



Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 19/07/12
Ymweliad â safle a wnaed ar 19/07/12

**gan Tim Belcher FCII, LLB (Hons),
Solicitor (Non-Practising)**

Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 13/08/12

Appeal Decision

Hearing held and site visit made on 19/07/12

**by Tim Belcher FCII, LLB (Hons),
Solicitor (Non-Practising)**

an Inspector appointed by the Welsh Ministers
Date: 13/08/12

Appeal Ref: APP/H6955/A/12/2172149

**Site address: Land east of junction of Tanyfron Road and Southsea Road,
Southsea, Wrexham, LL11 5PF**

**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 Andrew Cash against the decision of Wrexham County Borough Council.
- The application Ref P/2011/0670, dated 12 September 2011, was refused by notice dated 6 February 2012.
- The development proposed is a travellers' chalet and caravan park for one plot (one chalet and two caravans) plus amenity building.

Decision

1. The appeal is dismissed.

Procedural and Background Matters

2. The appeal site i.e. the land edged red on Plan A fronts on to Southsea Road. At present it is part of a single parcel of land – the remainder of that parcel is edged blue on Plan A. In addition, the appellant is the owner of another parcel of land which is separated from the aforementioned land by a public footpath that links Southsea Road with the Brymbo Link Road. The extent of the appellant's land ownership is shown on the plan attached to the Office Copy Entries for Title Number WA714405¹.
3. Plan B identifies what is described at as a "chalet" (6m wide x 9.5m long). The appellant confirmed that this would be a static mobile home but would fall within the statutory definition of a caravan. In my Appeal Decision I will refer to this caravan as "the chalet".
4. A twin unit mobile home has been placed on the land. It is about 7.3m wide x 14.6m long. The twin unit mobile home has been stationed in a position whereby it straddles the red and blue land (it is mainly on the blue land). The appellant explained that this twin unit mobile home had cost him about £17,000. Due to the difference in size it would not be possible to re-position the twin unit mobile home on to the proposed site

¹ Document 5

for the chalet. The appellant explained that if planning permission was granted for the appeal proposal he would remove the twin unit mobile home from the land.

5. In addition to the stationing of the twin unit mobile home on the land the following development has been carried out:
 - a) about four touring caravans have been stationed on the land and used for residential purposes by the families of the appellant's brother and sisters,
 - b) an area of hard-standing (part stoned and part tarmac) had been laid. This hard-standing covers the whole of the red land and extends on to the blue land,
 - c) a LPG tank has been installed on the blue land,
 - d) wooden fencing (on a concrete base supported by concrete posts) has been erected around the perimeter of the majority of the red and blue land,
 - e) a mobile utility and laundry building has been stationed on the red land,
 - f) the former narrow agricultural entrance has been replaced by a brick built splayed vehicular and pedestrian entrance with pillars adorned with corbels and lions together with ornate metal entrance gates. Further, a tarmac surface has been laid between the carriageway and the appeal site.
6. The Council issued an Enforcement Notice dated 11 June 2012. The Enforcement Notice alleges, amongst other things, the change of use of land owned by the appellant from an agricultural use to a mixed use of residential and commercial/business use. The Enforcement Notice has been appealed.
7. The Council do not dispute that the appellant is a gypsy as defined in Circular 30/2007 - "Planning for Gypsy and Traveller Caravan Sites" (the Circular).
8. The appeal site and the other land owned by the appellant are within an area designated in the Wrexham Unitary Development Plan (the UDP) as Green Barrier. The UDP explains that in Wrexham Green Barrier land possesses the same characteristics and purposes as formal Green Belts except in its long term permanency. Planning Policy Wales (PPW) explains that around towns there is often the need to protect open land and Councils need to consider establishing Green Belts and making local designations such as green wedges. The term "Green Barrier" is the Council's local designation for what is effectively a green wedge. PPW explains that green wedge policies should be reviewed as part of the development plan review process but in the mean time it should be treated as Green Belt.

Main Issues

9. It was agreed by the parties at the Hearing that the main issues in this case are:
 - a) Is the proposal inappropriate development in the Green Barrier?
 - b) Would the proposal harm the openness of this part of the Green Barrier?
 - c) Would the proposal harm the character and appearance of the site and the surroundings?
 - d) Would the proposal increase highway safety risks along Southsea Road?
 - e) What other matters are there that weigh in favour of the proposal?

Policy

10. The development plan for the area includes the UDP. I have been referred to UDP Policies PS2, EC1, GDP1(a, b, d & i) & H9.
11. I have also been referred to advice in:
 - a) The Circular,
 - b) The Good Practice Guide in Designing Gypsy Traveller Sites in Wales,
 - c) PPW, and
 - d) "Manual for Streets".
12. The Circular post dates the UDP and such national advice on the provision of gypsy sites is highly relevant to the determination of this appeal.
13. Finally, I was referred to other policy documents². The Council confirmed that there was no specific advice in any of those documents that they wished to rely on or refer me to.

Reasons

Is the proposal inappropriate development in the Green Barrier

14. The UDP explains that within the Green Barrier development will only be granted planning permission if it is for a specified type of development or a use which maintains the openness of the Green Barrier and does not conflict with the purpose of including land in the Green Barrier. PPW also specifies what types of development are allowed within the Green Barrier. Specifically, PPW explains that new gypsy sites in the Green Barrier are likely to be inappropriate development.
15. The proposed amenity building is not within the specified lists of developments in UDP Policy EC1 or paragraph 4.7.16 of PPW that are considered appropriate in the Green Barrier. Further, whilst I know that the stationing of the chalet is a use of land but that use would have a similar impact in terms of openness as the erection of a similar sized building. Further still, the associated stationing of two touring caravans and the parking of vehicles by the occupiers of the site and their visitors will further erode the openness of the Green Barrier. In my assessment the proposal would not maintain the openness of the Green Barrier and so, in accordance with paragraph 4.7.18 of PPW, is inappropriate development.
16. One of the purposes of the Green Barrier is to assist in safeguarding the countryside from encroachment. In my assessment the proposal would conflict with this purpose because it would result in encroachment into the open countryside between Southsea Road and the Brymbo Link Road.
17. I therefore conclude, for the reasons explained above, that the proposal is inappropriate development in the Green Barrier. Accordingly, it would be contrary to the relevant parts of the UDP and advice in PPW. PPW explains that there is a presumption against inappropriate development in the Green Barrier and substantial

² Local Planning Guidance Note 16 – Parking Standards, Local Planning Guidance Note 17 – Trees and Development, Wrexham LANDMAP Supplementary Planning Guidance, Technical Advice Note 15: "Development and Flood Risk" & Technical Advice Note 18: "Transport".

weight should be given to any harmful impact which development has on the Green Barrier.

18. Further, PPW explains 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 Barrier together with any other harm which it may cause.

Would the proposal harm the openness of this part of the Green Barrier

19. I have explained that the site is within the Green Barrier. There was no representation made to the Council at the time the Council's now withdrawn Local Development Plan was being prepared seeking the withdrawal of the appeal site from the Green Barrier. I do not consider the fact that there is built development within the Green Barrier on the opposite side of the road to the appeal site undermines the designation of the Green Barrier so far as it relates to the appeal site.
20. PPW explains that one of the most important attributes of the Green Barrier is its openness.
21. Prior to the acquisition of the land by the appellant planning permission had been granted for a small stable building to be erected on the land³. The building was required for the stabling of two ponies. The permission did not authorise the change of use of the red or blue land and the lawful use of that land remains as agricultural. The stable still remains in place. It is proposed to use the stables for bin storage and/or the stabling of the appellant's horses.
22. In addition there is a smaller building on the land which does not have the benefit of a planning permission. This building is referred to as an existing shed on Plan B. It is proposed to retain the shed which would be used for stabling and/or ancillary residential uses.
23. In my judgement the proposed amenity block and chalet would seriously erode the openness of this part of the Green Barrier. I have also explained above that the associated stationing of two touring caravans and the parking of vehicles by the occupiers of the site and their visitors will further erode the openness of the Green Barrier.
24. I am aware that the appellant's advisers do not agree with this assessment. Their view is that the site is well screened from public view. I do not consider that the issue of loss of openness is one that is solely assessed by reference to public views from outside the site or can be overcome by screening otherwise inappropriate development. Accordingly, I am not persuaded by that argument.
25. I therefore conclude that the proposal would materially harm the openness of this part of the Green Barrier. Accordingly, the proposal is contrary to the relevant parts of the UDP and advice in PPW.

Would the proposal harm the character and appearance of the site and the surroundings?

26. The UDP explains that:

³ Planning permission BRO 22749 dated 31 October 1994

- a) development must not materially detrimentally affect the countryside character, and
 - b) built development should accord with the character of the site and make a positive contribution to the appearance of the locality.
27. The appellant is of the view that the proposal tidies up what was an untidy site and the use cannot be seen unless one was looking for it. The site is currently well screened from Southsea Road. This screening would be far less effective during that time of the year when the boundary trees and hedgerows are not in leaf. However, this could be satisfactorily addressed through improvements to the boundary planting.
28. There would be clear and unobstructed public views of the proposal from the public footpath, especially at the point where a gate is provided. For the same reasons explained above regarding loss of openness I consider that the proposal would detrimentally affect the countryside character of the appeal site and would fail to make a positive contribution to the appearance of the locality. I do not agree with the appellant's view that the site, prior to its current unlawful use, did not make a contribution to the open nature of the countryside. Prior to the developments which have been carried out I am of the view, having regard to historic photographs, that the site was an attractive area of open countryside.
29. I know that there would have been some hard-standing on the land which facilitated the use of the stables and also provided a surface on which vehicles could be driven to the upper part of the site and then on to the adjacent field. Further, it is clear that when the land was unlawfully used for the stationing of a residential caravan (circa 2000) there was a large area of hard-standing⁴ provided. However, that area of hard-standing was unlawful and it is clear from photographs of the site post 2000 that nature had reclaimed most of the land. The area of hard-standing associated with the use of the stables was limited and was not unlike many areas of countryside where horses are grazed and stabled. That limited amount of hard-standing did not materially harm the character or appearance of the countryside. Further, the visual impact of the limited area of the hard-standing associated with the former agricultural use of the site would have been far less intrusive than that which would result from this proposal.
30. The appellant considers the site to be previously developed land. However, having regard to the definition of previously developed land in PPW I do not agree with that assessment. As explained above the site's lawful use remains as agricultural land which, by that definition, is not previously developed land.
31. The Circular explains that gypsy caravan sites in rural settings are acceptable in principle. However, this advice applies to sites that are not subject to specific planning constraints. In this case the appeal site is subject to such a constraint as it is Green Barrier land. Further still, I do not consider the Circular means that all rural sites are acceptable and in this case I consider the harm to the character and appearance of the area to be so significant that permission should be withheld.
32. Further still, I remain of the view that the land on the far side of Southsea Road from the settlement of Southsea (i.e. the same side of the road as the appeal site is located) remains mainly undeveloped. The introduction of the proposed development

⁴ Photographs 1 & 2

would materially harm the character and appearance of the area. Accordingly, the proposal would be contrary to the relevant parts of the UDP.

Would the proposal increase highway safety risks along Southsea Road

33. The UDP explains that all new development should ensure safe vehicular access to and from the site. The Circular explains that consideration must be given to vehicular access from the public highway and road safety for the occupants and their visitors.
34. I have not been provided with any details as to the levels of traffic that use Southsea Road. However, on my two visits to the site I noted that there was a regular flow of traffic along Southsea Road. There is no evidence to support the appellant's assertion that the road is empty of traffic for long periods.
35. The Council accept that visibility to the north from the access to the site would be satisfactory subject to the roadside hedge being trimmed back. The amount of trimming back would not jeopardise the screening qualities of the hedgerow.
36. The Council have measured the speed of vehicles approaching the site from the south. Applying the standards set out in "Manual for Streets" it would be necessary to provide a visibility splay of 2.4m by 59m. This can only be achieved by removing the hedge to the south of the access point⁵. Further, it would require:
 - a) the partial demolition of the stables,
 - b) the relocation of the chalet, and
 - c) the relocation of the area where the touring caravans would be stored.
37. This would require the appeal scheme to be considerably amended. Even if that were possible, despite concerns over highway visibility discussed at the Hearing and local criticism of the scheme, the appellant did not suggest that it could be changed. Under the circumstances, it would not be reasonable to impose a condition to require the provision of such a visibility splay as this would fundamentally alter the proposal.
38. The best visibility splay that can be achieved 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). "Manual for Streets" explains that a centreline measurement may be used where it is not possible for approaching vehicles to cross the centre line. That does not apply in this case and 25m is the best visibility that can be achieved.
39. The agricultural use of the land owned by the appellant would have generated some vehicular movements but on the best evidence that I have these would have been very limited. The appellant has referred to additional traffic that could be generated if there were "farm gate sales" of produce. The increase in traffic has not been quantified. Further, there seems to me to be little likelihood for such sales being generated from any realistic agricultural use of the land.
40. I am aware that the appellant intends to continue the agricultural use of the remainder of his land by the grazing of horses if planning permission is granted for the residential use. In my assessment the amount of vehicular activity generated by the agricultural use and the residential use would be greater than the former agricultural

⁵ Document 7

use of the land or the likely future use of the access if the land was used for agricultural uses only. I am in no doubt that the proposal would result in an increased use of a severely substandard access.

41. I am of the view that the achievable visibility splay of 25m to the south of the site is inadequate to achieve a safe access. Accordingly, I conclude that the proposal would increase highway safety risks along this part of Southsea Road and would be contrary to the relevant part of the UDP and advice in the Circular.

What other matters are there that weigh in favour of the proposal

42. The UDP explains that in exceptional circumstances where sites for caravans for individual gypsy families cannot be accommodated within settlement limits consideration will be given to other proposals subject to compliance with UDP Policy GDP1. I have explained above why the proposal does not comply with Policy GDP1 and other UDP Policies.

Is there a current under provision of gypsy sites within Wrexham?

43. In May 2011 the Council agreed at a planning appeal Hearing⁶ that there was a current need for an additional 23 pitches. It was agreed at this Hearing that this need had not reduced.
44. The emerging Local Development Plan (the LDP) has been withdrawn by the Council and there is no timescale for the submission of the revised LDP. It is accepted by the Council that the withdrawn LDP failed to make reasonable site provision for the gypsy and traveller community.
45. From all the evidence that has been presented it is clear that there is a significant need for further gypsy caravan sites in the Council's area. However, the appellant accepts that just because there is a need it does not mean that this site should necessarily be approved.

What are the appellant's personal circumstances?

46. The appellant and his partner have been separated but I was advised that they are trying to reconcile their differences and re-establish their relationship. The appellant's partner regularly visits the appellant and their children at the appeal site.
47. The appellant has three children, twins aged 6 and a 14 year old girl. The twins regularly attend a Catholic School which is about 4 or 5 miles from the appeal site. The appellant's other child does not attend school.
48. I agree that there are clear advantages for the appellant's children to have a settled base from which they can regularly attend a local school.

Were non-Green Barrier sites considered as alternatives

49. The appellant acquired the land in November 2009⁷. He claimed that he acquired the land for the purpose of setting up a site on which he and his family could live. He confirmed at the Hearing that he was unaware of the Green Barrier status of the land.

⁶ Document 8

⁷ Document 5

He also confirmed that he looked at other sites but was equally unaware of what the planning status of those sites was.

50. PPW explains that alternatives to the use of Green Barrier for gypsy sites should be explored and that the national policy on Green Barriers applies equally to applications for planning permission by gypsies as it does to the settled population. There is no evidence before me that the appellant considered non-Green Barrier sites as an alternative to the use of the appeal site.

What alternative accommodation options are available for the appellant if the appeal is dismissed?

51. The appellant confirmed that at the time he acquired the land (i.e. November 2009) he was living with his family on an authorised site known as Green Meadows Chalet Park, Towers Lane, Alvanley, Frodsham, Cheshire⁸ (the Green Meadows Site). The appellant is one of six named gypsies (and their dependents) who can live on that site.
52. The appellant explained that he had to leave the Green Meadows Site due to personal circumstances involving the occupation of another pitch on that site by a person who he did not get on with.
53. The use of the Green Meadows Site expires on 24 May 2013. No evidence was presented to me as to what the likely views were of the local planning authority for the Green Meadows Site regarding the possible renewal of that permission.
54. The Council also confirmed that there were four pitches available at the public site at Ruthin Road which is within the administrative area of Wrexham. The appellant claimed that for a number of reasons he could not move to that site. His main concern is that the site is occupied by people who are his enemies and there would be problems if he tried to settle on to the Ruthin Road site.
55. Finally, the appellant confirmed that he could not live in conventional bricks and mortar housing (social or private).
56. The appellant claimed that if he could not get planning permission to stay on the appeal site then he would have to live on the side of the road with the obvious problems which that would cause.

Other Material Considerations

57. I am aware that the now withdrawn LDP Policy P10 (Gypsy and Traveller Accommodation) did not seek to restrict sites to those outside the Green Barrier and that the proposed extension of the socially rented pitches at Ruthin Road is within the Green Barrier. That does not alter my view that this proposal is inappropriate development in the Green Barrier.

⁸ Document 9

Flooding

58. I am aware that a very minor portion of the site lies within Zone C2. Staff from the Environment Agency, who are primarily responsible for advising the Council about flooding issues, inspected the site and they considered the risk to be acceptable⁹.

Other Concerns Raised by Local Residents

59. I am aware of, and sympathise with, the many concerns raised by local residents which were fully discussed at the Hearing. It appears that many of the problems which they have experienced were caused by members of the appellant's extended family. The proposal is for the occupation of the site by the appellant and his immediate family.

Overall Conclusions

60. I have explained that:

- a) There is a current under provision of sites available for gypsies and travellers in the Council's area.
- b) The appellant has young school age children living with him at the appeal site two of whom regularly attend school.
- c) There is no evidence that non-Green Barrier sites were considered by the appellant as alternatives to the appeal site.
- d) It is unlikely that there are any other lawful sites available to the appellant in the event that he has to leave the appeal site.
- e) The withdrawn LDP did not exclude gypsy site provision in the Green Barrier and the proposed extension of the Ruthin Road site would result in the loss of Green Barrier land.

61. However, the determining issues in this case are that the proposal is inappropriate development in the Green Barrier and the proposal would materially harm the openness of the Green Barrier and the character and appearance of the area. Further, the proposal would increase highway safety risks along this part of Southsea Road. All the other matters that weigh in favour of the proposal do not amount to very exceptional circumstances sufficient to outweigh the serious harm resulting from the proposal by way of inappropriate development and the other planning harm.

62. In the light of the advice in the Circular I have considered whether a temporary permission would be appropriate in this case even though it was not sought by the appellant. The Circular explains that a temporary permission may be justified where it is expected that the planning circumstances will change in a particular way at the end of the temporary permission. There is no evidence that this will happen in this case. Accordingly, I do not consider that a temporary permission is appropriate.

63. Dismissal of the appeal would, in all likelihood, require the appellant and his family to vacate the site (which has to be regarded as their home) without any certainty of suitable alternative accommodation being readily available. I recognise that this would represent an interference with their home and family life. However, the harm

⁹ Document 6

which would be caused by the development, in terms of its effect on the Green Barrier, on the locality generally and on highway safety, all interests of acknowledged importance, is considerable.

64. Taking into account all material considerations I am satisfied that these legitimate aims can only be adequately safeguarded by the refusal of permission.
65. The protection of the public interest cannot be achieved by means which are less interfering of the appellant's and his family's rights. They are proportionate and necessary in the circumstances and would not result in a violation of his rights or the rights of his family under Article 8 of the European Convention on Human Rights.
66. For the reasons given above I conclude that the appeal should be dismissed.

Tim Belcher

Inspector

- Document 7 - Plan produced by the Council showing visibility splays to the south of the entrance to the appeal site.
- Document 8 - Appeal Decision – Land at Roseacre Caravan Park, Daisy Lane, Rossett, Wrexham (Planning Inspectorate Ref APP/H6955/A/10/2143180).
- Document 9 - Planning permission issued by Cheshire West & Chester Council dated 10 June 2011 – the Green Meadows Site.

APPLICATION PLANS

- Plan A – Ordnance Survey Sitemap
- Plan B – 0.1755/A/C (Rev B)

PHOTOGRAPHS

- 1 & 2. Photographs submitted by the appellant showing parts of the appeal site – the photographs are believed to have been taken circa 2000.
- 3 Aerial photograph of the appeal site submitted by the appellant showing the site prior to the appellant's acquisition.
- 4 to 11 Photographs of a community event held on the appeal site – the photographs are believed to have been taken circa 1995.