



Penderfyniad ar yr Apêl

Appeal Decision

Ymweliad â safle a wnaed ar 15/08/16

Site visit made on 15/08/16

gan Aidan McCooey BA MSc MRTPI

by Aidan McCooey BA MSc MRTPI

Arolygydd a benodir gan Weinidogion Cymru

an Inspector appointed by the Welsh Ministers

Dyddiad: 06.09.2016

Date: 06.09.2016

Appeal Ref: APP/A6835/A/16/3149082

Site address: Land at Rhos Road, Penyffordd, Flintshire

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

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant outline planning permission.
- The appeal is made by White Acre Estates against the decision of Flintshire County Council.
- The application Ref 053656, dated 1 May 2015, was refused by notice dated 21 January 2016.
- The development proposed is the erection of up to 40 residential dwellings with associated access.

Decision

1. The appeal is allowed and planning permission is granted for the erection of up to 40 residential dwellings with associated access on land at Rhos Road, Penyffordd, Flintshire in accordance with the terms of the application, Ref 053656, dated 1 May 2015, and the plans submitted with it, subject to the conditions set out in the attached Annex .

Procedural Matters and Background

2. The site adjoins but is outside the settlement limit and its development would be contrary to Flintshire Unitary Development Plan. The Council does not have a 5 year supply of housing land and the need to increase supply is an important consideration. This application was refused on 20 January 2016 on the basis that there was no capacity in the foul drainage network. The Council considered that the proposed development could not progress quickly and would not contribute to meeting the current shortfall in housing land. The appellant appealed against this decision.
3. A Hydraulic Modelling Assessment (HMA) has now been completed through Dwr Cymru Welsh Water (DCWW). The results show three available options to resolve any potential detriment to the network. These solutions could be achieved within 12 months; were acceptable to the developer and do not affect the viability of the scheme. Officers reported this matter to the appropriate Planning Committee on 22 June. The recommendation was that planning permission be granted because the impediment to the speedy delivery of the dwellings had been overcome and the development would therefore be sustainable. Members decided to refuse the application contrary to this advice.

4. The provision of an element of affordable housing and open space/play area in appropriate residential developments is required by the Unitary Development Plan. The Council also has published guidance requiring contributions towards education provision. To that end a signed obligation under section 106 of the Act securing the provision of and contributions towards affordable housing, open space/ play areas and education facilities was submitted with the appeal. The Council confirmed that it is necessary, reasonable in scale and kind and directly related to the development. The Council is content with the provisions of the Undertaking in relation to contributions for and provision of affordable housing, education and open space/play areas. The Council point out that the paragraphs in Schedule A of the obligation are not numbered. This does not affect the validity or provisions of the Undertaking. I also note that this was not raised in the Council's detailed comments on an earlier draft. I have no evidence that the contributions made would result in 5 or more contributions for the same provision. I am satisfied that the obligation meets national policy as set out in Circular 13/97¹ and the 3 statutory tests set out in Regulation 122 of The Community Infrastructure Levy Regulations 2010. In these circumstances I consider that this obligation would be fairly and reasonably related to the development proposed and that it passes the above statutory tests and policy requirements. Thus I afford the obligation significant weight in my decision.

Main Issues

5. I consider that the main issues are:

- the effect of the proposed development on the character and appearance of the area and the countryside, and
- whether there is a 5 year supply of housing land and, if not, whether any detriment to the open countryside would be outweighed by the need to increase housing supply.

Reasons

6. The appeal site is outside the settlement boundary as defined in the Flintshire Unitary Development Plan (UDP) and thus contrary to UDP Policy GEN3, supported by strategic Policy STR1. The proposed development clearly does not fall within any of the exceptions listed in Policy GEN3. This policy is consistent with the aims of Planning Policy Wales Edition 8 in directing development to existing settlements and conserving the countryside².
7. The appeal site adjoins the built-up edge of Penyfford and the existing dwellings on Fford Derwen and at Rhos y Brunner Farm. The latter are served by an existing access to Rhos Road. The remaining site boundaries are defined by Rhos Road and the A550. The site is well enclosed by mature hedgerows and trees along the roadside boundaries. There is an existing play area at the end of Fford Derwen, which adjoins the northern corner of the site. To the south on the other side of Rhos Road, there is a further area of undeveloped land. The site contains a single mature oak tree on one field boundary.

¹ Circular 13/97 Planning Obligations

² Planning Policy Wales paragraphs 4.6.4 and 4.7.8

8. The development of the site would result in the loss of open land on the approach to the settlement. The site is well-enclosed in views from the main roads and this mature vegetation can be retained as part of the development. The A550 also forms a logical boundary for the settlement at this location. The impact on the open countryside beyond the site would therefore be limited. The Council agreed with the conclusions of the appellant's Landscape and Visual Impact Assessment that the impact would be low. There would be some effect on Rhos Road as there would be some loss of vegetation in order to provide access. However, this would be limited and could be mitigated by the proposed planting. Overall, I agree with the Council report that the harm would not be significant.

5 Year Housing Land Supply

9. Planning Policy Wales requires Local Planning Authorities to ensure that sufficient land is genuinely available to provide a 5-year supply of land for housing judged against the general objectives and the scale and location of development provided for in the development plan.
10. The Unitary Development Plan is beyond its end date and it is for the decision-maker to consider whether the Plan policies are outdated for the purposes of determining planning applications. Where relevant development plan policies are considered outdated there is a presumption in favour of proposals in accordance with the key principles and key policy objectives of sustainable development³. The Council accepts that there is not a 5 year supply of land for housing. The latest Joint Housing Land Availability Study (JHLAS) in April 2014 showed a supply of 3.7 years. In addition, as the UDP is beyond its end date the Council will be unable to produce a JHLAS to evidence any land supply until a replacement adopted LDP is in place. Technical Advice Note 1 – *Joint Housing Land Availability Studies (TAN1)*⁴ advises that "Where the current JHLAS shows a land supply below the 5-year requirement...the need to increase supply should be given considerable weight when dealing with planning applications provided that the development would otherwise comply with development plan and national planning policies".
11. Penyfford and Penymynydd is a Category B settlement and the Unitary Development Plan allocated a growth rate of 15% to such settlements. The Council confirmed that the growth rate had reached 27% to date, which is close to the figure achieved in 2009 and referred to by the Unitary Development Plan Inspector in her report on that Plan. She did not consider that the growth rates in the Plan should be considered to be prescriptive. Given the status of the settlement, the growth already experienced and the range of facilities available, I do not consider that exceeding the specified growth rate is significant.

Other Matters

12. The highway authority had no objection to the proposal subject to conditions. Agents for the owner of the land across the road argued that access to that site should not be prejudiced by this proposal. There are several potential options for access including a roundabout and junction spacing arrangements. These options can be explored once the detailed proposals for development for the other site are known. The highway authority requirement for a 3m wide strip set back into the roadside boundary in order

³ PPW paragraph 4.2.4

⁴ 6.2 of Technical Advice Note 1 Joint Housing Land Availability Studies January 2015

to accommodate a cycleway and footway is not acceptable. This would result in the loss of the mature hedges to the detriment of the character and environment of the area. This was a particular concern to an Inspector in a 2007 decision nearby. Whilst circumstances have changed since then, the retention of as much hedgerow as possible is still an important consideration. The layout and design of the dwellings would be reserved matters for future consideration and so the objections to the illustrative layout are not relevant.

13. The important vegetation on the site can be retained and that along the A550 safeguarded separately from the curtilages of dwellings. The submitted tree survey categorised the mature Oak tree as poor and not worthy of retention. There was no objection to the development from NRW or the Council on ecological grounds. The submitted agricultural land classification report concluded that the land is Grade 3b and not subject to any policy protection. The other issues raised were addressed in the Council's committee reports. None were found to warrant the refusal of planning permission. I have seen no evidence that leads me to disagree with those conclusions.

Conditions

14. I have considered the suggested conditions and the appellant's comments thereon in the light of the guidance in Welsh Government Circular 16/2014⁵. The two year commencement condition is necessary because this planning permission is being granted to meet a pressing need and therefore the development should be delivered quickly. This also addresses any issue in regard to the fact that this is an application for outline planning permission. The appellant agreed with this point and accepted that this condition was necessary in the circumstances. Given this short timescale it is not reasonable or necessary for the required improvements to the foul drainage infrastructure to be completed before development commences. Demand on the infrastructure would only be generated upon occupation of any of the dwellings. I amend the suggested condition accordingly and remove reference to DCWW therein, as the discharge of conditions must rest solely with the Local Planning Authority.
15. The other conditions imposed will protect the living conditions of surrounding occupiers (including during the construction period) and control surface water disposal. As access is not reserved for future approval a raft of highway conditions covering the access, visibility splays, gradients, length of driveways, parking and turning areas, the design, layout and traffic calming of internal roads, and the prevention of surface run-off are all required to protect highway safety both within the proposed development and on the surrounding roads. The appellant did not explain the difficulty with suggested condition 12 but as it repeats the requirements of condition 5, I do not consider condition 12 to be necessary anyway.
16. A condition to address the possible impact of noise from the adjoining A550 is required. There would be a potential for parts of the site to fall within noise exposure categories that would require noise attenuation measures. I have clarified the wording to require mitigation if the survey finds it to be necessary. The importance of the retention of the existing trees and hedgerows has been discussed above and must be ensured by appropriate landscaping conditions.

⁵ The Use of Planning Conditions for Development Management

Planning Balance and Overall Conclusions

17. The proposed development would not accord with the Policy GEN3 of the UDP because the site is outside the settlement limit. However, the site is adjacent to the limit and is well enclosed with a logical boundary limiting incursion into the open countryside. The site is on the edge of a settlement that is well served by a range of local facilities, bus services and a train station. The UDP Inspector considered local services to be good. The Council accepts that the site is in a sustainable location in terms of facilities and services. The appellant has undertaken an analysis of the sustainability of candidate sites put forward for the new Local Development Plan. The appeal site scores highly and was considered to be the top performing site. I give this exercise little weight but note that the result was not disputed by the Council. The UDP Inspector did not recommend inclusion of the appeal site purely because more land was not needed at that time.
18. The Council cannot demonstrate a 5-year supply of housing land and the development would meet that urgent need for housing. Welsh Government policy and guidance indicates that the need to increase housing supply is an important consideration in these circumstances. The only obstacle to the speedy delivery of housing has been overcome i.e. the foul drainage issue. The proposal would also bring economic benefits during construction and provide affordable housing in line with the Council's requirements. The open space and education contributions would also be a benefit.
19. A 2015 decision in relation to a proposed residential development at Ewloe⁶ (also in Flintshire) was brought to my attention. The Inspector warned that "*There is a danger that the need to increase supply and lack of a 5-year housing land supply could be used to justify development in inappropriate locations.*" I have found that the proposed development would be sustainable and this particular location would be appropriate. Having taken all relevant matters raised into account, I conclude that the benefits of the proposal outweigh the conflict with the development plan.
20. For the reasons given above, I conclude that the appeal should be allowed.

A L McCoony

Inspector

⁶ APP/A6835/A/14/2220730 – Land off Old Hall Road/ Greenhill Avenue, Ewloe

Annex – Conditions

1. Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than 12 months from the date of this permission. The development shall begin either before the expiration of two years from the date of this permission or before the expiration of 12 months from the date of approval of the last of the reserved matters to be approved, whichever is the later.
3. Prior to the commencement of development a detailed scheme for the disposal of surface water shall be submitted to and approved in writing to the local planning authority. The scheme shall be implemented in accordance with the approved details unless any variation is first agreed in writing by the local planning authority.
4. No development shall commence until a scheme to increase capacity in the foul drainage system has been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the approved scheme has been completed in full in accordance with the approved details.
5. Prior to the commencement of development a detailed scheme for the formation and construction of the means of site access shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details. The approved access shall be provided prior to the commencement of any other works on the site.
6. The front of any garages hereby approved shall be set back a minimum distance of 5.5m behind the back of the footway line or 7.3m from the edge of the carriageway in the case where the crossing of a grass service margin is involved.
7. Prior to the commencement of any site works, a Construction Traffic Management Plan shall be submitted to, and approved in writing by, the local planning authority. The approved Construction Traffic Management Plan shall provide details of:
 - Contact name and numbers of personnel responsible for adherence to and monitoring of the plan;
 - Contact names and numbers for any site-related enquires including out of office times;
 - Anticipated duration of the works;
 - Proposed signage types and locations;
 - Position of gates incorporating a set-back of 12m to allow a delivery vehicle to park/wait;
 - The access and egress route with appropriate traffic monitoring in order to control traffic movements;
 - Measures to avoid depositing mud, dust or other debris onto the highway by incorporating wheel wash and dust suppression equipment;
 - The timing of deliveries and main construction traffic arrivals and departures to avoid peak times;
 - Working hours;
 - Site notices informing construction workers and other site operatives of agreed working hours;

- The parking of vehicles of site operatives and visitors;
- Loading and unloading of plant and materials;
- Storage of plant and materials used in constructing the development;

The development shall be carried out in accordance with the approved Construction Traffic Management Plan unless otherwise agreed in writing with the local planning authority.

8. Prior to the commencement of any works on site a detailed scheme for the internal estate roads including layout; turning and parking areas other than within dwelling plots; design; means of traffic calming and signing; surface water drainage; street lighting; and construction shall be submitted to and approved in writing by the local planning authority. The approved scheme shall also include a timetable for the implementation of the works. The development shall be carried out in accordance with the approved scheme unless any variation is first agreed in writing by the Local Planning Authority.
9. Prior to the commencement of development details of means to prevent the run-off of surface water from any part of the site onto the highway shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details unless any variation is first agreed in writing by the Local Planning Authority.
10. The access shall have visibility splays of 2.4m by 43m in both directions. The visibility splays shall be maintained free of obstructions in excess of 600mm for the lifetime of the development.
11. The gradient of the access shall not exceed 1 in 24 for the first 10m from the edge of the carriageway and 1 in 15 thereafter.
12. No dwelling on the development hereby approved shall be occupied until a Full Travel Plan and Transport Implementation Strategy has been submitted to and approved in writing by the local planning authority. The approved plan and strategy shall be implemented in full.
13. As part of the reserved matters submission a noise survey shall be undertaken to assess the current noise levels on the site and submitted for the approval of the Local Planning Authority. The survey shall include an appropriate scheme for noise attenuation to be provided as part of the development.
14. The landscaping details to be submitted as part of the reserved matters shall provide for the retention and enhancement of all the boundary hedgerows of the site except those required to be removed for the access; together with details for their protection during construction and for the lifetime of the development.