

**FLINTSHIRE COUNTY COUNCIL**

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

**DATE:** **24<sup>TH</sup> FEBRUARY 2016**

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

**SUBJECT:** **APPEAL BY MR. B. EVANS AGAINST THE DECISION OF FLINTSHIRE COUNTY COUNCIL TO REFUSE PLANNING PERMISSION FOR THE USE OF THE LAND FOR THE STATIONING OF CARAVANS FOR THE RESIDENTIAL PURPOSES FOR 1 NO. GYPSY PITCH TOGETHER WITH THE FORMATION OF HARD STANDING AND UTILITY/DAYROOM ANCILLARY TO THAT USE AT 8 RATCLIFFE ROW, CHESTER ROAD, PENTRE**

**1.00 APPLICATION NUMBER**

1.01 052899

**2.00 APPLICANT**

2.01 MR. B. EVANS

**3.00 SITE**

3.01 8 RATCLIFFE ROW,  
CHESTER ROAD, PENTRE.

**4.00 APPLICATION VALID DATE**

4.01 10<sup>TH</sup> NOVEMBER 2014.

**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 the land for the stationing of caravans for the residential purposes for 1 No. gypsy pitch together with the formation of hard standing and utility/dayroom ancillary to that use at 8 Ratcliffe Road, Chester Road, Pentre, Deeside, CH5 2DY. The application was refused under delegated powers with the appeal dealt with by way of an informal hearing and was **ALLOWED**.

5.02 An application for full costs was made against the Council and a full award was given in relation to the costs of the appeal proceedings.

## **6.00 REPORT**

### 6.01 Background

Members may recall that this application was refused under delegated powers on 30<sup>th</sup> April 2015 on the grounds that due to the close proximity of the access road and the noise generated by its use and the resultant lack of privacy, the proposed gypsy would have unacceptable impact on the amenities of the occupants of No. 8 Ratcliffe Row.

### 6.02 Issues

The Inspector considered that the main issues were the effects of the proposal on the living conditions of neighbouring residents, particularly any effect on the occupiers of No. 8 in terms of loss of privacy or noise disturbance and whether there were any material considerations, in particular relating to the shortage of suitable alternative local gypsy pitches and the personal circumstances of the appellant's family, sufficient to outweigh any harm identified in relation to the living conditions of No. 8.

### 6.03 Living Conditions

Access to the site is proposed via an existing driveway which serves No. 8 and runs alongside the side elevation of the house and opens up to a wider area, surfaced in loose stone chippings, which extends from the rear elevation of the house to a yard area within which it is proposed to site the caravans and the utility/dayroom. To the rear of this area there is a small stable block and enclosed manege which is separated by a gate and fence from the rear of the appeal site. The side boundaries of the site and its boundary with the rear garden of a neighbouring property, McGlen, are demarcated by a high close boarded timber fence, supported by concrete posts.

6.04 No. 8 is a narrow-fronted, semi-detached house. It is a two-bedroom property owned by the appellant and rented out on a commercial basis. National policy identifies the potential problems that may arise from tandem development, including disturbance and lack of privacy to the house in the front. Along the side elevation of the dwelling there are several window openings which serve the first floor bedrooms and a living room and kitchen at ground floor. The proximity of the access means that those attracted to the appeal site would be able to look directly into the living room of the dwelling and from appreciably closer quarters than from the adjacent highway.

6.05 The accessibility of the site to local facilities, including shops and a school means that it is reasonable to anticipate regular pedestrian movements associated with the proposed use. This would be more intrusive than the overlooking associated with vehicular traffic. Whilst

the appellant suggested that such overlooking can arise from those visiting the stable block at the rear, the permission is subject to a condition that ties the use to occupiers of No. 8. The Inspector considered that such a use is not likely to involve pedestrian movements to the same degree as the proposal.

- 6.06 In terms of noise disturbance, the property fronts a busy road, which includes high volumes of heavy goods vehicles to the various industrial and other commercial uses nearby. This is likely to cause some disturbance within the living room and front bedroom which have windows facing the road. The proximity of the driveway access to side windows of the house the Inspector considered that it is likely that passing traffic would be readily noticeable for occupants, especially within the rear rooms of the house. The Council referred to the potential disturbance from car headlights shining into the rooms. The Inspector accepted that this may occur but would be short lived, occurring as vehicles turn into the site from the east. Thereafter the light beam would be directed along the lane rather than towards the windows.
- 6.07 The Council expressed concerns regarding the impact on the rear garden of No. 8. However, the site visit revealed that the property had no demarcated outdoor amenity space. The whole of the outdoor area was hard surfaced in coarse stone. Within this area the Inspector observed a children's trampoline, toys and bicycles stored immediately to the rear of the house. It was agreed that the provision of a dedicated private outdoor amenity area at the rear of the dwelling would benefit the living conditions of its occupants. This could be secured by planning condition.
- 6.08 The present occupiers of the house did not object to the scheme. The Inspector was mindful that were the appeal allowed, future occupiers of No. 8 would take up residence in the knowledge of the proximity of the shared driveway and the implications of this to living conditions. The Inspector also considered that the harmful effects that were identified in terms of disturbance within the home would be partly compensated by the provision of an outdoor amenity space. On balance the Inspector considered that the disturbance caused to the occupiers of No. 8 would not be particularly intrusive, nonetheless it was considered that it would be of some significance.
- 6.09 The Inspector noted concerns raised by local residents that the use would give rise to noise nuisance, and that this was partly informed by their experience when the unauthorised pitch was in operation on the site. As the use seeks permission only for residential use, and the scope to control this through the imposition of standard conditions, there was no reason to anticipate that such a use would unacceptably impact on other nearby residences.

6.10 Accommodation Needs & Personal Circumstances

The Council accepted that there is an under provision of gypsy pitches within the County. The latest GTANA which is for the period 2011-16 identifies a shortage of 36 pitches. The Council points to schemes in the pipeline that would reduce the shortfall to 23. As it was agreed that this lower figure represented a significant shortfall it is not necessary for the Inspector to consider whether the appellant is correct to assert that the level of demand is seriously underestimated by the GTANA. The Council has commissioned consultants to provide a new assessment, but no alternative figures are available.

6.11 The Council is at a fairly early stage in the preparation of its LDP. There has been significant slippage in the delivery timetable which now anticipates that Plan adoption will be in 2021 or thereabouts. In the meantime, the Council could not demonstrate that it was taking adequate alternative steps to address the shortage of pitches.

6.12 At an anecdotal level the appellant referred to the experience of several family members who had been unsuccessful in securing pitches in the area. Against this context, the scheme offers the opportunity of one pitch in a location within settlement limits and close to a range of local services and facilities. The parties agreed that such benefits rarely arise in relation to new gypsy and traveller pitches. In this context the level of harm the Inspector identified to the living conditions of occupiers of No. 8 is clearly outweighed by the scheme's contribution to the local supply of gypsy and traveller pitches and the benefits of providing settled accommodation to future occupiers.

6.13 Mr. Evans explained that he and his wife had experience of living in a house for a few months some 8 to 9 years ago. They had found the experience to be objectionable and as a result reverted to living in a caravan. They have been unable to secure a permanent pitch during this time and so have been forced to move frequently. They have been mainly doubling-up in cramped conditions on existing pitches occupied by family members, and having to move on to avoid overstaying their hosts' welcome. Both Mr. Evans and his two sons have health problems. Not having a permanent address caused problems with hospital appointments and so on. The two boys are of primary school age and have enjoyed and benefitted from their extended periods of school attendance. The longest of these was when the family took up unauthorised residence on the appeal site for some 8 months. Their education was hampered by the breaks in their schooling and the move from one school to another.

6.14 The lack of adequate provision of gypsy pitches in the area was a weighty consideration as WAG Circular 30/2007 makes clear. In this case it attracts greater weight given that there is no reasonable prospect of the situation being addressed in the short term. The appeal site is located within settlement limits, is accessible to a range

of local services and facilities and, in this respect, performs well in terms of sustainability principles.

- 6.15 The extent of the harm that the Inspector described in terms of the effect on living conditions of the occupiers of No. 8 was outweighed in this case by the absence of a sufficient local supply of suitable gypsy pitches. It was therefore considered that the scheme would not give rise to an unacceptable impact on the amenity or character of the surrounding area.
- 6.16 The personal circumstances of the appellant's family weighed in favour of granting permission. However, as considered that the more general considerations relating to the shortage of supply of pitches was sufficient to clearly outweigh the harm that identified in relation to the first main issue, these personal circumstances were not determinative. Accordingly, it was not reasonable to limit the permission to a personal one.
- 6.17 Costs Application  
The appellant made an application for a full award of costs against the Council in respect that the Council acted unreasonably in that a balancing exercise of the considerations in favour of the scheme was not undertaken and whether planning conditions could be imposed to address the harm.
- 6.18 The Council in its officer delegated report made no reference to the lack of caravan pitches in the County and identified the presumption in favour of the development because of its location within a settlement boundary. It also identified the potential to mitigate the appearance of the development. However, there was no indication, the Inspector considered that the identified harm was balanced against the factors that weighed in favour of the scheme.
- 6.19 The thrust of the conclusions drawn in both the report and the appeal statement was that the scheme represented backland development that would adversely affect the amenities of the occupiers of the house. The Inspector considered that there was no comment on the severity of such harm in the circumstances of the case. Having noted the materiality of the considerations relating to need and lack of pitches, such considerations were not weighed against the identified harm. The Inspector considered that the Council ought to have known of the significance of such considerations which led to several recent appeals in its area being allowed on the basis that they outweighed harmful impacts. The evidence led the Inspector to find that the application was not properly considered in the light of the material considerations.

## **7.00 CONCLUSION**

- 7.01 The Inspector considered that the scheme would give rise to harm to the living conditions of the occupiers of No. 8. It would create a situation that should be avoided but in the reasons set out on the first issue, the impact would not be particularly harmful. It was certainly not such as to make the living conditions unacceptable. No other harm was identified. The site's location within a settlement means that the scheme performs well in terms of sustainability and the avoidance of development in countryside. The scheme accords with Policy HSG14, which deals specifically with gypsy sites, therefore it accords with the development plan. Therefore, the Inspector **ALLOWED** the appeal.
- 7.02 In addition, the Inspector considered that the failure by the Council to carry out an appropriate balancing exercise constituted unreasonable behaviour. The failure to consider whether the grant of a temporary permission might mitigate the harm such as to make it acceptable is inextricably linked to the failure to carry out a proper balancing exercise. There the Inspector awarded full costs of the appeal proceedings against the Council.

### **LIST OF BACKGROUND DOCUMENTS**

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

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