



Appeal Decision

by N Jones BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 10/07/2024

Appeal reference: CAS-02030-S8W8X4

Site address: Land at Kynsal House, Vale Road, Rhyl,

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Phillip Purcell against the decision of Denbighshire County Council.
 - The application Ref 45/2021/0516/PF, dated 14 May 202, was refused by notice dated 17 March 2022.
 - The development proposed is the change of use of land and ancillary buildings to form residential traveller site for siting 6 no. static caravans, with the existing dwelling (Kynsal House) retained for owners / managers accommodation and including formation of internal pathways, parking, landscaping and associated works.
 - A hearing was held on 30 April 2024.
 - A site visit was made on 30 April 2024.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land and ancillary buildings to form residential traveller site for siting 6 no. static caravans, with the existing dwelling (Kynsal House) retained for owners / managers accommodation and including formation of internal pathways, parking, landscaping and associated works at Land at Kynsal House, Vale Road, Rhyl, in accordance with the terms of the application, Ref 45/2021/0516/PF, dated 14 May 2022, subject to the conditions set out in the schedule to this decision letter.

Procedural Matters

2. The Council queried whether correct certification of landownership had been undertaken with reference to unregistered land near the access to the appeal site. However, although the full extent of the access to the appeal site was omitted from the red line plan, the appellant confirmed that the access does not include that unregistered land, and the parties agreed that Kynsal House is served by an access onto Vale Road which would also be used to serve the proposed development.
3. At the time of my site visit, static caravans present at the time of the Council's decision had been removed. The appellant confirmed that the permission sought is for a proposed

development rather than retrospective planning consent, and I have considered the appeal on this basis.

4. A completed Unilateral Undertaking, including a commitment towards open space, was submitted after the hearing, and the Council given opportunity to comment.
5. Paragraph 2 of the Welsh Government's Circular 005/2018 Planning for Gypsy, Traveller and Showpeople Sites (the Circular) defines gypsies and travellers. It was confirmed at the hearing that there is no dispute between the parties that the appellant meets this definition. It was also agreed at the hearing that details regarding the personal circumstances of the appellant and his family would be exchanged in writing after the event. Interested parties were given an opportunity to comment.

Main Issues

6. The main issues are:
 - 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.

Reasons

Living conditions

7. Kynsal House is a two-storey detached dwelling, facing into a large rear enclosed yard. It is located to the north of, and set back from, the A525 at Vale Road, and accessible between commercial units, which I saw during my site visit form part of a bustling mixed commercial and residential area. The Glan Aber Trading Estate adjoins the appeal site to its east, whilst housing at Brookdale Road and Knowsley Avenue adjoin to the north and west. The caravans would be located within the rear yard area, along with parking and amenity areas.
8. Denbighshire Local Development Plan (LDP) Policy BSC 10 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, which applies in this case. Policy BSC 10 also resists development that would be detrimental to the amenity of occupiers of adjacent properties. LDP Policy RD 1 also supports proposals within development boundaries, provided, amongst other things, that they do not unacceptably affect the amenity of local residents, by virtue of, amongst other things, increased activity, noise and disturbance.
9. It was accepted at the hearing that the proposal would reflect a density of a minimum of 35 dwellings per hectare expected for residential development set out in Policy RD 1. Given the appeal site's location within a tight knit built up area, I do not consider that the number of units proposed as part of the appeal scheme would represent an overly intense development of the appeal site.
10. In terms of layout, the intended siting of caravans on the appeal site would place them close to some of its external boundaries. I saw during my site visit however that the caravan proposed to be located in the north-western corner of the appeal site, on pitch No.1, would reflect the side to boundary siting of its immediately adjoining property at No 54 Brookdale Road and so would not be incongruous. The remaining five caravans would be close to the eastern boundary but would be orientated with their narrowest elevations towards the adjoining Trading Estate and would have no unacceptable effects on users of

that site. The intended location of open spaces and parking and turning areas closest to the appeal site's western boundary would largely mirror the open aspect fronting properties at Knowsley Avenue alongside. Whilst some nearby dwellings would have open views across the appeal site from their first-floor windows, this would largely replicate similar views between existing properties within the densely developed setting of the site. The dwellings at No 16 and No 18 Knowsley Avenue face towards the site across the estate road but the intended caravans would be located at the furthest end of the appeal site and orientated with their narrowest elevation towards these properties. Given this, and the screening effect of the existing fence, there would be no unacceptable overlooking towards these dwellings.

11. The proposed caravans would be raised above ground level to mitigate flood risks and the two units which would be located close to the rear boundaries of the terraced row at Brookfield Road would fall significantly short of the separation distance of 21m between opposing windows set out in the Council's adopted Supplementary Planning Guidance 'Residential Development' (SPG). However, the SPG's guidelines on separation distances are intended to maintain adequate privacy. Given the available width to secure an appropriate landscaping scheme, as well as the screening effects of existing boundary fencing, and the single storey nature of the caravan accommodation proposed, I do not consider that there would be unacceptable overlooking of properties at Brookfield Road or their gardens as a result of the proposed development.
12. As well as suitable parking space, the site would accommodate areas of open space. Moreover, the areas between caravan pitches would be unenclosed and available for the families' use. Whilst the extent of these areas would not reach the on-site standard of open space expected by LDP Policy BSC 11, that Policy allows some flexibility in provision, including where it is demonstrated that amongst other things, it is impractical to provide the full requirement for open space on site. The Council has confirmed that there is no shortfall of open space locally, with extensive facilities within a short walking distance from the appeal site. It has also accepted that a financial contribution towards the maintenance of that open space would be appropriate in this case. Accordingly, I consider that the scheme would provide an appropriate layout.
13. There is 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. Moreover, some of the site's intended occupiers may be periodically absent from the site travelling for work, reducing the habitual level of on-site activity, whilst a planning condition could also ensure that no inappropriate commercial activity would take place on the site. Existing 2m high timber fences would be retained on the site's external boundaries whilst a landscaping scheme would add an additional buffer between the appeal site and existing housing. Lighting would be low level and would have no unacceptable effects beyond the site's boundaries. Notwithstanding the fabric of caravans, the proposal is for 6 units to be used as permanent residences and there is no cogent evidence that this type of residential use would be inherently noisier than conventional housing. Other legislative controls exist to deal with any excessive noise amounting to a statutory nuisance.
14. I conclude that the proposal would not harm the living conditions of neighbouring occupiers and so would comply with LDP Policies BSC 10 and RD 1.

Highway Safety

15. Vale Road is a busy arterial route into Rhyl. It operates as a regular bus route and also serves local housing and commercial premises as well as four local schools. During my mid-afternoon site visit, the road accommodated a steady and continuous volume of

vehicular and pedestrian traffic, including school pupils. Whilst I acknowledge the travelling lifestyle of intended occupiers of the site, the appeal scheme would allow the opportunity of a permanent residential base and I have therefore assessed the proposal on the basis that the site would be permanently occupied.

16. The intended layout was amended at the application stage to provide turning space within the site. The caravans, as well as the existing dwelling, would be provided with designated parking spaces, and there would be additional communal parking space within the site. The appellant confirmed that no touring caravans would be kept at the appeal site, and this is a matter which could be controlled by a planning condition. Whilst local residents raise concerns about the logistics of installing static caravans on the site, the appellant confirms that once installed, the units would only require replacing when they reach the end of their design life. I consider that any disruption through installation would have only limited localised short-term effects.
17. Visibility on exiting the appeal site is impaired in both directions by commercial properties where its access meets the partially ad hoc arrangement of shared parking and pedestrian space between those properties and Vale Road. The appeal scheme would lead to an increased regular use of this access. However, the Council confirms that the access forms part of an employment allocation in the LDP at Glan Aber Trading Estate and I saw that as well as the appeal site, it serves as rear access to those adjoining commercial units, with one business utilising space alongside the access for loading and unloading goods at the time of my visit. I note residents' anecdotal evidence of highway safety incidents but there is no empirical evidence of any accidents locally and I note that the Highway Authority raises no concerns regarding the use of the access to serve the proposed development. Owing to its dog-leg alignment, and commercial use, as well as use for informal parking, I consider intended residents of the appeal site would be likely to emerge slowly from the access. Given existing parking and pedestrian activity in the commercial frontage area, I also consider that drivers and pedestrians would exercise suitable caution within that space.
18. I saw that visibility onto Vale Road from the shared parking and pedestrian space is good in both directions. Given the volume of traffic it already carries, the likely increase in traffic which would arise from the appeal proposal would represent only a small addition to the overall flow on the local highway network. Moreover, since the application was considered by the Council, the local speed limit has been reduced which would be likely to benefit highway safety for all users.
19. I acknowledge local concerns regarding a previous proposal for an access from the appeal site onto Knowsley Avenue to which the Highway Authority objected. However, the intended occupiers of the appeal proposal would utilise the existing access onto Vale Road. Whilst I saw that a dropped kerb was in place at Knowsley Avenue at the time of my site visit, access was blocked by the existing perimeter fence, and any future use could be controlled by a planning condition.
20. I conclude that the proposal would not harm highway safety and would therefore comply with LDP Policy RD 1.

Flood Risk

21. Planning Policy Wales (Edition 12) (PPW) states that planning authorities should adopt a precautionary approach of positive avoidance of development in areas of flooding from the sea or from rivers. The Council's approach to flood risk is set out in LDP Policy RD 1 which states that development proposals will be supported within development boundaries provided its criteria are met, including that it satisfies physical or natural environmental considerations relating to, amongst other things, liability to flooding.

22. The appeal site lies entirely in Zone C1 as defined by the Development Advice Map (DAM) referred to in Technical Advice Note 15: Development & Flood Risk (TAN 15). The site is within Flood Zone 3 and the TAN15 defended zone according to the Flood Map for Planning (FMfP). Notwithstanding any occasions spent by its intended residents in travelling, the appellant acknowledges that the proposal would lead to an intensification of residential use of the appeal site. All residential premises, including caravans, are defined in TAN 15 as highly vulnerable development (HVD).
23. TAN 15 advises that new development will only be justified in zones C1 and C2 if it is necessary to assist or be part of a local authority regeneration initiative or a local authority strategy required to sustain an existing settlement (test i) or necessary to contribute to key employment objectives (test ii). Neither applies here and on that basis, I need not go on to consider tests (iii) and (iv).
24. Nonetheless I will do so. The site comprises previously developed land (test iii). The final justification test requires that the potential consequences of a flooding event for the particular type of development have been considered and found to be acceptable. In most modelled flood events, including flooding risk from the adjoining watercourse at 'The Cut', the appellant's Flood Consequences Assessment (FCA) indicates that the appeal site would meet the tolerable flood levels set out in TAN 15. Even so, TAN 15 states development should be designed to be flood free during the 0.5% tidal/coastal flood (i.e. 200 to 1 chance in any year event). However, for such an event, should there be a breach of flood defences, the FCA's modelling indicates that flooding of the appeal site would occur, with depths of over 2m predicted, representing significant and unacceptable risk.
25. I conclude that 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.

Other material considerations

26. The Circular confirms that 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. No unmet need had been identified during preparation of the LDP. However, Policy BSC 10 also states that the Council will identify permanent and transit caravan sites for Gypsies and Travellers should an unmet need be identified. The Council acknowledges it has not allocated or delivered any sites and accepts there is an unmet need for at least 12 pitches, as identified in its published 2021 Gypsy and Traveller Accommodation Assessment (GTAA), which forms part of the evidence base for the Replacement Local Development Plan 2018-33 (RLDP). Further, at the hearing, the Council advised that the latest revised draft GTAA assessment indicates an unmet need for up to 18 pitches.
27. The RLDP is expected to address the shortfall, but a deposit plan is not expected until early 2025. At best the RLDP is likely to be examined in 2026 and adopted in 2027. Any Gypsy and Traveller sites allocated in the deposit RLDP would be subject to consultation and likely to be subject to scrutiny at examination. Accordingly, there is no likelihood that a plan led solution to the acknowledged unmet need will occur any time soon.
28. The appellant has set out his family's personal circumstances, providing details of his six children, and their respective partners and children, who would occupy the intended caravans. The adult male family members all travel for work. The appeal site offers the extended family an opportunity to live together on family-owned land, with the appellant and his wife also providing financial support to one of their daughters. In relation to the family's children, there are several of school age, as well as pre-school age children. The

proposal would provide all the children with a settled base and would enable the older children to attend school and obtain an education.

29. I have had regard to representations from a neighbouring occupier about the limited number of family members resident at Kynsal House, with other family members not currently residing at the site. However, during the hearing the appellant explained the circumstances of those family members resident in the existing dwelling. The absence of other family members was also cogently explained. As agreed by the Council, a planning condition could limit occupation of the site to family members and their dependents.

Planning Balance

30. The appeal proposal would not harm the living conditions of neighbouring occupiers or highway safety and would provide a sustainable site within a settlement boundary. It would also contribute to the maintenance of public open space in the locality. However, I afford these matters neutral weight as they would be expected of any development.

31. In relation to flood risk the proposal would not meet local and national planning policy guidance which unequivocally emphasises the need to take a precautionary approach and directs development away from areas of highest risk. Avoidance of highly vulnerable development in areas of flood risk serves the wider public interest and this policy conflict therefore weighs heavily against allowing the appeal.

32. I have taken into account the personal circumstances advanced in support of the proposal with particular regard to the fact that dismissal of the appeal would result in an interference with the private family life of the extended family group, and the family life of the children concerned, which is a matter safeguarded under Article 8 of the European Convention on Human Rights, and which includes consideration of the best interests of the children. Given the accepted lack of alternative provision, dismissing the appeal is likely to condemn the children to a roadside existence. I consider that the children's best interests would be served by a settled family base and access to education and other necessary services. This carries substantial weight in favour of allowing the appeal.

33. The existing unmet need for Gypsy and Traveller sites in Denbighshire is unlikely to be met in the foreseeable future. The appeal proposal would provide 6 residential traveller pitches which would go some way to meet that need in accordance with LDP Policy BSC 10. Bearing in mind the duty to meet the accommodation needs of Gypsies and Travellers, I afford these matters considerable weight in favour of the appeal proposal.

34. In balancing these competing considerations and their respective weight, I have taken into account whether the best interests of the children in this case outweighs conflict with national planning policy on flood risk. I acknowledge that it would not be in the best interest of children that their homes are flooded and that their lives put at risk. However, flooding at the appeal site is predicted to be within the tolerable ranges for residential use set out in national planning policy in all but extreme events with flooding levels including a breach of flood defences, calculated with regard to a 100 year residential design life with an allowance made for climate change. Given the nature of the predicted flood risk, taking into account that there are no other sites available to meet the family's needs, I consider the dangers to the children of a roadside existence are greater than from flooding and conclude that the children's best interests would be served by allowing the proposal.

Other Matter

35. The Council raises no concern that the use of the access would prejudice the employment allocation at the Glan Aber Trading Estate. Given the existing use of the access, I have no reason to reach a different conclusion.

Conditions and Obligation

36. Whilst there is no shortfall in the provision of open space, developers are expected to make a financial contribution to mitigate the increased usage of existing facilities. As the appeal proposal would likely add to the demand for and use of local facilities, I consider the submitted obligation is necessary for the proposal to comply with LDP Policy BSC 11.

37. The Council has suggested conditions which I have considered in the light of the advice within Circular 016/2014 The Use of Planning Conditions for Development Management ('the Circular'). I consider that a condition, naming family members and their resident dependents, would provide the necessary clarity to limiting the occupation of the intended development to the family group, to reflect the justification for the development to serve the best interests of the children. A condition is also necessary to limit the number of static caravans on the site to reflect the permission sought and to prohibit any touring caravans or motorhomes from being placed on the site in the interests of highway safety. A condition to prevent use of an access on the western boundary of the appeal site, including the removal of dropped kerbs in that location, is also necessary in the interests of highway safety. A condition prohibiting commercial activities is necessary to safeguard the living conditions of neighbouring occupiers, but matters related to the burning of waste and surface water drainage are covered by other legislative controls and therefore unnecessary. A condition requiring submission of a lighting scheme is also unnecessary as details have already been provided. There is no cogent evidence of protected species being present at the appeal site, but a scheme of ecological enhancement could be secured by a planning condition. Whilst the submitted drawings indicate that landscaping would be provided, the proposals are limited in species mix and a condition requiring a landscaping scheme is therefore necessary to ensure that any scheme is appropriate.

Conclusion

38. For the reasons given above, and taking all other matters into account, I conclude that the appeal should be allowed. I allow the appeal.

39. In reaching my decision I have taken into account the requirements of sections 3 and 5 of the Well-being of Future Generations (Wales) Act 2015. I consider this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Minister's wellbeing objectives as required by section 8 of the Act.

N Jones

Inspector

List of Documents

Appellant's draft Unilateral Undertaking

Council's written justification for an open space contribution

Schedule of Conditions

1. The development shall begin not later than five years from the date of this decision.

Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out in accordance with details shown on the following submitted plans and documents unless specified otherwise within any other condition pursuant to this permission:

- (i) Location Plan
- (ii) Existing Site Plan (Drawing No. DG1)
- (iii) Proposed Site Plan (Drawing No. DG2 Rev B)
- (iv) Existing and Proposed Outbuilding Floor Plan (Drawing No. DG3)
- (v) Justification Statement
- (vi) Limited Flood Consequences Assessment
- (vii) Landscaping Schedule
- (viii) Lighting Bollard Specification
- (ix) Waterco Flood Consequences Assessment
- (x) Statement in Response to Consultation Responses

Reason: For the avoidance of doubt and to ensure a satisfactory standard of development.

3. There shall be no more than 6 permanent static caravans on the site at any time as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968. No additional static caravans, touring caravans or motor homes shall be brought onto the site at any time.

Reason: To define the scope of the permission and in the interests of highway safety (LDP Policy RD 1).

4. The occupation of Kynsal House and the site shall only be by the following, and their resident dependents: Mr & Mrs Phillip Purcell, Joe and Bridget Doran, Patrick and Margaret Delaney, John and Hannah Purcell, Luke and Mary Price, Kathleen Purcell and John Padley, Babi Purcell.

Reason: To ensure continuation of the justification for permitting the development

5. No commercial or livery activities shall take place on the land, including the storage of materials. No more than one commercial vehicle per plot shall be kept on the land for use by the occupiers of the caravans hereby permitted, and commercial vehicles shall not exceed 3.5 tonnes in weight.

Reason: To ensure no commercial activities adversely affect the residential amenity of residents of nearby properties (LDP Policies RD 1 and BSC 10).

6. No static caravans shall be brought onto the site until a scheme for biodiversity enhancement has been submitted to and agreed in writing by the local planning authority. The development shall be carried out, and thereafter retained, in accordance with the approved details.

Reason: To enhance the site's biodiversity (Policy 9 Future Wales)

7. Notwithstanding the approved plans, no static caravans shall be brought onto the site until a scheme of hard and soft landscaping has been submitted to and approved in writing by the local planning authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the bringing of the first static caravan onto the site, or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: To ensure that the development hereby permitted does not have a detrimental impact on the character and appearance of the area or on the living conditions of neighbouring occupiers (LDP Policies BSC 10 and RD 1)

8. The sole means of access to the site shall be as shown on the approved plan, Proposed Site Plan (Drawing No. DG2 Rev B). Access onto Knowsley Avenue shall remain permanently closed, with the dropped kerbs removed and the raised kerbs reinstated before any static caravans are brought onto the site.

Reason: In the interests of highway safety (LDP Policy RD 1).