



Appeal Decision

by N Jones BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 15/10/2024

Appeal reference: CAS-03373-V0K5X4

Site address: Carpark opposite Royal Oak Cottages, Brynydd, off Fennant Road, Ponciau, Wrexham, LL14 1HR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Ms Pamela Hughes and Mr Paul Evans against Wrexham County Borough Council.
 - The application Ref P/2023/0630 is dated 6 September 2023.
 - The development proposed is an outline application for erection of up to 6 dwellings (all matters reserved).
 - A site visit was made on 17 September 2024.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal relates to the failure of the Council to determine a planning application which seeks outline permission, with all matters reserved for future approval, for the development described in the banner heading above. The description of development given on the application form contains commentary on the appeal site and anticipated visual effects of the development which would 'provide local housing'. Article (3) of Part 2 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 states that where layout, scale and access are reserved, the application for outline planning permission must state the approximate location of buildings, routes and open spaces included in the development proposed and must state the upper and lower limit for the height, width and length of each building included in the development proposed. Upper and lower limits provided by the appellants indicate the intended 6 housing units would be 5m wide, with a length between 7m and 9m, and a height of between 8m and 9m. I consider the Council's description of the development, as given in the banner heading above, accurately describes the proposal. I have considered the submitted plan on the basis that it provides an indication of the approximate location of buildings, routes and open spaces intended for the appeal site.

3. The Council adopted the Wrexham Local Development Plan (LDP) in December 2023, following submission of the application but before submission of the appeal. The appeal must be determined in accordance with the current development plan unless material considerations indicate otherwise. I am satisfied that the parties have been provided with an opportunity to address LDP policies relevant to the proposal.

Main Issues

4. The Council did not issue a decision within the dual jurisdiction period but has set out its concerns regarding the proposal and the reasons it would have refused the application. Having regard to those reasons, I consider the main issues are:
 - (i) Whether, with regard to local planning policies, the proposal would be an appropriate form of development;
 - (ii) the effect of the proposal on biodiversity and ecological interests; and
 - (iii) whether the proposal would make an appropriate contribution towards local education provision.

Reasons

Form of development

5. The appeal site is a former public house car park, measuring some 550m², which is located in a prominent and visible position, elevated above Fennant Road and Oak Road and separated from them by a grass verge. It is located within the settlement of Ponciau, within a residential setting, comprised of mainly detached dwellings, and more recent units of semi-detached appearance, in its immediate context. Ponciau is included within Rhosllannerchrugog which is a Tier 2 'Key Settlement' where Policy SP2 of the LDP directs new development, identifying that such locations are capable of accommodating windfall development and will usually have good access to services, facilities and public transport. The intended units would be located in an accessible area directly adjacent to a bus stop and would provide affordable housing units which the appellants state are much needed locally. I acknowledge that the intended development would incorporate sustainable build principles. The Council raises no concerns related to highway safety and I observed during my site visit that Fennant Road carries a continual but light flow of traffic, with traffic speeds generally low. The appeal site was previously in use as a car park and the volume of traffic likely to be generated by up to 6 residential units would not be significant within the wider residential context. I therefore concur with the Council's view that the appeal site would, in principle, offer a suitable opportunity for windfall development on a brownfield site. However, the appeal scheme must also comply with other relevant policies and guidance in order to be acceptable.
6. In terms of the form of development, in order to make a positive contribution to the creation of locally distinctive places, and to accord with or enhance the character, local distinctiveness and appearance of the site, LDP Policies SP12 and DM1 require all development to be of a high quality, sustainable design in terms of their siting, layout, scale, height, design, density, use of materials and landscaping. LDP Policy DM1 also requires that development proposals must not have an unacceptable effect on the amenity of the occupiers of nearby properties. LDP Policy T1 requires, amongst other matters, that developments provide appropriate levels of parking. LDP Policy T2 encourages active travel and supports new development where, amongst other things, secure and convenient cycle parking is provided.
7. Detailed guidance is provided in a series of Local Planning Guidance Notes (LPGN) including LPGN21 'Space Around Dwellings' which advises that new houses should

benefit from a satisfactory degree of privacy and daylight and that the residents of existing houses should also not be unduly affected by the development. To achieve this, it advises minimum separation distances, particularly between windows serving habitable rooms. LPGN21 also advises that all houses should benefit from private garden space. Provision must also be made on site for the storage of waste/recycling bins. LPGN 16 'Parking Standards' sets parking standards largely based on the number of bedroom spaces but accepts communal parking arrangements on small schemes. It also specifies that secure space for 2 cycles should also be provided per dwelling.

8. I acknowledge that the appellants state that they are seeking outline consent for 1-bedroom dwellings, based on an indicative plan, and that they expect any developer in the future to apply again with a final design. I recognise that there may be other ways of developing the appeal site, including different layout options, however, the proposal seeks planning permission for up to 6 dwellings and I must deal with the appeal scheme as submitted. It would not be appropriate to modify or curtail the planning permission as sought through planning conditions limiting the number of units. Furthermore, there would be no certainty that any future developer would not wish to develop 6 larger dwelling units which would be within the scope of the consent as sought.
9. I saw that the appeal site is level with the semi-detached properties on Brynydd which have habitable rooms facing towards it. However, given the illustrative siting of the intended dwellings close to Oak Road, the appeal scheme could be designed to meet the LPGN21 separation distance guidance to avoid unacceptable direct overlooking of the dwellings at Brynydd. The scheme could also be designed to meet the advised separation distance from the blank gable wall at Bodsara, which adjoins the site to the north. However, LPGN21 advises that required separation distances are increased where the ground slopes between properties. I saw that the appeal site is elevated above Oak Road and given the illustrative siting of the intended dwellings, the LPGN21 separation distance between them and the two habitable room window openings in the front elevation of No 10 Oak Road would not be met. Whilst the submitted site plan is illustrative, owing to the number of units proposed on a constrained site, I consider it unlikely that the appeal scheme could be accommodated whilst achieving separation distances between both Brynydd and Oak Road. It has not therefore been demonstrated that the proposal would not harm the living conditions of neighbouring occupiers.
10. Moreover, as well as the units themselves, the appeal site would also need to accommodate requisite cycle spaces, parking spaces and garden areas. To accommodate their intended scale, the illustrative site plan depicts a terraced arrangement which would be at odds with the largely detached and semi-detached nature of dwellings locally. A minimum of 9 parking spaces would be sought to serve the development (based on 1-bedroom units), with 12 spaces (as depicted on the illustrative plan) required for 2-bedroom units. I acknowledge that LPGN21 states that for flats/maisonettes, a balcony or private space at ground level is desirable, adequately screened and measuring a minimum of 10m² in area. However, in relation to housing development, for dwellings accommodating up to two people, such as would be the case for one-bedroom dwellings, a minimum of 30m² of private garden area would be required. This requirement rises to a minimum of 50m² per unit for dwellings designed to accommodate 3 or more occupiers. Given the limited size of the appeal site and the intended number and scale of the units, I am not satisfied that a layout reflecting the predominant character of housing locally could be achieved, incorporating adequate garden space for each of the proposed dwellings whilst also meeting the separation distances and the parking, cycle and refuse storage requirements which would be necessary to make the development acceptable. From the evidence before me the proposal would lead to a cramped and constrained layout on a conspicuous site, at odds

with the prevailing character of housing locally and which would not secure satisfactory living conditions for neighbouring and future residents.

11. I note appellants' contention that planning permission could be granted subject to conditions that the requirements of relevant local planning guidance notes would have to be met at the reserved matters stage. However, given the large number of units proposed on a small site, there is no certainty relevant LPGN requirements could all be achieved. It would not be appropriate to deal with matters relating to the acceptability of the principle of that development through planning conditions after planning permission had been given.
12. I conclude that it has not been demonstrated that, with regard to local planning policies, the proposal would be an appropriate form of development. It would therefore fail to comply with LDP Policies SP12, DM1, T1 and T2. It would also be contrary to LPGN16 and LPGN21 advice.

Biodiversity and ecological interests

13. LDP Policy SP14 states that development will only be permitted where it seeks to protect, conserve and enhance the natural environment including, amongst other areas, Special Areas of Conservation as well as natural landscape features and Green Infrastructure such as trees, hedges and woodland which contribute to the quality and diversity of the natural environment and play an important role in mitigating the impact of climate change. The explanatory text to Policy SP14 confirms that developments should also seek to provide biodiversity enhancement, reflecting advice within Planning Policy Wales (Edition 12) (PPW) (para.6.4.5) that planning authorities must seek to maintain and enhance biodiversity
14. I saw that whilst it is adjoined by grass verges, the appeal site is devoid of vegetation, and I concur with the Council's view that a scheme to enhance biodiversity and green infrastructure, which would also allow potential connectivity with adjoining habitat in nearby gardens, could be controlled by a planning condition.
15. However, the Council confirms that the appeal site lies within a buffer zone for the Johnstown Newt Sites Special Area of Conservation (the Newt SAC). The Newt SAC is composed of two post-industrial sites and its population of this species is one of the largest known in Great Britain. Connectivity of terrestrial habitat provides opportunities for the species to disperse for feeding and breeding purposes whilst rubble, amongst other things, provides refuge areas.
16. LDP Policy NE1 explains that development will only be permitted, amongst other things, where it is possible to ascertain no adverse effect on the integrity of the habitat or site. The explanatory text to Policy NE1 states that where development is proposed which may have an effect on a special site of international or national importance, sufficient information will be required of all applicants to enable a full assessment of the proposal to be carried out. The need for such assessments will not be limited to development located within the designated areas as, depending on the nature of the development and of the nature conservation interest, significant effects may occur even if the development is some distance away. Technical Advice Note 5 'Nature Conservation and Planning' (TAN 5) confirms that the level of likelihood that should trigger a requirement for developers to undertake surveys should be low where there is a possibility that protected species might be present.
17. I note the appellants' contention the former car park site would not provide suitable habitat for the species and that potential effects on Great Crested Newts (GCN) were not raised by the Council in relation to the nearby redevelopment of the site of the former

public house. I have been provided with insufficient details of the public house site development to enable a meaningful comparison. However, given the appeal site's proximity to suitable connecting habitat and that some rubble is located near the fence with Bodsara which could provide a refuge area, I do not consider the potential presence of great crested newts can be discounted.

18. I acknowledge that the Design and Access Statement states that appropriate working methods which would prevent protected species from being trapped/caught as part of the development would be in place, and the appellants' contention that surveys could be required through a planning condition to be undertaken at a later date. However, TAN 5 advises that such matters should not normally be left for later submission under conditions imposed on any permission given, because they will be material to the determination of whether planning permission should be granted. No ecological survey data has been submitted to demonstrate that the site would not provide suitable habitat or functional connectivity with the Newt SAC.
19. I conclude that it has not been demonstrated that the proposal would not harm biodiversity and ecological interests. It would therefore conflict with LDP Policies SP14 and NE1. It would also be contrary to the advice contained within PPW, TAN 5 and the Council's adopted Local Planning Guidance Note 32 'Biodiversity and Development' (LPGN32) which confirms that establishing a good evidence base is essential when determining planning applications.

Local education provision

20. LDP Policy SP5 states that planning obligations will be sought to mitigate any impacts directly related to the development and will be assessed on a case-by-case basis, with the types of obligations sought including education provision / facilities. Its explanatory text indicates that planning obligations or Section 106 agreements can be used as a means of offsetting the strain new development will place on existing infrastructure, services, and facilities either by seeking the developer to undertake the necessary work or via a financial contribution.
21. The Council's adopted Local Planning Guidance Note 27 'Developer Contributions to Schools' (LPGN27) provides more detailed guidance and identifies the circumstances and locations in which developer contributions will be necessary, based on a number of considerations. I concur with the appellants that LPGN27 does not seek contributions for units that have only 1 bedroom. However, the appeal scheme proposes up to 6 dwellings, and the application is made in outline with the detailed design, including the final number of bedrooms, reserved for future consideration. LPGN27 confirms that its requirements apply to developments of four or more residential units, whether by new build, conversion or changes of use. The Education Authority's calculation for the requested contribution in this case includes a formula for calculating contributions where the number of bedrooms is unknown. Based on that formula, no contribution would be required as a result of the proposal for primary education but would be required towards secondary education locally.
22. As the proposed development of up to 6 dwellings would generate additional demand on educational resources in the area, I find that such a contribution would be reasonable, related to the development and necessary to make the development acceptable. In the absence of a mechanism to secure such a contribution, I find that the proposal would not make an appropriate contribution towards local education provision. The proposal would not therefore be in accord with LDP Policy SP5 and LPGN27.

Other Matters

23. The appeal site is within the catchment of the River Dee and Bala Lake Special Area of Conservation (River SAC). Natural Resources Wales (NRW) sets conservation objectives for the SAC, including phosphorus targets. In 2021, it published the results of its Compliance Assessment of Welsh River Special Areas of Conservation against Phosphorus Targets, which, amongst other things, found failures within the River Dee. New development within any part of the catchment which will increase the amount or concentration of wastewater effluent or organic materials discharged directly or indirectly into the catchment's waterbodies has the potential to increase phosphate levels within those waterbodies. I note that the Council raises no objection to the proposal in relation to its effects on the River SAC as Dŵr Cymru Welsh Water (DCWW) have confirmed that the WwTW has capacity to treat foul flows from the intended development whilst maintaining compliance with the existing and proposed phosphorus consent limits. There is hydraulic capacity for new connections to be made to the sewer network and associated WwTW without leading to an increase in the environmental impact of storm overflows. Nevertheless, the proposal would lead to increased phosphorus discharges with a pathway for impacts on the River SAC. However, as I am dismissing the appeal on other grounds, it has not been necessary for me to undertake an appropriate assessment in this case.
24. I note the concerns of local residents, but the existing condition of local road surfaces is not in itself sufficient reason to withhold planning permission and the volume of traffic likely to be generated by the proposal would not contribute significant deterioration.
25. The appellants' concerns regarding the progress of the application and its handling by the Council are not matters before me in this appeal which I have assessed on its planning merits

Conclusion

26. For the above reasons, and having regard to all matters raised, the appeal is dismissed.
27. In reaching my decision, I have taken account of the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives as required by section 8 of the WBFG Act.

N Jones

INSPECTOR