



Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 13/03/01

Appeal Decision

Hearing held on 13/03/01

gan/by Ian Osborne BA(Hons) DipTP MRTPI

Arolygydd penodwyd gan Cynulliad
Cenedlaethol Cymru

an Inspector appointed by the National
Assembly for Wales

Dyddiad/Date

26-03-2001

Appeal Ref: APP/H6955/A/00/1053265

Land opposite 7 Temperance Road, Southsea, 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 Mr Mark Rodenhurst against the decision of the Wrexham County Borough Council.
- The application (ref: P/2000/0230), dated 13/03/00, was refused by notice dated 08/05/00.
- The development proposed is the continuation of the stationing of a caravan for residential use for a temporary period of 1 year.

Summary of Decision: The appeal is dismissed for the reasons set out below.

Procedural Matters

1. Since the caravan had been stationed on the land prior to the date of the application to the Council, I have dealt with the appeal as though the application had been made under section 73A of the Act, as amended, for planning permission for development carried out without such permission.
2. At the Hearing the Appellant explained that he wished permission to run for a period of 1 year from the date of my decision. The Council did not object to this, and I have, therefore, dealt with the matter accordingly.
3. The site edged red on the plan submitted with the application includes only the siting of the caravan. Access to the caravan from the public highway is via an existing gateway owned by the Appellant and then across an area of hardcore, which forms part of the substantial area of land owned by him to the east of this stretch of the B5101. I have, therefore, dealt with the appeal on this basis.

Main Issues

4. The main issues in this case are: first, the effect of the continuation of the stationing of the caravan, and of any improved access to it, on the openness of its surroundings; and second, whether the personal circumstances of the Appellant and his family are of sufficient weight to override any harm on the first main issue.

Planning Policy

5. Policy S3 of the *Wrexham Maelor Local Plan*, adopted in February 1996, indicates that in green barriers development that would not detrimentally affect their open character will normally be permitted. The implication is, however, that development which would have a harmful effect on their open character will normally be refused. The appeal site is within a green barrier. Policy S1 of this local plan indicates that new housing will be directed to within defined settlement areas, and Policy H5 indicates that outside such limits new dwellings will only be permitted in specified circumstances. In my view none of these exceptions applies in this case. The Proposals Map of this local plan shows the appeal site outside the settlement boundary of the south-east part of Tanyfron.
6. National planning policy is set out in *Planning Guidance Wales: Planning Policy*, issued in April 1999. Paragraph 4.6 of this guidance indicates that, unless otherwise specified, a planning permission runs with the land and it is seldom desirable to provide for any other arrangement. Exceptionally though personal hardship may be material to the consideration of a planning permission. In such circumstances, a permission may be granted subject to a condition that it is personal to the person concerned.

The Site and Surrounding Area

7. The appeal caravan is sited close to the northern corner of the Appellant's land on the east side of the B5101, adjoining the embankment of the road which flies over this B road at this point. (The Council refer to this road as the B5105 but it appears to me that it is the B5101) This northern part of the Appellant's land, which is at a lower level than the elongated southern part, also contains a double compartment stable block, a large shed, a small shed, a couple of kennels, a few poultry houses, and 2 van bodies.
8. At the time of my visit there was also a mechanical digger and a tractor on the land, but during my visit the tractor was driven away. There were 2 ponies grazing on hay in this northern enclosure, and I saw 2 dogs. There is a hedge some 3m high along the road frontage of this northern part of the Appellant's land.
9. The light-coloured caravan is some 9.15m long, including its tow bar, and about 3.1m wide. It contains 2 bedrooms, but the lounge area is also used for sleeping purposes. It has mains water and electricity, is connected to a septic tank, and uses bottled gas. At the date of the Hearing it was being lived in by the Appellant and his wife, together with 5 of their 6 children.
10. Their eldest child, who is a 17-year-old girl, lives in the Appellant's 2-bedroomed house at 7 Temperance Road, which is a short distance from the access to the appeal caravan, on the west side of the B5101. This semi-detached house, which has a small single-storey side extension, has a side and rear garden. At the time of my visit it contained a medium-sized touring caravan. This garden is separated from the B5101 by a stream. Temperance Road is a narrow street but there is space to park a car in the side garden of No 7. There is a public house in High Street a little way to the south of the junction of this road, Temperance Road and the B5101.

Reasons and Conclusions

11. On the first main issue, whilst the appeal caravan is screened to some degree from public view, nevertheless, I consider that it materially reduces the openness of the green barrier between the built-up areas of Tanyfron and the main part of Southsea. As such, its continued siting at this point would not be in accordance with Policy S3 of the local plan. Irrespective,

therefore, of whether the frontage hedge to the south of the access to the Appellant's land were removed in order to improve visibility for drivers emerging from this access, there is a strong policy objection to the continuation of the siting of the caravan.

12. I have taken into account that the former Wrexham Maelor Borough Council granted planning permission in 1994 for the erection of the stable block which exists on the same parcel of land as the appeal caravan. However, this permission pre-dated the adoption of the current local plan and, in any case, was for a type of building commonly allowed in the countryside, including in specially designated areas. The stable block is the only structure on the Appellant's land which has planning permission. I do not consider that its existence justifies further reducing the openness of this land, even for only 1 year.
13. I have considered the possibility of whether the appeal caravan could lawfully remain if it were used for agricultural or possibly equestrian purposes. Whilst the visual impact would be similar, nevertheless, its continued use for residential purposes would not be in accordance with Policies S3 and H5 of the local plan. There are thus material planning differences between use of the caravan for, say, agricultural and residential purposes.
14. Turning to the second main issue, I acknowledge that, by modern standards, the Appellant's 2-bedroomed house at 7 Temperance Road does not provide sufficient living accommodation for his large family. He is unemployed and has been for some time. He cannot, therefore, afford to move to a larger house, nor to extend further his present house, even though he could do much of the work himself, since he is a bricklayer by trade. Consequently, his preferred solution is to obtain a 4- or 5-bedroomed Council house. He has applied for such a house in this western part of Wrexham but understands that there is likely to be a 2-5 year wait. At the Hearing the Council did not dispute this.
15. He has not applied for planning permission for a further extension to his house, though he now understands that he may be able to obtain a loan from the Council at a preferential rate of interest in order to build an extension.
16. On my site visit measurements were taken in the side and rear garden of 7 Temperance Road. From these it is evident that, if the present touring caravan there were removed, the appeal caravan could be stationed in this garden and still leave space for a car to be parked off the highway. On the evidence before me, planning permission would not be required for the stationing of this caravan in this garden, since it would be occupied by some of the members of the same family would lived in the house. The house, together with the caravan, would provide the Appellant and his family with the same amount of accommodation as they currently occupy.
17. There is no evidence before me that stationing the appeal caravan in the Appellant's garden would prejudice his chances of obtaining a Council house, compared with the present split-site arrangement. Further, since no planning application has been made for a further extension of his house, there is insufficient evidence before me to conclude whether the presence of the appeal caravan in his garden would prevent the erection of an extension of sufficient size. At the same time, there is insufficient evidence for me to be able to come to a view about whether, if an extension were erected, this would then prevent the caravan being moved off the site subsequently.
18. I have had regard to the fact that one of the Appellant's children has a learning disability and that for her living near the family's animals has a beneficial effect. However, there is no evidence before me that it is necessary for her to live on the same site. I acknowledge that both for her, and for other young children, crossing the B5101 from 7 Temperance Road to

visit the animals would require supervision by an older person. Nevertheless, since many families have children who need to be supervised when crossing a main road, this consideration is not of substantial weight and, in any case, is not exceptional. In addition, I do not consider that the frictions which, from time to time, break out in many families constitute exceptional circumstances for planning purposes. Neither individually nor together, therefore, do these factors amount to personal hardship.

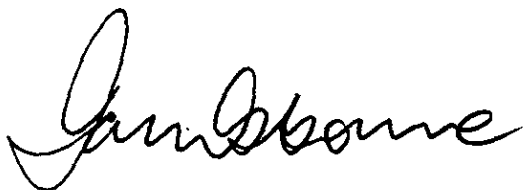
19. I find overall, therefore, on the second main issue that, since the Appellant could station the appeal caravan in the garden of 7 Temperance Road, his personal circumstances are not of sufficient weight to override the objections which I have identified on the first main issue.
20. With regard to the Appellant's submissions in relation to the violation of his human rights, he clarified at the Hearing that these were based solely on Article 8 of the European Convention on Human Rights [ECHR]. This Article is concerned with the right to respect for private and family life. The Council respond that they have balanced his rights against the need to protect the openness of this green barrier in the public interest.
21. In my view, the dismissal of this appeal would not prevent Mr Mark Rodenhurst and his family from enjoying a normal family life in a combination of the house at 7 Temperance Road and a caravan in its garden. It may be more convenient for them to continue with the present, split-site arrangement but it is not necessary for them to do so. It is within Mr Rodenhurst's capacity to achieve this solution without the need for planning permission. The dismissal of this appeal would thus cause no more than inconvenience to them.
22. This would still be the case even if it were necessary for the Council to take enforcement action to achieve the cessation of the residential use of the appeal site and the removal of the appeal caravan from Mr Rodenhurst's land to the east of the B5101. This slight degree of interference with his family life is, therefore, insufficient to give rise to a violation of his rights under Article 8 of the ECHR.
23. However, even if it were to be held that there were a substantial interference with Mr Rodenhurst's home and family life, that interference must be balanced against the public interest in pursuing legitimate aims stated in Article 8, in particular the economic well-being of the country (which includes the preservation of the environment). The objections to the continuation of the stationing of the appeal caravan on the site referred to in paragraphs 10-12 above are serious ones and would not be avoided, or sufficiently reduced, by a planning permission for only 1 year. The public interest can only be safeguarded, therefore, by the dismissal of this appeal.
24. Consequently, in all the circumstances I consider that, even if there has been a substantial interference with Mr Rodenhurst's rights under Article 8 of the ECHR, the refusal of planning permission is necessary in a democratic society in furtherance of the legitimate aims stated. They do not place a disproportionate burden either on him or his family. I therefore conclude that, even if this is the case, dismissal of Mr Rodenhurst's appeal would not result in a violation of his rights under Article 8.
25. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Formal Decision

26. In exercise of the powers transferred to me, I hereby dismiss the appeal.

Information

27. Particulars of the right of appeal against this decision to the High Court are enclosed for those concerned.

A handwritten signature in black ink, appearing to read 'Ian G. Bourne'. The signature is written in a cursive style with a large initial 'I'.

INSPECTOR

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APPEARANCES

FOR THE APPELLANT:

Mr Tony Williams, Solicitor	- Appellant's Agents
Mr Mark Rodenhurst	- Appellant
Mrs Sadie Rodenhurst	- Appellant's Wife

FOR THE LOCAL PLANNING AUTHORITY:

Mr David Williams BA(Hons)	- Senior Planning Officer, Wrexham CBC
Mr Lee Walsh TechMRTPI	- Planning Enforcement Officer, Wrexham CBC

DOCUMENTS

Document 1	- List of persons present at the Hearing.
Document 2	- Extract from <i>The Times</i> relating to the case of <i>Varey v United Kingdom</i> , ECHR, 21/12/00.
Document 3	- Extract from <i>DC Case News</i> , September 2000, relating to gypsy sites and other rural caravans.

PLAN

Plan A	- Plan showing the siting of appeal caravan and the surrounding land owned by the Appellant, together with the location of 7 Temperance Road.
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There were no PHOTOGRAPHS submitted