



## **Adroddiad**

Ymchwiliad a gynhaliwyd ar 30/11/04

Ymweliad â safle a wnaed ar 30/11/04

## **Report**

Inquiry opened on 30/11/04

Site visit made on 30/11/04

**gan/by John Davies MRTPI**

**Arolygydd penodwyd gan Cynulliad  
Cenedlaethol Cymru**

**an Inspector appointed by the National  
Assembly for Wales**

Dyddiad/Date **20-01-2005**

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TOWN AND COUNTRY PLANNING ACT 1990

WREXHAM COUNTY BOROUGH COUNCIL

APPEALS BY MR MICHAEL BERRY AND MRS FLORENCE BERRY

(A) AGAINST AN ENFORCEMENT NOTICE ALLEGING THE CHANGE OF USE OF LAND  
TO USE FOR THE PROVISION OF RESIDENTIAL CARAVAN ACCOMMODATION WITH  
ASSOCIATED SHEDS AND THE PARKING OF VEHICLES

(B) AGAINST THE REFUSAL OF RETROSPECTIVE PLANNING PERMISSION FOR THE  
SITING OF 1 RESIDENTIAL CARAVAN, 1 TOURING CARAVAN AND ASSOCIATED  
SHEDS FOR 1 LOCAL GYPSY FAMILY.

LAND AT BERRYLAND, HOMESTEAD LANE, WREXHAM

## **Appeal A: Ref APP/H6955/C/01/1072601**

### **Site address: Berryland, Homestead Lane, Wrexham**

- 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 Michael and Mrs Florence Berry against an enforcement notice issued by Wrexham County Borough Council on 31 July 2001. The Council's reference is 9.PG/686.
- The breach of planning control as alleged in the notice is the change of use of the land to use for the provision of residential caravan accommodation with associated sheds and the parking of vehicles.
- The requirements of the notice are:
  - (1) Stop using any part of the land for the provision of residential caravan accommodation and/or the parking of vehicles;
  - (2) Remove from the land all caravans, vehicles and sheds; and
  - (3) Restore the land to the condition it was in before the laying of tarmac and hardcore to create a hardstanding area for caravans and the erection of a fence to enclose the part of the land upon which the caravans are located.
- The period for compliance with these requirements is 42 days.
- The appeal is proceeding on the grounds set out in sections 174(2)(a) and (g) of the 1990 Act. The deemed application for planning permission also falls to be considered.
- The decision dated 18 June 2002 was quashed by order of the Court of Appeal.

**Summary of Recommendation: The appeal be allowed, the enforcement notice be quashed, and planning permission be granted subject to conditions.**

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## **Appeal B: Ref APP/H6955/A/01/1070501**

### **Site address: Berryland, Homestead Lane, Wrexham**

- 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 Berry against the decision of Wrexham County Borough Council.
- The application Ref WRO P/2001/0343, dated 18 February 2001, was refused by notice dated 9 July 2001.
- The development proposed is a retrospective application for the siting of 1 residential caravan, 1 touring caravan and associated sheds for 1 gypsy family.
- The decision dated 18 June 2002 was quashed by order of the Court of Appeal.

**Summary of Recommendation: The appeal be allowed and planning permission be granted subject to conditions.**

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## **ABBREVIATIONS**

Assembly Member	AM
European Convention on Human Rights	ECHR
Planning Policy Guidance Note	PPG
Planning Policy Wales	PPW
Speech and Language Therapy	SALT
Special Landscape Area	SLA
Technical Advice Note	TAN
Traveller Education Support Services	TESS
Unitary Development Plan	UDP

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## **1. Procedural Matters**

- 1.1 These appeals were previously determined by an Inspector in a decision dated 18 June 2002. The appeals were allowed subject to conditions and the enforcement notice was quashed. A challenge to those decisions in the High Court was dismissed on 4 November 2002. But the decision of the lower court was overturned in the Court of Appeal by an Order dated 19 June 2003. Leave to appeal to the House of Lords was refused on 23 February 2004. By letter dated 22 March 2004 the National Assembly for Wales recovered jurisdiction over the appeals in view of their history. In the same letter the National Assembly invited further written representations on:
- (a) the conclusions reached by the Inspector in his original decision letter;
  - (b) the reasons behind the judgement of the Court of Appeal;
  - (c) any material information which has come to light since the date of the original decisions on the appeals;
  - (d) Welsh Office Circular 2/94 “Gypsy Sites and Planning”; and
  - (e) any other consideration relevant to the redetermination.
- 1.2 In letters dated 7 April and 5 May 2004, respectively, the Council and the appellants requested that the inquiry be re-opened.
- 1.3 The inquiry opened on 30 November 2004 and sat for 3 days, closing on 2 December. I adjourned the inquiry on the first morning as the Council had not received the statement of evidence of Mr Philip Brown prior to the inquiry. During that adjournment I made an accompanied visit to the appeal site and to the Council’s gypsy site on Ruthin Road.
- 1.4 It should be noted that the description of the planning application subject of Appeal B was revised prior to its determination to that given above. The amended application form is found in Doc 10D.
- 1.5 This report contains a description of the site and surroundings, the relevant planning policies, the gist of the parties’ cases, my conclusions and recommendations. A list of conditions is in the Annex. Appendix 1 contains the names of those who appeared at the inquiry. Appendix 2 is a list of the documents and plans.

## **2. The Site and Surroundings<sup>1</sup>**

- 2.1 The appeal site lies some 1.5km west of Wrexham town centre on the western frontage of Homestead Lane, a Class 3 road linking the A525 Ruthin Road to the north and the B5099 Bersham Road to the south. The A525 crosses the A483(T) Wrexham by-pass about 1km to the west. The official Ruthin Road gypsy site lies immediately south west of the junction of the A525 and A483(T), bounded to the north by the A525 and to the east by the embankment of the slip road from the A483(T).
- 2.2 Homestead Lane marks the boundary of the Wrexham built up area. Land west of the lane, extending north, west and south of the appeal site, is countryside largely in agricultural use. On the opposite east side of the lane is the Ysgol Clywedog secondary school, presently undergoing extensive building work. There is housing further east, beyond the school

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<sup>1</sup> Doc 9i – Sect 1; Doc 23 – Sect 2; Plan A

playing fields, and to the south where dwellings adjoin Homestead Lane. North of the A525 lies the Wrexham Maelor Hospital and the Wrexham Technology Park. Between the Technology Park and the A525 is an area of presently vacant land where housing and business development is proposed<sup>2</sup>.

- 2.3 The appeal site is roughly rectangular, bounded on its north east and south east sides by Homestead Lane. The south east boundary is largely open although a few trees from a former hedgerow remain. There is a hedgerow for the northern half of the north east boundary with the remainder open. The south west boundary is formed by a hedgerow. A bridleway runs along the north west boundary of the site, separated from it by another hedgerow.
- 2.4 Access to the site is at its southern corner from where a drive runs along the south west boundary to a surfaced area occupying the western corner of the site, approximately as shown in the drawing accompanying the planning application<sup>3</sup>. This surfaced area is separated from the rest of the appeal site, which is grassed, by a fence about 1.8 metres high mostly of wood with a small section of steel sheet at its northern end. There is a static caravan on the surfaced area parallel and close to the south west boundary of the appeal site. In the western corner is a portable toilet. There are 3 structures close to the north west boundary of the site. Starting from the western corner these are: a large timber shed painted dark green used for storage and as a workshop; a smaller timber storage shed painted the same colour; and a dog pen built of steel sheets and painted the same colour. There is a trailer and a small mobile caravan parked alongside the wooden fence separating the surfaced area from the remainder of the appeal site.
- 2.5 The appeal site rises gradually from the entrance towards the bridleway along its north west boundary. The field west of the site rises to the west and north away from Homestead Lane. The lane is described in the evidence for both parties as 4.6 metres wide adjacent to the site with no footpaths. It also has no street lighting.

### **3. Planning Policy<sup>4</sup>**

- 3.1 At the time of the inquiry the development plan comprised the Clwyd County Structure Plan First Alteration approved in 1991 and the Wrexham Maelor Local Plan adopted in February 1996<sup>5</sup>. Structure Plan Policy H2 states a strong presumption against development that would affect the open character of green barriers, the precise boundaries of which will be defined in Local Plans. Structure Plan Policy B13 precludes residential caravans and mobile homes in the open countryside apart from gypsy sites required by the Caravan Sites Act 1968.
- 3.2 The Local Plan defines a green barrier that encompasses the appeal site, which lies outside the defined limits of Wrexham. Policy S1 directs new housing to within defined settlement limits. Policy S3 specifies development that may be permitted in green barriers provided it does not detract from the open character of the area. These include uses appropriate to a rural area. Policy S4 sets a number of criteria that all development should satisfy. Policy H5 precludes new dwellings outside defined settlements apart from certain exceptions. These do not include caravans or accommodation for gypsies. New housing is defined in paragraph 4.9 of the Local Plan as including caravans and mobile homes. The appeal site

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<sup>2</sup> Docs 11iv, 13ii

<sup>3</sup> Doc 10D

<sup>4</sup> Doc 9i – Sect 5; Doc 23 – Sect 3

<sup>5</sup> Doc 10PQ

also lies in a Special Landscape Area (SLA) where development is discouraged by Policy E7, which gives priority to the conservation and enhancement of landscape quality. The Local Plan contains no policy relating specifically to accommodation for gypsies.

- 3.3 The Structure Plan Second Alteration is not part of the development plan as work on it ceased after local government reorganisation in 1996. Nevertheless, the Wrexham County Borough Council adopted those parts relating to its area for development control purposes. Policy HSG10 precludes residential caravans and mobile homes in the open countryside apart from gypsy sites. Policy HSG12 sets a number of requirements that should be met when selecting a gypsy caravan site.
- 3.4 The Wrexham Unitary Development Plan (UDP) has progressed through all the stages prior to formal adoption. The inquiry into objections was held in 2002 and modifications were first proposed in July 2003. In May 2004 the Council adopted a modified version for development control purposes<sup>6</sup> apart from policies dealing with minerals and waste. Further modifications were placed on deposit from 4 June-16 July 2004. A report recommending formal adoption of the UDP was presented to the Council's Planning Committee on 6 December 2004<sup>7</sup> subject to confirmation by the Council on 22 December. The Council wrote on 30 December 2004 after the inquiry had closed confirming that it had resolved to adopt the UDP.
- 3.5 The appeal site remains outside the settlement limits of Wrexham in the UDP and within a green barrier and SLA. Policy PS1 directs new development to within defined settlements. Policy PS2 requires all development not to be materially detrimental to the countryside and to landscape character, amongst other things. Policy EC1 states as follows:

*Within Green Barriers, development will only be granted planning permission if it is for agriculture, forestry, essential facilities for outdoor sport and recreation, cemeteries and other uses of land which maintain the openness of the Green Barrier and do not conflict with the purposes of including land within it.*

- 3.6 Policy EC5 gives priority to the conservation and enhancement of the landscape of SLA. Development in these areas will be strictly controlled. All development will be of a high standard of design and landscaping, and special attention will be paid to minimising visual impact from nearby and distant viewpoints. As in the Local Plan, Policy H5 allows only certain types of new houses outside defined settlements and paragraph 6.12 defines new housing as including caravans and mobile homes.
- 3.7 Policy H9 of the UDP states as follows:

*In exceptional circumstances, where sites for caravans for individual gypsy families cannot be accommodated within settlement limits, consideration will be given to other proposals, subject to compliance with Policy GDP1.*

Policy GDP1 sets out general development principles that all new development must satisfy.

- 3.8 National policy advice is contained in Planning Policy Wales (PPW) March 2002. Section 2.6 sets out advice on the treatment of Green Belts and green wedges, a term which includes local designations. Paragraph 2.6.10 advises that green wedges should be established through UDPs. Paragraph 2.6.14 states that there will be a presumption against

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<sup>6</sup> Doc 12

<sup>7</sup> Doc 14

inappropriate development in a green wedge. Paragraph 2.6.18 advises that other forms of development, which would include changes in the use of land, would be inappropriate unless they maintain the openness of the green wedge and do not conflict with the purposes of including land within it.

- 3.9 Advice on housing is contained in Chapter 9 of PPW. Paragraph 9.2.17 states that local authorities must indicate (*in UDPs*) the regard they have had to meeting the accommodation needs of gypsy families.
- 3.10 Further advice relating to gypsy sites is given in Welsh Office Circular 2/94. Paragraph 1 states that its main intentions include providing that the planning system recognises the need for accommodation consistent with gypsies' nomadic lifestyle. Paragraph 9 refers to the importance of making adequate gypsy site provision in development plans. Paragraph 12 advises that locations should be identified in development plans wherever possible and that where this is not possible site provision policies should have clear and realistic criteria. Paragraph 13 indicates that gypsy sites are not normally regarded as an appropriate use of land in Green Belts and sites for gypsies should not be allocated on Green Belt land in development plans. Paragraph 14 points out that sites outside settlements but within a reasonable distance of services and facilities might be considered. Sites on the outskirts of built up areas may be appropriate provided care is taken to avoid encroaching on the open countryside. Paragraph 21 stresses that private applications should not be refused on the grounds that public provision is adequate or that alternative accommodation is available elsewhere on local authority sites.
- 3.11 Welsh Office Circular 76/94 sets out the definition of a gypsy as in Section 24 of the Caravan Sites and Control of Development Act 1960. Paragraph 3 of the Circular refers to the clarification of this definition provided by the judgement in *R v South Hams DC ex parte Gibb*.

#### **4. Planning History<sup>8</sup>**

- 4.1 Temporary planning permission was granted in 1987 for a timber storage shed and renewed with an expiry date of 31 December 1991. It is not disputed that this is the large wooden workshop and storage building adjacent to the north west boundary of the site<sup>9</sup>. No action has been taken to secure the removal of this building.
- 4.2 The appellants have made 3 previous applications on the appeal site, for the stationing of a residential caravan in 1994 and use as a gypsy caravan site in 1995 and 1999. It appears that the last of these was subject of an appeal that was withdrawn.

#### **5. Other Agreed Facts**

- 5.1 A draft statement of common ground was submitted by the appellants at the start of the inquiry. This was amended by the Council by the deletion of the paragraphs they disagreed with and some handwritten additions and changes. Document 6 is the agreed Statement of Common Ground.

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<sup>8</sup> Doc 9i – Sect 3; Doc 23 – Sect 4

<sup>9</sup> See paragraph 2.4 above



## 6. The Case for the Appellants

### *Policy*

- 6.1 Local Plan Policy S3 does not contain a presumption against inappropriate development in green barriers. This is a local designation that pre-dates PPW, which requires green wedges to be established through UDPs. The Inspector who held the first inquiry accepted that it was incorrect to apply the test of inappropriate development to the green barriers in Wrexham until they had been reviewed through the UDP process, as required by PPW<sup>10</sup>. That review has not taken place and the changed status of green barriers as a result of PPW has not been subject to public consultation.
- 6.2 Policy EC1 of the UDP does not set out a presumption against inappropriate development, even though the policy wording was considered by the Inspector at the Local Plan inquiry<sup>11</sup>. If a proposal were in conflict with Policy EC1 the developer would not know that very exceptional circumstances had to be demonstrated, as opposed to relying on material considerations. No more weight can therefore be given to green barrier policy in the UDP than under Policy S3 of the Local Plan, which does not require the developer to demonstrate that very exceptional circumstances exist where there is a conflict. Be that as it may, the evidence demonstrates that very exceptional circumstances exist in this case.
- 6.3 Nor has the SLA designation been reviewed. It is not based on a formal scientific assessment of the area's landscape value as required by paragraph 5.3.11 of PPW and so little weight can be given to UDP Policy EC5.
- 6.4 Turning to gypsy policies, the general thrust of Structure Plan Policy B13 that gypsy sites may be located in the countryside still applies. It accords with Circular 2/94. Policy B13 and the Circular confirm that gypsy caravan sites are 'other uses appropriate to a rural area', which Structure Plan Policy H2 and Local Plan Policy S3 permit in the green barrier. Similar conclusions were reached in an appeal near Blackpool<sup>12</sup>.
- 6.5 The UDP contains no assessment of quantitative need and it has been confirmed at appeal that Circular 2/94 requires this<sup>13</sup>. PPW similarly advises that housing policies should be based on a quantitative assessment of need. Chapter 9 deals with housing, which should be interpreted as including caravans and mobile homes. Reference to housing needs must include gypsies and travellers. Paragraph 9.2.17 explicitly refers to the accommodation needs of gypsy families. Failure to assess the need for gypsy site accommodation discriminates against the appellants, contrary to the Race Relations (Amendment) Act 2000.
- 6.6 Nor does the UDP identify sites. Policy H9 unrealistically suggests that in the first instance sites should be within settlements, but acknowledges they may be acceptable outside settlements. Circular 2/94 makes it clear that sites should be identified and only if that is not possible should a plan include a criteria based policy. But Policy H9 does not contain any criteria. The UDP is hence inadequate with regard to provision for gypsies and Policy H9 should be given little weight. The Local Plan Inspector recommended changes to the policy

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<sup>10</sup> Doc 24 – App1, para 23

<sup>11</sup> Doc 11iii

<sup>12</sup> Doc 24 – App 2

<sup>13</sup> Doc 24 – App 3

but these were rejected by the Council<sup>14</sup>. In similar circumstances where a gypsy policy did not accord with government advice little weight was attached to it at appeal<sup>15</sup>.

- 6.7 Interference with the appellants' rights under Article 8(1) of the European Convention on Human Rights (ECHR) would not be justified by application of a development plan framework that does not accord with the law. It would discriminate against Mr Berry and would invalidate the argument that the interference with his rights if the appeals were dismissed would meet a pressing social need.

#### *Gypsy Status*<sup>16</sup>

- 6.8 The appeal site is occupied by Mr Michael and Mrs Florence Berry and their 6 youngest children – Mary (23), Jack (17), Paddy (13), Kathleen (11), Miles<sup>17</sup> (8) and Florence (7). Mr Berry is too ill to work and is unlikely to be able to resume working manually. Since the last inquiry he has travelled with his extended family, including their older daughters Ann Cash and Margaret Maguire, their eldest son Jerry and their families. They travel together to Ireland for 1 week every year for a family gathering and the Patron Mass for family members. In 2002 they were in Sweden for 8 weeks and travelled in parts of England doing various types of work. Mr and Mrs Berry looked after the children whilst the other adults worked. Michael Berry advised on pricing and doing the work. Gypsy families have lived for generations like this, working together and co-operating to work, including the older family members.
- 6.9 In 2003 they spent 6 months in Sweden on various sites. In 2004 they were in Ellesmere Port for 2-3 weeks, Chester for 1 week and Porthmadog for 3 weeks. They have travelled in 2004 to the Appleby Horse Fair, the May and October Stowe Fairs, and a monthly fair at Holmfirth, staying respectively for 3 days, 2 days at each, and overnight. Michael and Jack trade in horses, carts and harnesses. They have 4 horses and a foal. Michael is teaching Jack the business of horse trading. They have travelled for more than 7 weeks this year.
- 6.10 Jack is a self employed landscape gardener and travels to work in the Chester, Birkenhead and Liverpool areas. He has also travelled to Sweden to work and spent 8 months there in 2003. Paddy has travelled since April 2004 with his sister Ann and her husband Andy Cash, mainly in Sweden, learning how to lay paving and tarmacadam. He returned to school in November but intends to pursue a gypsy way of life when he leaves. Florence lived in Sweden with Ann and Andy from April-October 2004.
- 6.11 In *Greenwich LBC v Powell* [1989] 1 AC 995 the House of Lords interpreted the statutory definition of a gypsy as including a person leading a nomadic habit of life seasonally, returning regularly to the same site. The Court of Appeal in *R v South Hams DC ex p Gibb* [1995] QB 158 held that 'gypsies' meant persons who wandered or travelled for the purpose of making or seeking their livelihood. The judgement in *Maidstone BC v SSE and Dunn* [1996] JPL 584<sup>18</sup> established that the sporadic nomadic life does not have to be very substantial.

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<sup>14</sup> Docs 11ii, 13i

<sup>15</sup> Doc 24 – App 3

<sup>16</sup> Doc 23, paras 5.15-25; Doc 25

<sup>17</sup> Also known as Miley

<sup>18</sup> Doc 24 – App 4

- 6.12 The tests of whether or not a person is a gypsy are now set out in the Court of Appeal judgement on these appeals<sup>19</sup>. Auld LJ stated that it remained for another case to review the link between livelihood and travelling identified in *South Hams*. Clarke LJ stated that the time for deciding upon status is the date of the decision; the decision is one of fact and degree; a gypsy may retain the nomadic habit of life even if temporarily confined to a permanent base for personal reasons; and where that is the case the question is whether, as matter of fact, they have abandoned the nomadic way of life. Relevant to this decision could be the person's history and whether they were ethnic; whether other family members were nomadic; whether there was a proven intention to resume travelling; what would happen if they were forced to move; the attitude to a conventional house; and all the surrounding circumstances relevant to whether the site would be a gypsy caravan site. Clarke LJ also confirmed that gypsy status may be retained for planning purposes even though it may be some time before a person can resume travelling provided he can show that he has not abandoned the nomadic habit of life. The case of *R v Shropshire CC ex p Bungay* [1991] 23 HLR<sup>20</sup> confirms that a person may stop travelling for a substantial period but retain gypsy status because there was a precise reason, such as old age and ill health.
- 6.13 In this case Mr Berry is in the same position as the gypsy in *Bungay* and so retains gypsy status. Mrs Berry's gypsy status would be in abeyance following *Bungay*. Jack satisfies the statutory definition. But Mr Berry also fulfils the statutory definition as he is travelling. He goes out to price jobs for his family, evidence that was not before the original inquiry. This combined with the trading in horses at fairs and his ill health is enough to confirm that he retains the nomadic habit of life. The facts are unlike those in *Hearne v National Assembly for Wales and Carmarthenshire CC* QBENF 1999/0648/C<sup>21</sup>. Although Mr Berry is too ill to work he travels for other reasons. Failure to apply gypsy policies would violate his rights under the ECHR by failing to facilitate the gypsy way of life.

*Countryside and Green Barrier*<sup>22</sup>

- 6.14 Before being bought by the appellants in 1994 the appeal site contained a wooden storage building and enclosures for keeping poultry. The site was derelict and overgrown and 40 tons of rubbish were removed by the appellants. The site is small, low lying and unobtrusive. It is well screened by hedgerows and adjoins the built up area on 2 sides. It is only visible in short and medium range views but the hedgerows and proximity to the built up area minimise the visual impact. The site could be landscaped and screened to further reduce the impact of the fencing and caravans<sup>23</sup>. The static mobile home could be painted a dark colour. The appeal site therefore does not intrude into the open countryside and because it is an enclosed parcel of land it does not detract significantly from the openness of the green barrier. Because of its different character it is not seen as an extension of the urban area. The Council accepted at the inquiry that the only objective of the green barrier of concern was encroachment on the open countryside. Since this does not occur the objectives of the green barrier are not prejudiced.
- 6.15 There is therefore no material conflict with Local Plan Policy S3, which seeks to protect the open character of the area. Nor is there any harm to the SLA or conflict with Policy E7.

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<sup>19</sup> Doc 10A

<sup>20</sup> Doc 33 - para 10

<sup>21</sup> Doc 33 - para 14

<sup>22</sup> Doc 23 - paras 5.26-34

<sup>23</sup> Doc 24 - App 5

With regard to Policy S4, criterion (a) is met since UDP Policy H9 acknowledges that gypsy sites may be acceptable outside settlement limits and the appeal site is appropriate to its rural setting. Criterion (b) is met since the site does not materially detract from the landscape. Criterion (c) is satisfied as there is no objection from the Highway Authority. A visibility splay of 2m x 70m is available to the south. To the north the existing visibility of 2m x 58 metres exceeds the 2m x 45m suggested in TAN18 for the speed of traffic round the bend. There is no impact on local residents as required by criterion (d) and no objection has been raised on criteria (e)-(h).

- 6.16 For similar reasons the location of the site satisfies many of the criteria of Policy HSG12 of the Structure Plan Second Alteration, which are consistent with those in Circular 2/94. The Council's planning witness agreed at the inquiry that Policy HSG12 could be used to judge the appeal site and that it was a useful indication of the sort of criteria that could be applied. With regard to criterion (F) the site is 1 mile from the centre of Wrexham, where there are 2 Catholic schools that the appellants' children attend, and the medical facilities required by the family, Mr Berry in particular. Criterion (G) is met since the site is less than 250 metres from Ruthin Road. The site's appearance has been enhanced compared with its former condition and there is minimal impact on agricultural land, so satisfying criterion (H).
- 6.17 The criteria of UDP Policy GDP1 are met for the same reasons. Consequently, the appeal site can be said to satisfy Policy H9. But the supporting text to Policy H9<sup>24</sup> refers to environmental and locational policies. On this basis the use of the appeal site conflicts with Policy H9 since Policy EC1 does not permit caravan sites in the green barrier. The development hence conflicts with UDP policies designed to protect the landscape and the green barrier. It is accepted that the advice in PPW gives a different policy context from the original inquiry by adding substantial weight to conflict with green barrier policy. But the weight to be attached to such conflict is reduced because the purposes of the green barrier are not compromised. The impact on openness and the countryside is not significant. The weight to be attached to conflict with Policy EC1 is further reduced by the fact that it contains no presumption against inappropriate development and because there is no UDP policy adequately addressing the needs of gypsies.
- 6.18 In any event, if it is found that the appellants are not statutory gypsies little weight should be attached to conflict with Policy EC1, because the UDP would impose a requirement with which members of a racial group would be unable to comply. This would be a breach of the Race Relations (Amendment) Act 2000. They need to live in a caravan in accordance with their traditional lifestyle. The judgement in *Chapman v United Kingdom* [2001] 33 EHRR 18<sup>25</sup> was based on the need for gypsies to be given special consideration because of their nomadic lifestyle. The European Court would not consider the need to protect Mr Berry's lifestyle as having ceased when he became too ill to travel. The United Kingdom Government is committed to protecting the rights and freedoms of people belonging to national minorities. The appellants belong to the minority ethnic group of Irish Travellers. This is integral to their personal need irrespective of whether they are gypsies for planning purposes. The Council's planning officer accepted in cross-examination that the local planning authority had the discretion to apply Policy H9 in such circumstances. This is the only policy that could be applied to someone who is an ethnic gypsy but does not satisfy the

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<sup>24</sup> Doc 12 – Para 6.19

<sup>25</sup> Doc 32i

statutory definition. It is designed to meet the needs of gypsies and the Council has discretion to decide the ambit of its policies.

*Need for Gypsy Sites*<sup>26</sup>

- 6.19 Circular 2/94 makes clear that the planning system must recognise the need for accommodation consistent with gypsies' nomadic lifestyle. Need has been accepted by the courts as a significant material consideration, particularly in *Hedges v SSE* [1997] 73 P&CR 534. There is low provision in Wales compared with England and the aim of Circular 2/94 to enable gypsies to provide their own sites is not being met<sup>27</sup>. The National Assembly for Wales Equality of Opportunity Committee has carried out a policy review of provision for gypsies and travellers<sup>28</sup>. Their report accepts there is a national shortage of gypsy sites in Wales and contains a number of recommendations being considered by a Ministerial Working Group within the Assembly. A review of national policy is underway in parallel with that in England.
- 6.20 There is a long history of unauthorised camping in the Wrexham area, the annual counts showing an average of 42 caravans on unauthorised sites in Clwyd between 1980-1996. Clwyd County Council made strenuous efforts over many years to find gypsy sites but only the site at Ruthin Road was opened, in 1986, although 83 potential sites were assessed. There was a large unauthorised site at Croesnewydd Road from 1987 to 1999. In the 1994 appeal decision<sup>29</sup> granting a temporary 2 year permission for this site the Inspector concluded there was an obvious need for additional gypsy sites in the Wrexham Maelor area. In 1997 there were 13 families on the Ruthin Road site and 26 families with 37 caravans on unauthorised sites, 24 of these families being at Croesnewydd Road<sup>30</sup>.
- 6.21 The 9 additional pitches provided at Ruthin Road did not compensate for the closure of the Croesnewydd Road site. Of the 24 families there when it closed, 1 is at Ruthin Road, 9 went into houses, 5 are travelling in Ireland or Liverpool, and 7 are travelling as part of a larger group between unauthorised sites in the Chester/Ellesmere Port/North Wales/Shropshire area. Many of these families are from the Wrexham area and send their children to school in the town. Of the 9 families that went into houses several have resumed travelling. The appellants' daughter Margaret McGuire and her family are part of this group and in her view 8 or 9 families would return to Wrexham if a suitable site were available. Three of Margaret's children go to St Anne's Catholic Primary School in Wrexham. She delivers them to the appeal site each morning, from where they catch a school bus. She prefers to do this and live on an unauthorised site than move to Ruthin Road; other members of the group feel the same. Most families from the Croesnewydd Road site would not move to Ruthin Road because of past problems of violence, theft and intimidation. The groups on the 2 sites are from different ethnic backgrounds and do not mix, a problem recognised at appeal<sup>31</sup>.
- 6.22 The Council has contrived to keep a pitch available at Ruthin Road by reserving it for the appellants. If there was an objective allocation policy it would have been let some time ago. There are 24 families at Ruthin Road on 16 pitches out of a total of 19. If all 3 vacant pitches were let to them there would still be 5 without their own pitch. There are 8/9

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<sup>26</sup> Doc 23 – paras 5.44-67

<sup>27</sup> Doc 21

<sup>28</sup> Doc 22 - App 2

<sup>29</sup> Doc 24 – App 7

<sup>30</sup> Doc 24 – App 8

<sup>31</sup> Doc 24 – App 9

additional families in the group with whom Margaret McGuire is travelling who would like a site in Wrexham and 4 of the families from Croesnewydd Road have resumed travelling. That alone gives a partial need for some 17-18 sites. But there is further demand demonstrated by the unauthorised camping in the Wrexham area. Seventeen families stopped on the Wrexham Industrial Estate in May 2002. The Council's record of unauthorised camping<sup>32</sup> also indicates a need. But it only records the cases that come to the Council's attention and is a partial picture, since the police in Wrexham move travellers on quickly. The Council has carried out no counts since 1997. The evidence demonstrates a considerable unmet need for gypsy sites in the Borough.

- 6.23 The Ruthin Road site is poor. The roads do not allow vehicles to pass. There is no amenity area or children's play space. The accommodation is cramped<sup>33</sup>. Some caravans are less than 4 metres apart and less than 1 metre from the road. This does not comply with the Council's site licensing conditions<sup>34</sup>, which require each caravan to be 3 metres from the plot boundary and 2 metres from the road. It is a breach of fire regulations that would expose a private sector owner to a fine. On the 15 metre square plots on Ruthin Road compliance with the site licensing conditions would leave a 10 metre square area, too small for the appellants' 12 metre long static caravan. The Council's Housing Operations Manager accepted at the inquiry that the quality of life was better at the appeal site.
- 6.24 The appellants bought the appeal site in 1994 for £7500 and have looked for alternatives for 14 years. Other sites they have looked at have been poorly located or too expensive. In late 2000 Mr Berry visited every estate agent in Wrexham, Chester and Mold looking for a plot for a small caravan site but none was available. From the failed efforts of the Clwyd County Council, the failure of Wrexham Borough Council to identify any sites in their Local Plan or UDP, and the appellants' lack of success it is clear that there is no realistic prospect of the appellants finding an alternative site. Even if one were available the appellants are on benefits and income support and could not afford it. This is not challenged.

#### *Personal Circumstances*<sup>35</sup>

- 6.25 The appellants' personal circumstances apply irrespective of whether they are gypsies for planning purposes<sup>36</sup>. The appellants' 4 youngest children attend local schools. Miles has speech and language problems and is on a Special Needs Register<sup>37</sup>. Kathleen is also on the Special Needs Register and receives support for literacy and numeracy. Her skills are improving. Mrs Berry ensures that her daughter Margaret's 3 children attend St Anne's Catholic Primary School. The appellants have built up links with their children's school and are very supportive. The school confirms that periods of absence from the school have a detrimental impact on the children's learning and that the appeal site is very important to the family's stability and the children's future education. The 1999 report 'Raising the Attainment of Minority Ethnic Pupils: School and LEA Responses' found that gypsy/traveller children are most at risk in the education system. The case of *Basildon DC v SSETR & Others* [2001] JPL 1184<sup>38</sup> recognised the need for gypsy families to have stability in the interests of the education of their children. If the family are forced to leave the appeal

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<sup>32</sup> Doc 15

<sup>33</sup> Doc 21 – para 20

<sup>34</sup> Doc 16 – para 3.1

<sup>35</sup> Doc 23 – paras 5.68-78

<sup>36</sup> Doc 10A – para 20; Doc 24 – App 10, para 20

<sup>37</sup> Doc 26 – App AFB1

<sup>38</sup> Doc 24 – App 12

site they would not go to Ruthin Road but would end up living at the side of the road because of the lack of alternatives. It would be impossible for the appellants to send their children to school in these circumstances as they might have to move before the end of the school day.

- 6.26 Mr Berry has coronary heart disease. He has been in hospital 3 times in the past year because of chest pain and visits the Heart Failure Team in Wrexham Hospital weekly. His doctor confirms the need for him to have consistency of care and the importance of familiar medical professionals who know him and his history<sup>39</sup>. He also expresses concern at the impact on Mr Berry of being forced to move from Wrexham and he confirms the health problems of the gypsy travelling community. In addition Mary suffers from psoriasis and depression and attends the local hospital. The family benefits from being settled on the appeal site and having stable access to health care. Research for the Department of Health by Birmingham University has highlighted the health problems of gypsies and travellers<sup>40</sup>. Forcing the appellants to leave the appeal site would have a serious impact on the family's health and safety.

*Very Exceptional Circumstances*<sup>41</sup>

- 6.27 Very exceptional circumstances do not need to be shown because Policy EC1 does not require it. But if it is concluded that this is the correct approach, the case of *South Bucks DC & another v. Porter* [2004] UKHL 33 is important. In this the House of Lords upheld the view that the lack of an alternative, the applicant's chronic illness and the impact on her of being forced to move amounted to very special circumstances<sup>42</sup>.
- 6.28 The appellants have nowhere else to go. They moved to the appeal site from Ruthin Road because of assaults on Mr Berry and the person responsible still lives there. The family, including the children, was subject to violence, bullying and verbal abuse, and their possessions were continually stolen or broken. Mrs Berry had been particularly concerned at the effect this was having on her husband's health. Setting aside the fact that the Ruthin Road site is cramped and the pitch too small for the appellant's caravan, the impact on the children and on the health of Mr Berry of being forced to return there would be unacceptable. It is not true that they get water from Ruthin Road; they have not done so for over 3 years. Their water comes from a garage in Wrexham<sup>43</sup>. The Council confirmed at the inquiry that there is nowhere else in the District where an ethnic or statutory gypsy could set up a site without being in breach of development plan policy.
- 6.29 With regard to education, the Council refers to *Chelmsford v FSS & Draper* CO/3497/2003<sup>44</sup> but in that case only education was relied on. In this case there is a combination of factors and *Basildon v FSS & Temple* CO/1799/2004<sup>45</sup> confirms that a number of ordinary factors when combined may amount to something very special. The unmet need for more gypsy sites and lack of an alternative site; health and education considerations; the absence of any assessment of need and lack of effective policies in the

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<sup>39</sup> Doc 26 – App AFB2

<sup>40</sup> Doc 22 - App 1: page 7, second paragraph

<sup>41</sup> Doc 23 – paras 5.79-85

<sup>42</sup> Inspector's Note: It was agreed at the inquiry that the phrase "very exceptional circumstances" used in PPW implies the same policy test as "very special circumstances" used in PPG2 in England.

<sup>43</sup> Doc 27

<sup>44</sup> Doc 18

<sup>45</sup> Doc 32v – para 17

UDP, together heavily outweigh the weight to be attached to conflict with green barrier and SLA policies and the slight harm caused by the use of the appeal site.

#### *Other Matters*

6.30 It is regretted if the appellants' dogs have caused problems. But such problems could be caused by any dog owner in a residential area and there are other means of control. With regard to the commercial vehicles parked on the site, a condition would be acceptable limiting the size of vehicle that could be parked here. The application is for a residential site and not for commercial activity.

#### *Ground (g): Period for Compliance with the Enforcement Notice/Temporary Permission*

6.31 The period is inadequate for the appellants to find another home and should be extended. But alternatively a temporary permission could be granted on the grounds that the UDP is deficient and because it is likely there would be a significant policy change at national level resulting from the current policy review. A temporary permission would allow the Council to re-examine its UDP gypsy policies and carry out a needs assessment, and would allow any change in national policy to be taken into account. There is nothing to indicate a realistic prospect of another site becoming available within 6-12 months. Unless it is clear that a site will become available it would be better to grant a temporary permission than allow a longer compliance period.

#### *Human Rights*

6.32 If the appeals were dismissed the appellants would have to leave the appeal site. They would not go to Ruthin Road but would live at the side of the road. This would be a violation of their rights under Article 8 of the ECHR. The correct approach is in 2 stages as set out in *Samaroo v SoS for the Home Department (unreported)*<sup>46</sup>. The interference with the appellants' rights would be disproportionate to any benefits in terms of the protection of the environment. *Chapman* confirms that there is a positive duty to facilitate the gypsy way of life. This case concerns the appellants' home, their identity and their way of life.

6.33 If the appellants have to move from the appeal site then it should not be until the Council has undertaken a proper assessment of need and found a better site for them. In a similar case in England a temporary permission was granted for this process to be carried out although the site was in the Green Belt<sup>47</sup>. It would take 2-3 years to carry out a proper quantitative assessment.

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<sup>46</sup> Doc 20 – para 4

<sup>47</sup> Doc 24 – App 11



## 7. The Case for the Council

7.1 The Council agrees that the 3 main issues are whether the appellants are gypsies for the purposes of planning policy; whether the development accords with local and national policies; and are there very exceptional circumstances sufficient to outweigh the harm caused by the use of the appeal site<sup>48</sup>.

### *Gypsy Status*

7.2 The judgement in the Court of Appeal<sup>49</sup> confirms that the effect of the statutory and policy definition of a 'gypsy' focuses on their current nomadic lifestyle and that applicants no longer pursuing that lifestyle do not come under policies that make provision for it. The policy definition of gypsies is in Circulars 2/94 and 76/94. These define gypsies by reference to a pattern of full-time, seasonal or periodic travelling for the purpose of work. On the basis of the evidence at the last inquiry the appellants did not lead a nomadic life and therefore do not benefit from planning policies applying to gypsies. The application of gypsy site policies to the appeals has been considered, but without prejudice to the Council's case.

7.3 The evidence of travelling since the previous inquiry is at best equivocal. The trip to Sweden was described by Mr Berry in cross-examination as something of a holiday, although he advised his son Jack on work. Trips to Ellesmere Port and Chester have also involved him in giving advice. Mr Berry accepted that, of the family living on the appeal site, only Jack is working. This does not support the assertion that the site is a base for work-related travel and used as a gypsy caravan site.

### *Policy*<sup>50</sup>

7.4 The Wrexham Maelor Local Plan and Clwyd Structure Plan First Alteration are the development plan until the UDP is adopted. The Structure Plan Second Alteration was not adopted and has been superseded by the UDP.

7.5 Local Plan Policy S1 directs new residential development to within defined settlements, in accordance with Circular 2/94 that refers to the need to avoid gypsy sites encroaching on the open countryside. Local Plan Policy S3 protects green barriers. This is a local designation used to protect the countryside from development that would affect its openness. It provides the strongest level of protection and performs the same function as the green wedge in PPW. It should therefore receive the same level of protection as the Green Belt. The development of the appeal site is contrary to Local Plan Policies S1, S3, S4(b) and H5 and to Structure Plan Policy H2. It would be harmful to the landscape of the SLA, contrary to Local Plan Policy E7. Due to the repeal of the Caravan Sites Act 1968 Structure Plan Policy B13 no longer applies.

7.6 In view of its imminent adoption, the greatest weight should be attached to the relevant policies in the UDP, particularly H9, GDP1, EC1 and EC5, which should attract greater weight than the Local Plan policies, including S3. There is no doubt that the development damages the open character of the area. Screening the site with fencing or landscaping is not acceptable, as advised in paragraph 9.3.6 of PPW; it is an argument that can be too easily

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<sup>48</sup> Doc 19

<sup>49</sup> Doc 10A

<sup>50</sup> Doc 9i – Sections 5, 7.7.1-22

repeated. The mobile home, static caravan and ancillary structures are an encroachment on the countryside, contrary to Policy EC1. The use of the appeal site introduces an urban form of development into an attractive area of open countryside on the edge of the built up area, seriously harming the local landscape contrary to Policy EC5.

- 7.7 The appellants argue that little weight should be given to Policy EC1 and that it does not apply a presumption against inappropriate development since it does not repeat the wording of PPW and has not been the subject of public consultation. But there is nothing in PPW to indicate its advice should not be given immediate effect. The advice in section 2.6 of PPW applies to the formulation of UDP policies and determining applications; there is no indication that the presumption against inappropriate development does not apply to existing green barriers or wedges. Furthermore, the extension of protection to green wedges appeared in the draft of PPW issued in February 2001.
- 7.8 The wording of Policy EC1 is that recommended by the Local Plan Inspector whose intention was to make the policy accord more closely with PPW<sup>51</sup>. The policy accords with paragraph 2.6.18 of PPW and ensures that applications for inappropriate development would not be in accord with the UDP, as required by PPW paragraph 2.6.15. The UDP need not say how departures from the UDP will be assessed since this is set out in PPW. As to public consultation, the proposed modifications to the UDP were advertised and open to objection. At the time of the Modifications Report, July 2003<sup>52</sup>, green wedge policy in PPW had been in the public domain for over a year. Policy EC1 meets the advice in PPW and should be accorded substantial weight.
- 7.9 As to the SLA, since PPW was published shortly before the UDP inquiry was held it was not possible for the Council to carry out a landscape appraisal as advised in paragraph 5.3.11 of PPW. The Local Plan Inspector considered this policy but recommended no changes in this respect<sup>53</sup>. The planning witness stated at the inquiry that this was an interesting area of landscape encompassing hills on the fringes of Wrexham.
- 7.10 The existing use of the site is contrary to the advice in paragraph 13 of Circular 2/94. It also conflicts with green wedge policy in PPW, which requires that substantial weight is given to harm caused by inappropriate development in a green wedge.
- 7.11 The Council's planning witness confirmed at the inquiry that the purpose of the green barrier here is to protect the countryside from encroachment and not to prevent the coalescence of settlements. The area needed this level of extra protection because of its sensitive location close to a large urban area. The Council also confirmed at the inquiry that the Ruthin Road official gypsy site had been in the green barrier when the site was extended by adding 9 pitches for the Croesnewydd Road residents.

#### *Very Exceptional Circumstances*

- 7.12 The approach must be that adopted in *Chelmsford BC v FSS & Draper*<sup>54</sup>. There must be a combination of factors that can reasonably be described as very exceptional and which clearly outweigh the harm to the green barrier.

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<sup>51</sup> Doc 11iii

<sup>52</sup> Doc 13i

<sup>53</sup> Doc 11i

<sup>54</sup> Doc 18 – paras 56 & 58

- 7.13 Dealing first with gypsy policies, the Council accepts that there is no relevant policy in the Local Plan. But there is a policy in the UDP. Although no quantitative assessment of the need for gypsy sites is contained in the Local Plan or the UDP, Policy H9 accords with the thrust of Circular 2/94. The policy makes it clear that proposals outside settlement limits will be considered. The policy gives more flexibility in finding a suitable site than setting rigid criteria. The Council's policy is to invite developers to discuss proposals at an early stage. Representations on the policy were made by groups representing gypsy interests during consultations on the draft UDP and at the deposit stage. Objections to the policy were considered at the UDP inquiry<sup>55</sup>. Whilst the Council did not accept the Inspector's recommendation, this does not refer to lack of consultation or quantitative assessment. The Council's strategy in the UDP<sup>56</sup> is to provide additional pitches at Ruthin Road, which has been done; close the unofficial Croesnewydd Road site, also carried out; provide housing for gypsies who want it; and encourage gypsies to develop appropriate sites themselves. There were no objections to this strategy in the UDP. The records of unauthorised camping and the personal knowledge of the Council's planning officers confirm that in the past 5 years there has been very little unauthorised gypsy camping in the area<sup>57</sup>. There is a vacant plot on the official Ruthin Road site that has been reserved for the appellants. It is far from clear that a quantitative assessment would have resulted in a material change to the strategy given the lack of evidence of unmet demand.
- 7.14 If the appeal site is subject to Policy H9 as a gypsy caravan site, the use must satisfy Policy GDP1 and environmental Policies EC1 and EC5. The development conflicts with these and hence does not comply with Policy H9. If Policy H9 is not considered adequate then the advice in Circular 2/94 and PPW must be considered. Neither contemplates a gypsy caravan site in the Green Belt nor, since PPW applies the same policy to both, in a green barrier. If a quantitative assessment had been carried out there is no reason to conclude that this would have provided a more favourable policy context. Absence of such an assessment does not outweigh the harm to the green barrier.
- 7.15 The planning witness confirmed at the inquiry that the Council does not take the view that permanent housing is an option for the appellants. Their need for accommodation is accepted. But it is not exceptional. It does not have to be met on the appeal site and could be met at Ruthin Road<sup>58</sup>. The site has 19 concrete, fenced pitches. Three pitches are vacant, 2 of which are to be let to families currently sharing other pitches on the site. Plot 14, the one formerly occupied by Mr and Mrs Berry, has been reserved for them and remains vacant. There are 81 people officially registered as living on the site but at least 90 adults and children live there, in 23-24 families. The site has an office open Monday-Friday from 0730-1530 and is managed by an Acting Gypsy Liaison Officer and a support worker. It is accepted that Mr Berry was not happy at having to move from Croesnewydd Road to Ruthin Road when the former illegal site closed in 1999. He complained about anti-social behaviour, joy riding, stealing, bad language, fighting and friction between residents. The site was at that time unsettled but the problems have diminished and it will soon be almost fully occupied, indicating that the site is far more stable than after the Croesnewydd Road site closed. The housing witness confirmed at the inquiry that the site had been full in March 2001 apart from Plot 14, which probably could have been let at that time.

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<sup>55</sup> Docs 11ii, 13i

<sup>56</sup> Doc 12 – para 6.19

<sup>57</sup> Doc 15

<sup>58</sup> Doc 7

- 7.16 When Mr Berry was interviewed for re-housing about 5 years ago he showed clear signs of having been assaulted. Mr Berry said this had been by Mr Purcell. But the incident between Mr Berry and Mr Purcell occurred several years ago and Mr Purcell's recent behaviour has not caused complaint. Jack Berry visits and stays on the site regularly and the appellants visit to fill water containers. No problems have occurred on these visits. The appellants' concerns, although no doubt genuine, do not make the Ruthin Road site unacceptable as an alternative. The Council does not reject development of the appeal site because there is space at Ruthin Road, recognising the advice in paragraph 21 of Circular 2/94. But the availability of space on the official site weakens the argument for breaching green barrier policies.
- 7.17 There are large areas of land around Wrexham and other settlements in the Borough that are not subject to green barrier, SLA or flooding constraints<sup>59</sup>. The Council has been willing for many years to discuss the appellants' requirements and help them find another site but that offer has not been taken up. No substantial evidence has been given of the appellants' means. But their land, mobile home, 2 caravans, Mercedes car and pick-up truck, horses and extended trips to Sweden indicate, notwithstanding they are receiving benefits, that they are not without assets or income. There is every prospect that an alternative site could be found with the Council's assistance.
- 7.18 With regard to the wider need for sites, Mr Wilson could not give a figure at the inquiry and Mr Brown's estimate of 18-20 was not credible, being based simply on adding up those families who share pitches at Ruthin Road and those who have been in Wrexham at some time but live here no longer. There is no evidence to show a significant unmet need, let alone an exceptional need.
- 7.19 The children's educational needs are accepted but are not remotely unusual<sup>60</sup>. Miles and Kathleen attend St Anne's Primary School, some 2.44 miles by road from the appeal site. Paddy goes to St Joseph's High School, about 1.12 miles away. The 3 children have free transport to and from school. Miles receives Speech and Language Therapy (SALT) and is on the School Action Plus register, which involves external support services. He receives support from the Traveller Education Support Services (TESS) 3 times a week. But 3% of the school's pupils are on the School Action Plus Register; throughout the Borough the figure is 2% or 200 pupils. Kathleen has learning difficulties, particularly numeracy and receives support from the Resourced Provision Unit at the school, together with weekly help from the TESS and Special Education Support Staff. Paddy is severely dyslexic and receives a lot of support from the Learning Support Department. The appellants' 3 grandchildren also attend St Anne's when they stay at the appeal site. The appellant's children are happy and settled at school. St Anne's welcomes traveller children and has vast experience of their culture. They employ a Traveller Nursery Nurse for half a week and the Traveller Education Service Coordinator supports the children 2 mornings each week and gives pastoral support. This level of support is not available in any other school in the Borough. However, wherever the children lived in the Borough, including Ruthin Road, they would be able to attend St Anne's and St Joseph's and would have free school transport. The National Assembly's guideline is that no primary school pupil should travel more than 45 minutes to school; for secondary school the figure is 1 hour. Nowhere in the Borough would be more than about 40 minutes from the schools in Wrexham and on that

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<sup>59</sup> Plan B

<sup>60</sup> Doc 8

basis large sections of the Borough could be examined for an alternative site, some of which to the north east of the town would be closer to St Anne's.

- 7.20 With regard to the appellants' health needs, they returned from Sweden twice in 2003 to attend hospital appointments. They have managed to travel elsewhere without difficulty. There is no reason to conclude that their health needs could only be met if they are living on the appeal site.
- 7.21 The Council is concerned at the precedent that would be created if planning permission were granted without truly exceptional circumstances. The development occupies a relatively small part of the appeal site and it could be difficult to resist further applications, for example for an additional caravan for a family member or for business activities

#### *Highway Issues*

- 7.22 The Council's Highways Department does not object subject to the provision of a visibility splay of 2m x 70 metres in both directions. This would make the site more open to view and prominent in the landscape since screen hedging would have to be removed. New hedging would take a number of years to become an effective screen.

#### *Human Rights*

- 7.23 The Council accepts that their actions amount to an interference with the appellants' rights under Article 8 of the ECHR but consider the removal of the caravans is necessary and proportionate. The *Chapman* judgement makes it clear that planning policy protecting environmentally sensitive areas may justify an interference with a person's rights under Article 8 of the ECHR. The appellant's rights must be weighed against the public interest in protecting the environment. If they have to leave, they could move to the plot on Ruthin Road they occupied from September 1999 to September 2000. They would not be homeless. They could alternatively seek permission for a caravan site outside the green barrier.
- 7.24 If the factors put forward by the appellants do not constitute the necessary very exceptional circumstances the appellants' rights under Article 8 would not materially add to those factors.

#### *Ground (g): Period for Compliance with the Enforcement Notice/Temporary Permission*

- 7.25 The appellants suggest that a 2 year compliance period would allow the Council to develop appropriate policies in the UDP and carry out a quantitative assessment of need. But the UDP does contain a policy, H9. Lack of evidence of need due to limited instances of unauthorised camping, and vacant pitches at Ruthin Road, indicate no unmet need for gypsy accommodation in the Borough. The appellants could be accommodated at Ruthin Road within the 42 day period allowed in the notice. The works to clear and reinstate the site are minor and could be carried out in the same period.
- 7.26 The appellants' suggestion of a temporary 2 year permission would be possible. But anything likely to emerge from a review of UDP gypsy policies would not make this site any the more acceptable. Although the appellants may need additional time to move from the site, the option of extending the compliance period on the notice is preferable to a temporary permission because this would avoid having to serve a fresh notice.

## 8. The Case for Interested Parties and Persons

- 8.1 The **Offa Community Council**<sup>61</sup> object on the grounds that the appeal site is in the green barrier and a SLA and the development is therefore contrary to the Local Plan. In addition, the site is on a dangerous bend with poor visibility. The lane has no pavements, is narrow and is used by children walking to the Ysgol Clywedog school. Vehicles entering and leaving the appeal site are a danger. Opposition is strengthened by complaints from residents. The appellants have not complied with the conditions imposed by the previous Inspector. The site is used for commercial activity, with 3.5 tonne lorries parked overnight. Dogs from the site roam the streets. At the inquiry Mrs Benfield, Clerk, said that Homestead Lane is the natural edge of the town and that development here would set a precedent. The green barrier would be put at risk and it was essential to prevent the coalition of Wrexham with its satellite towns such as Bersham and Coedpoeth. Homestead Lane is used as a short cut between Ruthin Road and the A483 and fast-moving cars put school children using the lane at risk. There has been a large increase in the number of pupils at Ysgol Clywedog. The Community Council had received a large number of complaints about the appellants since the previous appeal decision and everyone has the same rights. The Ruthin Road site is well run and convenient and fulfils the Council's obligations.
- 8.2 The **Homestead Residents' Association**<sup>62</sup> object on the grounds that the site is in the green barrier and its use conflicts with the Local Plan. They are also concerned at highway safety as the access is on a bend with poor visibility. There is concern that the appellants have not complied with the conditions imposed by the previous Inspector. There have been many complaints about dogs and residents have been attacked in Homestead Lane. At the inquiry Mr Crewe, Vice-Chairman, said that there was no issue with the appellants, but something needed to be done about their dogs, which had been running loose. He also pointed out that the school was closed at the time of the inquiry and that normally there would be many school children walking along the lane. In summer the hedges along the lane are thicker, reducing visibility. The lane is subject to a 60 mph speed limit where the site access is located and he had been forced to brake by a car coming out of that access. Normally a large lorry with a crane was parked on the site, which reversed out onto the lane, causing a highway danger. He stated that cars do not always slow down at the bend as concluded by the previous Inspector. Cars have taken the bend too fast and gone off the road into the hedge.
- 8.3 **Mrs McBurney** said at the inquiry that the site is open countryside. She looks straight at the caravan from her kitchen window. Although there was a touring caravan on the site on 30 November 2004 when the Inspector visited the site there had not been one there for the previous 12 months. Commercial vehicles had been parked there earlier. She had been subject to considerable stress because of the appellants' dogs and on only 2 nights out of 10 is her sleep uninterrupted. The situation was not usually like it was during the site visit, when the dogs were penned in; the pen had been built recently. The dogs wander the school playing fields and she cannot go along the lane, where 2 people have been bitten. There had been a catalogue of complaints going back several years and the site had been tidied up for the Inspector's visit, giving a false impression.

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<sup>61</sup> Doc 3ii

<sup>62</sup> Doc 3i

8.4 **Dr John Marek AM**<sup>63</sup> supported the appellants. He said that the Council had gone to any lengths to prosecute the case. When the appellants won their appeal to the High Court the Council should have let the matter be. The Council had acted unreasonably in spending so much taxpayers' money. Planning permission had been granted for over 300 houses on land north of Ruthin Road, although the UDP Inspector had ruled against it<sup>64</sup>. The land surrounding the appeal site was being considered for school playing fields. Eventually the appeal site would end up within the settlement, the natural boundary for which was the A483 Trunk Road. He had visited the site several times without telling anyone and on each occasion the site had been tidy. There had always been problems at the Croesnewydd Road site. Enlarging the Ruthin Road site had not been a good option since large gypsy sites generally were not good sites. Conditions at Ruthin Road were not good.

## 9. **Conditions**<sup>65</sup>

9.1 The conditions proposed by the Council are the same as those imposed by the previous Inspector. On **condition 4** the appellants requested a change to require the submission of a scheme to keep the vision splays clear. The Council responded that it was a matter of fact whether the splays were clear. The Council suggested that **condition 8** should explicitly refer to the provision of a water supply. The appellants supported this.

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<sup>63</sup> Docs 4i & ii

<sup>64</sup> Doc 11iv – page 150; Doc 13ii

<sup>65</sup> Doc 9i – pages 32-33

## 10. Conclusions

*[Footnote references are to the preceding paragraphs in this report]*

10.1 The appeal on ground (a) in respect of Appeal A, the related deemed application, and Appeal B are for the same development. I have therefore dealt with them together.

*Policy*<sup>66</sup>

10.2 I deal first with the status and weight to be attached to the various policy documents. Whilst the development plan at the time of the inquiry was comprised of the Structure and Local Plans, the Council considered that greatest weight should be given to the UDP since it had gone through all the stages prior to adoption and has been used for development control purposes, apart from minerals and waste development, since May 2004. The Council subsequently resolved to adopt the UDP on 22 December 2004. Bearing in mind its imminent adoption I have proceeded on the basis that the UDP has superseded the Structure and Local Plans. Whilst reference was made to Policies HSG10 and HSG12 of the Structure Plan Second Alteration<sup>67</sup>, this document was never part of the development plan and should no longer be given any weight.

10.3 The appellants argue there should not be a presumption against inappropriate development in the green barrier and a developer should not be required to show very exceptional circumstances to justify development, as advised in PPW, since Policy EC1 does not state this. I acknowledge that the previous Inspector accepted it would be incorrect to apply the test of inappropriate development. But the correct approach is to apply the relevant policy, EC1, in accordance with its terms. It sets out what is permitted in the green barrier and the test to be applied. The Local Plan Inspector recommended a revision to bring the policy in line with PPW by ensuring that certain forms of development, classed by PPW as “inappropriate”, are not permitted in the green barrier. Policy EC1 does that. The fact that it does not use the word “inappropriate” makes no difference.

10.4 As to the test of very exceptional circumstances, this is set out in current national policy guidance. The fact that it is not stated in the UDP does not mean it should not be applied. The appellants argue that the policy has not been reviewed through the UDP process as required by PPW and that the changed status has not been the subject of public consultation. There are several points to make. First, reference to the review of green wedge policies as part of the UDP review in paragraph 2.6.12 of PPW relates to the issue of permanence. Green Belts are longer term and so need not be considered in the UDP review. But green wedges are less permanent and so need to be dealt with in the UDP review. This does not imply that all green wedges in existing development plans must have been reviewed as part of the UDP process before PPW policy advice can be applied to them. Second, there is nothing in PPW that says green wedge policies should not be applied to existing green wedges. Provided these are part of the development plan and are required to serve the same purposes as land in a Green Belt I consider they come within the ambit of the policy advice in PPW applying to green wedges. If it had been intended that national policy would apply only to green wedges defined in an adopted UDP then PPW should have said so; it does not. Third, the green barrier in Wrexham has existed for many years. Its existence highlights the fact that the area is subject to an extra level of protection on top of that given to other areas of countryside. Finally, there was ample opportunity for the public to comment on the

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<sup>66</sup> 3.1-3.9, 6.1-6.6, 7.4-7.10

<sup>67</sup> 6.16



wording of the policy at the UDP inquiry and subsequently at modifications stage. I am therefore satisfied that the green barrier policy has been correctly reviewed through the UDP process and that the advice in PPW applies to it.

- 10.5 With regard to the SLA, this was not reviewed during the UDP or subject to any assessment of the area's landscape value<sup>68</sup>. But I accept the Council's point that it was not possible to carry this out in the time available as PPW was published just before the UDP inquiry. The policy has been through the UDP process and should be afforded full weight.
- 10.6 But turning to Policy H9, leaving aside the question of the appellants' status it seems to me that the criticisms of this are justified<sup>69</sup>. First, Circular 2/94 states that its intentions are to provide that the planning system recognises the need for accommodation consistent with gypsies' nomadic lifestyle and to reflect the importance of the plan-led system<sup>70</sup>. The UDP should therefore make proper provision for gypsy accommodation and PPW stresses the importance of including policies for the provision of gypsy sites. It is difficult to see how this could be done without some attempt at assessing the need for such accommodation, as advised in paragraph 12 of the Circular. I return to the issue of need later. The important point here is that the lack of any form of assessment is contrary to the Circular advice.
- 10.7 Second, since no sites are identified in the UDP it should include clear, realistic criteria, since it otherwise would be failing to make any provision for gypsies contrary to the aims of the Circular. Policy H9 is intended to provide for the accommodation needs of gypsies but it contains no criteria. It is at best vague since the only thing it does is indicate that gypsy sites will be considered outside settlements in exceptional circumstances without giving any basis for judging such a proposal other than by reference to Policy GDP1. But this only sets out general principles that all development must satisfy<sup>71</sup>. I fail to see how applying such a policy recognises the specific needs of gypsies, which is one of the aims of the Circular and PPW. I accept the benefits of discussion with gypsies<sup>72</sup>, but Policy H9 is of limited assistance in assessing the merits and acceptability of specific sites. I consider that the UDP and Policy H9 fail to comply with the Circular and PPW advice, as they do not properly recognise the accommodation needs of gypsies, which reduces the weight to be given to this policy.
- 10.8 It is appropriate to deal here with the argument that the Council has the discretion to apply Policy H9 to ethnic gypsies who do not satisfy the statutory definition<sup>73</sup>. It is for the courts to decide the scope of a local planning authority's discretion in the application of its policies, but in my view development plan policies must be interpreted and applied as written and in accordance with any supporting explanatory text. If Policy H9 was written to include ethnic gypsies or the supporting text stated that to be the case there could be no dispute. But that is not the case. In the absence of any definition or suggestion in the UDP to the contrary I consider that Policy H9 should only be applied to the appellants if they are gypsies as defined in statutory and policy terms.

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<sup>68</sup> 6.3, 7.9

<sup>69</sup> 6.6, 7.13

<sup>70</sup> 3.10

<sup>71</sup> 3.7

<sup>72</sup> 7.13

<sup>73</sup> 6.18

### *Main Issues*

10.9 From this analysis of the policy background I consider that my recommendation must turn on the following main considerations:

- whether the appellants and those living with them on the appeal site are gypsies for the purposes of planning policy;
- whether the use of the appeal site complies with local and national policies designed to protect the surrounding area designated as a green barrier and SLA; and, if not
- whether the other considerations in this case, including need for gypsy sites, the availability of alternative sites, and the appellants' personal circumstances, clearly outweigh the harm to the green barrier and SLA that would result from the continued use of the appeal site.

### *Gypsy Status*<sup>74</sup>

10.10 Section 24(8) of the Caravan Sites and Control of Development Act 1960 defines gypsies as “*persons of a nomadic habit of life, whatever their race or origin*”. Circular 76/94 repeats that definition and adds the interpretation from *South Hams*, that gypsies means those who live a nomadic life for the purpose of work. The Court of Appeal judgement on these appeals by Mr & Mrs Berry states that this is the starting point for determining whether anyone is a gypsy; that the decision is one of fact and degree; and that the relevant time is the date of the planning decision.

10.11 Whatever evidence there was of a nomadic habit of life at the time of the first inquiry I must consider the evidence before me. Since then the appellants have travelled with their family. I do not share the Council's view that the evidence is equivocal. It is acknowledged that Mr Berry is too ill to resume work. But it is not disputed that he has travelled. As Circular 76/94 makes clear, *South Hams* drew the distinction between gypsies and those who move from place to place without any connection between their movement and means of livelihood. That is not the case here. With the rest of his extended family Mr Berry has travelled as part of a group of gypsies travelling for the purposes of making or seeking their livelihood. They were in Sweden for 8 weeks in 2002 and parts of England. In 2003 they spent 6 months in Sweden on various sites and in 2004 travelled to sites in England and Wales. Mr Berry did not work manually but advised on pricing and carrying out the work. He has thus contributed to the family group making their livelihood. Mr and Mrs Berry also looked after the children, allowing the older members of the family to work.

10.12 In addition, the appellants have been to horse fairs to trade in equipment and in horses. Mr Berry is teaching his son Jack the business of horse trading and they own 4 horses. This again is an accepted part of the traditional gypsy way of life. Jack is a self employed landscape gardener who spent 8 months travelling and working in Sweden in 2003 and presently works in the Chester, Birkenhead and Liverpool areas. Although Paddy and Florence are still of school age they lived and travelled with their sister in Sweden for some 6 months in 2004. Paddy is learning the skills associated with the travelling lifestyle of gypsies. These children are being brought up in the traditional gypsy nomadic lifestyle.

10.13 My conclusions on gypsy status are that Mr and Mrs Berry are following a nomadic way of life. They travelled with their extended family for a considerable part of 2003 and a

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<sup>74</sup> 6.8-13, 7.2-3

significant period in 2004. The evidence shows that they performed an essential role as part of the family group travelling for the purpose of seeking and making a livelihood, in the traditional manner of gypsy families. I am therefore satisfied that the appellants are gypsies for the purposes of the statutory and policy definitions. Jack Berry travels for work in the North East Wales and Liverpool areas and in Sweden, and so is also a gypsy. Mr and Mrs Berry's children, Paddy and Florence in particular, are being brought up in the traditional gypsy travelling lifestyle. It may be that Mr Berry's deteriorating health will force him to cease travelling in the future. But gypsy status can change and I must come to a conclusion on the facts before me. I conclude that the appeal site is being used and is intended to be used to accommodate a gypsy family.

*Green Barrier and Landscape Impact*<sup>75</sup>

10.14 Use as a gypsy caravan site is not one of the types of development set out in Policy EC1 as acceptable in the green barrier. It permits uses that maintain the openness of the green barrier and do not conflict with the purposes of including land in it. In this case the Council has stated that the relevant purpose is to safeguard the countryside from encroachment<sup>76</sup>. Whilst the history of the site indicates that there has been a large structure there for a number of years<sup>77</sup>, the stationing on it of a large static caravan and a mobile home, the parking of a car and commercial vehicle and the erection of fencing has caused an additional loss of openness. Whilst the site is enclosed by hedgerows that separate it from the adjoining countryside, it remains the case that the site is less open than it would otherwise have been. With regard to the impact on the countryside, the use of the site has the trappings and characteristics of an urban form of development that represents an encroachment into an area outside the boundaries of Wrexham and therefore classed as countryside for policy purposes. The use of the appeal site hence causes a loss of openness, in conflict with one of the purposes of the green barrier and with UDP Policies EC1 and H5, and is inappropriate development as defined in PPW. For similar reasons, if they need be considered, it conflicts with Structure Plan Policy H2 and Local Plan Policies S3 and H5.

10.15 Considerable weight must be attached to the fact that the use of the appeal site is inappropriate development conflicting with policies designed to protect the green barrier. But it is necessary to examine and evaluate the extent of the harm it causes in order to balance it against other considerations. The harm caused to the openness of the green barrier is reduced by the enclosed nature of the site and its unobtrusive location. The extent to which the site encroaches on the open countryside is limited since it is enclosed by existing hedgerows and screened by its low lying position. The site without the existing caravans and vehicles would make only a minimal contribution to the open, rural character of the area. The large workshop/storage building would remain and the site would not appear undeveloped, albeit that the building is not unlike many found in rural locations.

10.16 With regard to the effect on the landscape, the site is in a rural setting but one strongly influenced by the built up area to the east of Homestead Lane, where there is a large secondary school and residential areas. Because of the low lying, unobtrusive location and natural screening the site is not visible in long distance views and it has no impact on views of the wider landscape. For these reasons the impact on the wider landscape is negligible. Nevertheless, there will be other sites in the SLA where similar arguments could be put

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<sup>75</sup> 2.3-4, 3.1-8, 6.14-18, 7.5-6

<sup>76</sup> 7.11

<sup>77</sup> 4.1

forward and they do not justify approval in an area where strict control is exercised. The objective of Policy EC5 is to maintain and enhance landscape quality. Although the site is neat and well-kept, it cannot be said to have a high standard of design or landscaping and the use does nothing to further the aims of Policy EC5, albeit that the harm to the landscape is small. For similar reasons it does not meet the objectives of Local Plan Policy E7.

#### *Other Considerations*

10.17 Policy H9 indicates that caravan sites for individual gypsy families will be considered other than within settlement limits in exceptional circumstances, subject to Policy GDP1. PPW states that inappropriate development should only be permitted in very exceptional circumstances where other considerations clearly outweigh the harm to the green wedge.

#### *Need<sup>78</sup>*

10.18 The appellants are gypsies in statutory and policy terms and they need accommodation consistent with that lifestyle. The Council argues there is no need for gypsy sites and that any quantitative assessment would demonstrate this. I do not doubt that the Council's planning officers are very familiar with the instances of unauthorised encampments in the Borough, but I fail to see how it is possible to predict the results of such an assessment in advance. The record of unauthorised camping shows some need, albeit at a low level, but there will be other cases dealt with by the police with which the local planning authority did not become involved.

10.19 It is now generally accepted that there is a national shortage of gypsy sites in Wales and in view of the history of gypsies living in this area, with efforts going back many years to find gypsy sites, it is unlikely that this shortage does not extend to the Wrexham area. The counts for 1980-96 showed a consistent level of unauthorised camping. This is unlikely to have disappeared as the Ruthin Road site contains only 19 pitches. Only 9 extra pitches were provided at Ruthin Road when the Croesnewydd Road site closed in 1997, at which time it contained 24 families. The Inspector who dealt with the 1994 appeal on the latter site concluded that there was an obvious need for sites in the Wrexham Maelor area.

10.20 In the absence of any proper assessment and without any counts over recent years it is necessary to take account of the evidence from the gypsy community. This indicates that 4 families who left the Croesnewydd Road site for permanent housing have resumed travelling. The appellants' daughter and 8-9 other families with associations with Wrexham who are travelling between unauthorised sites in the Chester/Ellesmere Port/North Wales/Shropshire area would return to Wrexham if a suitable site was available. In spite of her travelling the appellants' daughter sends her children to school in Wrexham.

10.21 Turning to the Ruthin Road site, this contains 24 families and is not large enough for every family to have a pitch. The Council confirms that this site was full in March 2001 and that Plot 14, which has been reserved for the appellants, could have been let to another family. Setting aside any criticisms of the official site, this evidence paints a clear picture of unmet demand for gypsy sites in the Borough.

#### *Alternative Sites<sup>79</sup>*

10.22 I accept the appellants' criticisms of the Ruthin Road site. My visit confirmed that it is cramped, with little space between caravans or the plot boundaries; many pitches almost

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<sup>78</sup> 6.19-22, 7.13-4, 7.18

<sup>79</sup> 6.23-4, 6.28, 7.13, 7.15-7

completely covered by caravans, vehicles and equipment; and no play or open areas. The Council's Housing Manager acknowledged at the inquiry that the quality of life on the appeal site was better than at Ruthin Road. From my visits to both sites there is no comparison. I find it hard to understand how the Council can consider it reasonable to expect the appellants to move to the official site in view of its condition. The site is too small for the number of caravans and families it already contains, which is itself an indication of unmet need. The Council has contrived to keep a plot for the appellants when in reality it should have been let to another gypsy family.

10.23 Even were it considered that a plot is genuinely available for the appellants at Ruthin Road and that the conditions there were acceptable, it would be unreasonable to expect them to move there. There is no dispute that Mr Berry was assaulted when he lived there by someone who has subsequently been in prison and has returned to live on the Ruthin Road site. Someone with severe heart disease should not be expected to return to live on a cramped caravan site close to the person who previously assaulted them. Even if the recent behaviour of the person responsible for the assault has been impeccable, Mr Berry would naturally fear the threat of further assaults and the medical evidence leaves little doubt that such stress would affect his health (*see paragraph 10.27 below*). His family would also be put under severe stress by returning to Ruthin Road since all, including the children, were previously subject to threats and intimidation. That evidence is not challenged. For these reasons I do not consider it is reasonable to expect the appellants to move to the Ruthin Road site.

10.24 There is no other authorised site in Wrexham Borough for them to live. None is identified in the UDP<sup>80</sup>. The Council maintains that it would be possible to find a site for the appellants in the Borough outside a green barrier and SLA and not prone to flooding. But looking at the maps showing these areas of constraint most of the land surrounding Wrexham is covered by green barrier or SLA designations. In reality the appellants would find it extremely difficult to find a site suitable for gypsy accommodation close to Wrexham that was not subject to policy constraints similar to the appeal site. The Council did not suggest that a site could be found within the urban area and did not put forward any alternative sites. The appellants have undertaken a search without success. Even if one were to be found, the evidence indicates the appellants do not have the means to purchase another site.

10.25 Furthermore, the appeal site is well located in terms of the advice on location in paragraph 14 of Circular 2/94. It is on the edge of the settlement and convenient for all services and facilities such as shops, schools and health care. In terms of distance it is more convenient than the official Ruthin Road site, which is around 1km to the west, further from the town and also within the green barrier<sup>81</sup>. Any alternative site outside the areas constrained by green barrier or SLA policies would probably be further from Wrexham and hence less sustainable, requiring greater travelling distances for the appellants and their children to attend their existing schools and health care facilities in the town. The Council acknowledged at the inquiry that the primary school the children presently attend in Wrexham provides a level of support for traveller children not available in any other school in the Borough<sup>82</sup>. There are clear benefits to the appellants of being able to continue in the care of medical professionals familiar with Mr Berry's history<sup>83</sup>.

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<sup>80</sup> 6.6

<sup>81</sup> 2.1, 6.16

<sup>82</sup> 7.19

<sup>83</sup> 6.26

*Personal Circumstances*<sup>84</sup>

- 10.26 The Council has not suggested that the appellants live in a permanent house<sup>85</sup>. Although it was an option open to them when the Croesnewydd Road site closed<sup>86</sup> they chose to move to the official gypsy site at Ruthin Road. Their need is for accommodation consistent with their traditional lifestyle. If they were unable to stay at the appeal site they would continue to live in caravans and in view of the lack of alternatives and desire to be near Wrexham to be close to its facilities they would be forced to resort to unauthorised camping.
- 10.27 This has considerable implications for the health of Mr Berry and the education of the children. Mr Berry has a serious heart condition. Whilst he was abroad in 2003 he returned twice for check-ups but he has been in hospital 3 times in the past year and now needs more regular check-ups. Having to revert to travelling between unauthorised sites would affect his health in 2 ways, first by imposing additional stress and, second, by making it more difficult to obtain regular health care. Research has shown that gypsies and travellers suffer from health problems. In this case Mr Berry is being treated by a GP familiar with his medical history and used to dealing with the gypsy community, and he is treated regularly at the same hospital. The disruption and uncertainty of travelling between unauthorised sites, not knowing the length of any stay, or where the family would move to next, and possibly being too far from Wrexham to continue being treated by people familiar with his heart condition, would put Mr Berry at serious risk. And the whole family, particularly Mrs Berry, would be affected by seeing his health suffer.
- 10.28 On the matter of the children's education, Kathleen and Miles have serious learning problems and Paddy is severely dyslexic. Although he has been out of school travelling during 2004, Paddy remains of school age and should have the opportunity of a full time education. This would be difficult if the family were resorting to unauthorised sites, as they could be moved on by the police whilst the children were at school. The education of the 3 children would be disrupted. The severest impact would be on Kathleen and Miles, who are in specific education support programmes. I accept that they are not unique and that there are some 200 pupils in Wrexham Borough on the same support scheme as Miles. But it would be a reasonable assumption that very few of these are also receiving additional support as traveller children. The Council is no doubt correct in saying the children would be able to attend their existing schools wherever they lived in the Borough. But that presupposes an alternative site could be found and there is no realistic prospect of that occurring on the evidence before me. The most likely prospect is the appellants being forced to move from one unauthorised site to another, which would disrupt their children's education, even if they were lucky enough to be able to continue in their existing schools.

*The Balancing Exercise*

- 10.29 The need for gypsy sites in the Borough, together with the appellants' personal need for accommodation consistent with their gypsy status, and their personal circumstances linked to Mr Berry's health and the children's education, must be weighed against the harm caused by the continued use of the appeal site. In striking that balance it is necessary to have in mind Article 8 of the European Convention on Human Rights, which provides that everyone has the right to respect for their private and family life. The decision on these appeals has considerable implications for the appellants, particularly bearing in mind the lack of suitable

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<sup>84</sup> 6.25-26, 7.19-20

<sup>85</sup> 7.15

<sup>86</sup> 7.13

alternative accommodation. They stand to lose their home, which would be a serious interference with their rights under Article 8. This permits such interference where necessary in a democratic society to, amongst other things, protect the rights and freedoms of others, an aspect of which is the preservation of the environment. In reaching a recommendation I must therefore balance the degree of environmental harm and the benefits of the use of the appeal site ceasing, against the implications for the appellants of forcing them to leave.

10.30 Considerable weight must be attached to the fact that the use is an inappropriate form of development in the green barrier. But the harm to openness and the degree of conflict with the relevant purpose of the green barrier, protecting the countryside from encroachment, is limited. The harm to the landscape is minimal because of the unobtrusive location and screening by natural vegetation and landform. The visual harm could be reduced further by additional landscaping, which could be required by a condition. Against this the need for gypsy sites in the Borough and the lack of alternative sites weigh heavily in the appellants' favour. Considerable weight must also be given to the impact of dismissing these appeals on the health of Mr Berry and the rest of his family, and the disruption to the education of their children, 2 of whom have special needs. In addition the site is well located for services and facilities as advised in paragraph 14 of Circular 2/94 and alternatives would be likely to be less sustainable, involving greater travelling distances for the appellants to education and health facilities in Wrexham. The cumulative weight of these favourable considerations together clearly outweighs the harm caused by the continued use of the appeal site.

10.31 I accept that the site has been occupied without planning permission. However, the appellants owned the site for some time before moving to it<sup>87</sup> and it is not disputed that attacks on Mr Berry precipitated the family's move from the Ruthin Road site. In the light of the lack of any alternative, whilst their move to the site without permission cannot be condoned, the reasons are understandable.

10.32 I recognise the concerns of the Council and residents regarding precedent, but the considerations on which my conclusions are based are specific to this case. They relate to the lack of alternatives due partly to the unsuitability of the Ruthin Road site for these particular appellants; the personal circumstances of Mr Berry's health and the special education needs of the appellants' children; and the minimal harm to openness and lack of conflict with the relevant purpose of the green barrier, to protect the countryside from encroachment, caused by the continued use of this particular site. Each application must be considered on its merit and the balance could be different on another site even if precisely the same combination of personal circumstances arose.

10.33 For all these reasons I consider that very exceptional circumstances exist in this case that justify a departure from the UDP policies designed to protect this area. On the facts of this case the adverse effect on the appellants of requiring them to leave the appeal site would be out of proportion to the benefits and could not be considered to be necessary in the public interest, resulting in an unacceptable interference with their rights under Article 8. I therefore conclude that in respect of Appeal A ground (a) should be upheld and the deemed application granted, and that Appeal B should be allowed.

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<sup>87</sup> 6.24

### *Other Matters*

- 10.34 The main objection raised by the Community Council and residents, apart from the policy issues dealt with above, is that of highway safety. The Council has asked for visibility splays of 2x70 metres in both directions at the site access<sup>88</sup> and does not dispute that 2x70 metres is available to the south and 2x58 metres to the north<sup>89</sup>. Access to the site is on a sharp bend in Homestead Lane<sup>90</sup>. I observed during my visit that this bend causes vehicles to slow down considerably. Whilst I accept that some vehicles will drive too fast, the removal of parts of the hedgerow along Homestead Lane has much improved visibility around this bend. Drivers approaching from the north can clearly see vehicles turning into and out of the appeal site. I consider that the existing visibility to the north is sufficient for the speed of vehicles approaching from the north and accords with the recommendations in TAN18. The lack of footpaths and lighting, use of the lane by pupils of Ysgol Clywedog and as a short cut by traffic, are existing factors affecting the safety of vehicles and pedestrians. The minimal amount of traffic generated by use of the appeal site would not significantly affect the existing situation given the acceptable visibility at the access.
- 10.35 It is also evident that dogs have caused problems by roaming loose in the area and attacking pedestrians<sup>91</sup>. I do not question the residents' view that the appellants' dogs have caused these problems. But dogs allowed to roam the streets can cause a problem in any residential area. The appellants did not appear to know of the problems caused by their dogs prior to the inquiry. I have no reason to doubt the assurance given on their behalf at the inquiry that their dogs would be kept under control in future. The pen recently built on the site should make this easier. There are powers available to the Council to deal with such nuisance should it re-occur.
- 10.36 I appreciate that neighbouring residents are upset by the fact that the appellants moved onto this site without planning permission and feel that their rights have been infringed<sup>92</sup>. But the use of the appeal site has no direct impact on them because of the distance from the closest houses<sup>93</sup>. Some of them may be able to see the appeal site from their homes, but the site is not unsightly, particularly at this distance. Conditions can be attached to prevent commercial use or the parking of large commercial vehicles, which appears to have occurred in the past.

### *Conditions*<sup>94</sup>

- 10.37 The conditions I recommend are in the Annex. Although there is a general need for gypsy accommodation in Wrexham Borough, the appellants' personal circumstances are part of the considerations that outweigh the harm to the green barrier and landscape. Consequently, any permission has to be personal to the appellants and so Condition 1 of the Council's proposed conditions is necessary. Condition 2 is required to ensure the site is restored when it is no longer needed. But it has been modified to make it clear that restoration is not required until both Mr and Mrs Berry have ceased occupation. To protect the appearance of the area and provide additional screening a condition is necessary to replant the hedgerow that has been removed to provide visibility. I have made some minor changes to the

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<sup>88</sup> 7.22

<sup>89</sup> 6.15

<sup>90</sup> 2.3-4, 8.1-2

<sup>91</sup> 8.2-3

<sup>92</sup> 8.1-2

<sup>93</sup> 2.2, 8.3

<sup>94</sup> 9.1



Council's suggested Condition 3 to make it clear that submission of a scheme is required within 1 month and that implementation is to be in the first planting season following its approval by the Council. Condition 4 is required to ensure adequate visibility is provided and maintained. I do not consider it necessary for a scheme to be submitted for approval as suggested by the appellants. The requirements of the condition are perfectly clear. I have reversed the order of the Council's Conditions 3 and 4 for clarity. Condition 5 is required to protect the appearance of the area by controlling the number and location of caravans on the site and requiring the large static caravan to be painted an appropriate colour. Condition 6 is necessary to avoid vehicles reversing onto Homestead Lane, which would be a highway danger. Condition 7 is necessary to control the use of the appeal site, which is intended for residential use. Commercial use would have quite different implications in terms of traffic movement, highway safety and visual impact. Condition 8 ensures that the appeal site is provided with proper facilities. I have amended the Council's condition to include water supply as agreed at the inquiry. The appellants presently have to obtain water from a local garage<sup>95</sup>. The condition I recommend allows 6 months from the date of approval of details, rather than the date of the appeal decision. The conditions I recommend include other minor revisions to the Council's conditions for clarity.

*Appeal A: Ground (g) – Time for Compliance & Appeal B: Temporary Permission*

10.38 If the Assembly disagrees with my conclusions in respect of Appeal A, it becomes necessary to consider the ground (g) appeal. Bearing in mind my conclusions on the acceptability of the Ruthin Road site and the lack of any other approved sites in the Borough, the 42 days allowed by the notice would be inadequate. It would not allow the appellants time to identify and move to another site. In the light of the history of efforts to find gypsy sites in the Borough by previous authorities and the appellants' failed efforts, a much longer period would be required. This view is reinforced by considering the implications of forcing the appellants to move from their home in the light of Article 8 of the ECHR and the lack of alternative sites. If it were concluded that the minimum necessary to protect the public interest is to require the appellants to leave the appeal site, it is necessary to weigh the harm of allowing them to stay for a limited period against the extent of the interference with their Article 8 rights. Having regard to my analysis of the degree of harm to the green barrier and landscape it would be disproportionate to require compliance with the 42 day period in the notice. A proper balance, bearing in mind the difficulties that the appellants are likely to encounter in finding another site and the time needed to obtain planning permission, setting aside any considerations of affordability, indicates that a minimum of 2 years should be allowed. However, it is not usual to allow such a lengthy period for compliance with an enforcement notice.

10.39 The appellants have suggested that an alternative would be to grant a temporary permission, although the Council are opposed to this<sup>96</sup>. The advantage of a temporary permission is that it would allow conditions to be imposed to control the use and is in my view the better option. The Council did not accept the Local Plan Inspector's recommended change to Policy H9<sup>97</sup>. Faced with this the appellants would find it difficult to find a site acceptable to the Council as any they identified would almost inevitably be outside a settlement. If a site were found they would be likely to face problems in obtaining permission and would still

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<sup>95</sup> 6.28

<sup>96</sup> 6.31, 6.33, 7.25-6

<sup>97</sup> 6.6

have to obtain the money to buy the site, which they would find difficult as they are on income support.

10.40 If the Council undertakes a proper quantitative assessment of the need for accommodation for gypsies, it could identify the necessary sites as part of its new local development plan. I concur with the appellants that this is likely to take up to 3 years<sup>98</sup>. I would not recommend extending the period for compliance with the notice for this period since this is effectively granting a temporary permission. But in my view a 3 year period would be justified if the Assembly considers that a temporary permission should be granted because of the difficulty of finding another site and the time likely to be needed by the Council to carry out a proper needs assessment. If it is decided to grant a temporary permission it should be subject to conditions 1-3 and 5-7, inclusive, in the Annex to provide proper control of the use.

### *Overall Conclusions*

10.41 I conclude that there are other considerations in this particular case that together clearly outweigh the harm to the green barrier and to the landscape. There are therefore very exceptional circumstances justifying a departure from the policies designed to protect the green barrier and surrounding area. The impact on the appellants of requiring them to leave the appeal site would be disproportionate to the likely benefits and not necessary in the public interest.

10.42 I therefore conclude that the enforcement notice subject of Appeal A should be quashed and planning permission granted and that Appeal B should be allowed, both decisions subject to the conditions discussed above.

## **11. Recommendations**

### ***Appeal A: APP/H6955/C/01/1072601***

11.1 I recommend that the appeal be allowed, the enforcement notice be quashed and planning permission granted on the deemed application subject to the conditions set out in the Annex attached.

### ***Appeal B: APP/H6955/A/01/1070501***

11.2 I recommend that the appeal be allowed and planning permission be granted subject to the conditions set out in the Annex attached.

Inspector

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<sup>98</sup> 6.33

## **ANNEX: LIST OF CONDITIONS**

- 1) The use hereby permitted shall be personal to Mr Michael Berry and/or Mrs Florence Berry and to any resident dependants and shall be for a limited period being the period during which the premises are occupied by Mr Michael Berry and/or Mrs Florence Berry.
- 2) When the premises cease to be occupied for residential purposes by both Mr Michael Berry and Mrs Florence Berry the use hereby permitted shall cease and all caravans, associated sheds, fencing and hardsurfacing brought on to the site in connection with the use shall be removed and all service connections stopped up.
- 3) Visibility splays measured 2 metres back from the Homestead Lane carriageway edge along the centreline of the access shall be provided to points measured along the same carriageway edge a distance 70 metres to the south and 45 metres to the north of the centreline. Within these splays the highway boundary means of enclosure and any other obstructions shall be lowered to a maximum height of 1 metre above road level. These splays shall be completed within 1 calendar month of the date of this decision and shall thereafter be maintained.
- 4) Within 1 calendar month of the date of this decision, details of a scheme showing hedge and tree planting along the rear of the northern visibility splay line required by Condition 3 above shall be submitted in writing to the local planning authority for approval. The scheme shall be carried out as approved in the first available planting season (October – March) following approval. Any trees or plants which, within a period of 5 years from the completion of the scheme, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with other identical plants or trees of similar size and species unless the local planning authority gives written consent to any variation.
- 5) There shall be no more than 1 static residential caravan and 1 touring caravan on the site at any one time. The caravans shall be sited in the north western corner of the site behind the existing screen fence. Within 3 months of the date of this decision the static caravan shall be painted in a shade of dark green paint to be agreed in writing by the local planning authority. Thereafter any static caravan on the site shall be maintained in that colour.
- 6) Vehicles shall only park on the existing hardsurfaced areas along the western part of the site and between the caravans and storage building. Space shall be maintained at all times to enable vehicles to turn within the site so that they may enter and leave in forward gear.
- 7) No commercial activity shall take place on the site, including the storage of materials and the stationing of any vehicle over 3.5 tonnes overnight. There shall be no loading or unloading of vans, open backed vehicles or lorries on the site at any time.
- 8) A scheme for the connection of the site to services, including drainage, electricity and water supply, shall be submitted to and agreed in writing by the local planning authority within 1 month of the date of this decision. The scheme shall be carried out as approved within 6 months of the date of its approval.

## **APPENDIX 1: APPEARANCES**

### FOR THE APPELLANTS:

Mr Stephen Cottle	of Counsel
He called:	
Mr Timothy Wilson	Liaison Officer for Accommodation, Cardiff Gypsy & Traveller Project
Mr Michael Berry	Appellant
Mrs Florence Berry	Appellant
Mr Philip Brown BA MRTPI	Philip Brown Associates
Dr John Marek AM	Assembly Member

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Robin Green	of Counsel
He called:	
Mr Robert Dewey BA MBA DipTP MRTPI	Planning Control Manager
Mr Fred Czulowski	Housing Operations Manager
Mr John Davies BED	Senior Education Officer (Primary)

### INTERESTED PERSONS:

Karen Benfield	Clerk, Offa Community Council, 20 Temple Row, Wrexham LL13 8LY
Mr Vernon Crewe	Vice-Chairman, Homestead Residents Association, 5 The Homestead, Wrexham LL14 4HQ
Mrs R McBurney	19 The Homestead, Wrexham LL14 4HQ

## **APPENDIX 2**

### **DOCUMENTS**

- 1 Lists of persons present at the inquiry on 3 days
- 2 Council's notification letter
- 3i,ii 2 letters of objection received prior to inquiry
- 4i,ii E-mails from Dr Marek received prior to, and handed in at, the inquiry
- 5 Enforcement Notice and Plan
- 6 Statement of Common Ground
- 7 Mr Czulowski's Statement of Evidence
- 8 Mr Davies' Statement of Evidence
- 9i,ii Mr Dewey's Statement of Evidence and Summary
- 10 Appendices A-PQ submitted by Mr Dewey
- 11i-iv Extracts from Inspector's Report into objections to the Wrexham UDP
- 12 Wrexham UDP Post Modifications Edition May 2004
- 13i,ii Extracts from Council's Response to Inspector's Report
- 14 Council's Report on Further Modifications to UDP December 2004
- 15 Council's Record of Unauthorised Encampments 2003-4
- 16 Site Licence Conditions – Caravan Sites & Control of Development Act 1960
- 17 Wrexham CBC Guide 'Applying for Housing'
- 18 Judgement submitted by Council *Chelmsford v First Secretary of State & Draper*
- 19 Council's Closing Submissions
- 20 Opening Statement on behalf of the Appellants
- 21 Mr Wilson's Statement of Evidence
- 22 Appendices 1 & 2 submitted by Mr Wilson
- 23 Mr Brown's Statement of Evidence
- 24 Appendices 1-12 submitted by Mr Brown [Appendix 12 – *Basildon v SSETR & Others* submitted at Inquiry]
- 25 Statement of Mr Michael Berry
- 26 Statement of Mrs Florence Berry and attached documents AFB1 & 2
- 27 Handwritten note regarding access for drinking water to Wrexham Car & Van Hire

- 28 Photographs of Appleby Horse Fair
- 29 Letter from former Co-ordinator of Traveller Education Services in Wrexham
- 30 Letter from Office of the Deputy Prime Minister dated 14 April 2004 regarding Bi-Annual Count of Gypsies and Travellers
- 31 Report on 'The Provision and Condition of Local Authority Gypsy/Traveller Sites in England' – the Niner Report
- 32i-v Appellants' List of Authorities:
  - (i) *Chapman v United Kingdom*
  - (ii) *Basildon v FSS & Cooper*
  - (iii) *Clarke v SSTLGR*
  - (iv) *Thlimmenos v Greece*
  - (v) *Basildon v FSS & Temple*
- 33 Appellants' Closing Submissions

#### **PLANS**

- A Extract from UDP Proposals Map showing settlement boundaries, Green Barriers and Special Landscape Areas (SLA) around Wrexham town
- B Extract from UDP Proposals Map showing settlement boundaries, Green Barriers and SLA around Wrexham town & Areas at Risk of Flooding (TAN15 Zone C2)