

Yr Arolygiaeth Gynllunio



The Planning Inspectorate ⁶⁸⁶

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Your Ref / Eich Cyf

Our Ref / Ein Cyf

APP/H6955/A/01/1070501

APP/H6955/C/01/1072601

Date / Dyddiad

18 June 2002

Dear Madam

**TOWN & COUNTRY PLANNING ACT 1990
APPEALS BY MR M BERRY AND F BERRY
SITE AT BERRYLAND, HOMESTEAD LANE, WREXHAM**

Amgaeaf benderfyniad yr Arolygydd ar yr apêl
uchod.

I enclose the Inspector's decision on the above
appeal

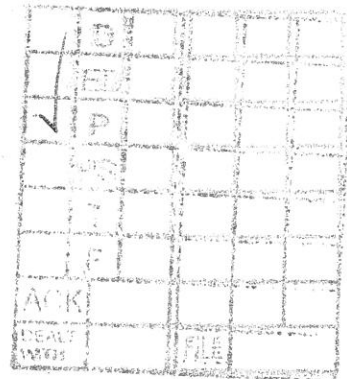
Yn gywir

Yours faithfully

Meic Crahart
Cofrestrfa - Registry

211B

Rydym yn Croesawu Gohebiaeth yn Gymraeg a Saesneg
We Welcome Communications in English and Welsh



Penderfyniad ar yr apêl

Ymchwiliad a agorwyd ar 23/04/02

Appeal Decision

Inquiry opened on 23/04/02

gan/by Stuart B Wild MRTPI MCMi

Arolygydd penodwyd gan Cynulliad
Cenedlaethol Cymru

an Inspector appointed by the National
Assembly for Wales

Dyddiad/Date 18-06-2002

Appeals 1 Ref: APP/H6955/C/01/1072601

Site address: Land at Homestead Lane, Wrexham

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Michael Berry and Florence Berry against an enforcement notice issued by Wrexham County Borough Council.
- The Council's reference is 9.PG/686.
- The notice was issued on 31 July 2001.
- The breach of planning control as alleged in the notice is, without planning permission, the change of use of the land to use for the provision of residential caravan accommodation with associated sheds and the parking of vehicles.
- The requirements of the notice are: (1) stop using any part of the land for the provision of residential caravan accommodation and/or the parking of vehicles; (2) remove from the land all caravans, vehicles and sheds, and (3) restore the land to the condition it was in before the laying of tarmacadam and hardcore to create a hardstanding area for caravans and the erection of a fence to enclose the part of the land upon which the caravans are located.
- The period for compliance with the requirements is 42 days.
- The appeals are proceeding on the grounds set out in sections 174(2)(a) and (g) of the 1990 Act. The deemed application for planning permission also falls to be considered.

Appeal 2 Ref: APP/H6955/A/01/1070501

Site address: Berryland, Homestead Lane, Wrexham

- 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 Michael Berry against the decision of Wrexham County Borough Council.
- The application (Ref. WRO P/2001/0343), dated 18 February 2001, was refused by notice dated 9 July 2001.
- The development proposed is a private gypsy caravan site.
- The inquiry sat for 3 days on 23 April and 21-22 May 2002.

Summary of Decisions: The appeals are allowed, the enforcement notice is quashed and planning permission is granted subject to conditions.

Procedural and Background Matters

1. The inquiry was opened by Inspector Clive Nield on 23 April 2002 but adjourned for 4 weeks to allow time for the appellants to appoint various expert witnesses, for those witnesses to visit the site and prepare their evidence, and for the Council to have sight of that evidence in advance of the inquiry resumption. The parties agreed at the inquiry that 4 weeks was

sufficient time for these matters to be dealt with. Mr and Mrs Berry had applied for exceptional funding for representation at the inquiry and this was authorised on 11 April 2002. The period between 11 April and 23 April 2002 was considered to be too short to allow reasonable preparations to be made in advance of the opening of the inquiry.

2. I reopened the inquiry on 21 May 2002. The inquiry then sat for two days and I made an accompanied inspection of the appeal site and its surroundings and the official gypsy site at Ruthin Road at the close of the inquiry on 22 May.
3. After the planning application was submitted the description of the development was clarified and agreed, and the Council's refusal notice described it as the "siting of one residential caravan, one touring caravan & associated sheds for one local gypsy family (in retrospect)". I shall take this to be the development before me under the S78 appeal.
4. Mr and Mrs Berry both lodged separate appeals against the enforcement notice. These appeals are identical in all respects and I shall consider them together. The issues raised concerning the appeal against the refusal of planning permission (S78 appeal) and the appeals under ground (a) against the enforcement notice (S174 appeal) are identical and my considerations are equally applicable to both appeals.

Appeals under S78 and S174 Ground (a)

Main Issues

5. From the representations made at the inquiry, the written representations and my inspection of the site and its surroundings I consider that the main issues are the effect of the proposal on the character and appearance of the area bearing in mind the Council's policies for the area, the effect of the proposal on highway safety and the effect on the amenities of the occupiers of nearby dwellings.

Planning Policy

6. The Council's policies for the area are contained in the Wrexham Maelor Local Plan approved in 1996 and the Clwyd County Structure Plan First Alteration approved in 1991. These are the elements of the current Development Plan. The Council drew particular attention to Local Plan policies S1, S3, S4, H5 and E7 and Structure Plan policies B13 and H2.
7. The Structure Plan second alteration had reached an advanced stage at Local Government reorganisation in 1996 but it was not formally adopted. The Council adopted such parts as related to the Wrexham area for development control purposes. Policies HSG10 and HSG12 were specifically drawn to my attention.
8. The emerging Unitary Development Plan is at the Public Inquiry stage. Policies H9 and GDP1 were again drawn to my attention. The Council also drew attention to National Guidance in Planning Policy Wales and Circular 2/94.

Reasons

9. I note that Mr Berry has had to give up his previous mobile employment and that his travels are now normally restricted to about two visits to Ireland each year. However this is due to his ill health and I see no clear evidence to suggest that the appellants are no longer within the normal definition of gypsies for the purposes of the planning legislation.

10. Turning to the first issue of the effect on the character and appearance of the area it was accepted by both main parties that the appeal site lies outside the boundary of any settlement and is therefore within the open countryside. The site lies within a green barrier where Local Plan policy S3 states that development that would not detrimentally affect their open character will normally be permitted. I note that there are no specific policies within the Local Plan relating to gypsy sites. Structure Plan policy B13 states that the development of residential caravans and mobile homes in open countryside, apart from gypsy sites required by the Caravan Sites Act 1968 will not normally be permitted on a permanent basis. Policy H2 precludes development in defined green barriers unless it is in association with agriculture, forestry, outdoor sport and recreation, cemeteries and institutions in large grounds. The Council pointed out that the Caravan Sites Act 1968 had been repealed and therefore policy B13 was no longer applicable. However virtually the same policy is repeated in Second Alteration policy HSG10 which the Council has adopted for development control policies. Therefore I consider that the general thrust of policy B13 is still applicable.
11. In general terms it appears to me that the possible location of a site for an individual gypsy family in the open countryside is not, in principle, contrary to the objectives of the Development Plan and other material planning policies. I attach significant weight to the criteria included within policy HSG12 which again the Council adopted for development control purposes. These criteria give the clearest guidance as to where a gypsy site might be acceptable.
12. Criteria A relates to the provision of mains services and no evidence was produced to show that this would be a problem. Criteria B and D relate to clearly defined boundaries and screening. This site was formerly occupied by three cottages and more recently by a small livestock unit. It has well established natural boundaries with extensive screening in place. It is not part of a larger field. In my view the site generally complies with criteria B and D. The site is in the same general location as the Council site at Ruthin Road and the former unauthorised site at Croesnewydd and therefore I consider that it is within an area normally frequented by gypsies as required by criteria E. The site is closer to schools, shops etc than the Council site and therefore satisfies criteria F. I saw no evidence to suggest any conflict with criteria H concerning high quality agricultural land, SSSIs or sites of other nature conservation importance. The question of effect on areas of high quality landscape is potentially a conflict depending on any assessment of the visual quality of the green barrier. I shall return to this point later. Finally criteria C and G relate to the second and third main issues in the case which are considered in more detail below.
13. In evidence in chief the Council's planning witness accepted that it is most unlikely that any specific site would completely satisfy all the development control criteria. In my view that is a sensible and realistic approach. It is a matter of balance as to how much weight to attach to any degree of conflict with the various elements of the criteria.
14. On the effect on the character and appearance of the area the current designation of the green barrier in the Local Plan is a local designation. Whilst the site is in an attractive area of open countryside it is not a landscape protected by any national designation. It is part of the open countryside around the settlement which should normally be protected from the harmful effects of unacceptable forms of development.
15. The proposal clearly has some effect on the character and appearance of the area since it is visible from the public highway and across the open countryside. However the effect on the open character of the green barrier referred to in Local Plan policy S3 is much restricted by the small scale of the proposal and the existing boundary screening around much of the site.

In my view the effect on the character and appearance of the area and its openness would be relatively slight.

16. Turning to the second issue of the effect on highway safety this is criteria G of policy HSG12. The Council did not object on highway safety grounds subject to certain visibility splays at the access. Local residents and interested persons did raise concerns including the proximity of the access to the sharp bend, the absence of footways and the use of the road for children going to the nearby school.
17. I observed that the access is off a road subject to the national 60mph speed limit. The road is narrow with limited forward visibility but is generally sufficiently wide to permit two vehicles to pass. There are no footways in the vicinity of the appeal site.
18. The proximity of the bend results in traffic passing the site at relatively low speeds. There is reasonable visibility at the access to the right which would comply with the visibility standards suggested by the Council. Visibility to the left is restricted by the existing hedge and trees but in my view is currently adequate given the need for traffic to slow to negotiate the bend. The removal of more of the existing trees and hedge to extend the visibility would reduce the existing screening of the site. I consider that the proposal would not be unacceptably harmful to the safety of highway users with the existing visibility. The proposal therefore complies with criteria G.
19. On the third issue of the effect on the amenities of the occupiers of nearby dwellings this covers the aspects raised by criteria C of policy HSG12. I observed that there are a number of dwellings in the general area. However they are separated from the site by the road with its hedges, another field and its boundary hedge. No doubt there are views from some of the dwellings of the site. But given the distance from the nearest dwellings and the clear evidence given at the inquiry that the site is for one family only with no business activity on the site, I do not consider that any impact on the amenities of the occupiers of those dwellings would be sufficiently harmful to justify withholding consent. The conflict with criteria C is therefore again slight.
20. In weighing the proposal against the slight conflict with two of the criteria that I have identified and the conflict with other general policies concerning development outside settlement boundaries and within Special or Local landscape Areas I must take into account other material considerations. In this case I attach significant weight to the health of Mr Berry and to the needs of his younger children's education. I further note that his grandchildren also benefit from regular school attendance because they are collected and returned to his property on school days. Whilst there is a pitch available on the official Ruthin Road site the history of conflict with other residents are such that it is unreasonable to expect Mr Berry to return to that site. The alternative would be to resume a mobile existence which would be harmful to Mr Berry's health and disruptive to the education needs of his children. In any event Circular 2/94 at paragraph 21 makes it very clear that "authorities should not refuse private applications on the grounds that they consider public provision in the area to be adequate, or because alternative accommodation is available elsewhere on the authorities' own sites". In my view these other material considerations in this case more than outweigh any degree of conflict with the appropriate policies.
21. Since the appeals succeed on my interpretation of the weight to be attached to the Development Plan and associated policies under S54A of the Act I have not attached any significant weight to the disputed evidence concerning whether or not there is any need for additional gypsy sites in the Wrexham area.

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22. I have also had regard to the evidence of the Council's planning witness concerning the status of green barriers. He drew attention to the March 2002 version of Planning Policy Wales which deals in some detail with "Green Belts and green wedges". The term green wedge includes other terms for local designations and it was maintained that this included green barriers as referred to in the Wrexham Local Plan. In essence the Council's view was that in light of this new policy document the test of appropriate and inappropriate development should be applied to the areas designated as green barriers around Wrexham.
23. In my view the advice in paragraph 2.6.6 of Planning Policy Wales that Green Belts should be established through UDPs means that it is inappropriate to apply these new controls to an existing green barrier until its status has been reviewed through the UDP process. If not then a fundamentally different level of control would be introduced without the opportunity of members of the public being able to register any objections to the change.
24. However, in the particular circumstances of this case, even if I accepted the Council's point of view that this proposal represented inappropriate development in a Green Belt or green wedge, then the concerns regarding Mr Berry's health and the benefits to his children of continued regular schooling represent very special circumstances that clearly outweigh any harm by reason of inappropriateness. In addition given my findings above that the effect on the openness of the area would be relatively slight, then the personal circumstances of the appellants would represent very special circumstances which would more than outweigh the harm that the proposal would have on the green barrier.

Conditions

25. The Council and the appellants suggested a number of conditions which should be attached to any permission. I have considered these in accord with the advice contained in Circular 35/95. My conclusions in this case have been heavily influenced by the clear evidence that the site is required for the appellants' family use only. There is no intention to run any business from the site. A personal permission for Mr and Mrs Berry was acceptable to the appellants. In my view a personal permission is appropriate in the circumstances of this case. I shall also impose conditions to limit the extent of the use to prevent any commercial activity. Further landscaping was suggested by the appellants including an earth mound and planting in front of the screen fence. This will be subject to a condition together with further planting behind the visibility splays in the interests of the visual amenity of the area. As explained above I consider that the existing visibility splays are sufficient in this case although I consider that a condition is necessary to ensure that vehicles are parked only on the current hardsurfaced area and that a turning space is maintained in the interests of highway safety. I shall impose a condition to limit the number of caravans to one static and one tourer to prevent any further extension of the number of caravans. The question of the siting of the caravans was raised. In my view the present positions are acceptable provided that the static caravan is painted dark green. This is again necessary in the interests of visual amenity. The site is not currently connected to mains services but I understand that it is the appellants' intention to provide connections if the appeals are successful. The provision of normal drainage facilities and electricity supply to avoid the need to use a generator would reduce possible problems for local amenity. I shall therefore impose an appropriate condition.

Other matters

26. I have taken into account all of the other matters raised in the written representations and at the inquiry but they are not sufficient to outweigh those considerations that have led to my conclusions.

Conclusions

27. Subject to the imposition of the conditions identified above I conclude that the effect of the proposal on the character and appearance of the area, the effect of the proposal on highway safety and the effect on the amenities of the occupiers of nearby dwellings would not be sufficiently harmful to justify the refusal of planning permission.
28. Since the S174 appeal succeeds on ground (a) the ground (g) appeal does not fall to be considered.

Formal Decisions

Appeals 1 Ref: APP/H6955/C/01/1072601

29. In exercise of the powers transferred to me, I allow the appeal and direct that the enforcement notice be quashed. I grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land at Berryland, Homestead Lane, Wrexham, as shown on the plan attached to the notice, for the provision of residential caravan accommodation with associated sheds and the parking of vehicles subject to the following conditions:
- 1) The use hereby permitted shall be personal to Mr Michael Berry and/or Mrs Florence Berry and to any resident dependants and shall be for a limited period being the period during which the premises are occupied by Mr Michael Berry and/or Mrs Florence Berry.
 - 2) When the premises cease to be occupied for residential purposes by Mr Michael Berry and/or Mrs Florence Berry the use hereby permitted shall cease and all caravans, associated sheds, fencing and hardsurfacing brought on to the premises in connection with the use shall be removed and all service connections stopped up.
 - 3) Within one calendar month of the date of this decision, details of a scheme showing hedge and tree planting along the rear of the visibility splay required by condition 4, together with details of earth mounding and planting on the road side of the existing screen fence around the caravans, shall be submitted to and approved in writing by the local planning authority. The scheme as approved shall be carried out in the first planting season (October – March). Any trees or plants which within a period of 5 years from the completion of the scheme, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.
 - 4) Visibility splays measured 2m back from the Homestead Lane carriageway edge along the centreline of the access shall be provided to points on the same side of the carriageway edge 70m to the right and 45m to the left side of the centreline. Within these splays the highway boundary means of enclosure and any other obstructions shall be lowered to a maximum height of 1m above road level. These splays shall be completed within one calendar month of the date of this decision and shall thereafter be maintained.
 - 5) There shall be no more than one static residential caravan and one touring caravan on the site at any one time. The caravans shall be sited in the north western corner of the site behind the screen fence. Within 3 months of the date of this decision the static caravan shall be painted in a shade of dark green paint to be agreed with the local planning authority. Thereafter any static caravan shall be maintained in that colour.

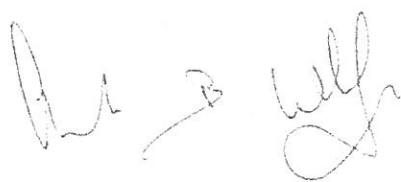
- 6) Vehicles shall only park on the hardsurfaced areas along the western part of the site and between the caravans and storage building. Space shall be maintained at all times to enable vehicles to turn within the site so that they may enter and leave the site in forward gear.
- 7) No commercial activity shall take place on the site, including the storage of materials and the stationing of any vehicle over 3.5 tonnes overnight. There shall be no loading or unloading of vans, open backed vehicles or lorries on the site at any time.
- 8) A scheme for the connection of the site to services including drainage provision and electricity supply shall be submitted to and agreed in writing by the local planning authority and shall be implemented within 6 months of the date of this decision.

Appeal 2 Ref: APP/H6955/A/01/1070501

30. In exercise of the powers transferred to me, I allow the appeal and grant planning permission for the siting of one residential caravan, one touring caravan & associated sheds for one local gypsy family (in retrospect) at Berryland, Homestead Lane, Wrexham in accordance with the terms of the application Ref. WRO P2001/0343 dated 18 February 2001, and the plans submitted therewith, subject to the same conditions as appeal APP/H6955/C/01/1072601 above.

Information

31. A separate note is attached setting out the circumstances in which the validity of any of these decisions may be challenged by making an application to the High Court.
32. These decisions do not convey any approval or consent that may be required under any enactment, by-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
33. An applicant for any approval required by a condition attached to this permission has a statutory right of appeal to the National Assembly for Wales if that approval is refused or granted conditionally or if the authority fails to give notice of its decision within the prescribed period.



Inspector

APPEARANCES

FOR THE APPELLANTS:

Mr S. Cottle of Counsel	Instructed by The Community Law Partnership
He called	
Susan Alexander	National Co-ordinator Friends, Family and Travellers Advice and Information Unit
Margaret Greenfields	Researcher on Traveller health and education
Mrs F Berry	Appellant
Mr M Berry	Appellant
Mr P Brown	Planning witness – Bolton Emery Partnership
Dr M Harper	Local resident and friend of appellants
Vicki Seddon	Travellers Education Service (Teacher of appellants children)
Mrs Maquire	Appellants' daughter

FOR THE LOCAL PLANNING AUTHORITY:

Mr R Green of Counsel	Instructed by the Wrexham County Borough Council.
He called	
Mr R A Dewey	Planning Control Manager
Mr P Calland	Chief Housing Officer

INTERESTED PERSONS:

Gordon Emery	Voluntary footpath officer, Ramblers Association Wrexham Group, 27 Gladstone Road, Chester
Cllr David Rodger	Ward Councillor Wrexham CBC
Mrs K Benfield	Clerk to Offa Community Council, 20 Temple Row. Wrexham LL13 8LY
Mrs M Large	21 The Homestead, Wrexham
Mr V Crewe	5 The Homestead, Wrexham

DOCUMENTS

- Document 1 Lists of persons present at the inquiry on 23/04/02, 21/05/02 & 22/05/02
- Document 2 Various letters of notification and list of persons notified.

LPA DOCUMENTS

- Document 3 Proof of evidence (POE) of Mr R A Dewey
- Document 4 Appendix 1 to Doc 3
- Document 5 Appendix 2 to Doc 3
- Document 6 Supplementary POE of Mr R A Dewey
- Document 7 Bundle of correspondence re UDP gypsy policies
- Document 8 Aerial photo of site early 2000
- Document 9 POE of Mr P Calland
- Document 10 Note re illegal encampments dated 21/05/02

APPELLANTS DOCUMENTS

- Document 11 POE of Susan Alexander and appendices
- Document 12 POE of Margaret Greenfields
- Document 13 POE of Mrs F Berry and appendices
- Document 14 POE of Mr M Berry and appendices
- Document 15 Second POE of Mr M Berry and appendices
- Document 16 POE of Mr P Brown
- Document 17 Appendices to Doc 16
- Document 18 POE of Dr Harper
- Document 19 POE of Vicki Seddon and attached Statement of Miss R Molyneux (Headteacher) taken as written submission
- Document 20 Letter dated 17/05/02 from Dr John Marek AM
- Document 21 Written submission and appendices from Hughie Smith, Gypsy Council
- Document 22 Letter dated 22/05/02 from Beechley Medical Centre
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- Document 23 Letter dated 15/05/02 from Wrexham Housing Dept
Document 24 Letter dated 16/07/98 from DETR
Document 25 File of other cases
Document 26 Further bundle of other cases

OTHER DOCUMENTS

- Document 27 Letter dated 10/05/02 from P G Large
Document 28 Petition against proposal from local residents

PLANS

- Plan A Plan attached to enforcement notice.
Plan B Planning application plan.
Plan C Plan showing appeal site, Ruthin Road site and former Croesnewydd site
Plan D Plan showing Settlement Limit, Green Barrier and Special Landscape Area



RIGHT TO CHALLENGE THE APPEAL DECISION

The attached appeal decision is final unless it is successfully challenged in the Courts on a point of law. If a challenge is successful the case will be returned to the National Assembly for Wales by the Court for re-determination. However, if it is re-determined, it does not necessarily follow that the original decision on the appeal will be reversed.

Depending on the circumstances, an appeal may be made to the High Court under either or both sections 288 and 289 of the Town & Country Planning Act 1990. There are differences between the two sections, including **different time limits**, which may affect your choice of which to use. These are outlined below.

You may wish to consider taking legal advice before embarking on a challenge. The following notes are provided for guidance only.

CHALLENGES UNDER SECTION 289 OF THE 1990 ACT

Section 289(1) relates to decisions on enforcement appeals. The appellant, the local planning authority or any person having an interest¹ in the land to which the enforcement notice relates may appeal to the High Court against the decision on a point of law.

An appeal under section 289 may only proceed with the *leave* (permission) of the Court. An application for leave to appeal **must be made to the Court within 28 days of the date of the appeal decision**, unless the period is extended by the Court.

If you are not the appellant, the local planning authority or a person with an interest in the land but you want to challenge an enforcement appeal decision on grounds (b) to (g), or the decision to quash the notice, you may make an application for judicial review. You should seek legal advice promptly if you wish to use this non-statutory procedure.

CHALLENGES UNDER SECTION 288 OF THE 1990 ACT

Decisions on appeals under section 78 (planning) or section 195 (Lawful Development Certificate) may be challenged under this section. Section 288 also relates to enforcement appeals, but only to decisions granting planning permission or discharging conditions. Success under section 288 alone would not alter any other aspect of an enforcement appeal decision. The enforcement notice would remain quashed unless successfully challenged under section 289 or by judicial review.

Section 288 provides that a person who is aggrieved by the decision to grant planning permission or discharge conditions (on an enforcement appeal) or by any decision on an associated appeal under s78 or s195 of the Act, may question the validity of that decision by an application to the High Court on the grounds that:-

- (i) the decision is not within the powers of the Act; or
- (ii) any of the 'relevant requirements' have not been complied with ('relevant requirements' means any requirements of the 1990 Act or of the Planning & Tribunals Act 1992, or of any order, regulation or rule made under either Act).

These two grounds mean in effect that a decision cannot be challenged merely because someone does not agree with an Inspector's judgement. Those challenging a decision have to be able to show that a serious

¹ To have an interest in the land means essentially to own, part own, lease and in some cases, occupy the site.