Penderfyniadau Cynllunio ac Amgylchedd Cymru
Planning & Environment Decisions Wales

Appeal Decision

---

by Richard E. Jenkins BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 05/06/2025

Appeal reference: CAS-03806-R1T0R9

Site address: Land at Gladstone Way, Hawarden, Flintshire, CH5 3HU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Martin Gallagher against an enforcement notice issued by Flintshire County Council.
- The enforcement notice, numbered ENF/157/24, was issued on 26 September 2024.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of land for the siting of two residential caravans and one utility/ day room shown in the approximate positions coloured green (caravans) and blue (utility/ day room) on the attached plan, and laying of hardstanding.
- The requirements of the notice are to: 1) Permanently cease the residential use of the caravans and utility/ day room on the Land shown in the approximate positions coloured green (caravans) and blue (utility/ day room) on the attached plan; 2) Remove the caravans and utility day/ room from the Land shown in the approximate positions coloured green (caravans) and blue (utility/ day room) on the attached plan; AND 3) Restore the Land to its former profile and condition to include reinstatement of any vegetation and hedgerows.
- The period for compliance with the requirements is: 1) Requirement 1 – within 28 days after the Notice takes effect; 2) Requirement 2 – within 56 days after the Notice takes effect; 3) Requirement 3 – within 112 days after the Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990, as amended.
- A hearing and site visit was held on 8 April 2025.

Decision

1. The Enforcement Notice is corrected by:
    - The deletion of the words at Section 3 of the Notice in their entirety, and their substitution with the following: "*Without planning permission, the material change of use of the land for the siting of two residential caravans and the laying of a hardstanding*".

- The deletion of the steps at Section 5(1) and Section 5(2) of the Notice in their entirety, and their substitution with the following: "(*1) Cease the residential use of the land; (2) Remove the caravans from the Land*".

2. Subject to these corrections, the appeal is allowed under ground (a) and the Enforcement Notice is quashed. Planning permission is granted on the application deemed to have been made under Section 177(5) of the 1990 Act, as amended, for the development already carried out, namely the material change of use of the land for the siting of two residential caravans and the laying of a hardstanding on Land at Gladstone Way, Hawarden, Flintshire, CH5 3HU, as referred in the Notice, subject to the planning conditions set out at Annex A of this decision letter.

Background and Procedural Matters

3. Planning permission was refused in November 2021, under LPA Ref: 062368, for the change of use for the stationing of caravans for residential purposes, together with hardstanding and utility day room. That decision was made contrary to the professional advice of the Council's Planning Officers. The reasons for refusal included concerns that the development would represent inappropriate development in the open countryside that would cause harm to the open character and appearance of the Green Barrier, contrary to Policies GEN1, GEN3 and GEN4 of the then adopted Flintshire Unitary Development Plan (UDP). A second reason for refusal related to an inadequate drainage solution, contrary to the aims of Policies GEN1 and EWP16 of the UDP. For the avoidance of any doubt, no appeal was brought against the Council's decision on that case.

4. Notwithstanding the decision on the above application, the development was implemented in part, with a subsequent retrospective planning application (Ref: COU/000366/2) validated by the LPA in May 2024. Notwithstanding the officer's recommendation on the 2021 application, the 2024 application was refused under delegated powers, with the single reason for refusal stating that the development represents inappropriate development which does not maintain the openness of the green wedge and would conflict with the purposes of including land within the designation by encroaching upon the countryside. It also stated that there are no very exceptional circumstances that would allow this form of development and that it is considered contrary to Policy EN11 of the adopted Flintshire Local Development Plan (LDP). Enforcement action followed, with an Enforcement Notice issued on 26 September 2024.

5. It is common ground between the parties that the appellant and his immediate family fall within the definition of '*Gypsies and Travellers*', as defined by Welsh Government (WG) Circular 005/2018: *Planning for Gypsy, Traveller and Showpeople Sites* (2018) (hereinafter referred as Circular 05/2018). Having considered the written and oral evidence in respect of this appeal, I have no reason to dispute this position. The legislative and policy framework relating to Gypsies and Travellers is therefore engaged.

Application for Costs

6. An application for an award of costs has been made by the appellant against Flintshire County Council. This application is the subject of a separate Decision.

Reasons

The Enforcement Notice

7. The breach of planning control alleged within the Notice is: "*Without planning permission, the change of use of land for the siting of two residential caravans and one utility/ day room shown in the approximate positions coloured green (caravans) and blue (utility/ day*

room) on the attached plan, and laying of hardstanding". However, it became apparent at the time of my site visit that, whilst the development proposed through the previous planning applications had been implemented in part, the proposed utility/ day room had not been constructed. The appellant confirmed this to be the case on site, and the LPA noted that the error is likely to have arisen from an overreliance on the plans subject of the previous planning applications.

8. Reflective of the fact that enforcement action can only be taken against those matters that have occurred as a matter of fact, it was agreed between the parties that the Enforcement Notice should be corrected to omit references to the utility/ day room. Both parties have agreed that this could be done without prejudice to any party and I have no reason to come to a different conclusion on this matter. I shall therefore correct the Enforcement Notice under the powers afforded by Section 176 of the above Act by removing reference to the utility/ day room in the allegation. I shall also make other minor amendments to the allegation in the interest of clarity and precision. The words in Section 3 of the Notice shall therefore be substituted in their entirety with the following: "*Without planning permission, the material change of use of the land for the siting of two residential caravans and the laying of a hardstanding*".

9. Consequential corrections are also necessary to the requirements of the Notice set out at Section 5. Specifically, Step 1) of the requirements shall be corrected to read as follows: "*1) Cease the residential use of the land*". Step 2) of the requirements shall also be corrected to state: "*2) Remove the caravans from the Land*". It is material to note that there were a couple of small ancillary structures on the land at the time of my site inspection that were not referenced in either the Enforcement Notice or the wider evidence base. It would not be appropriate for me to expand the scope of the Notice to make reference to these structures. However, this would not prevent the Council from considering taking enforcement action against those structures, or for the appellant to consider applying for retrospective planning permission for those same structures, following the determination of this appeal.

The Appeal under Ground (a) – The Deemed Planning Application

10. The appeal under ground (a) is that planning permission should be granted for the matters that constitute the alleged breach of planning control. Having regard to the necessary corrections outlined above, planning permission is therefore sought in this instance for the material change of use of the land for the siting of two residential caravans and the laying of a hardstanding.

    Having regard to the reasons for issuing the Notice, the main issues in the determination of this appeal are: *whether the development would be acceptable in principle, having particular regard to the planning policy framework; the effect of the development upon the character and appearance of the area; whether the development is inappropriate development in the Green Wedge, and whether any harm by reason of inappropriateness would be clearly outweighed by other considerations that constitute very exceptional circumstances that justify the harm to the Green Wedge; and finally, whether any identified harm would be individually or collectively outweighed by the matters in favour of the development, including the personal circumstances advanced.*

Principle of Development

11. The site is located outside of the settlement boundaries defined by the adopted Flintshire Local Development Plan 2015- 2030 (Adopted 2023) (LDP) and is therefore located within the '*countryside*' for the purposes of planning policy. Consistent with the thrust of national planning policy, Policy PC1 of the adopted LDP seeks broadly to strictly control

development in the countryside, providing policy exemptions to such control. Whilst criteria a), b), c) and d) do not provide a policy exemption for the development proposed in this instance, it is necessary to assess the proposal against the policies specific to Gypsy and Traveller accommodation.

12. In this respect, Policy STR12 sets out the LDP's approach to meeting the needs of the Gypsy and Traveller community, noting that the Plan makes site specific provision for permanent and transit pitches. Specifically, Policy HN8 of the adopted LDP identifies the sites allocated to meet the need within the approved Gypsy and Traveller Accommodation Assessment (GTAA) (2022) and Policy HN9 sets out a criteria-based approach to assessing proposals for such uses on unallocated sites. The site subject of this appeal is not allocated for '*Gypsy and Traveller*' accommodation, meaning that the principle of development must be assessed under Policy HN9.

13. Policy HN9 states that proposals for such accommodation would be preferred within settlements, or adjoining settlement boundaries, where the resulting development would represent a logical extension to the settlement. Where there are no suitable locations within or adjacent to existing settlements, open countryside locations would then be considered. This approach is broadly consistent with the thrust of the advice set out in WG Circular 05/ 2018 which adopts a sequential approach to identifying sites, whilst not preventing sites from being located within rural areas. Consistent with the sustainability considerations identified under Circular 005/2018, Policy HN9 also requires such development proposals to be, amongst other things, well related to community facilities and services, capable of being served by utilities, satisfactory in respect of amenity standards and not be at a high risk of flooding.

14. It was generally agreed at the Hearing that the appeal site lies within close proximity to the identified settlement boundaries and occupies a broadly sustainable location. Indeed, it is within walking distance from a variety of facilities and services. No concerns have been raised over the issue of utilities and I have not seen any cogent arguments to lead me to conclude that the proposed use would fail to provide satisfactory amenity standards for both its occupiers and neighbouring uses. As such, and bearing in mind the fact that the site is not located in an area at high risk of flooding, I find that the development would be broadly compliant with the aforementioned policies of the adopted LDP. It would also be consistent with the thrust of the advice in national policy, including Circular 005/2018. The development would, therefore, be acceptable in principle.

Character and Appearance

15. There is little doubt that the development materially alters the character and appearance of the appeal site, with an otherwise undeveloped parcel of land being used for residential purposes. Indeed, the siting of caravans, along with the laying of the hardstanding and the residential paraphernalia and activities that go with the use, materially alter the character of what is lawfully an area of '*countryside*'. However, I was able to confirm at the time of my site inspection that the boundaries of the appeal site are well defined, with the use relatively well-screened from the public highway. From wider vantage points, the site is also seen within the context of the significant highway infrastructure that forms part of the Queensferry roundabout with its associated A494 Aston Road high level flyover. It is also material to note that the opposite side of the A550 Gladstone Way is characterised by existing residential uses, including a substantial mobile home development.

16. On this basis, whilst I find that the development inevitably causes harm to the rural nature of the immediate environs, there are significant mitigating circumstances that lead me to conclude that it does not cause significant harm to the character and appearance of the

area more generally. Indeed, any conflict with Policy PC2 of the adopted LDP would be limited and would be an expected implication of the in-principle support for Gypsy and Traveller sites in such a countryside location.

Green Wedge, including whether there are very exceptional circumstances

17. The appeal site is located within a Green Wedge, as designated by Policy EN11 of the adopted LDP. PPW states that, to maintain openness, development within a Green Wedge must be strictly controlled. It also goes on to state that, when considering applications for planning permission in Green Wedges, a presumption against inappropriate development will apply. The development subject of this appeal does not fall within any of the purposes that are classified as an exemption to the definition of inappropriate development and, furthermore, Gypsy and Traveller accommodation is not identified as a policy exemption under the criteria of Policy EN11. As such, the development subject of the appeal constitutes inappropriate development in the Green Wedge. In accordance with PPW, substantial weight should be attached to any harmful impact which the development would have on the purpose of the Green Wedge.

18. I have been advised that the key purpose of the designation is to prevent coalescence. Indeed, the Green Wedge designation separates the built form to the west of the A494 Aston Road, that located to the east of the A550 Gladstone Way and the wider developments located to the south. The development clearly impacts upon the openness of the site and, as such, runs counter to the planning aim of preventing coalescence. However, to effectively quantify the extent of the harm, it is necessary to note that such impacts are mitigated by a number of factors, including both the modest scale of the proposals and the positioning of the site immediately adjacent to existing buildings and highways infrastructure. Indeed, whilst the loss of openness at a site level is not disputed, the impacts on the openness of the wider landscape are limited. The harm is therefore minor in nature although, in accordance with the advice contained within PPW, such harmful impacts merit substantial weight.

19. PPW states that inappropriate development should not be granted planning permission except in very exceptional circumstances where other considerations clearly outweigh the harm to the Green Wedge designation. In considering whether there are very exceptional circumstances in this case, it is firstly relevant to note that there is an unmet need for Gypsy and Traveller accommodation in the area. Indeed, the need for approximately 23No. pitches identified through the approved GTAA is significant and, on the basis of the number of live planning applications in the area, it appears to be common ground that the actual level of need is even greater than that identified within the GTAA. For the avoidance of any doubt, there is no dispute in this instance that the appellant's family are in genuine need of accommodation, meaning that Section 103 of the Housing (Wales) Act 2014 is of particular relevance. Indeed, this provision requires that, where a housing authority's approved GTAA identifies a need within its area, the authority must exercise its powers so far as may be necessary to meet those needs.

20. The Council has confirmed that, despite the identified need, there are no available alternative sites within the administrative area. The evidence suggests that this situation is also unlikely to change in the short term and the Council acknowledged at the Hearing that, despite having a criteria based policy in its adopted LDP, it does not have a strategy in place to deal with the Gypsies and Travellers that are in immediate need for accommodation. The Council is, therefore, failing to meet its statutory duty under Section 103 of the Housing (Wales) Act. With this in mind, and bearing in mind the appellant's aversion to conventional bricks and mortar accommodation, it is clear that the appellant would be extremely unlikely to find suitable alternative accommodation should planning permission be withheld. Indeed, the appellant confirmed at the Hearing that, in

such a circumstance, the family, including four child dependents, would be forced into taking up an itinerant lifestyle on the roadside.

21. The loss of a family home, and the resulting displacement of its family members with no alternative base, engages the rights under the Human Rights Act (1998) and the Equality Act 2010. Article 8 and Article 1 of the European Convention on Human Rights, as incorporated into the Human Rights Act, requires that decisions ensure respect for private and family life and the home, and the peaceful enjoyment of their possessions. Given the protected characteristics of the appellant, due regard must also be had to the equality aims set out in the Equality Act. As the appeal site is occupied by a number of children, the rights of the occupiers also need to be considered within the context of Article 3 of the United Nations Convention on the Rights of the Child which requires the best interest of the children to be a primary consideration. Indeed, it is well-established in law that no other factor can inherently carry greater weight in the planning balance.

22. I have already set out above that the failure to secure planning permission in this instance would lead to the family being made homeless, with only the prospect of a roadside existence. This would represent a significant disruption to the family unit, which would be in complete contrast to the current arrangements where the family could live in a secure environment throughout the year. A roadside or itinerant lifestyle would also have clear and obvious implications for the family's ability to gain access to essential facilities and services, with potentially catastrophic implications for the overall stability of the family unit. Specifically, the family are well embedded into the local community and have caring responsibilities for an elderly family relative who lives less than half a mile away. A grant of planning permission in this instance would enable those connections to continue and for the family's work, education and healthcare continuing relatively uninterrupted.

23. Furthermore, whilst many children are successfully relocated when families move, the appellant's family would inevitably encounter problems accessing education from no fixed address, with a similar situation likely to arise in respect of healthcare. This would be expected to have a significant adverse impact upon the general well-being of any family members being made homeless, but would be particularly pronounced in this instance due to the personal circumstances of the youngest child. Specifically, whilst that child is too young to have obtained a full diagnosis, the evidence suggests that he suffers from severe physical and mental health challenges. These are set out in the written correspondence and were further clarified at the Hearing. Without repeating such details, it is of relevance to note that he currently attends a number of medical appointments, therapies and meetings with a wide variety of health and social care specialists. The child and parents also benefit from a family support worker accessed via his one to one nursery. With no fixed address, access to these services could be lost, with devastating impacts on both the child and the family unit as a whole.

24. It is clearly relevant to note that the aforementioned legislative rights of the appellant's family are qualified, and that such interferences may be justified where they are proportionate and in the public interest. Allowing the appeal in this instance would result in harm to the Green Wedge and seeking to avoid that harm is a legitimate planning aim. However, the foregoing matters in favour of the development collectively merit substantial weight and clearly outweigh the harm to the Green Wedge designation. Indeed, the interferences to the aforementioned legislative rights would not be proportionate to the harm to the Green Wedge and it is on this basis that I find that the matters in favour of the development constitute the very exceptional circumstances necessary to conclude that the development would be compliant with PPW's Green Wedge policy. There would

also be no fundamental conflict with the thrust of Policy EN11 of the adopted LDP which acknowledges the need to consider very exceptional circumstances.

Overall Planning Balance, Conclusion and Planning Conditions

25. On the basis of the foregoing, I have found that the development is acceptable in principle. I have also found that the minor harm to the Green Wedge, even when attributed substantial weight, is clearly outweighed by the matters in favour of the development. These matters constitute the very exceptional circumstances required to ensure compliance with Green Wedge policy and they also amount to compelling reasons why permission should be granted in this instance. Indeed, they outweigh the cumulative harms to both the Green Wedge and the character and appearance of the area. The appeal should therefore be allowed under ground (a) and that the Enforcement Notice should be quashed. Planning permission should be granted, subject to conditions, on the application deemed to have been made under Section 177(5) of the 1990 Act, as amended.

26. In coming to this conclusion, 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 (WBFG Act). I have taken into account the ways of working set out at Section 5 of the WBFG Act and consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives, as required by Section 8 of the WBFG Act.

27. I have considered the suggested planning conditions within the context of the advice set out in WG Circular 016/2014: *The Use of Planning Conditions for Development Management* (2014) and have imposed those which meet the relevant tests, albeit with minor amendments where necessary to aid precision. As set out above, the personal circumstances of the appellant's family have materially impacted upon the justification for a grant of planning permission. As such, a condition tying the permission to the appellant and her resident dependents is necessary. Suggested condition Nos. 4 and 5 have been merged given that the planning issues overlap. The full reasons for each of the planning conditions imposed, as well as relevant policy references, are set out in full under the respective planning condition, at Annex A.

The Appeal under Ground (g)

28. In light of the findings in respect of the deemed planning application arising from the appeal under ground (a), the ground (g) appeal does not fall to be considered.

Richard E. Jenkins

INSPECTOR

Annex A:

SCHEDULE OF CONDITIONS

1) The occupation of the site shall only be by the following and their resident dependents: Martin Gallagher; Mary Gallagher; and Martin Gallagher Junior.

   REASON: *To reflect the material considerations in favour of the scheme, in accordance with Policies STR12 and HN9 of the adopted Flintshire LDP, PPW and WG Circular 05/2018 .*

2) When the land ceases to be occupied by those named in Condition No.1, the use shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place within 6 calendar months of that date.

   REASON: *To reflect the personal nature of the planning permission and in the interests of the character and appearance of the area and the openness of the Green Wedge, in accordance with Policies PC2 and EN11 of the adopted Flintshire LDP.*

3) No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than one shall be static caravans) shall be stationed on the site at any time.

   REASON: *To ensure that the site affords satisfactory amenity standards both for its occupants and for neighbouring land uses, in accordance with Policy HN9 of the adopted Flintshire Local Development Plan*.

4) Within three months of the date of this decision a scheme of site layout, including site access arrangements, shall have been submitted for the written approval of the local planning authority. The scheme shall include a timetable for implementation. The works shall be implemented and retained in accordance with the approved details.

   REASON: *For the sake of clarity and in the interests of residential amenity in accordance with Policies PC2 and HN9 of the adopted Flintshire LDP.*

5) Within three months of the date of this decision a foul water drainage scheme to cater for the disposal of foul water flows from the site shall have been submitted for the written approval of the local planning authority. The scheme shall include a timetable for its implementation. The works shall be implemented and retained in accordance with the approved details.

   REASON: *To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and to ensure no pollution of or detriment to the environment. In accordance with Policies PC2, HN9 and EN15 of the adopted Flintshire LDP.*

6) No commercial activities shall take place on the land, including the storage of materials.

   REASON: *In order to protect residential amenity, in accordance with Policy PC2 of the adopted Flintshire LDP.*

7) Within three months of the date of this decision a scheme for biodiversity enhancements shall have been submitted for the written approval of the local planning authority. The scheme shall include a timetable for its implementation. The works shall be implemented and retained in accordance with the approved details.

   REASON: *In the interest of green infrastructure in accordance with Policies STR13 and EN2 of the adopted Flintshire LDP.*

Annex B:

HEARING DOCUMENTS

1) LPA – Planning Officer's Committee Report - LPA Ref: 062368 – 23 November 2022
2) LPA – Flintshire County Council – Planning Enforcement Policy – January 2019