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## Penderfyniadau ar yr Apêl

Gwrandawriad a gynhaliwyd ar 07/06/17

Ymweliad â safle a wnaed ar 07/06/17

**gan Melissa Hall BA(Hons), BTP, MSc, MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru**

**Dyddiad: 06.12.17**

## Appeal Decisions

Hearing Held on 07/06/17

Site visit made on 07/06/17

**by Melissa Hall BA(Hons), BTP, MSc, MRTPI**

**an Inspector appointed by the Welsh Ministers**

**Date: 06.12.17**

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### Appeal A: APP/E6840/C/17/3169691

**Site address: Land opposite Llancayo House, Llancayo, Usk NP15 1JF**

**The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr M Purcell against an enforcement notice issued by Monmouthshire County Council.
- The enforcement notice, Ref E16/035, was issued on 19 January 2017.
- The breach of planning control as alleged in the notice is the unauthorised change of use of land to a caravan site including the creation of a hardstanding.
- The requirements of the notice are:
  - (i) Remove all unauthorised caravans / mobile homes from the land.
  - (ii) Remove all associated vehicles, gas containers and other extraneous materials from this site.
  - (iii) Remove the hardstanding completely from the land.
  - (iv) Cease the use of the land as a caravan site.
- The period for compliance with the requirements is 2 calendar months from the date that the Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

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### Appeal B: APP/E6840/A/17/3169689

**Site address: New Stables, Abergavenny Road, Llancayo, Usk, Monmouthshire NP15 1JF**

**The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.**

- 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 Michael Purcell against the decision of Monmouthshire County Council.
  - The application Ref DC/2016/00297, dated 28 July 2016, was refused by notice dated 12 December 2016.
  - The development proposed is described as a 4 plot gypsy site for one family – comprising 4 plots with space for mobile home, touring caravan, utility / amenity building and parking space.
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## **Decisions**

### *Appeal A: APP/E6840/C/17/3169691*

1. The appeal is allowed in respect of ground (g) only, but otherwise dismissed. I direct that the Enforcement Notice be corrected and varied by:
  - The addition of the words "sheds", "septic tank" and "generator" to Requirement (ii) of Schedule 4 so that it reads as follows "Remove all associated vehicles, sheds, septic tank, generator, gas containers and other extraneous materials from this site'.
  - The re-wording of Requirement (iii) of Schedule 4 from "Remove the hardstanding completely from the land" to "Remove completely from the land the hardstanding to yard area currently occupied by caravans".
  - The deletion of the words "Time for compliance: 2 calendar months from the date this Notice takes effect" and their replacement with the words "Time for compliance: 12 calendar months from the date this Notice takes effect".

Subject to these variations the Enforcement Notice is upheld.

### *Appeal B: APP/E6840/A/17/3169689*

2. The appeal is dismissed.

## **Application for Costs**

3. An application for costs has been made by the appellant against Monmouthshire County Council. This application is the subject of a separate Decision.

## **Procedural and Preliminary Matters**

4. As set out above, two appeals are before me which will be considered on their individual merits. Nevertheless, to avoid duplication I have dealt with the two together, except where otherwise indicated.
5. Although the site address stated on the Enforcement Notice ("the EN") differs from that shown on the planning application form, I am satisfied that both appeals relate to the same site.
6. The development the subject of the planning application has, in part, been implemented. Whilst the planning application form states that a cesspit would be used to dispose of foul water, at the Hearing the appellant confirmed that a septic tank has instead been installed. Other than an indication on the submitted plan of the location of the septic tank, the planning application was not accompanied by details or its specification, nor have they subsequently been provided with the appeal.
7. Although not cited in its reasons for refusing the planning application, the Council's Committee Report takes issue with the installation of a cesspit, stating that it has not been inspected by Council officials to ensure that it is installed correctly. Whilst it is clear that a cesspit has not been installed, the Council confirmed at the Hearing that its concern relating to the installation of non-mains drainage remains. This matter was therefore discussed at the Hearing having regard to national planning policy guidance outlined in Welsh Office Circular 10/99 '*Planning Requirements in respect of the Use of Non-Mains Sewerage incorporating Septic Tanks in New Development*'.

8. The Plot Plan submitted in respect of the planning application shows the footprint of the amenity blocks, albeit no corresponding plans or elevations have been provided showing their detail. I was told that the details were described in the Design and Access Statement (DAS). At the Hearing, the Council could not explain how it came to determine the planning application without these details and I am not satisfied that a description of the amenity blocks in the DAS is sufficient. It was suggested to me that details of the amenity blocks could be the subject of a planning condition in the event of planning permission being granted. It is on this basis that I have considered this aspect of the development the subject of the S78 appeal.
9. In support of the appeal, the appellant submitted an alternative Layout Plan. However, at the Hearing it was agreed that the appeal is to be determined on the basis of that used by the Council in its determination of the planning application. I have not therefore considered the acceptability of the amended site layout in coming to my Decision.
10. There is no dispute that the occupants are not gypsies within the terms of Paragraph 3 of Welsh Assembly Government Circular 30/2007 '*Planning for Gypsy and Traveller Caravan Sites*'. I have no reason to conclude otherwise.

### **The EN**

11. The appellant considers the reference to 'extraneous material' in Requirement (ii) of Schedule 4 to be imprecise and ambiguous and that it does not accurately tell the recipient what is required to comply with the EN. The Council explained that it was intended to relate to materials such as the sheds, the generator and scrap metal.
12. Following a discussion at the Hearing, I consider that the sheds, septic tank and generator do not constitute 'extraneous material', but instead should be listed as individual structures or items that are to be removed from the site. However, using the dictionary meaning of the word 'extraneous', the reader would understand it to mean '*irrelevant or unrelated to the subject being dealt with*'. I am satisfied that this description adequately explains the type of other items that need to be removed, such as the scrap metal, which are in situ only by reason of the use of the land as a Gypsy site.
13. The appellant sought to clarify the extent of the hard standing that needed to be removed to comply with the EN. Both parties agreed that the EN seeks to attack the area of hardstanding to the yard area on which the caravans stand. I will therefore amend the wording of Requirement (iii) of Schedule 4 of the EN accordingly.

### **Background**

14. I understand from the appellant that, at the time the EN was issued, the site contained an access track some 35 metres long and 7 metres wide, with double gates set back from the highway by approximately 10 metres. A yard, measuring in the order of 40 metres by 30 metres, was being used for the stationing of three touring caravans, a single unit mobile home and three sheds (one of which has a toilet, bath and washing machine connected to a septic tank). There were two short lengths of panel fencing and timber fencing enclosing a horse paddock. In the paddock area was a block of kennels, tack and a cart together with a container and a lorry body used for storing animal feed.
15. At the Hearing, the Council confirmed that the EN does not seek to attack the use of the land for the keeping of horses and the siting of the associated van body /

container used to store animal feed together with the tack, cart and the dog kennels in the adjoining paddock area.

16. The corresponding planning application seeks the provision of four individual plots for one Gypsy family. A greater number of physical structures are shown on the submitted drawings than were on the site when the EN was served; this includes featheredge fencing subdividing the hardstanding area into the 4no plots, each with its own separate amenity block (comprising a toilet/ bathroom and kitchen). There would also be a larger area of hard surface and space would be available within each plot for a mobile home and /or touring caravan and a parking area.

### **Statement of Common Ground**

17. The appellant prepared a draft Statement of Common Ground (SOCG) in advance of the Hearing, albeit the Council did not respond to or comment on its content.
18. I therefore requested clarification of the Council's position in respect of the submitted draft SOCG at the Hearing. The Council agreed the following:
- The lawful use of the land at paragraph (4) is correctly stated insofar as it is agriculture but it was being used for the keeping of horses.
  - The Relevant Policy section at paragraph (5) confirms that incorrect reference had been made to Policy ENV1 of the adopted Monmouthshire Development Plan 2014 (LDP) in the EN. Rather reference should have been made to Policy EP1 which relates to amenity and environmental protection.
  - The Need for Sites at paragraph (6) refers to the 2015 Monmouthshire Gypsy and Traveller Accommodation Assessment (GTAA) submitted to Welsh Government (WG) in February 2016 for 8 pitches to 2021. The Council confirmed that the GTAA was ratified by WG in December 2016.

### **Deemed planning application / ground (a) and the S78 appeal**

#### ***Main Issues***

19. Against the background that I have described, the main issues are:
- The effect of the development on the character and appearance of the area with particular regard to the Upper Usk Valley Landscape character.
  - The effect on highway safety, with particular regard to visibility at the site entrance.
  - Whether the site can offer safe conditions because of the risk from flooding.
  - Whether the site can be adequately drained.

#### *Character and appearance*

20. LDP Policy LC1 seeks to protect the countryside for its own sake and presumes against new development in the open countryside unless exceptionally justified. It is no part of the appellant's case that the proposal is any of the exceptions listed in Policy LC1 relating to new development in the open countryside.
21. Whilst the Council also refers to conflict with LDP Policy S1, the appellant questions its relevance. From my reading of this policy, it relates to the special distribution of new housing provision and not specifically to the provision of Gypsy and traveller sites. Be that as it may, this policy directs new residential development to within or adjoining the 'Main Towns', the 'Sevenside' sub-region settlements and the 'Rural Secondary

Settlements' which have sufficient form and capacity for growth. It is not the case that the appeal site lies within any of the settlements listed.

22. Rather the appeal site lies some 2km north of the town of Usk and on the periphery of the small hamlet of Llancayo, along the main B4598 Abergavenny Road linking these two areas. The appellant relies in part on Welsh Government Circular 30/2007 '*Planning for Gypsy and Traveller Caravan Sites*', which advises that sites on the outskirts of built up areas may be appropriate or that sites may also be found in rural or semi-rural settings. It adds that rural settings, where not subject to specific planning or other constraints, are acceptable in principle<sup>1</sup>.
23. LDP Policy H8 presumes in favour of permanent pitches for Gypsy and traveller sites where a need is identified provided that they *inter alia* do not occupy a prominent location and are consistent with LDP policies for protecting and enhancing character and distinctiveness of the landscape and environment (my emphasis). This policy also requires such sites to have a safe and convenient access to the highway, to avoid areas at high risk of flooding and to be served by adequate on-site services for sewage disposal, which I will deal with later in my Decision.
24. LDP Policy DES1 deals with the protection and enhancement of character and distinctiveness insofar as it requires new development to be of a high quality design, in particular, to respect natural views and panoramas where they include attractive landscape.
25. Once it is accepted that Gypsy and traveller caravan sites are acceptable in rural and semi-rural areas, then some degree of harm is inevitable. The question then becomes whether that harm is acceptable as it is, or if can be made so by the imposition of suitable planning conditions. In my view, the requirement in LDP Policy H8 for such sites do not occupy a prominent location and to be consistent with other development plan policies for protecting and enhancing character and distinctiveness advances the approach taken in the Circular to dealing with semi-rural or rural sites.
26. Be that as it may, I do not consider that the appeal site could be described as remote from a settlement given its position on the main B4598 between Llancayo and Usk. It does not lie within an area subject to specific planning constraints, such as a National Park, an Area of Outstanding Natural Beauty or a Conservation Area. Neither is it within Green Belt or Green Wedge.
27. The Monmouthshire Landscape Study (MLS) identifies that the site falls within the Upper Usk Valley landscape character area. It is described as the flat floor of the Usk valley upstream from Usk to the county boundary beyond Gilwern. Its landscape characteristics are a floodplain, intensively farmed with large fields of permanent pasture and arable crops enclosed with linear tree belts, low managed hedges and post and wire fence.
28. The appellant argues that the site and development is read as part of the settlement of Llancayo, not least as its entrance is located after the road sign for those entering the hamlet, opposite the entrance to Llancayo House and after the turning for the Llancayo Business Park. However, I do not agree on this point. Although the access points to Llancayo House and the Business Park are clearly visible from the B4598 travelling past the site, the associated built form is considerably less so. Similarly, the site is physically separated from the existing buildings in Llancayo by fields, hedgerows and vegetation. Rather, in my opinion, the site is read largely in the

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<sup>1</sup> Paragraph 26 of Circular 30/2007.

context of the natural landscape described in the MLS, albeit with the various access points along this stretch of the B4598 visible and contributing to the context.

29. The development is clearly identifiable as a caravan site and has inevitably taken the appearance of a permanent residential development. This is made all the more apparent from the associated paraphernalia such as the hard standing, surfaced and widened access, car parking, fencing and shed. The additional structures and alterations proposed as part of the planning application would further add to this residential character and appearance.
30. In other words, the use has altered the nature and character of the site from the former agricultural land used for the keeping of horses, which formed part of the open countryside beyond the built-up area to a residential site with a more urban appearance. The development thus causes some limited harm to the character and appearance of the countryside. That limited harm must nevertheless be viewed in the context of the implicit acceptance in the Circular that Gypsy and traveller sites may be located in rural areas.
31. I do not agree with the Council that the site could reasonably be described as 'visually prominent'. Whilst it is visible in part, for example the tops of the caravans can be seen at certain points from long range travelling south along the B4598 towards Usk, views of the development are primarily limited to glimpses through the access and gaps in the vegetation when passing along the site frontage. For the most part, the site is largely screened by the existing vegetation along the site frontage and the hedgerow separating it from the fields beyond. In visual impact terms therefore, it is the access itself which is most visible, which is not dissimilar to others along this stretch of the highway.
32. Whilst it is a pleasant predominantly rural landscape, it is of no specific importance and has not been afforded any particular protection. None of the key qualities of the Upper Usk Valley landscape character area are seriously affected by the development; it does not affect the river, harm views to higher ground or enclose the open, flat riparian landscape which is of high scenic quality.
33. Consequently, I do not find that the location of the site is inherently unacceptable and I consider that the limited scale of the development together with the position of the caravans and associated parking does not seriously harm the character and appearance of the rural landscape. Neither do I consider that the additional development proposed would have a significantly greater visual impact.
34. Furthermore, and in order to minimise any adverse visual impact, additional landscaping along the field boundary and site frontage could be controlled by condition.
35. As such, I do not find conflict with LDP Policy H8, DES1 or Circular 30/2007 in this regard.

#### *Highway Safety*

36. The site access is positioned on a straight section of the B4598, but on the outside of the bend into Llancayo. This section of the B4598 has no footways or street lighting and visibility to the south is restricted in part by the roadside hedgerow, vegetation and road traffic signs. It is, however, a relatively wide carriageway measuring some 8.5 metres adjacent to the site. The road is subject to a 50mph speed limit from Usk reducing to 40mph through Llancayo. The site access lies some 20 metres within the 40mph speed limit.

37. The Council argues that the significant increase in vehicular movements of varying number and size of vehicles associated with a development of this type is detrimental to highway safety without significant improvements to the existing vehicular access over and above that which has already been carried out or is detailed on the submitted plans.
38. The appellant contends that the use is likely to generate no more than 16-20 vehicle movements per day and that most trips would be by private car. The Council does not put a figure to the anticipated additional traffic movements. Circular 30/2007 states that projected vehicular movements for Gypsy and Traveller sites should be assessed on an individual basis for each site. Proposals should not be rejected if they would give rise to only modest additional daily vehicle movements and/or the impact on minor roads would not be significant.
39. Notwithstanding the above, there is no disagreement between the parties that there is a material increase in the use of the access over and above that associated with the previous use of the site for the keeping of horses. In addition to the use of the access by, in effect, a family group in private cars for the most part, there would also be caravans being towed so that slow moving combinations would need to enter and leave the junction. The issue, therefore, is whether visibility at the junction would be so inadequate for the nature and volume of additional traffic movements that the impact on highway safety would be significant.
40. The Council seeks visibility splays of 120 metres (40mph) to the right and 160 metres (50mph) to the left based on the Design Manual for Roads and Bridges (DMRB). At the Hearing, it confirmed that the visibility splays are required based on speed limits along the road. Whilst it was argued that drivers do not adhere to the speed limit along this stretch of road, the Council has not produced any corroborating evidence of traffic volume and speed data.
41. The appellant's written evidence states that in seeking the speed limit order in 2014, the average 7 day vehicle flow through Llancayo on the B4598 was between 2337 and 2977 vehicles. The mean speed either side of the hamlet was between 45 and 47mph and the 85th percentile speed was between 54 and 56mph. Consequently, the appellant concludes that these are very low traffic levels for a road of this standard and there are large gaps between passing vehicles. At the time of my site visit, which was at mid-afternoon on a weekday, this was certainly evident.
42. The appellant argues that the approach taken by the Council is not that advocated in Manual for Streets (MfS). In particular, my attention is drawn to paragraph 1.4.4 which states that the DRMB is not an appropriate design standard for most streets, particularly those in lightly trafficked residential and mixed-use areas. In the case of the appeal site, I agree that there are several side roads, farm access points and other access points for properties and traffic speeds are restricted. That is, continuous traffic movement without manoeuvres influencing traffic road speed is not the primary function of this road.
43. In this context, I consider that it is appropriate to use the standards set out in MfS. The appellant tells me that a visibility splay of 79 metres (40mph) to the right and 113 metres (50mph) to the left would be required. I have no evidence that leads me to any other conclusion in this regard.
44. The vision splay to the right can be easily achieved. It is the visibility to the left that is more problematic due to the roadside vegetation hedgerow and street signs, albeit I accept that the vegetation had been trimmed back prior to my site visit.

45. Following the imposition of the speed restriction, vehicles approaching the site from the north towards Usk should be travelling at speeds no greater than 40mph. Those approaching from the south should be slowing down as they emerge from a 50mph into the 40mph speed limit on entering Llancayo.
46. Taking the MfS measurements, the visibility splay to the left would be achievable to the centre line of the road. I am satisfied that the driver of a vehicle approaching from the south towards Llancayo would have the opportunity to see a vehicle emerging from the site to the right and adjust his speed accordingly. Given the generous width of the road, there would also be no need for a vehicle to cross the centre line when emerging from the access and turning left thus minimising the potential for conflict with an oncoming vehicle heading north. Given that the road speed is 40mph at this point, neither is there an expectation that an oncoming vehicle would be overtaking heading towards Llancayo.
47. I note that local residents comment on the traffic speeds and accidents along this road and, as I understand it, this was the primary reason for the speed reduction along this stretch of the B4598 in 2014. No records of accident data since this time are before me and there is no substantive evidence of subsequent accidents as a result of traffic emerging from any of the junctions along this road.
48. I thus conclude that adequate visibility can be achieved in accordance with the guidance in MfS. Consequently, the development is acceptable in highway safety terms.
49. Although not cited in its reason for refusal, I also note the Council's concern regarding the provision for parking and vehicular movement<sup>2</sup>. Given the size of the site, I am satisfied that this matter could be dealt with by condition in the event of planning permission being granted.

### *Flood Risk*

50. There is agreement between the parties that part of the site lies in Zone C2<sup>3</sup> as defined in Technical Advice Note 15 'Development and Flood Risk' (TAN 15). Paragraph 6.2 of TAN 15 identifies that new development should be directed away from Zone C and that highly vulnerable development and Emergency Services in Zone C2 should not be permitted.
51. Natural Resources Wales (NRW) has confirmed that its flood maps indicate that flood risk at the site is from the unnamed brook to the north of the site which has a small ungauged catchment. Any flooding is likely to be rapid with no significant lead in time. Flooding from the River Usk appears to be limited to the B4598 and low lying land to the south of the site. It acknowledges that the land on which the caravans and septic tank are sited lies is higher ground and outside the flood risk area. Thus, its concern relates primarily to the acceptability of the access / egress<sup>4</sup>.
52. Residential caravan sites are deemed to be highly vulnerable development. I accept that, in this case, it is only the north-west corner of the site that lies within Zone C2. However, TAN 15 advises that access routes should be operational under all conditions.

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<sup>2</sup> Notwithstanding its acknowledgement in paragraph 5.3.6 of its Committee Report that there is sufficient land available within the site to provide adequate parking facilities.

<sup>3</sup> Defined as areas of the floodplain without significant flood defence infrastructure.

<sup>4</sup> Whilst NRW provided additional comments on 11 April 2017 based on an alternative layout plan showing an alternative access outside Zone C2, this layout is not before me.



53. At my site visit I observed that the watercourse to the north lies below the level of the site. I therefore agree with the appellant that it is likely that much of the adjoining field would flood before the road. Be that as it may, I have been told by local residents that the B4598 and the houses in the vicinity have flooded on several occasions. The appellant acknowledges that most of the hamlet of Llancayo is Zone C2, as is much of the grounds of Llancayo House and the private access road and business units associated with Llancayo Farm to the west.
54. In this context, I cannot be certain from the evidence before me how quickly the access and road would flood after the field or whether there would be sufficient warning for occupants of the site to evacuate the site before being cut off by flood water. As this part of the site provides the only means of access to and from the site, I am not satisfied that the occupants would be provided with a safe means of escape in the event of a flood. Neither is there a Flood Warning service available in respect of the ungauged watercourse to alert the occupants of potential rapid flooding in the area. Hence, it has not been demonstrated that the development would be safe for the lifetime of the development.
55. It therefore follows that the development would not be permissible in this location on the basis that it is highly vulnerable development in an area at risk of flooding which cannot be justified in the context of national planning policy guidance. It would also conflict with the aims of LDP SD3 which states that highly vulnerable development will not be permitted in areas liable to flooding and with Policies H8 and S12 which require new development to avoid the siting of development in areas at risk of flooding.
56. Even were that otherwise, NRW advised the Council that if it were minded to grant planning permission contrary to the requirements of TAN 15, the applicants should be required to undertake a Flood Consequences Assessment (FCA). This is to ascertain whether the consequences of flooding can be managed down to an acceptable level for the type of development proposed, although it is to be borne in mind that the FCA is additional to the other tests, not instead of them.
57. I note that the Council invited the appellant to submit a Flood Consequences Assessment (FCA). However as the development does not meet the first tests outlined in the TAN, I do not consider it appropriate to conclude on whether an FCA should be submitted and whether mitigation could be provided given the fundamental conflict with the aims of national planning policy to steer unjustified highly vulnerable development away from areas at risk from flooding.
58. I also acknowledge the appellant's concern that NRW does not conduct site visits, rather it raises an objection in principle. Whilst I do not dispute that in some circumstances it may be appropriate to take a pragmatic approach, in this case, the lack of clear evidence that the risk of flooding would be insignificant prevents me from concluding that the site can offer safe conditions for its occupants.

#### *Drainage*

59. At the Hearing, the appellant told me that a septic tank has been installed. I have not been provided with the details of its design or size, albeit the appellant stated that it is the largest sized tank that can be purchased.
60. Welsh Office Circular 10/99 '*Planning Requirements in respect of the Use of Non-Mains Sewerage incorporating Septic Tanks in New Development*' provides advice on non-mains sewerage aspects of development so as to avoid environmental, amenity or public health problems which could arise from the inappropriate use of non-mains sewerage systems. It states that the first presumption must always be to provide a

system of foul drainage discharging into a public sewer. If it can be demonstrated that connection to a public sewerage system is not feasible, a package sewage treatment plant incorporating a combination of treatment processes should be considered.

61. The appellant is of the understanding that there is no connection to mains drainage available, particularly as others in the area are relying on septic tanks. The Council was not able to confirm a mains connection in the area.
62. The Circular advises that responsibility for demonstrating that a development is effectively served by a sewerage system rests with the developer. It adds that applications for planning permission should be supported by a full assessment of the *proposed* use of septic tanks to confirm that adverse effects would not arise (my emphasis).
63. I accept that, in principle, a properly constructed and maintained septic tank should not lead to environmental, amenity or public health problems. However, in practice, problems can occur as a result of poor maintenance or inadequate capacity. In this particular case, the installation of the septic tank without any form of assessment fails to provide a thorough examination of the impact of the disposal of the final effluent or whether it is discharged to a water course or disposed of by soakage into the ground. If a soakaway is to be used, neither have I been provided with the results of a percolation test which would confirm the extent of soakaway that would be needed.
64. I also note the observations of NRW that a septic tank discharging 5 cubic metres per day or less to surface water or 2 cubic metre per day or less to ground water must be registered. Should the discharge be more, a permit to discharge would be required by NRW. Given the lack of any detail whatsoever in relation to the septic tank that has been installed, this matter adds further to my concern regarding the potential adverse impacts arising.
65. Hence I cannot conclude that the use of the septic tank does not or would not lead to a significant environmental, amenity or public health problem in the area. In this regard, the proposal would conflict with the Circular and with LDP Policy H8 to ensure that the development is served by adequate on-site services for sewage disposal.
66. I have had regard to whether it is possible to overcome this issue by means of condition. However, in my opinion it would be inappropriate to condition a form of non-mains drainage that has already been implemented and which should be material to the consideration of the acceptability of the development. Furthermore, such a condition would be unenforceable because I am not persuaded that it is, in practice, possible to ascertain details of the tank that has been installed together with its capacity and any environmental impacts. It would thus fail the tests outlined in Welsh Government Circular 016/2014 *'The Use of Planning Conditions for Development Management'*.

#### *Other Considerations*

##### *Need for gypsy pitches*

67. Paragraph 17 of Circular 30/2007 requires local planning authorities to allocate sufficient sites in Local Development Plans to ensure that the identified pitch requirements for residential use can be met and that such sites are suitable with a realistic likelihood that they will be made available for that purpose.
68. The Council's identification of Gypsy / traveller sites is based on objectively assessed need. Its GTAA concludes that there is an estimated unmet need for 8 pitches to

2021, based on overcrowding, unauthorised occupation and the likelihood of cultural aversion to conventional housing.

69. After some discussion, the Council agreed that the needs assessment may not be representative of actual need. The identified need does not adequately take account of in-migration<sup>5</sup> and I agree with the appellant that it is difficult to reconcile this figure of 8 with the current appeal before me for a 4 plot gypsy site and an application for 5 additional pitches at the Llangeview Usk site (which was refused permission in November 2016). I also note that on the appeal site alone several, but not all, of the family members were taken into account in the needs assessment; I am not entirely convinced therefore, that it properly reflects existing or future household formation. Hence, the immediate identified need appears to be low and I therefore consider that it should be regarded as a minimum.
70. The GTAA shows that there are currently no Council owned and run sites, either residential or transit. There are two authorised sites which are privately owned (the occupation of which is restricted by personal condition) and 10 unauthorised encampments on Council owned land by the travelling community. Hence there are no socially rented sites currently available in the Monmouthshire area.
71. I also understand that the second annual review of the LDP (2015-2016) recommended an early review of the development plan given that the supply of housing sites fell below the required five year period. In doing so, it was suggested that the review could consider other LDP policies, including the Gypsy and traveller policy in light of the shortfall of pitches to meet identified need. However, the Council confirmed that the LDP review process will not commence until early 2018. As a consequence, there is still no timescale as to when the pitches will be provided to meet identified need.
72. In terms of the availability of alternative sites, the appellant stated that the authorised sites in Cardiff, Blaenau Gwent and Torfaen are full. I heard that whilst some of the occupants spent a period in bricks and mortar accommodation, it was purely to secure access to a college education for one of the children and the tenancy ended when the college course was completed. There was a period in which another of the occupants resided in bricks and mortar accommodation in Pontypool for reasons of personal safety, but that tenancy has also been surrendered. However, the appellant explained of an aversion to bricks and mortar accommodation, such that it is not a realistic alternative.
73. In light of the evidence in this regard, I cannot be certain of the alternative living arrangements that would be available to the family in the event of planning permission being refused and the EN being upheld. It seems likely that the family would need to move outside the Monmouthshire area in search of alternative accommodation as there are no other Gypsy or traveller sites to allocate to in the county.

*Personal circumstances*

74. The appellant's grounds of appeal and subsequent oral evidence at the Hearing provides considerable details of the social and education needs of the occupants, with particular reference to the children. I am aware that the family are committed to their children's education; two of the children attend the local school in Usk and are taken

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<sup>5</sup> The GTAA states that no additional households wanting to live in the County were drawn to the attention of the Authority by other Authorities.

to school in the school minibus and a third child attends a high school in Pontypool. The family are engaged in a variety of activities and hold positions in the community where they are much involved in local issues. The family attend the Gypsy church in Newport with prayer meetings in Pontypool and Blackwood. Two of the family members travel for work and a third has recently started a training course in Cardiff. The family also travel to Gypsy horse fairs and trotting events.

75. The upholding of the EN and dismissal of the appeals would be likely to lead to the family's group eviction from the site, thus interfering with their private and family life. It would result in the loss of their home, albeit unlawful, and the apparent lack of immediate available alternative accommodation makes such interference more serious. I also do not dispute that the children will be reliant on local education provision in the foreseeable future, and that there would be some disruption arising if the continued occupation of this site ceased.

*The Balancing Exercise and Conclusions*

76. For the reasons I have given, I consider that the development is in conflict with the tests outlined in national and local planning policy relating to highly vulnerable development in flood risk areas and I cannot be certain that the site can be adequately drained. So the question is whether this harm is outweighed by other considerations that justify the development.

77. In favour of the appeals is the unmet need for sites in Monmouthshire. This carries significant weight as does the failure of the Council to currently meet that need. The lack of alternative available sites for the appellant and his family also adds weight to the appellant's case.

78. I have had regard to the personal circumstances of the appellant and his family with particular reference to the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty under the Equality Act 2010. Article 8 of the European Convention on Human Rights (as incorporated by the HRA) requires that decisions ensure respect for private and family life. Dismissing the appeal would force the appellant and his family to leave the site and resume an itinerant lifestyle. This would represent an interference with the occupants' homes and their family life.

79. However, these are qualified rights and interference may be justified where in the public interest. In applying proportionality, these interferences would be in accordance with the law and in pursuit of legitimate aims to avoid siting highly vulnerable development in areas at high risk of flooding and to ensure that development can be served by adequate on site services for sewage disposal. In the context of this case, these matters outweigh the human rights of the family. Despite the unmet need for pitches and the lack of alternative sites, I have concluded that the granting of a permanent planning permission would not be appropriate.

80. Where Article 8 rights are those of children, as in this case, they must also be seen in the context of Article 3 of the United Nations Convention on the Rights of the Child. This requires a child's best interests to be a primary consideration. The courts have held that, although a primary consideration, the best interests of a child are not a determinative planning issue, but no consideration must initially be regarded as more important or, in advance of the subsequent assessment of the individual circumstances, be given greater weight.

81. The Guidance similarly advises that decision-makers need to assess whether children's best interests are relevant to any planning issue under consideration. In doing so, it advises they will want to ensure their approach is proportionate. They need to

consider the case before them, and need to be mindful that the best interests of a particular child will not always outweigh other considerations, including those that impact negatively on the environment or the wider community.

82. I accept that the best interests of the children would be served by a permanent and secure home and continued access to the local schools, facilities and activities in the wider community. However, this does not outweigh my concern about the existing risks to children in connection with flooding in particular, and that this potential harm cannot be addressed by a planning condition.
83. Overall, I am satisfied that the need to resist the residential use of a site at high risk of flooding and ensure that it can be adequately drained cannot be achieved by any means which are less interfering with the appellant's and the family's rights and with the best interests of the children. They are thus proportionate and necessary in the circumstances.

#### *Temporary permission*

84. The possibility of a temporary permission for a 3-5 year period has been raised. The Council states that a temporary permission was considered as part of the determination process but was ruled out due to the unsustainable location of this site and its harm to the landscape.
85. Circular 30/2007 identifies that there are three factors to be taken into account in considering whether a temporary permission should be granted; these are unmet need, no available alternative sites and a reasonable expectation that new sites are to become available in the area at the end of the temporary period which will meet need.
86. I do not dispute that there continues to be an unmet need and a current lack of available alternative sites. However, no timing has been provided in relation to the Council's provision of an authorised site and how many pitches it would accommodate, albeit it is likely to coincide with the second LDP review which does not commence until 2018 at the earliest. Hence, I do not consider that a realistic, alternative site will become available within the minimum 3 year temporary period suggested by the appellant.
87. Added to this, I am concerned regarding the current lack of satisfactory foul drainage arrangements, and the absence of a detailed assessment of the septic tank having regard to matters such as capacity and maintenance and the potential environmental, amenity or public health effects should failure occur. Such would be the scale of the planning harm inherent in the development in this instance, granting permission for the suggested temporary (albeit considerable) maximum period of 5 years would unacceptably extend the potential risks that I have identified and would not outweigh considerations against the development.
88. I consider that these matters override the unmet need, lack of alternative sites and the personal circumstances of the appellant and his family in deciding whether a temporary planning permission is justified.

#### **The ground (g) appeal**

89. The appeal under Ground (g) is made on the basis that the 2 month period for compliance with the EN is too short in view of the potentially homeless situation in which the occupants may find themselves and the absence of suitable alternative accommodation currently available. A period of 12 months with a further 2 months to restore the site to its previous condition is therefore sought.

90. The Council accepted the difficulty of a 2 month period, but considered that 6 months would provide sufficient time to find alternative accommodation. As I understand it, the appeal site is the only place of residence for the occupants and they own no other property or land.

91. To extend the period for compliance would prolong the harm I have identified. However, I have also had regard to the lack of realistic available alternative sites in the county and the likely effect on the occupants of resorting to a roadside existence or other unauthorised sites. An extended compliance period would increase the likelihood of another suitable site being found. In these circumstances, and as discussed, I conclude that an extended period of 12 months should provide sufficient opportunity for the occupants to find alternative accommodation. I do not find that a further 2 months is required to restore the site to its former condition given that the caravans and much of the domestic paraphernalia would be re-located concurrently with the family's move to an alternative site. I shall vary the EN accordingly.

### **Overall Conclusion**

92. In conclusion, the appeals are unsuccessful on ground (a) / deemed application and I refuse to grant planning permission. The appeal on ground (g) succeeds as I find the compliance period too short, and I am therefore varying the EN accordingly prior to upholding it.

*Melissa Hall*

Inspector

## **APPEARANCES**

### FOR THE APPELLANT:

Ms Alison Heine	Planning Consultant
Ms Sharmane Jones	Occupant
Mr Andrew Morgan-Andrews	Family support
Ms Trudy Aspinall	Travelling Ahead advisor

### FOR THE LOCAL PLANNING AUTHORITY:

Ms Kate Young	Planning Officer
Mr Guy Delamere	Enforcement Officer
Mr Stephen Griffiths	Housing Officer

### INTERESTED PARTIES:

Ms Valerie Smith	Local Ward Member, Monmouthshire County Council
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## **DOCUMENTS**

1. The Council's letter of notification of the appeal, dated 17 May 2017.
2. Monmouthshire County Council Gypsy and Traveller Accommodation Assessment 2016-2021.