

Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 21/02/17

Ymweliad â safle a wnaed ar 21/02/17

**gan Kay Sheffield BA(Hons) DipTP
MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 29.03.2017

Appeal Decision

Hearing held on 21/02/17

Site visit made on 21/02/17

by Kay Sheffield BA(Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 29.03.2017

Appeal Ref: APP/H6955/A/16/3161155

Site address: Land west of Bryn Offa, Fennant Road, Ponciau, Wrexham.

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 Bridget McGuire against the decision of Wrexham County Borough Council.
 - The application Ref P/2016/0225, dated 02/03/2016, was refused by notice dated 06/06/2016.
 - The development proposed is the change of use of land to provide 2no. Gypsy and Traveller pitches, day room and hard standing.
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to provide 2no. Gypsy and Traveller pitches; erection of an ancillary mobile day room/amenity building; and the construction of hard-standing area and access at land west of Bryn Offa, Fennant Road, Ponciau, Wrexham in accordance with the terms of the application, Ref P/2016/0225, dated 02/03/2016, subject to the conditions set out in the schedule below.

Preliminary Matters

2. My pre-Hearing and accompanied site visits took place outside peak traffic hours and during a school holiday. In view of the concerns raised by the Council and interested parties in respect of highway safety, I made an unaccompanied visit on 15 March 2017 when I viewed the traffic during the morning peak period.
 3. The Appellant purchased the appeal site in 2014. Planning permission was previously sought in 2015 for the change of use of part of the site for one gypsy and traveller pitch with use of the existing access. This was refused on the grounds that the access did not meet the required visibility splays. In the application subject of the appeal, the position of the access has been amended; the area of the site extended to include all the land in the ownership of the Appellant and the number of pitches increased to two. Although the description given in the planning application is largely consistent with that given in the Council's decision notice the latter provides greater clarity of the proposals. I have therefore adopted it for use in the decision.
 4. The Appellant contends that the site is previously developed land on the basis that in 2009, under a previous ownership, the land had been occupied on a residential basis.
-

The Council confirmed that the use was unauthorised. Although part of the site is residential garden, the majority of the land has historically been in agricultural use. From the history of the site and my observations of its condition I am satisfied that the land on which the major part of the development would be sited does not satisfy the definition of previously developed land given in Planning Policy Wales (PPW).

5. Reference was made to covenants on the land which restricted its use to pleasure or light agriculture. It is not clear from the evidence whether the restriction applies to all of the appeal site or part of it as contended by the Appellant. However, this is a separate legal matter which has no bearing on the outcome of the appeal.
6. It is common ground that the Appellant and other proposed beneficiaries of the proposal comprise gypsies and travellers, as defined by Welsh Government Circular 30/2007. In the absence of any evidence to the contrary I am satisfied that this is an appropriate basis upon which to determine the appeal and the national and local policy framework relating to gypsies and travellers is accordingly engaged.

Main Issues

7. The main issues are:
 - The appropriateness of the site for gypsy and traveller accommodation having regard to need for and availability of suitable sites within existing settlements;
 - The effect of the development on the character and appearance of the area;
 - The vulnerability of the site to surface water flooding;
 - The effect on the setting of heritage assets;
 - The effect on biodiversity; and
 - The effect on highway safety.

Reasons

The appeal site and its surroundings

8. The appeal site covers approximately 0.16 hectares of land in a small valley located in open countryside with built development on higher ground to the west and east. The site lies on the northern side of Fennant Road from which access is derived via timber gates set back from the carriageway. The land generally falls from east to west and is mainly set below the level of the road. It is enclosed by conifer hedges with sections of older hedgerow along the road frontage. Within the site and adjacent to the access there is an outbuilding and part of the site is surfaced with crushed stone. The appeal site also includes an area which was formerly part of the garden to 3 Bryn Offa, one of a terrace of two storey dwellings set on higher land to the east with views towards the site. The gardens to these properties adjoin the eastern boundary of the site.
9. The land to the north and west of the site is in agricultural use and further west there are residential properties also elevated above and with views towards the site. There are overhead electricity lines aligned to the western boundary of the site and a public footpath through the adjoining fields follows the same boundary. Johnstown Newt Site Special Area of Conservation (SAC) lies approximately 600m to the south and Offa's Dyke, parts of which are Scheduled Ancient Monuments (SAM), lies to the east.

The need for and availability of suitable sites

10. Whilst Policy PS1 of the Wrexham Unitary Development Plan, 2005 (UDP) requires new development to be directed to within defined settlement limits, in exceptional circumstances Policy H9 of the UDP allows consideration to be given to sites for

caravans for individual gypsy families which cannot be accommodated within settlement limits subject to compliance with Policy GDP1.

11. According to the Wrexham Gypsy and Traveller Accommodation Needs Assessment, 2013 there is an unmet need of 21 pitches across the authority's area. Although at the time of the Hearing confirmation was awaited from Welsh Government, the figure has increased to 27 pitches in the 2016 Assessment. The Council indicated that new sites would only come forward as part of the emerging Local Development Plan (LDP) or as private sites such as the appeal proposal. The anticipated date for the adoption of the LDP is not until late 2018.
12. The Appellant currently resides on the Council's only permanent site at Ruthin Road, Wrexham. Although resident there since it opened approximately 30 years ago, the Appellant now found it unsuitable as the site was overcrowded and the location of her pitch at the end of the single width road made access difficult. This was of particular concern given the health problems of the Appellant and her family which I have been made aware of in confidence. The Council confirmed that improvements were planned to the site which included a reduction in the number of pitches to nine and an overhaul of the accommodation blocks. Previously the site had accommodated 20 pitches but these had been reduced to 15 and of these one was currently vacant and would remain so to allow the improvements to be carried out. There was no dispute that there is an unmet need which potentially would only be met by small private sites for one or two pitches.
13. The Appellant confirmed to the hearing that she had been looking for a suitable site within the Wrexham area for five years prior to her purchase of the site in 2014. Whilst the Appellant has a daughter living in Wolverhampton, the remainder of her children and her mother are resident in the Wrexham area. It is also obvious from the length of her residence on the Ruthin Road site that she has close ties to the area and her desire to remain living in the locale is understandable.
14. It is recognised that no evidence has been submitted documenting the search undertaken by the Appellant for suitable land. However, given the nature of the development and the Council's statement that sites allocated in the LDP would likely be outside any recognised settlements, I consider it highly unlikely that the Appellant would have been able to secure a suitable site within a settlement. Although reference was made to a vacancy on a private site, no substantive evidence of its availability has been provided. In these circumstances I am satisfied that, subject to compliance with Policy GDP1, the proposal would comply with Policy H9 of the UDP.

The effect on the character of the area

15. The Reasoned Justification of Policy H9 of the UDP indicates that particular attention will be paid to the visual impact of the proposal on the surrounding landscape character. Policies PS2 and GDP1 (a) also seek development which would not detrimentally affect landscape character and which in its scale, design and layout, and in its use of materials and landscaping, accords with the character of the site and makes a positive contribution to the appearance of the locality.
16. It is accepted that the introduction of caravans and a day room to the site would alter its appearance. However the views into the site are severely restricted by the existing hedge planting and the siting of the caravans would not be in prominent positions within it. It is acknowledged that the hedging is not native and consequently detracts from the appearance of the area. However, it is understood that the conifers were

planted prior to the purchase of the site by the Appellant. Whilst the species may be prone to thinning at the bottom, there is the opportunity as part of the development to supplement the boundary treatments to ensure appropriate species are planted to help break up views of the proposal in the interests of the visual amenity of the area and the privacy of the residents of the site.

17. In the absence of more suitable sites and given the limited effect the development would have on visual amenity, I conclude that the development would not be detrimental to the character of the site or the surrounding landscape, in accord with Policies PS2, H9 and GDP1 of the UDP.

Surface water flooding

18. The extracts from the Natural Resources Wales flooding maps submitted by the Council and other interested parties indicate that the site is subject to surface water flooding. This was also demonstrated by the representations of local residents who cited incidents of flooding on the site and submitted photographs of standing water on the lower land to the west. Whilst the flood maps are diagrammatic, part of the site of the proposed day room lies within an area of high risk which equates to a risk of flooding each year of less than 1 in 30 or 3.3%. The proposed static caravans would be either within an area of no or low risk of less than 1 in 1000 or 0.1% chance of flooding each year.
19. During my accompanied site visit I found the site, including the lower parts, to be firm and dry underfoot. It did not display the same characteristics as the land shown flooded in the submitted photographs in terms of its firmness and vegetation. During my unaccompanied visit, which followed a period of recent rainfall, I observed standing water in the field to the west of the site which is crossed by the public footpath. I also noted water in the ditch along the boundary of the field with the site. Whilst my views into the site were restricted by the planting, I did not observe any standing water within its boundaries.
20. Although there is a risk that part of the site would be affected by surface water flooding each year, I am not persuaded by the evidence that the risk would be high. Moreover the static caravans and the day room would be raised above the ground and the former would be away from the areas of the site at highest risk. This differs from the appeal¹ drawn to my attention by an interested party where the whole of the development was within an area at a high risk of flooding.
21. There is also the potential that development on the site could add to surface water run-off and exacerbate problems of flooding elsewhere. However, it is proposed to collect the run-off from the caravans and day room via a rainwater harvesting system and the hard-standings would be impervious. Concerns were raised with regard to the potential to pollute the environment if harvested rain water was to be used for the washing of vehicles or other uses. However, the details of surface water drainage would be subject of agreement with and control by the Council.
22. Foul drainage would be to a Biodisc plant proposed to be sited in an area identified as being at a higher risk from surface water flooding. Concerns were raised with regard to the effect of flooding on the plant and its soakaway. Whilst I am not persuaded that the proposed site of the plant would be suitable, I have no evidence that a system of this type would be unsuitable for the disposal of foul drainage. Moreover, it

¹ Appeal Ref: APP/H6955/A/10/2143180

is a matter which can be controlled by condition to ensure that a satisfactory system is installed prior to the residential occupation of the site.

23. I have noted that interested parties consider the application should have been the subject of a flood consequences assessment and also the consternation expressed regarding the lack of objection on flooding grounds by statutory authorities. However, I consider that the evidence before me is sufficient to reach a conclusion on this matter. Based on the evidence I do not consider that the development would be at a high risk from surface water flooding nor would it exacerbate problems of surface water flooding experienced elsewhere, in accord with Policy GDP1 (i) of the UDP.

The effect on heritage assets

24. Whilst a large part of Offa's Dyke in the local area has been destroyed, there are two well preserved sections designated as SAM approximately 145 metres to the north of the site. The Council expressed concern that the development would harm the setting of this important landscape feature.
25. It is accepted that the appeal site forms part of the landscape which sets the context for the SAM and that it would feature in views of the SAM from Fennant Road, the private gardens of the properties to the west of the site and from the public footpath. However, given the effectiveness of the existing vegetation in screening the site, the view would not alter significantly and the effect of the proposal on the setting of the heritage asset would be minimal. I am satisfied that the development would not harm the setting of Offa's Dyke, in accord with Policy EC11 of the UDP which seeks to protect SAM and their setting.
26. Interested parties contended that the appeal site was situated within the ditch to the dyke and as it was located within part of the structure the development should not go ahead. However Cadw, as a statutory consultee, raised no objection to the proposal and despite being aware that buried remains of the dyke may survive, a watching brief during any excavations on the site was not required. In view of the lack of evidence I am unable to give any weight to the contention that the site is of historical importance to the local area.

The effect on biodiversity

27. The Ecological Report submitted with the planning application included an Extended Phase 1 Habitat Survey which had been carried out in February 2015. The report recognised the potential for the presence of great crested newts on the site and set out mitigation measures to deal with this. Whilst it is generally recognised that such surveys are time-limited, I am in agreement with the Council that little would have been gained from an updated survey.
28. The proposal would involve the removal of piles of stones and wood around the perimeter of the site and a short section of hedge at the entrance which are potential refuges for great crested newts. However the site is more than 500m from the known breeding habitat occupied by this species; water bodies within this radius are noted as offering poor breeding habitat; and the site has generally poor foraging habitat.
29. It is accepted that there would be a loss of hedgerow habitat which would harm the interconnectivity of pathways provided by the network of hedges for foraging newts. However, the section of hedge which would be removed is only a few metres and any other work is restricted to the cutting back of the height or width of the hedges to provide the required visibility. Mitigation is proposed in respect of the timing of the

works and the action to be taken should newts be found. Furthermore, supplemental planting on the site would help reinforce the wildlife corridors already provided by the hedges around the site.

30. In view of the limited potential for great crested newts on the site and the extent of the mitigation proposed, I consider the development would not be detrimental to the special ecological features of the area, in accord with Policy GDP1 (h) of the UDP which seeks to safeguard sites and areas of nature conservation and wildlife interest.

The effect on highway safety

31. Fennant Road in the vicinity of the site is subject to a 20 mph speed limit and is part of a bus route. Whilst it is almost completely devoid of footways and on the northern side has limited sections of verge for use as a pedestrian refuge against passing traffic, opportunity does exist for pedestrians to step off the carriageway on the southern side of the road. Furthermore the entrance to the site is on a bend which limits forward visibility for motorists.
32. Interested parties expressed serious concerns about the safety of pedestrians, citing examples of accidents. Reference was also made to developments being refused in the area on grounds of highway safety. A traffic speed survey undertaken in May 2015 confirmed that a large amount of the traffic travelling in both directions along Fennant Road exceeded the 20 mph limit. My accompanied and unaccompanied visits also provided me with an indication of the speed and volume of traffic and the number of pedestrians during the late afternoon and early morning.
33. The Highway Officers of the Council raised no objection to the proposal as it was considered that visibility splays of 2.4 metres by 25 metres in both directions in accordance with guidance could be achieved. Although residents contended that the visibility splays included land outside the control of the Appellant, the documents before me indicate that the land required is within the control of either the Appellant or the highway authority. Furthermore the visibility splays were measured during the accompanied site visit. From the evidence I am satisfied that the specified visibility splays can be achieved.
34. I have noted the representations from interested parties that the visibility splays should be increased to 70 metres in both directions in order to comply with guidance in respect of speeds of 30 mph. However, the site is within a 20 mph area where it is the responsibility of the driver to travel within the speed limit and at a speed suited to the conditions. It would be inappropriate to assess the visibility required based on the illegal actions of drivers.
35. In observing the traffic during my site visits I noted a steady flow in both directions. Whilst the majority of the vehicles were cars or small vans, there were several larger vehicles including buses and coaches. The majority of traffic generated by the development would consist of cars and in terms of volume would be comparable to that generated by two dwellings. I accept that larger vehicles and touring caravans would enter and leave the site, but this would be less frequent. I am not persuaded that the proposal would make a significant difference to the volume of traffic already passing the site.
36. I did not observe a significant problem in vehicles of varying sizes passing each other on the section of highway fronting the site. I also walked Fennant Road past the site and whilst I accept that the safety of pedestrians is compromised by the lack of a

footway, I do not consider that the proposed development would add significantly to the risk to pedestrian safety.

37. On this basis I do not consider that the development would be detrimental to the safety of highway users, in accord with Policy GDP1(d) of the UDP.

Other material considerations

38. It is understood that the electricity cables which cross the site are 400KV cables and there are 132KV cables close by. Concerns were raised by interested parties with regard to the effect the electricity and magnetic fields (EMF) created by these cables would have on the health of future occupants. Whilst the submitted evidence² suggests that electricity can harm health, it also states that the balance of scientific evidence to date suggests that EMF do not cause disease. It goes on to state that there is no restriction on EMF grounds on how close a house can be to an overhead line. On this basis of the evidence before me, I do not consider the proximity of the development to the overhead lines sufficient reason to justify dismissing the appeal.
39. Local residents occupying properties with views towards the site raised the effect of the proposal on their visual amenity. I visited properties on Bryn Offa, to the east, and Bernfels Court to the west in order to view the site from the gardens to the dwellings. Whilst generally the boundary treatments screen the site from view, I noted that broken views of one of the static vans would be possible from 2 Bryn Offa. However, this could be overcome by additional planting along this boundary.
40. The appeal site includes land which was previously part of the garden to 3 Bryn Offa and it therefore encroaches between the gardens of 2 and 4 Bryn Offa. This part of the site is open to view from the gardens and the access road serving the dwellings. However it is elevated above the part of the appeal site on which the caravans and day room would be sited and is separated from it by tree planting. It is also proposed to be maintained as a grassed area and would therefore retain the appearance of a garden. In this respect I do not consider that the proposed development would harm the living conditions of local residents with regard to outlook and privacy.

Conditions

41. I have had regard to the conditions suggested by the parties in the light of Welsh Government Circular 016/2014 *The Use of Planning Conditions for Development Management*. I have imposed the standard time limit condition and confirmed the drawings on which my decision is based. Given the exceptional circumstances of the case, the occupation of the site is restricted to gypsies and travellers only and the number of caravans is restricted. Since only typical details of the static caravans and dayroom have been submitted confirmation is required of the size, height and design of the structures and external lighting in order to protect the amenities of residents and the visual amenity of the site and its surroundings. For similar reasons commercial activity is prohibited.
42. In the interests of highway safety the visibility splays at the access into the site are confirmed. In order to ensure vehicles regularly entering the site can pull off the road, the distance the gates need to be set back from the carriageway is specified. The provision and retention of parking and turning within the site are also required. In view of the concerns regarding the adequacy of the proposed foul and surface

² Electric and Magnetic Fields produced by Energy Networks Association, June 2013

water drainage, details are required to be approved and the scheme implemented prior to the residential occupation of the site. The scheme should also be designed to prohibit any surface water run-off from the site onto the highway.

43. The retention of existing planting and supplemental planting is necessary to break up views of the development, provide privacy for its occupants and in the interests of biodiversity. However, limited details have been provided of existing and proposed planting and the submission of a landscaping scheme is required.

Conclusions

44. I have found that the development would not be detrimental to the character of the site or the surrounding landscape nor would it harm the setting of Offa's Dyke or be detrimental to the special ecological features of the area. Whilst there is evidence that the area experiences episodes of surface water flooding, I have concluded that the development would not be at high risk from or exacerbate problems of surface water flooding experienced elsewhere. Furthermore I am satisfied that the volume and type of traffic it would generate would not significantly increase the volume of traffic using Fennant Road with little increased risk to highway safety. All these factors carry weight in favour of the appeal which is heightened by the unmet and increasing need for gypsy and traveller sites within the Council's area. There are no other material considerations sufficient to justify dismissing the appeal.
45. Whilst Policy PS1 of the UDP requires new development to be directed to within defined settlement limits, I am satisfied that exceptional circumstances which allow consideration to be given to sites for caravans for individual gypsy families which cannot be accommodated within settlement limits provided by Policy H9 and compliance with Policy GDP1 have been demonstrated.
46. In determining the appeal 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 the decision I have taken into account the ways of working set out in section 5 of the WBFG Act and I consider that the 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.
47. For the reasons given above, and having had regard to all other matters raised, the appeal is allowed subject to the conditions set out in the attached schedule.

Kay Sheffield

INSPECTOR

Schedule of Conditions:

- 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 the following approved plans and documents: location plan; and Drawing no. 0.4001/BM; and 0.4002/BM.
- 3) The occupation of the site shall only be by Gypsies and Travellers as defined by paragraph 3 of Circular 30/2007.

- 4) There shall be no more than two pitches on the site and on each of the two pitches hereby approved no more than one static caravan and one touring caravan as defined in the Caravan Sites and Control of Development Act 1990 and the Caravan Sites Act 1968, shall be stationed at any time.
- 5) No mobile home, static caravan or chalet shall be brought onto the site until details of the size, height, external appearance and means of attachment to the ground have been submitted to and approved in writing by the local planning authority. Thereafter only a mobile home, static caravan or chalet that accords with the details as approved shall be sited on the land.
- 6) No commercial activities 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 at any time other than for domestic purposes.
- 7) The 2.4 metres by 25 metres visibility splays shown on Drawing no. 0.4001/BM shall be provided prior to the first use of the development hereby approved and shall be maintained free of any obstruction exceeding 0.9 metres in height for as long as the development exists.
- 8) Details of any external lighting shall be submitted to and approved in writing by the local planning authority before the buildings hereby permitted are occupied. The development shall be carried out in accordance with the approved details.
- 9) The vehicular parking and turning areas shown on Drawing No. 0.4001/BM shall be fully laid out, surfaced and drained (in accordance with details approved under condition 11) prior to the first use of the development. These areas shall thereafter be permanently retained and kept free of any obstruction, and made available for the parking and turning of motor vehicles at all times.
- 10) No gates at the entrance into the site shall be erected within six metres of the edge of the carriageway.
- 11) Notwithstanding the submitted details, no development shall commence until 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 residential occupation of the site and retained for the duration of the development.
- 12) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of the development. The scheme shall also include details of any means of enclosure around the boundary of the site together with the provision of ecological enhancement measures taking into consideration the proximity of the site to habitat features favourable for great crested newts.
- 13) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species unless the local planning authority gives written approval to any variation.

APPEARANCES

FOR THE APPELLANT:

Trevor Mennell	Planning and Architectural Consultant
Bridget McGuire	Appellant
Kathleen Berry	Relative of the Appellant
Selina McGuire	Relative of the Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Philip Forster BSc(Hons) MCD	Planning Officer
Matthew Phillips BSc(Hons) MSc MRTPI	Lead Officer Planning Control

INTERESTED PERSONS:

Councillor Paul Pemberton	Ward Member
Councillor Kevin Hughes	Ward Member
Robert Dewey BA(Hons) MBA MRTPI	Representing Rhosllannerchrugog Community Council and Esclusham Community Council
Jane Mattocks	Local resident
Mary Sweeney	Local resident
Sharon Reeves-Jones	Local resident
Mike Davies	Local resident
Barry Welsh	Local resident

DOCUMENTS

- 1 Council's letter of 17/01/2017 regarding the arrangements for the Hearing.
- 2 Extract from Land Registry relating to the appeal site
- 3 Photograph of the site dated August 2009
- 4 Planning permission ref: ESC 20614 dated 10/09/1992 relating to the construction of an agricultural access
- 5 Policy EC 11 of Wrexham Unitary Development Plan
- 6 Plan defining boundary of land in ownership of the local highway authority