

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **PLANNING & DEVELOPMENT CONTROL COMMITTEE**

DATE: **18TH NOVEMBER 2015**

REPORT BY: **CHIEF OFFICER (PLANNING AND ENVIRONMENT)**

SUBJECT: **APPEAL BY MR. MYLES BERRY AGAINST THE DECISION OF FLINTSHIRE COUNTY COUNCIL TO REFUSE PLANNING PERMISSION FOR THE CHANGE OF USE OF LAND TO PROVIDE 2 NO. RESIDENTIAL GYPSY/TRAVELLER PITCHES TO INCLUDE 2 NO. STATIC CARAVANS AND 2 NO. TOURING CARAVANS WITH PARKING FOR 2 NO. VEHICLES TO EACH PITCH AT 1 OLD PAPER MILL LANE, OAKENHOLT – ALLOWED.**

1.00 APPLICATION NUMBER

1.01 053290

2.00 APPLICANT

2.01 MR. MYLES BERRY

3.00 SITE

3.01 1 OLD PAPER MILL LANE,
OAKENHOLT.

4.00 APPLICATION VALID DATE

4.01 17TH FEBRUARY 2015

5.00 PURPOSE OF REPORT

5.01 To inform Members of the Inspector's decision in relation to an appeal into the refusal to grant planning permission for change of use of land to provide 2 No. residential Gypsy/Traveller pitches to include 2 No. static caravans and 2 No. touring caravans with parking for 2 No. vehicles to each pitch (partly in retrospect) on land adjacent to 1 Old Paper Mill Lane, Oakenholt. The application was refused under delegated powers with the appeal dealt with by way of an informal hearing and was **ALLOWED**.

6.00 REPORT

6.01 Background

Members may recall that this application was refused under delegated powers on 8th April 2015 on the grounds that the proposals represented inappropriate development in the green barrier and there were no very exceptional circumstances to outweigh the subsequent harm.

6.02 Issues

The Inspector considered that the main issues were the effects of the proposals on the character and appearance of the area, whether the proposals complied with local and national policies designed to protect the countryside and green barrier and if not whether the harm to the green barrier clearly outweighs other circumstances and whether the circumstances amount to very exceptional circumstances necessary to justify the development.

6.03 Character & Appearance

The site forms part of a small area of mixed development located within the countryside. The site is accessed via a narrow unmade road, Old Papermill Lane, which slopes relatively steeply towards the site. Access to the site is gained directly from Old Papermill Lane and opposite and to the south of the site are a number of dwellings. The site is generally screened from sight from these properties by mature trees. The paper mill, a substantial industrial building, is to the north of the site and a field with Papermill Lane beyond is to the east of the site. The immediate area surrounding the appeal site is characterised by these features.

6.04 Prior to its occupation by Ms Hamilton and her children, the site was vacant. Inevitably there has been a change in character of the site. This change would be amplified should the appeal succeed and further caravans be brought onto the site.

6.05 Notwithstanding the change in character of the site itself, the presence of the existing residential and industrial uses means that a relatively small gypsy and traveller site would not be out of character with the land use pattern of the area. There is no reason why existing trees would be affected by the development and there are no proposals to alter the existing access to the site. Visually, the development would result in little change to the area. Therefore, whilst the development would result in a change of character to the site itself, it would be seen in the context of the surrounding area and the Inspector did not consider that it would have an unacceptable impact on the character and appearance of the area.

6.06 Countryside & Green Barrier

In policy terms, the site is located within the countryside. Policy GEN3 of the UDP provides that development proposals outside settlement boundaries will not be permitted except for a number of listed exceptions, none of which have been cited as applicable in this case. In this respect the development would fail to accord with development plan policy and would be inappropriate development in the open countryside.

6.07 Planning Policy Wales Edition 7 – July 2014 (PPW) makes reference to “local designations such as green wedges”. Policy GEN4 references the proposals map and designates the site as being within the green barrier: Flint – Connah’s Quay. The Inspector considered this designation to be akin to a green wedge and treated references to the “green barrier” as synonymous with “green wedge” for the purpose of the advice contained within national policy and guidance. This approach was agreed by the parties at the hearing. There was no dispute that in development plan terms, the development would be inappropriate development since it falls within the green barrier.

6.08 WAGC 30/2007 states that gypsy and caravan sites within the green wedge are likely to be inappropriate development. PPW advises that inappropriate development in green wedges should not be granted planning permission, except in very exceptional circumstances. Policy GEN4 states that development within the green barrier will only be permitted if development is one of a number of listed criteria, none of which are contended to apply to the proposed development. The policy states that the role of the green barrier is to protect key areas of open land and prevent the coalescence of settlements. For these reasons, the proposal would fail to accord with Policy GEN4 and would represent inappropriate development within the green wedge.

6.09 Therefore, the Inspector found that the proposed development would amount to inappropriate development in the countryside and within the green barrier.

Other Circumstances

6.10 The Need for Additional Gypsy Pitches

The Council has a duty under the Housing Act 2004 and WAGC 30/20076 to assess the need for Gypsy/Traveller accommodation and where an assessment of unmet need is evident, to ensure sufficient sites are allocated through the Local Development Plan (LDP) process. These duties reflect wider duties to promote equal opportunities and to prevent unlawful discrimination on the grounds of race.

- 6.11 The Council has not yet adopted a LDP and at the hearing it was confirmed that at present there is no timescale for adoption. In 2013 a Gypsy & Traveller Accommodation Needs Assessment (GTANA) was carried out covering the North Wales area. At that time, Flintshire was identified as having a shortfall of 36 pitches. Since that time the shortfall has been reduced to 25 after the grant of two planning permissions. The Council's evidence is that consideration has been given to extending the Council run site by 10 pitches however no firm plans have been formulated and therefore little weight was attached to this consideration. The Council acknowledged that there is a shortage of gypsy and traveller sites within Flintshire. Whilst the Council asserted that they are working on an updated GTANA and in evidence stated that it was anticipated that this work would be completed within three years, at this point in time the Council was unable to point to any available site which would be able to accommodate the appellant and extend family now or within the near future. This is a factor to which the Inspector attached substantial weight.
- 6.12 Personal Circumstances
The appellant, Mr. Berry, lives in a house with his daughter and her family. At the hearing he stated how the combination of overcrowding and his poor health made this an unsuitable arrangement, particularly since he suffers from emphysema and finds it difficult to use the stairs.
- 6.13 Mr. Berry's daughter-in-law, Ms Hamilton is currently residing on the site with her six children, four of whom attend the local school. The children have been attending school since they moved onto the site and are reported to have settled well. Ms Hamilton also suffers poor health and is under the care of Deeside Community Hospital for a back complaint. Evidence was also provided at the hearing that her youngest child had been referred to a specialist asthma clinic.
- 6.14 The appellant and Ms Hamilton stated that they have made enquiries about securing a pitch at the Queensferry and Huntley Yard sites but have been told there are no vacancies. Their evidence was that if the appeal failed, Mr. Berry would have to continue to reside at his daughter's house and Ms Hamilton would have nowhere to go and would resort to pitching at the roadside. The Inspector considered this would result in regular moving which would interfere with the children being able to attend school and would cause difficulties in accessing medical care.
- 6.15 The Council's position was that should this appeal fail, Ms Hamilton would be expected to comply with the enforcement notice but that action would be stayed provided it was clear steps were being taken to ensure compliance. The Council confirmed that assistance would be offered to Ms Hamilton in finding suitable alternative accommodation. However, given the lack of alternative sites the Inspector considered that there would be little prospect of the Council being able to find a pitch. As a result of this, the Council

acknowledged that any alternative offered would likely be in a house where there may be garden space to pitch a caravan. No assurances could be given that alternative accommodation could be found for the family which would avoid disruption to the family.

- 6.16 Overall, the Inspector considered these to be compelling reasons for the appellant and his extended family to be able to secure suitable accommodation, preferably within the area of the appeal site.

6.17 Other Matters

Local residents raised a number of other concerns including highway safety, noise and disturbance and the potential nuisance of smoke caused by fires on the site. Concerns relating to highway safety arose generally from the fact that Old Papermill Lane is narrow, slopes relatively steeply towards the site and is poorly surfaced. However, these matters have been considered by the Council's highways engineers who expressed no objection to the proposal. Whilst it was noted that additional traffic would be generated by the site could cause further damage to the surface of the road, the Inspector was satisfied on the basis of the evidence submitted that the level of additional traffic would not be sufficient to cause any harm, furthermore, a restriction on heavier commercial vehicles using the site is a matter which could be addressed by means of a suitable condition. This would reduce the number of heavy vehicles using the lane. In terms of potential for noise disturbance and nuisance from fires being lit on site, it was acknowledged that local residents have experienced some nuisance in this regard however these are matters which could be dealt with by through other statutory powers outside of the planning system.

6.18 Overall Balancing

The Inspector found that the proposed development would amount to inappropriate development in the countryside and the green barrier and was mindful of the advice contained within PPW that planning permission should not be granted for development which falls within the green wedge, unless very exceptional circumstances exist. It was therefore necessary to balance the finding that the development would be inappropriate development against other considerations in order to assess whether these amounted to the very exceptional circumstances required to overcome this. In assessing this balance the Inspector took into account the purposes of the green barrier and the extent of the harm which would be caused to it. The stated purpose of the green barrier is to protect the sense of openness and to prevent the coalescence of settlements at Flint and Connah's Quay. In this case, whilst the site is located within a rural setting, the site itself is largely enclosed by trees, many of which are mature and evergreen. As a result of this, there are very limited views into the site from the surrounding area. This, together with the presence of the adjacent housing and paper mill mean that the site as it was prior to its occupation by Ms Hamilton and her children would have made a

limited contribution to the openness of the green barrier. Further due to the location of the site adjacent to the row of dwellings and the paper mill, the proposal would not appear to extend the developed area any further into the countryside, nor would the proposal make any appreciable contribution to the coalescence of settlements. The Inspector attached substantial weight to the fact that the site is within the green barrier and found that the proposal would be in conflict with Policies GEN3 and GEN4 of the UDP. However, the particular circumstances of the proposal mean that the harm to the green barrier and conflict with countryside policy was limited.

- 6.19 Against this finding there is an accepted unmet need for gypsy and traveller sites within Flintshire which despite the advice contained within WACG 30/2007, the Council has not yet addressed. The proposal would contribute to the existing shortfall in pitches and would meet the needs of the current and intended occupants by providing sufficient space. This would provide a stable and secure environment for the appellant and his extended family to have undisturbed access to education and medical provision in circumstances, certainly in the case of Ms Hamilton and her children, where there appears to be no reasonable prospect of finding suitable alternative accommodation. Overall, the failure of the Council to address the unmet need for gypsy accommodation over a relatively long period with no clearly identifiable date by which the shortfall is expected to be addressed is a matter to which the Inspector attached substantial weight.
- 6.20 The family's personal circumstances are also material to the balancing exercise. The appellant's current living conditions are overcrowded and his evidence is that the proposal would allow him an appropriate lifestyle. Ms Hamilton and her children's personal circumstances are such that a refusal of permission would risk a disruption to the children's education and access to medical care due to the lack of suitable alternative accommodation. Furthermore, a refusal of permission in circumstances where enforcement action would be pursued would result in an interference with Ms Hamilton's and her children's right to respect for family and private life and to the peaceful enjoyment of their possessions as enshrined in Article 8 and Article 1 of Protocol 1 of the European Convention on Human Rights. Whilst this is a qualified right which has to be balanced against the public interest in protecting the countryside and green barrier from inappropriate development, taking into account all other considerations including the family's personal circumstances and the lack of suitable alternative sites, the Inspector concluded that the harm by reason of inappropriateness would clearly be outweighed by these factors.
- 6.21 Overall, the Inspector found that the need for additional gypsy pitches within the area and the personal circumstances of the appellant and his extended family, together amount to very exceptional circumstances. The potential for harm to the green barrier and the

countryside is clearly outweighed by these other considerations. As a result of this a permanent permission is justified and there is no need to consider the merits of a temporary permission as discussed at the hearing.

7.00 CONCLUSION

7.01 For the reasons set out above, the Inspector ALLOWED the appeal.

LIST OF BACKGROUND DOCUMENTS

Planning Application & Supporting Documents
National & Local Planning Policy
Responses to Consultation
Responses to Publicity

Contact Officer:	Alan Wells
Telephone:	(01352) 703255
Email:	alan.wells@flintshire.gov.uk