

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **PLANNING COMMITTEE**

DATE: **27th October 2021**

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

SUBJECT: **FULL APPLICATION- CHANGE OF USE OF LAND FOR 2 TRAVELLER PITCHES TO INCLUDE 2 NO. AMENITY BLOCK / DAYROOMS (PART RETROSPECTIVE) AT LAND NEAR "BRIER LODGE", RHYDDYN HILL, CAERGWRLE, WREXHAM, FLINTSHIRE**

APPLICATION NUMBER: **061842**

APPLICANT: **MR E PURCELL**

SITE: **LAND NEAR "BRIER LODGE", RHYDDYN HILL, CAERGWRLE, WREXHAM, FLINTSHIRE**

APPLICATION VALID DATE: **5TH OCTOBER 2020**

LOCAL MEMBERS: **COUNCILLOR G HEALEY**

TOWN/COMMUNITY COUNCIL: **HOPE COMMUNITY COUNCIL**

REASON FOR COMMITTEE: **MEMBER REQUEST- LOCAL AND COMMUNITY COUNCIL CONCERNS REGARDING HIGHWAYS AND AMENITY ISSUES**

SITE VISIT: **YES**

1.00 SUMMARY

1.01 This is a full application made partly in retrospect for the change of use of land for the retention of two gypsy pitches ,two day buildings (for welfare purposes) and the associated access and parking provision within the site at land near to Brier Lodge, Rhyddyn Hill, Caergwrle.

2.00 RECOMMENDATION: TO GRANT PLANNING PERMISSION, SUBJECT TO THE FOLLOWING:-

- 2.01
1. Time limit on commencement
 2. In accordance with approved details
 3. The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 2 of Welsh Government Circular 005/2018.
 4. No more than 2 pitches to be on site
 5. No commercial activities shall take place on the land, including the storage of materials.
 6. Landscape implementation
 7. Details of any external lighting to be submitted and approved
 8. Site and finished floor levels of static units to be submitted and approved.

3.00 CONSULTATIONS

3.01 Local Member

Councillor G Healey

I would like to object to the application on several grounds but the most pertinent seems to be the existence of a main gas pipe buried along the route of the bridle path to the site in question and across the site itself.

Concerns have been expressed that this pipe may not be robust enough to take the weight of vehicles which will use the bridle path and those located at the site. According to local knowledge the gas pipe developed a serious leak on the nearby farm as a result of deteriorating drip taps which allowed gas to escape to the surface. It is therefore vital that this issue is fully investigated in consideration of this application.

Concerns have also been expressed about the location of the septic tank and its close proximity to a stream which enters the River Alyn. As there is a danger of contamination of the River Alyn this too should be taken into consideration.

Hope Community Council

1. We object in principle to retrospective applications as it demonstrates a flagrant disregard for the planning process and the rules that all persons should follow. It sets a dangerous precedent if the Council gave retrospective permission in any case and in particular this case.
2. The community of Hope already has a travellers site. There is already a settlement within the community less than a mile from the applicant site. Provision for traveller sites is within the process of the LDP consultation and should not be permitted.

3. There is capacity at the existing travellers site on Gwern Lane, Caergwrle and Llay. The Gwern Lane site is part of the LDP proposals for significant extension. Therefore such accommodation has already been assessed and allocated. Should this application be permitted, the overall allocation within the LDP for traveller pitches should be reduced accordingly within the LDP otherwise it constitutes over allocation which is not necessary in our area.

4. This site is outside the settlement boundary and in open countryside and therefore should not be permitted.

5. TAN1 was also suspended to avoid overdevelopment in our area. This is tantamount to overdevelopment as it is new development outside of the LDP.

6. We also prey in aid the fundamental need for consistency of approach in planning. We as a council are aware of an application (App 060474) which was objected to by ourselves as it was outside the settlement boundary, in open countryside, did not comply with HSG5 and undermined the UDP and LDP. That application was refused by Flintshire Council. The principles of that application are no different in our submission, save for the aggravating feature in this case that this application is retrospective which adds to the reasons for refusing this application.

Site issues/breaches:

7. The bridle path is not appropriate for overuse by large vehicles and caravans.

8. The location of the septic tank which is close to a stream which feeds into the river Alyn, poses a risk of the septic tank overflow entering the stream and the river.

9. A gas main should normally be laid with a minimum depth of cover of 750mm in a road or verge and 600mm in a footpath. As a matter of urgency there is a need to establish the safety of the gas pipe with the increased traffic and heavy goods vehicles.

10. The above mentioned gas main also passes directly under the applicant site and causes concern for any future building excavations and those already completed on the site by the applicant. The gas main in an agricultural field and on private land and may be closer to the surface. Has the applicant checked with the gas company before commencing work?

Highways Development Control

No objection to the proposal

Public Rights of Way

No objection. Standard Note attached to planning permission regarding protection of public right of way.

Community and Business Protection

No adverse comments to make regarding this proposal.

Welsh Water/Dwr Cymru

No objections raised

Natural Resources Wales

The application site is within the catchment of the River Dee and Bala Lake Special Area of Conservation (SAC). As you are aware, on the 21st January 2021, we published an evidence package outlining phosphorus levels for all river SACs across Wales. As part of this package, we issued a Planning Position Statement, in which we advised that any proposed development that might increase the amount of phosphate (or phosphorus) within a river SAC catchment could lead to damaging effects to the SAC. Therefore, such proposals should be screened through a Habitats Regulations Assessment (HRA), to determine whether they are likely to have a significant effect on the SAC. We have also issued Planning Advice (May 2021) which gives specific advice in respect of foul drainage arrangements for new developments.

From the information submitted that the development has the potential to increase the amount of phosphorus being discharged from the site. As such, we refer you to our Planning Advice and advise you to seek further information from the applicant. We note that the intention is to connect to the existing septic tank. However, we advise you to seek further information as identified in the bullet point list given in the section titled 'What does this mean for development proposals involving private sewage treatment systems' of that advice.

Provided you are able to conclude that the development is not likely to have a significant effect on the SAC, we would have no objection to the proposal. However, should you conclude that the proposed development is likely to have a significant effect on the SAC, please consult us on your Appropriate Assessment under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended).

Airbus

No aerodrome safeguarding objection to the proposal

SP Energy

Standard guidance and hazard avoidance notes. No objection.

4.00 PUBLICITY

4.01 Site Notice, Neighbour Notification

2 letter of objection received:

- Already a settlement for the same family within 1 mile of application site
- The application plot has grown considerably in size from that occupied by former residents of the application site.
- Inadequacy of bridlepath access. Rhyddyn Hill is already a busy road
- What guarantees that present occupiers will remain on site?
- The services are not “existing” as claimed in the application. The water main was laid during the lockdown
- A gas main passes directly under the applicant site.
- The location of the septic tank, together with the topography of the site (close to a stream which feeds
- into the River Alyn) poses a risk of the septic tank outflow entering the stream and the river.
- The majority of the work on the site was completed during the first COVID lockdown in close proximity to the gas main. The hardcore, and the post and rail fencing were erected after the previous occupier vacated the site. The application would have us believe it was already in situ when the previous occupier lived on the plot. This is misleading.
- There is no environmental statement attached to this application
- Occupation of the site would lead to a widening of the bridle path, in order to facilitate further development of the land. This work has already started, in order to accommodate the transporting of the Static Caravans
- The accommodation area is extremely generous for 2 families. One family comprises of only 2 persons. Yet the application misleadingly presents this as “small in scale and extends to 2 pitches...”
- Previous anti-social and threatening behaviour by residents
- There is already a caravan park on Rhyddyn Hill, one which draws hundreds of visitors to the local area each year. Local businesses benefit from this.

5.00 SITE HISTORY

5.01 No relevant history

6.00 PLANNING POLICIES

6.01 Flintshire Unitary Development Plan
 STR1 New Development
 GEN1 General Requirement for Development
 GEN3 Development in the Open Countryside
 D2 Design

D3 Landscaping
L1 Landscape Character
HSG14 Gypsy Sites
AC 13 Access and Development

National Policy and Guidance

- Welsh Government Circular 005/2018 'Planning for Gypsy, Traveller and Showpeople Sites'
- Welsh Government Circular C 008/2018 'Planning requirement in respect of the use of private sewerage in new development, incorporating septic tanks and small sewage treatment plants
- Planning Policy Wales Edition 11 (February 2021)
- Future Wales 2020 - 2040

7.00 PLANNING APPRAISAL

7.01 Proposal

This full application seeks part retrospective consent for the change of use of land for the retention of two gypsy pitches, two day buildings (for welfare purposes) and the associated access and parking provision within the site .

7.02 Site

The site is located in an open countryside location close to but outside of the settlement boundaries of Hope, Caegwrle, Abermorddu and Cefn y Bedd as designated in the Flintshire Unitary Development Plan.

7.03 The site previously housed a static caravan and then became vacant during which time it suffered from significant fly tipping, the site has since been cleared of this rubbish. The site has been subsequently occupied for a period of 9 months prior to the submission of this planning application which seeks to regularise the use and the siting of the caravans, as well as the erection of day buildings and establishment of associated access/ parking and turning facilities provided by the hard cored area.

7.04 The site is a level grassed field and has mature woodland to the eastern boundary and mixed hedge row to the west boundary. The site is segregated from the rest of the field by a post and rail timber fence. As part of the application it is proposed to supplement the existing hedgerow and carry out soft landscaping within the site.

7.05 Principle of Development

The Housing (Wales) Act 2014 places a legal duty upon local authorities to ensure that the accommodation needs of Gypsies and

- Travellers are properly assessed and that the identified need for pitches is met. More recently Welsh Government have published a Circular 005/2018 Planning for Gypsy, Traveller and Showpeople Sites which reflects provisions contained in the Housing (Wales) Act 2014, to ensure local authorities meet the accommodation needs and provide sites for Gypsies and Travellers through the planning system.
- 7.06 UDP policy HSG14 also acknowledges the requirement for development plans to make adequate provision for the accommodation needs of gypsy families, but this policy predates the 2014 Act as well as Circular 005/2018, both of which place a different emphasis on assessing applications for Gypsy and traveler sites. Whilst the LDP has a similar criteria based policy to the UDP, it is still subject to the findings of the LDP Examination which has resulted in its two criteria a. and b. being deleted as they do not comply with the guidance in the above circular.
- 7.07 The above criteria require a proven need for a Gypsy and Traveler site to be demonstrated, as well as there being no suitable alternatives elsewhere. Welsh Government raised this matter in their representations to the LDP Examination Inspector, highlighting that the Circular notes that policy requirements to 'demonstrate unmet need' would act against freedom of movement for gypsies and travelers who may wish to develop their own sites. Such restrictions should not be placed on Gypsies and Travellers. The Circular clearly states that criteria based policies must be fair, reasonable, realistic and effective in delivering sites and must not rule out or place undue constraints on the development of Gypsy and Traveller sites.
- 7.08 The Council has an approved Gypsy and Traveller Accommodation Assessment (2016) that is still extant for the purposes of the LDP Examination evidence base and for Development Management purposes. This shows a plan period need for 19 additional pitches. In addition the LDP has made suitable site specific provision to meet this need, made via site allocations as extensions to three existing Gypsy and Traveller sites, 1 of which is Council owned and the others in private ownership. None of these allocations have yet been confirmed by the LDP Examination Inspector and neither do they have planning permission, although applications are under consideration for the two privately owned sites, and a further application is being prepared for submission on the Council owned site.
- 7.09 Suitable provision to meet this level of need has therefore been identified in the LDP, however the plan has yet to be adopted and this is a material factor in the consideration of the need and provision presented by this application. In any event, circular 005/2018 states that criteria based policies are required in development plans, to cater

for what is in effect new or windfall demand for pitches, and the UDP and LDP have similar criteria based policies.

7.10

Paragraph 7 of the Circular advises that the Well-being of Future Generations (Wales) Act 2015 sets a framework for local authorities to ensure the sustainable development principle is met. In terms of wellbeing goals the guidance reference a 'Wales of cohesive communities'. Paragraph 8 goes on to advise that '*Housing is a fundamental issue that affects the lives of people across Wales, including our Gypsy and Traveller communities*'. In particular the guidance requires that '*...Gypsies and Travellers should have equal access to culturally appropriate accommodation as all other members of the community*'.

7.11

Paragraph 12 recognises that '*Some Gypsies and Travellers may wish to find and buy their own sites to develop and manage*'. Paragraph 14 explains that the Housing (Wales) Act 2014 places a legal duty upon local authorities to ensure 'that accommodation needs of Gypsies and Travellers are properly assessed and that the identified need for pitches is met'.

7.12

Paragraph 36 explains that '*when identifying sites the planning authority should work with the Gypsy and Traveller Community*'. Paragraph 37 explains that 'issues of site sustainability are important for the health and well-being of Gypsy and Travellers not only in respect of environmental issues but also for the maintenance and support of family and social networks'.

7.13

Whilst the Circular advice supersedes criterion a. and b. of policy HSG14 of the UDP, on the basis that this would be unduly restrictive to applications such as this, the other UDP policy criteria are still relevant. These are in line with the Circular and essentially seek to assess the suitability of the location of the proposed gypsy and traveller site by ensuring that in a sequential sense, sustainable locations within or adjacent to existing settlements with access to local services are considered first. That said, the Circular goes on to state that 'Sites in the countryside, away from existing settlements, can be considered for Gypsy and Traveller sites if there is a lack of suitable sustainable locations within or adjacent to existing settlement boundaries'

7.14

The circular itself provides expanded guidance at paragraph 37 in respect of the sustainability of sites and the site should be assessed in this context. Whilst not an exhaustive list, the items to consider when assessing whether or not a site is suitable includes:

- *opportunities for growth within family units;*
- *the promotion of peaceful and integrated co-existence between the site and the local community;*
- *access to health and education services;*

- *access to utilities including water, waste water disposal and waste collection services;*
- *access by walking and cycling, public transport and private motor vehicles (including emergency vehicles);*
- *suitable nearby or on-site safe play areas;*
- *contribution to a network of transit sites which reduce the need for long-distance travelling or unauthorised encampments;*
- *not locating sites in zone C2 risk of flooding and only considering sites for location within zone C1 risk of flooding in line with guidance contained in TAN 1512, given the particular vulnerability of caravans; and*
- *regard for areas designated as being of international, national and local importance for biodiversity and landscape*

7.15

I consider that the site meets the specified criteria, specifically as it both offers the opportunity for growth within the family units on site by promoting an appropriate location for a permanent home, but that it also provides good connectivity to the local communities and the facilities they offer, as whilst the site itself is away from the settlements. The site is close to the edge of the four villages which together makes up Hope, Caergwrle, Abermorddu and Cefyn y Bedd (HCAC) which is a category B settlement in the adopted UDP. It is a sustainable location for new development given the availability of services and facilities and also proximity to other settlements in both Flintshire and Wrexham.

7.16

The advice and guidance within this circular provides the framework when determining this types of planning applications. In my view the principle of this development is acceptable with due regard to all relevant National and Local policies and advice. The site represents a sustainable location, appropriate for the level of development proposed and in addressing a specific housing need. There is no issue of prematurity given the position with provision in the LDP which is yet to be adopted. In any event, the advice in the Circular is clear that each proposal should be considered on its individual merits.

7.17

The Community Council has cited a planning permission, reference 060474, refused due to its open countryside location. This application was for the erection of a dwelling and was therefore contrary to the relevant policies directing development in the open countryside, specifically UDP policy HSG5, which specifically restricts residential development other than for very specific reasons and with sufficient justification. As mentioned previously there is no policy objection to Gypsy and traveller sites in open countryside locations, subject to other considerations. Policy HSG5 does not apply to the development subject to this application.

7.18

Best Interests of Children

As the residents of the site include children the proposal has been assessed with due regard to their best interests. The Best Interests of the Children is primary consideration for this application, as the the applicants have confirmed that two dependants reside on the site.

7.19

One child is now 9 years old and has attended the Local Primary School for the last 2 years. His elder sister is over 16 and attends a local College. The applicant has stressed that there are no family Council pitches available, as confirmed by the GTAA. The applicants have a settled home on the application site and other than travelling for work both families have lived on the site approximately 2 years. They are settled in the location and this has a great deal of benefits for the well-being of the children and their access to schooling, further education and local healthcare.

7.20

The benefits of enabling the provision of a stable and secure environment is a material consideration in the planning balance with the rights to respect for family and private life as identified in Article 1 and Article 8 of Protocol 1 of the European Convention on Human Rights.

7.21

It is acknowledged that children live. And would continue to live, on the site were permission to be granted, and the Local Planning Authority has a statutory duty under the Children's Act 2004, to safeguard and promote the welfare and well-being of the children.

7.22

There is also a national and international obligation continued in article 3(1) of the United Nations Covention of the Rights of the Child (UNCRC)

7.23

"In all actions concerning children, whether undertaken by public or private or social welfare institutions, courts or law, administrative authorities or legislative bodies, the best interests of the child shall b a primary consideration."

7.24

These considerations are therefore a primary material consideration in the site assessment. The implications of the applicant/family having a settled base for the needs of the children is a significant material consideration in the overall planning balance. In these circumstances the best interests of the children would be best served by occupation of the site.

7.25 Access

The application site is located off Ryddyn hill and accessed off the access presently serving Brier Lodge. This access is a Bridlepath, however Rights of Way have confirmed that they have no objection to the proposal.

7.26

The site is located 1 mile from Caergwrle a sustainable service and shopping centre and 5 miles away from Wrexham for major services. The site has vehicular access to the nearby highways network, as well as pedestrian access to the local area through the close proximity of public footpaths.

7.27

Highways have assessed the application and confirm that they have no objection to the proposal. The site proposes sufficient parking for its residents.

7.28

Design and impact upon local living conditions

Design guidance is published in the Welsh Government document 'Designing gypsy and traveller sites' (May 2015.) The application is of a relative small scale and proposes the installation of two pitches which includes two day/amenity buildings. These buildings will provide for bathroom, kitchen, dining-room/meeting room facilities . The amenity buildings are to be single storey 4m high, 2.4m to the eaves, 6m in width and 6m in length. The buildings are proposed to be constructed of a pitched tile effect roof and timber effect wall construction. There is already a hard core area to the frontage of the site and this is proposed to be retained as part of the proposal to provide independent parking provision for each pitch, clear of the highway and provides for turning facilities within the site. Each pitch will allow for a Touring caravan and Static caravan. I consider the proposed layout and facilities offered is in accordance with the aforementioned guidance.

7.29

There is presently some natural screening of the site afforded by the existing hedgerow boundaries and the mature woodland to the east of the site and it is proposed to reinforce the boundary treatments by additional planting and soft landscaping within the site. This can be secured by condition.

7.30

Given that the site is in an open countryside location, it is consequently away from other residential properties, as such it is unlikely to have an unacceptable impact upon the living conditions of existing residents of the area by adverse impact upon privacy, traffic or parking problems.

7.31

It should be noted that when assessing the impact of the Gwern Lane site at the planning Appeal, the Planning Inspector noted how any amenity impact could be suitably mitigated by the suggested landscaping. That particular site was larger and located closer to residential properties. I suggest that the same considerations apply and that in the case of this application the likely impact to local amenity is acceptable.

7.32

Drainage

The site presently benefits from a water supply and a septic tank facility will be utilised for sewerage provision. Third parties have queried whether this is suitable for the location. It appears, however, that it is not possible to connect the site to the public sewerage system and therefore a private solution would be appropriate.

7.33

Under the Habitats Regulations, where a plan or project is likely to have a significant effect on a European site, either alone or in combination with other plans or projects, and where it is not directly connected with or necessary to the management of the site previously (designated pursuant to EU retained law) the competent authority must carry out an appropriate assessment of the implication of the plan or project in view of the site's conservation objectives. Natural Resources Wales has set new phosphate standards for the river SACs in Wales. Any proposed development within the SAC catchments that might increase the amount of phosphate within the catchment could lead to additional damaging effects to the SAC features and therefore such proposals must be screened through a HRA to determine whether they are likely to have a significant effect on the SAC condition.

7.34

This application has been screened in accordance with Natural Resources Wales' interim advice for planning applications within the river Special Areas of Conservation (SACs) catchments (issued on 20th January 2021). It is considered that this development is unlikely to increase phosphate inputs as it falls within the following criterion in the interim advice: Private sewage treatment systems discharging domestic wastewater to ground into drainage fields constructed to the relevant British Standards and which are located more than 50m from the SAC (or a hydrological pathway to the SAC), and which have a daily discharge rate of less than 2 cubic metres (m³)

7.35

As mentioned above, it is considered that the use of a private sewage treatment system is considered to be appropriate in this location, as connection to the public sewerage system is not possible. The installation is in accordance with the advice in Welsh Government Circular 008/2018.

7.36

After receiving further advice from the applicant, and with due regard to NRW's published advice, I am able to conclude that the development is not likely to have a significant effect on the SAC. NRW therefore have no objection to the proposal.

7.37

Other Matters

Third party objectors have expressed concern over the possible existence of a Gas pipeline running under the highway to the front of the site, and queried whether or not there is sufficient depth to safely allow for the weight of vehicles accessing the site. I have not been made aware of any specific constraint concerning this matter, or been

advised by any statutory consultee that this is a concern. There does not appear to be a weight restriction on the adjacent private way.

7.38

Where main Gas pipelines exist that require easements or other protection from development these are identified on the Constraints information held by the Council. This does not appear to be the case in this instance. As such this matter would be one for the landowner to investigate as part of their own due diligence and I do not consider it to be a material planning matter which would attract significant weight.

7.39

An objection has been received regarding the impact of the proposal upon a local caravan site business. The proposal subject to this application is of a wholly different scale and character to that commercial enterprise and I do not consider it likely that the existence of this residential traveller site will cause undue confusion for holiday goers looking for the caravan site, or otherwise have a detrimental effect on this business.

7.40

The Community Council have expressed concern over the retrospective nature of this development and cited this as a reason that the application should be refused. This should not be a matter given any material weight in the assessment of this application. Retrospective applications are allowed for within the regulations.

7.41

Finally third parties have raised issues regarding potential anti-social behaviour arising from the proposal. There is no evidence to support this assertion.

8.00 CONCLUSION

By considering this planning application on its own merits and with due regard to all relevant National and Local policies and advice, It is my view that the proposal represents an appropriate and proportionate Gypsy and Traveller site that will benefit from its close proximity to the local communities that surround it but will not give rise to any undue or detrimental impact to the amenity of these communities. With full consideration to the benefits the establishment of this site will give to its residents and their individual needs, as well as all other material issues, I recommend that the application is approved subject to the Conditions outlines in paragraph 2.01

8.01 Other Considerations

The Council has had due regard to its duty under Section 17 of the Crime and Disorder Act 1998 and considered that there would be no significant or unacceptable increase in crime and disorder as a result of the recommended decision.

The Council has acted in accordance with the Human Rights Act 1998 including Article 8 of the Convention and in a manner which is necessary in a democratic society in furtherance of the legitimate aims of the Act and the Convention.

The Council has had due regard to its public sector equality duty under the Equality Act 2010.

The Council has had due regard to its duty under Section 3 of the Wellbeing of Future Generations (Wales) Act 2015 and considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the recommended decision.

LIST OF BACKGROUND DOCUMENTS

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

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