policy GDP1(d) of the adopted Wrexham Unitary Development Plan ("UDP") requires all new development to ensure safe and convenient access to and from development sites both on site and in the nearby locality.
13. The appeal site entrance would be located on a relatively straight section of Old Black Park Road. On the approach from the east, traffic would have just emerged from a roundabout. From the west, traffic would have an uphill climb around a bend before approaching the site. The proposal would result in the creation of a new access onto Old Black Park Road, which would be situated towards the easternmost end of the site and roughly opposite the entrance to the Council's Depot.
14. Guidance on the provision of safe visibility at junctions is provided in Technical Advice Note 18 '*Transport*' ("TAN 18") which refers to Manual for Streets ("MfS"). MfS and Manual for Streets 2 '*Wider Application of the Principles*' (MfS2) suggest a pragmatic approach to the application of highway design standards taking account of local context. It is recommended that, as a starting point for any scheme affecting non-trunk roads, designers should start with MfS.
15. I visited the site and the surrounding area in the morning prior to the Hearing. At the time of my visit, the road had a moderate flow of traffic in both directions with some gaps between passing vehicles. It is evident from the second survey undertaken over a seven day period between 10 and 16 January 2017, that the daily traffic flow on Old Black Park Road averaged less than 1,000 vehicles per day, which is less than the typical peak hour flow on a trunk road. Whilst interested parties were critical of the time of year and period over which the survey was undertaken, I have no compelling reason to doubt that it represented the typical traffic volume and speed along this section of the road.
16. The ATC's recorded traffic speed measured in the vicinity of the site entrance for eastbound traffic of 38.1mph and westbound traffic of 39.1mph, uncorrected for weather conditions. The speeds fall below the 40mph threshold above which MfS2 advises the application of *Design Manual for Roads and Bridges* parameters.
17. In light of the updated speed survey with two ATC's correctly located towards the limits of the visibility envelope, it is clear that the approach speeds are lower than that previously recorded in the initial survey. I accept that the geometric features of the highway, such as the steep uphill climb and the bend in the road are likely to result in variable traffic speeds along the relevant sections of the road. In this context and as average vehicle speeds are below 40mph, it is appropriate to apply MfS guidance rather than designing for continuous traffic speeds¹. That is, the use of 'stopping site distances' parameters are recommended².
18. Taking into account the guidance in MfS and MfS2, the appellant confirms that the required visibility splay lengths based on the observed speeds are calculated to be 67.4 metres based on large vehicles and 60.8 metres based on light vehicle

¹ This would be more appropriate on the main alignment of a trunk road which carries high volumes of through traffic.

² The stopping sight distance (SSD) is the distance within which drivers need to be able to see ahead and stop from a given speed.

requirements. The comparable distances to the east are 70.2 metres based on large vehicles and 63.3 metres based on light vehicle requirements.

19. At the Hearing, the Local Planning Authority confirmed its agreement that appropriate visibility splays can be achieved and that the single technical matter which resulted in the reason for refusal has been overcome. There is no substantive evidence before me that leads me to any other conclusions in this regard. I therefore find that the visibility splays that can be achieved at the proposed access in both directions would allow for traffic to stop in a safe, controlled manner.
20. I have taken into account the concerns of interested parties that the road is busy, with high volumes of traffic coming from the A5/ A483 bypass and the main community at Black Farm. In particular, concern was expressed regarding the volume of traffic associated with the large car boot sale every Sunday and HGV's emerging from the Council's Highway Depot. Residents contend that, together with high traffic speeds, the road alignment and blind junctions emerging onto Old Black Park Road make the highway conditions unsafe and unsuitable for an additional access. However, no details of actual accidents were put before me. Rather the appellant's Highway Consultant confirmed that the collision accident data had been reviewed and there have been no recorded injury accidents at the various accesses and junctions along the relevant section of Old Black Park Road for a period in excess of 10 years. This matter has not therefore altered the conclusions I have reached.
21. Consequently, I find that the proposal would not be materially harmful to highway safety and would accord with the aims of UDP Policy GDP1(d) and the guidance in TAN 18, MfS and MfS2.

Other Matters

22. At the Hearing, interested parties also raised concern regarding the site's proximity to the airport, with resultant issues associated with health and safety³ and noise / disturbance for future occupants. The Council did not take issue with either of these matters in coming to its decision and there is no compelling evidence before me that leads me to any other conclusions in this regard.
23. I also note the suggestion of residents that there are problems associated with surface water drainage further along Old Black Park Road and that measures such as traffic calming or the provision of a footway along the length of the road should be considered in order to improve highway conditions. However, Welsh Government Circular 016/2014 '*The Use of Conditions for Development Management*' ("Circular 01/2014") advises that a condition must fairly and reasonably relate to the development to be permitted. There is no evidence before me to the effect that the surface water drainage issues are a direct result of the site or that the proposed development would make the drainage conditions worse. Furthermore, the Highway Authority did not consider a scheme for traffic management or the provision of a footway linking the site to the wider area to be necessary in order to make the development acceptable. Hence, such measures cannot be justified by the nature of the development or its effect on the surroundings.

³ Residents referred to the position of the site at the end of an airport runway and several fatal accidents in the vicinity.

Conditions

24. I have had regard to the Council's suggested conditions and whether they meet the tests outlined in Welsh Government Circular 016/2014 '*The Use of Conditions for Development Management*'.
25. A condition requiring the development to commence within a five year period is necessary to comply with s91 of the Act. A condition requiring the development to be completed in accordance with the approved plans is necessary in the interests of clarity.
26. Details of noise mitigation measures are reasonable to protect the living conditions of the future occupants of the site. A condition requiring details of foul and surface water drainage is necessary to ensure the satisfactory drainage of the site.
27. A condition restricting the occupancy of the site to Gypsies and Travellers is reasonable given that the development is justified on this basis. The associated conditions restricting the number of pitches and caravans and preventing commercial activity on the site are necessary in order to minimise the impact of the development on its surroundings.
28. A condition relating to landscaping is necessary to ensure a satisfactory appearance to the site.
29. Conditions in relation to parking and tuning areas, access and visibility splays are necessary in the interests of highway safety.

Conclusion

30. For the reasons I have given, and having regard to all matters raised, the appeal is allowed.
31. I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WBFG Act"). In reaching this decision, I have taken into account the ways of working set out at section 5 of the WBFG Act and I consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives set out as required by section 8 of the WBFG Act.

Melissa Hall

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Trevor Mennell	Planning Consultant
Mr Jeremy Hurlstone	Highway Consultant
Mr Berry	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Phillips	Planning Control
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INTERESTED PERSONS:

Ms Susan Wood	Resident
Mr Den Wood	Resident
Mr Geraint Pierce	Resident
Dr Bridget Drukker	Resident
Mr John McMahon	Resident
Mr Ian Biggs	Resident
Mr Frank Evans	Resident
Ms Rebecca Harper	Resident
Ms Caryl Blackmore	Resident
Mr Shaun Jones	Clerk, Chirk Town Council
Cllr Ian Roberts	Ward Member, Wrexham County Borough Council
Cllr Terry Evans	Ward Member, Wrexham County Borough Council
Ms Naomi Penrose	Shropshire Star

ANNEX A

Appeal APP/H6955/A/17/3166718: Schedule of conditions subject to which planning permission is granted

- 1) The development shall begin not later than five years from the date of this decision.
- 2) The development shall be carried out in accordance with Drawing No 0/124 received on 25 March 2015 and the Proposed Illustrative Site Plan received on 9 June 2016.
- 3) The occupation of the site shall only be by Gypsies and Travellers as defined by paragraph 3 of Welsh Government Circular 30/2007.
- 4) There shall be no more than 7 pitches on the site and on each of the 7 pitches hereby approved no more than 1 static caravan and 1 touring caravan, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed at any time.
- 5) No commercial activity shall take place on the land including the storage of materials and the stationing of any vehicle in excess of 3.5 tonnes overnight. There shall be no loading or unloading of vans, open backed vehicles or lorries on the site other than for domestic purposes.
- 6) No development shall commence 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 occupation of any pitch.
- 7) No development shall commence until a scheme of noise mitigation has been submitted to and approved in writing by the local planning authority. The mitigation measures set out in the scheme as approved shall be implemented in full prior to the first occupation of any caravan and shall be retained as such thereafter.
- 8) No development shall commence until a scheme of hard and soft landscaping, together with a timescale for the implementation of all landscaping works, has been submitted to and approved in writing by the local planning authority. The landscaping of the site shall be carried out in accordance with the approved scheme. Any trees or plants which within a period of 5 years from planting are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 9) Notwithstanding the Proposed Illustrative Site Plan, no pitch shall be occupied until a parking area and turning facilities for that pitch has been laid out, surfaced and drained in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. The parking area(s) and turning facilities shall thereafter be retained, kept free of obstruction and made available solely for the parking of vehicles.
- 10) The existing vehicular access onto Old Black Park Road shall be permanently closed up prior to first occupation of the site.
- 11) The vehicular access shall be a minimum width of 5.5 metres and shall be surfaced with hard bound materials for a minimum distance of 10 metres behind the adjoining highway prior to first occupation of the site. There shall be no gates or other means of enclosure across the vehicular access point within 10 metres of the highway boundary.

- 12) The vehicular access shall provide visibility splays extending a minimum of 2.4 metres x 67.5 metres to the west and 2.4 metres x 70.5 metres to the east measured to the nearside edge of the adjoining highway. Within these splays there shall be no obstruction in excess of 1 metre in height above the level of the adjoining highway. The splays shall be retained as such thereafter.