



Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 06/02/19
Ymweliad â safle a wnaed ar 06/02/19

gan **Richard E. Jenkins BA (Hons) MSc MRTPI**

Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 25.04.2019

Appeal Decision

Hearing Held on 06/02/19
Site visit made on 06/02/19

by **Richard E. Jenkins BA (Hons) MSc MRTPI**

an Inspector appointed by the Welsh Ministers
Date: 25.04.2019

Appeal Ref: APP/E6840/A/18/3213980

Site address: Land North East of Coedr off B4521, Llanvetherine, Monmouthshire, NP7 8PY

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 James Mochan against the decision of Monmouthshire County Council.
- The application Ref: DC/2018/00205, dated 9 February 2018, was refused by notice dated 12 November 2018.
- The development proposed is the retention of material change of use of land to a one family traveller site, including the stationing of 1 caravan, day room, foul drainage, fencing and access driveway.

Decision

1. The appeal is dismissed.

Background and Procedural Matters

2. The appeal was submitted as an appeal against the failure of the Local Planning Authority (LPA) to give its decision against planning application Ref: DC/2018/00205 within the prescribed period. However, the LPA's Notice of Decision was issued on the final day of its jurisdiction, in accordance with the provisions of Section 78A(2) of the Act and Article 26A of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 as amended (the DMPO). In accordance with Section 78A(3) of the Act, the appeal subsequently reverted to an appeal under Section 78(1) of the Act against the LPA's refusal of planning permission.
3. It became apparent during the determination of the appeal that the formal processes set out in Section 78A(3)(a-c) were not correctly applied following receipt of the Notice of Decision. Specifically, the appellant was not explicitly offered the opportunity to revise his grounds of appeal¹ and neither was he given the option to request a change of procedure². Nevertheless, given that the appellant's grounds of appeal and wider written submissions adequately covered the issue of highway safety, which comprised the Council's sole reason for refusal, I am satisfied that there has

¹ Section 78A(3)(b) of the Act

² Section 78A(3)(c) of the Act

been no prejudice in this respect. In coming to this conclusion, I have been particularly mindful of the content of the appellant's final comments that were accepted and thoroughly debated at the Hearing. Furthermore, it was confirmed as common ground at the Hearing that a change of procedure would not have been necessary or appropriate in this case.

4. The Appeal Form outlines the appellant's intention to apply for an award of costs. However, given that the LPA's Notice of Decision was issued following the submission of the Appeal, the appellant's case for an award of costs, which related to the LPA's failure to determine the application within the prescribed timescale, fell away. Indeed, this position was confirmed through the appellant's withdrawal of the application for an award of costs at the Hearing.
5. The fact that the appellant and the other beneficiaries of the scheme fall within the definition of 'Gypsies and Travellers', as defined by Welsh Government Circular 005/2018: *Planning for Gypsy, Traveller and Showpeople Sites (2018)*(WG Circular 05/2018), is a matter of common ground. I have fully considered the written and oral evidence submitted in this respect and have no reason to come to a different conclusion on such a matter. The legal and planning policy framework relating to Gypsies and Travellers is therefore relevant and fully engaged for the purposes of this appeal.

Main Issues

6. The main issues in this case are: the effect of the proposed use on highway safety along the B4521; and whether there are any material planning considerations, in particular those relating to the need and supply of Gypsy and Traveller accommodation and the personal circumstances of the appellant's family, that would be sufficient to outweigh any harm identified in respect of highway safety.

Reasons

7. The appeal relates to an irregular shaped parcel of land located along the northern flank of the B4521, to the east of the village of Llanvetherine. The site is accessed directly off the B4521 and slopes steeply, with the majority of the site set at a higher ground level than the adjacent carriageway. The site is of modest scale and is relatively well enclosed by existing hedgerows and trees. A gravel driveway had been laid by the time I visited the site and a caravan and day room were in situ. The site was further screened by existing close board fencing, enclosed by an agricultural gate and served by a cesspit. The appeal proposal seeks planning permission, under Section 73A(2)(a) for the retention of the change of use of the land to a single family traveller site that would include the stationing of 1No. caravan, 1No. day room, foul drainage, fencing and an access driveway.
8. For reasons set out in its delegated Officer's Report, the Council does not object to the principle of development and, having regard to the advice contained within WG Circular 005/2018 and the availability of Gypsy and Traveller accommodation within the area, I have no reason to dispute such an assessment. I shall therefore confine my reasoning to the principal matter of dispute, which constitutes the effect of the development upon highway safety along the B4521, and whether any harm identified in this respect would be outweighed by the arguments in favour of the appeal, including the availability of alternative sites and the matters pertaining to the appellant's personal circumstances.
9. The Council objects to the proposed development on the basis that the access to the site is not considered to provide a safe and convenient access to the highway network

and that it, therefore, causes unacceptable safety concerns to users of the highway and the occupants of the appeal site. Given the procedural issues set out above, the arguments both for and against the scheme had evolved significantly by the time the oral evidence was heard at the Hearing, with significant written evidence prepared by the appellant in response to the Officer's Report and associated evidence exchanged through the appeals process. Specifically, the appellant submitted a significant amount of evidence to justify utilising the stopping sight distances advocated by Manual for Streets 2 (MfS2), as opposed to the corresponding approach set out in Technical Advice Note 18: *Transport* (2007)(TAN18), whilst also providing an up to date traffic survey in the form of an Automated Traffic Count (ATC).

10. Whether the principles applied in TAN18 or MfS2 should be applied in this case remains a matter of dispute between the parties, with the LPA advocating the use of TAN18 and the appellant utilising the methodologies and principles set out in MfS2. The appellant contends that the advice contained within TAN18 has been superseded for non-trunk roads by MfS2 and I am satisfied that such guidance can be applied to such rural settings. However, it is notable that the application of MfS2 in such circumstances is dependent on the local context and, in this respect, I am mindful of the fact that, despite not comprising a trunk road and being curvilinear in nature, the B4521 does represent a principal arterial route through the county. Nevertheless, it is well-established that the stopping sight distances and other such advice set out in the aforementioned documents should not be treated prescriptively and, in light of the particular set of circumstances in this case, I consider such a principle to be even more pronounced. I shall therefore consider the issue of highway safety within the context of the threat to the public as opposed to whether or not the development adheres to advisory stopping sight distances.
11. In this context, it is material to note that the LPA accepts the appellant's findings in respect of the actual speed of traffic travelling along the B4521 which has been recorded as being between approximately 51mph³ and 55mph⁴. The volume of traffic is also not disputed and, in the absence of any evidence to the contrary, I have no reason to contest such evidence. In such circumstances, TAN18 recommends that stopping sight distances should be in the region of 160 metres, whilst MfS2 advocates stopping sight distances of approximately 109m and 125m respectively. Neither party has submitted any technical drawings to demonstrate the available visibility splays and associated stopping sight distances and, due to health and safety concerns, it was not possible for such distances to be measured on site at the time of my site inspection. The appellant contends, however, that sight lines for lateral visibility vary between 120 metres and 140 metres respectively.
12. Nevertheless, it was clear at the time of my site inspection that, at a 2.4 metre x-distance, achieving such lateral visibility distances towards Abergavenny would be challenging, not least because of the existing vegetation that immediately abuts the site access. I recognise the appellant's willingness to maintain such an area to maximise visibility. However, the area of land in question is not within the appellant's ownership and, in the absence of any mechanism to demonstrate control over the necessary visibility splay, I consider such a matter to weigh against the proposal. Indeed, I have not seen anything to suggest that there would be a realistic prospect of the necessary works being provided and maintained as required. I recognise that MfS2⁵ allows for x-distances to be reduced in slow speed situations. However, given

³ Towards Abergavenny

⁴ Towards Cross Ash

⁵ Paragraph 10.5.8

that I do not consider the carriageway to represent a slow speed or lightly trafficked rural lane, I do not consider that a reduced x-distance would be justified in this case.

13. It is also notable that no substantive or cogent evidence has been submitted to demonstrate that a satisfactory turning area could be provided on the appeal site. Indeed, I was able to confirm at the time of my site inspection that, given the topography of the site, the significant proportion of land taken up by the siting of the caravan/ day room and the need for an area to park vehicles, there is sufficient doubt regarding the ability to provide a turning area to prevent such a matter from being left to the imposition of a suitably worded planning condition. The appellant contends that there is sufficient room to turn near the site access. However, the principle of locating a formal turning area within such close proximity to the junction with the carriageway, particularly given the aforementioned traffic speeds, represents a significant risk to the free flow of traffic and the safety of road users. I was also able to experience at the time of my site visit that the geometry and layout of the modest 'turning area' referred by the appellant is extremely difficult to negotiate, even in a modest sized car, particularly when seeking to approach the junction square on with the intention of achieving necessary visibility to the right towards Abergavenny. Indeed, by virtue of the geometry, gradient and overall layout of the access relative to the adjacent highway, I consider that the difficulties in approaching the carriageway in a perpendicular arrangement to further exacerbate the above visibility concerns.
14. Furthermore, it was confirmed at the Hearing that the site would be used for the stationing of a touring caravan and that it would be frequently accessed by the appellant's commercial vehicle. Such factors clearly serve to materially intensify the aforementioned concerns, not least because it increases the likelihood that reversing movements onto the B4521 would be necessary to either enter or egress the appeal site. I recognise the fact that only a single personal injury accident, which was minor in nature, has been recorded within the area. However, given that the land has not been in use as a residential site for a prolonged period of time, I do not consider such a matter to weigh heavily in favour of the proposal. Similarly, whilst I recognise the appellant's contention that the access to the site represents an existing access, I do not consider such a matter to weigh substantially in favour of the appeal, not least because I have not seen any evidence to indicate that the end use would result in similar traffic movements to that of the lawful fall-back position.
15. I therefore conclude that the proposed use of land as a single family traveller site in its current form represents a material threat to the free flow of traffic and highway safety along the B4521. I therefore find that it would conflict with Policy MV1: *Proposed Developments and Highway Considerations* of the adopted Monmouthshire County Council Local Development Plan 2011-2024 (adopted 2014) (LDP) which, amongst other things, states that developments that fail to provide a safe and easy access for road users will not be permitted. It would also conflict with Policy H8: *Gypsy, Traveller and Travelling Showpeople Sites* which, amongst other things, is permissive of proposals that have a safe and convenient access to the highway network and would not cause traffic congestion or safety problems.
16. In coming to such a conclusion, I have fully considered whether such matters could be effectively mitigated through the imposition of suitably worded planning conditions, including negatively worded Grampian conditions. However, given the fact that the development has already commenced, and bearing in mind the lack of any cogent evidence to indicate a realistic prospect of the necessary works being provided and maintained as required, I do not consider that such an approach would meet the policy tests set out in WG Circular 016/2014: *The Use of Planning Conditions for Development Management* (2014). Indeed, in the absence of any worked out

solutions, I consider the suite of highways concerns to represent a significant risk to public safety which weighs substantially against the appeal proposal.

17. It is common ground that there is an established need for Gypsy and Traveller accommodation within the area. It is also common ground that there is a lack of suitable alternative sites for such a use and it would appear that the Council does not have a strategy in place that would provide for additional sites in the short term. The dismissal of the appeal would result in the direct loss of the family home and therefore displace the family members, none of whom have an alternative base. Such factors weigh significantly in favour of the proposal, particularly in light of the statutory duty placed upon the Local Authority by the Housing (Wales) Act (2014). In coming to this conclusion, I have been mindful of the fact that the failure to secure planning permission at the site could potentially result in the need for the appellant and his family to leave the area or take up an itinerant lifestyle. Such a situation would have clear and obvious implications for the family's ability to gain access to necessary facilities and services, and indeed their overall stability, which is of particular importance in this case given that the appellant has a young child.
18. The provisions of the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty (PSED) under the Equality Act 2010 are therefore engaged. Specifically, Article 8 and Article 1 of Protocol 1 the European Convention on Human Rights, incorporated into the HRA, requires that decisions ensure respect for private and family life and the home, and to the peaceful enjoyment of their possessions. Given the protected characteristics of the appellant, due regard also has to be given to the equality aims set out in the PSED, whilst the rights of the children must also be seen within the context of Article 3 of the United Nations Convention on the Rights of the Child which requires that the best interest of the children shall be a primary consideration. Indeed, it is well established in law that no other factor should inherently carry greater weight in the decision making process than the best interest of the child.
19. In this case, it is clear that dismissing the appeal would interfere with the right to respect for private and family life and for the home, and to the peaceful enjoyment of their possessions. Furthermore, it would result in an interference with the best interest of the young child which directly aligns with that of the appellant. Nevertheless, such rights are qualified and interferences may be justified where they are proportionate and in the public interest. In this respect, I consider that the interference would be lawful and in pursuit of a well-established and legitimate aim that includes highway safety. I have already concluded above that the development materially undermines highway safety along the B4521 and that the threat to public safety is substantial. Indeed, I consider the identified harm and threat to public safety to outweigh the matters in support of the proposal, including the lack of available alternative sites and the personal circumstances described above that include the interferences with the human rights of the family and the best interests of the child.
20. I am satisfied that the legitimate aim of ensuring adequate levels of highway safety cannot be achieved by any other means that would have a reduced interference on such rights. In this respect I consider the interferences to be both proportionate and necessary. I have fully considered the possibility of granting a personal planning permission. However, given that I have already concluded above that the threat to public safety is not outweighed by the personal circumstances, I do not consider that such an approach would represent an appropriate solution. Similarly, given that a temporary planning permission would prolong the on-going threat to highway safety, I do not consider that such an approach would be justified, not least because I have not been provided with any indication that there will be a material change in circumstances in the foreseeable future.

21. The foregoing conclusions have been considered within the context of the other appeal decisions referred by the appellant, including Appeal Ref: 3155838 and Ref: 3144761. Nevertheless, I have not seen anything that indicates that the circumstances of those cases are directly comparable to those in this case. Indeed, the former decision clearly differs from this appeal because the Inspector found in that case that the proposed use had regard to the safe, effective and efficient use of the transportation network. Similarly, the public interest and the personal circumstances advanced in Appeal Ref: 3144761 clearly differ from this case. I do not therefore consider that such decisions justify a deviation from my overall findings.
22. Based on the foregoing, I conclude that the proposed development would materially undermine highway safety along the B4521 and therefore represent a significant risk to public safety. As set out above, the development therefore conflicts with Policies MV1 and H8 of the adopted LDP. Such harm is not outweighed by the collective arguments in favour of the appeal, including those relating to the need and supply of Gypsy and Traveller accommodation, the personal circumstances of the appellant and the interferences with the rights arising from the aforementioned legislation. For this reason, and having considered all matters raised, I conclude that the appeal should be dismissed.
23. In coming to this conclusion, I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (WBFG Act). I have taken into account the ways of working set out at section 5 of the WBFG Act and consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives, as required by section 8 of the WBFG Act.

Richard E. Jenkins

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Peter Baines	Assisting Appellant
James Mochan	Appellant
Mary Price	Appellant's partner

FOR THE LOCAL PLANNING AUTHORITY (LPA):

Andrew Jones	LPA Case Officer
Christian Lowe	Highways Officer

INTERESTED PERSONS:

Brian Nash

DOCUMENTS

- 1 LPA – Letter of Notification
- 2 LPA – Suggested Conditions
- 3 Appeal Ref: APP/H6955/A/16/3144761