

**REPORT BY THE HEAD OF PLANNING AND PUBLIC PROTECTION AND
COUNTRYSIDE SERVICES**

**Information report on appeal decision:
45/2021/0516/ PF - KYNSAL HOUSE, VALE ROAD, RHYL
Appeal - Allowed**

1. PURPOSE OF REPORT

1.1 To inform members on the recent appeal decision by PEDW for the following:

“Change of use of land and ancillary buildings to form residential Traveller site for 6 caravans, with the existing dwelling Kynsal House retained for owners / managers accommodation; including formation of internal pathways and parking, landscaping and associated works”

2. BACKGROUND

2.1 Planning permission was sought in 2022 for the:

“Change of use of land and ancillary buildings to form residential Traveller site for 6 caravans, with the existing dwelling Kynsal House retained for owners / managers accommodation; including formation of internal pathways and parking, landscaping and associated works”

2.2 Officers recommended to Planning Committee in March 2022 that planning permission should be granted for the above planning proposal. After a lengthy and full debate Members resolved to refuse planning permission against Officer recommendation. The reason for refusal was:

1. It is the opinion of the Local Planning Authority that the change of use of land site would result in an over-intensification of the use of the site. The cumulative impact of the creation of a 6 pitch site residential Traveller site alongside the dwelling on the 0.2 ha site would represent an overintense form of development in close proximity to residential properties on Knowsley Avenue which would give rise to the potential for increased disturbance and activity in the area and resulting in a detrimental impact on the health and well being of residents. As such the proposal is considered to be in conflict with criterion vi) of policy RD 1 and

criterion iv) of Policy BSC10 of the Local Development Plan Policy BSC10, which require proposals not to be detrimental to the amenity of the occupiers of adjacent properties.

2. It is the opinion of the Local Planning Authority that the proposal would formalise the increased use of an access onto Vale Road which is considered substandard. The use of the access for the scale and nature of the development proposed would result in a danger to pedestrians and road users on Vale Road contrary to criteria vii) and viii) of policy RD 1 of the Local Development Plan.

2.3 The vote was 13 to refuse planning permission, 2 to grant planning permission and 2 abstentions.

2.4 The appeal hearing was held on 30th April 2024. The decision to allow the appeal was issued on 10th July 2024, subject to the imposition of planning conditions.

2.5 As part of the decision the Inspector clarified some procedural issues, which included confirming the ownership of land in relation to the access, the acceptance of a Unilateral Undertaking legal decision, and confirming that the appellants met the Welsh Government Circular 005/2018 Planning for Gypsy, Traveller and Show-people Sites (the Circular) definition of gypsy and travellers.

2.5 A copy of the Appeal Decision is found at Appendix A of this report.

3. SUMMARY OF INSPECTORS DECISION

3.1 The inspectors decision focussed on 4 main issues:

- i) The effect of the proposal on the living conditions of neighbouring occupiers;
- ii) The effect of the proposal on highway safety;
- iii) Whether the proposal would comply with planning policy which seeks to steer highly vulnerable development away from areas at the highest risk of flooding;
- iv) Whether any identified harm would be outweighed by other material considerations.

3.2 Taking each issue in turn, the inspector concluded that:

- i) Living Conditions:

The Inspector identified that the adopted Denbighshire Local Development plan is permissive of gypsy and traveller caravan sites within or on the outskirts of established settlement boundaries with access to a range of facilities and services provided there would not be a detrimental impact on the amenity of occupants of neighbouring properties.

The inspector considered the proposed layout of the site, in relation to the site boundaries and adjacent dwellings. The inspector noted that the positioning

of the caravans within the site would not appear incongruous within the area, nor would they have unacceptable effects on users of the adjacent trading estate. In noting the open views some surrounding dwellings had across the site, the Inspector concluded that this replicated similar views between existing properties, and that the screening effect of the existing fence would prevent unacceptable overlooking issues.

The inspector examined the separation distances between the caravans and adjacent dwellings. It was identified that two of the caravans would be close to the terraced houses on Brookfield Road and fall short of the suggested SPG guidance of 21 metres separation distance between properties. However, the Inspector considered that the purpose of the suggested 21 metres separation distance was to protect privacy. In this instance although falling short of the 21 metres, the inspector concluded the available space for landscaping, the single-story nature of the caravans and the screening effect of the existing boundary treatment was sufficient to ensure there would not be an unacceptable overlooking of nearby properties.

The Inspector further concluded that there was no reason to believe that the daily activities at the site would result in unacceptable disturbance to neighbouring occupiers, particularly given the site's location within a mixed and densely developed residential and commercial area.

ii) Highway Safety:

The inspector considered the nature of traffic on Vale Road and observed the flow of traffic in the area during her mid afternoon site visit. The number of parking spaces within the site along with the turning area was considered acceptable. The visibility of the access onto Vale Road was also considered to be acceptable, and it was noted that there was no empirical evidence to support residents' anecdotal evidence of highway safety incidents. The physical nature of the access was considered to be a benefit in that it would force people access and egress the site slowly.

iii) Flood Risk:

The appeal decision identifies that the site is located entirely within a C1 flood-zone, and it was accepted at the hearing that the proposal would lead to an intensification of residential use at the appeal site (highly vulnerable development).

The Inspector accepted that the proposal would not pass tests i) or ii) of TAN 15 tests which is required to justify highly vulnerable development in C1 Flood-zones. The Inspector went onto consider the modelled flood events within the appellants Flood Consequence Assessment which demonstrated the impacts of flooding on the site would in the main be within the 'tolerable' flood levels as defined in TAN 15. However, in the 0.5% tidal/coastal flood

event, the FCA's modelling indicates that flooding of the appeal site would occur, with depths of over 2m predicted, representing significant and unacceptable risk. In regard to flood risk the inspector concluded the proposal would fail to meet the justification tests set out in TAN 15 and would fail to comply with planning policy set out in LDP Policy RD 1 and PPW which seek to steer highly vulnerable development away from areas at the highest risk of flooding

iv) Other Material Considerations:

The Inspectors decision summarises the policy requirement for local authorities to ensure that the accommodation needs of Gypsies and Travellers are properly assessed and that the identified need for pitches is met. At the hearing it was acknowledged that the latest revised draft Gypsy and Traveller Accommodation Assessment (GTAA) indicates an unmet need for up to 18 pitches. The family circumstances were considered, and the Inspectors decision concludes that the proposal would provide all the children with a settled base and would enable the older children to attend school and obtain an education. It was considered necessary to impose a planning condition to limit occupation of the site to family members and their dependents so as to ensure that the benefits identified were realised.

PLANNING BALANCE/CONCLUSION:

The Inspectors decision balances out the above consideration and states that:

- There would be no harm to amenity
- The proposal does not pass the TAN 15 tests in relation to flooding
- A refusal of permission would result in interference with the private family life and the family life of the children concerned, matters which are safeguarded by Article 8 of the European Convention on Human Rights. The lack of alternative provision would mean that refusal of permission would '*condemn the children to a roadside existence*'. The impact of refusing permission on the best interests of the children carried substantial weight in favour of allowing the appeal
- Considerable weight should be given to the existing unmet need for Gypsy and Traveller Sites in Denbighshire. This proposal would go some way to meeting that need.
- The best interests of the children are considered to be sufficiently important as to outweigh the conflict with national policy in relation to flooding.

In reaching the above conclusion and allowing the appeal, the Inspector found it necessary to impose planning conditions to deal with the following:

- Limiting the occupation to family members and their dependants

- Limiting the number of caravans on the site and to prohibit touring caravans and motorhomes
- A condition to limit access to the site
- A condition to prohibit commercial activities
- A condition requiring the submission of a lighting scheme for the site
- A condition requiring the submission of ecological enhancement.

4. RECOMMENDATION

4.1 That members note the content of the Inspectors decision.