

FLINTSHIRE COUNTY COUNCIL

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

DATE: **WEDNESDAY 12TH DECEMBER 2012**

REPORT BY: **HEAD OF PLANNING**

SUBJECT: **APPEAL BY MR MARTIN ROONEY AGAINST THE DECISION OF FLINTSHIRE COUNTY COUNCIL TO REFUSE PLANNING PERMISSION FOR THE CHANGE OF USE OF LAND FOR THE STATIONING OF CARAVANS FOR THE RESIDENTIAL PURPOSE OF 5 NO. GYPSY PITCHES TOGETHER WITH THE FORMATION OF ADDITIONAL HARD STANDING AND UTILITY/DAYROOMS ANCILLARY TO THAT USE ON LAND SIDE OF EWLOE BARN WOOD, MAGAZINE LANE, EWLOE.**

1.00 APPLICATION NUMBER

1.01 049152

2.00 APPLICANT

2.01 Mr Martin Rooney

3.00 SITE

3.01 Land to the side of Ewloe Barn Wood, Magazine Lane, Ewloe.

4.00 APPLICATION VALID DATE

4.01 02/09/2010

5.00 PURPOSE OF REPORT

5.01 To inform Members of the appeal decision, following the refusal of planning permission at the Planning and Development Committee on 12th January 2012. The application was for the change of use of the land for 5 residential gypsy pitches together with the formation of additional hard standing and utility/dayrooms ancillary to that use and retention of existing stables. The appeal was considered by way of a public inquiry for 4 days during July and August 2012. The appeal was DISMISSED but a partial award of costs was made against the council in relation to the second reason for refusal.

5.02 The planning application was refused for the following reasons:

1. The proposed development is contrary to Policy HSG 14 of the Unitary Development Plan, which states that development of new permanent gypsy sites will only be permitted where, amongst other criteria, "there is a demonstrable need". The local planning authority is not convinced that such a need has been established at the present time, having regard to studies which are being undertaken on a regional basis, in line with current Welsh Government guidance.

2. The proposal is premature pending the outcome of the council's assessment of the potential to extend the present gypsy site at Riverside, Queensferry. The proposal is therefore contrary to policy HSG14b of the Unitary Development Plan as the Queensferry site may prove to be a suitable alternative to the application site.

6.00 **REPORT**

6.01 The Inspector considered the main issues to be:

a) whether the proposal is appropriate development in the green barrier;

6.02 The Inspector concluded that the proposal was for an appropriate rural use but it was not essential that it had a rural location. It would reduce the openness of the green barrier and have an adverse impact on its character and appearance. The Inspector considered that it was to be treated as inappropriate development and not acceptable in the green barrier and therefore contrary to GEN4.

b) if it is not appropriate development, the extent to which the proposal would impact on the green barrier;

6.03 The open character and appearance of the green barrier would be affected, to a limited extent. It would make a marginal contribution to the coalescence of settlements and encroach into the countryside. Very exceptional circumstances therefore need to be shown which would outweigh these impacts.

c) the impact of the proposal on the rural character and appearance of the area;

6.04 The Inspector explained that gypsy sites are acceptable, in principle, in rural settings and will inevitably have some impact on their surroundings. That impact would not be unacceptable in this case.

d) the implications of the proposal for highway safety and the amenity afforded to other highway users;

6.05 The Inspector considered that the type and level of traffic likely to be

generated can be accommodated on the highway network without unacceptable risk to highway safety or loss of amenity for other users.

e) the effect of any other material considerations, including whether the site is premature pending the assessment of another site and the implications of the proposal for highway safety and the amenity afforded to other highway users;

6.06 The Inspector had serious concerns that the living conditions on the site would not be acceptable, particularly through the impact of noise from the A55 and possibly air quality, neither of which had been assessed.

6.07 The regional, local and personal need for additional pitches was a significant factor in support of the proposal, as was the lack of suitable and available alternatives to that proposed. The appellants were not currently homeless but their current living arrangements were far from satisfactory. They have a real and pressing need for a more suitable and stable base.

6.08 The proposal conflicts with policies GEN3 & 4 because it is not for a use for which a rural location is essential. The proposal satisfies criteria in policy HSG14 for gypsy sites.

f) whether there are very exceptional circumstances which outweigh the harm caused to the green barrier

6.09 The Inspector considered that in other than a green barrier location the combination of factors would enable permission to be granted, setting aside his concerns over living conditions for the future residents. Other than its failure to comply with policy GEN4 the proposal is largely in accordance with the UDP. The proposal has limited consequences for the open character and appearance of the green barrier and its purposes.

6.10 The Inspector considered the telling factor to be the need for additional pitches and the lack of suitable and available alternatives. The implications of the regional assessment of this need are mitigated by the fact that the location of future provision to meet the GTAA has yet to be assessed. The portion to be met in future is therefore not yet known. The assessed need will come about over the period up to 2016. However, some additional provision will need to be made in Flintshire and some of the need is immediate, including that of the intended occupants. Policy to date has failed to address the issue. In the Inspector's opinion the personal need of the appellant is the most telling factor and that would need to be recognised should permission be granted.

6.11 The Inspector considered that very exceptional circumstances *are* sufficient to outweigh the green barrier impacts. He would have

granted permission but for an unresolved matter – the possibly unsatisfactory living conditions, because of traffic noise and pollution from the A55. He says a careful assessment should be made, possibly with a technical noise assessment being provided by the applicant. To comply with PPW, the noise assessment should be available before determination of the application.

Need

- 6.12 One of the assessment criteria in Policy HSG14 is the need for additional gypsy pitches and the availability of alternatives. There is dispute that there is an unmet need in Flintshire. The Inspector concluded that there is a general and local unmet need and lack of alternative sites which weigh in favour of the proposal. Also, there is a significant existing personal need which further favours the proposal.

Living conditions on the site

- 6.13 The Inspector considered that the location of the appeal site immediately alongside the A55 means traffic noise is self-evident, significant and constant. He said that neither the council nor the appellant quantified the noise or air quality implications of the proposal. The Inspector considered that there is a significant and unresolved question over whether this is a sustainable location for such a noise sensitive development.

Costs Claim

- 6.14 In deciding whether to award costs in favour of the appellant, the Inspector concluded that the council *had* acted unreasonably in connection with the second reason for refusal (given in paragraph 5.02 above).
- 6.15 The Inspector said there is little or no progress in developing an extension to the Riverside site. There is no evidence of monies being allocated or of a planning application being made. The site has issues such as its location on Flood Zone 3, its substandard access onto the A494 Trunk Road and lack of successful negotiation on purchase of land for an alternative access. Extension to the Riverside site is therefore some way off.
- 6.16 The Inspector said the council showed there was a large degree of support within the council for the potential expansion of its Riverside site, which could make a significant contribution to the provision of additional pitches. However, the council was unable to establish that it was either committed or sufficiently advanced to be relied on as alternative accommodation now or within an appreciable timescale. The council did not give a sound basis for resisting the appeal proposal and to use it as such was *unreasonable*. Since the appellant was obliged to deal with this second refusal reason, the associated

costs were unnecessarily incurred.

- 6.17 The Inspector stated that the appellant is to submit to the council details of the costs incurred in contesting the second reason for refusal, with a view to reaching agreement as to the amount.

7.00 CONCLUSION

- 7.01 The Inspector concluded that planning permission should not be granted yet, due to the possibly unsatisfactory living conditions on the site from traffic noise and pollution. TAN11 points out that the weight to be given to such matters may be affected by other considerations, such as the need for the proposed development. Whether that is so or not cannot be assessed until the implications of traffic noise and pollution from the A55 are known.

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