



Appeal Decision

by I Stevens BA (Hons) MCD MBA MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 15/07/2024

Appeal reference: CAS-02985-G6S1X3

Site address: Land off Bethania Road, Acrefair, Wrexham, LL14 3HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Prospect Estates Ltd against the decision of Wrexham County Borough Council.
 - The application Ref P/2022/0469, dated 21 September 2021, was refused by notice dated 3 October 2023.
 - The development proposed is residential development of up to 33 dwellings.
 - A hearing was held on 21 May 2024.
 - A site visit was made on 22 May 2024.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application is made in outline with all matters reserved except for access. The proposed dwelling scale parameters vary between 5.7-19.5m width, 9.5m depth, and 7.6-8.5m ridge height.
3. The Wrexham County Borough Local Development Plan 2013-2028 (LDP) was adopted on 20 December 2023, superseding the Unitary Development Plan on which the Council's decision was based. The appeal is determined in accordance with the adopted LDP having regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004. I am satisfied that both parties have been provided with the opportunity to identify and make representations on the relevant LDP policies, and I have considered them in my determination of this appeal.
4. The appellant submitted a draft Unilateral Undertaking (UU) in advance of the hearing, which makes provision for contributions towards primary school education and public open space. This met the relevant legislative and policy tests for planning obligations and, consequently, the Council withdrew its fifth refusal reason at the hearing. A duly executed final version of the UU was provided after the hearing.

Main Issues

5. The main issues are:

- The effect of the proposal on nature conservation and protected species;
- The effect of the proposed development on highway safety;
- The effect of the proposed development on pedestrian safety, including active travel; and
- Whether the proposed development would be acceptable having regard to risks associated with land contamination.

Reasons

6. The appeal site is a rectangular parcel of level grassland to the south of Bethania Road. Dwellings lie on the opposite side of the street, while a bar/restaurant and car park adjoin the site's western boundary. Mature woodland surrounds the site to the east and south, which are subject to a group Tree Preservation Order (TPO). The site is located within the settlement limit of Acrefair and the Council has confirmed that the principle of residential development is acceptable under Policy SP2 of the Wrexham LDP.

Nature conservation and protected species

7. PPW sets out a step wise approach for proposals to maintain and enhance biodiversity, build resilient ecological networks, and deliver net benefits for biodiversity by ensuring that any adverse environmental effects are firstly avoided, then minimized, mitigated, and as a last resort compensated for. The requirement to maintain and enhance biodiversity is also reflected in the development plan, namely Future Wales Policy 9 and Policy SP14 of the Wrexham LDP.
8. The proposal is accompanied by a Preliminary Ecological Appraisal (July 2023) which amongst other things found no suitable buildings or trees for bat roosting within the appeal site. However, the report also recognised that the woodland provides a suitable foraging and commuting habitat for bats, particularly along its edges. The PEA advises if all trees displaying suitable roosting features are retained, along with a buffer to the trees and a sensitive lighting scheme along the woodland edge, the impact of development on roosting bats would be negligible.
9. I am not confident that these measures can be achieved based on the submitted details. Firstly, the woodland was not surveyed for bat activity. It is therefore unclear which specific trees have potential bat roosting features. Second, some trees that would be removed along the woodland edge may have roosting features, but without survey details it is impossible to know. Third, the PEA recommends a sensitive lighting scheme is delivered along with dark buffer areas along the woodland edge, given the potential for development to impact on bats. The indicative site layout does not show any proposed buffer area. Several rear gardens facing up to the woodland edge would have narrow depths. I am concerned with the pressures that residential activity within these gardens would place on retained protected trees such as crown encroachment, reduced natural light levels and excessive shading, and the increased risk of pruning or tree felling works being undertaken.
10. I appreciate the indicative layout plan shows details of matters which are clearly reserved for future consideration. I accept there may be alternative ways of developing the site. However, the plan before me is still material to my determination, particularly in terms of how it takes account of the identified constraints. I share the Council's Tree Officer's

concerns that in determining the principle of development for up to 33 dwellings, the number of plots proposed within the suggested parameters leaves little scope to provide the recommended buffer areas, or to deliver an effective lighting scheme which could be reasonably enforced when narrow gardens would be so close to potential bat roosting features.

11. If it is not possible to retain dark corridors along the woodland edges, the PEA recommends further survey work to establish bat foraging and commuting activity. While the appellant maintains that the buffer areas and lighting scheme form part of the detailed design matters to be considered at a future date, I have set out my reasons why there is a lack of certainty around the implications of development on bats. As Technical Advice Note (TAN) 5: Nature Conservation and Planning (September 2009) reiterates, it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
12. Given that the appellant has proposed improvements to the public right of way through the woodland, its effects on protected species also need considering. However, few specific details of the footpath works have been provided. At this stage, the implications of surfacing works on tree roots, and lighting on bats, is unclear. TAN 5 is also clear that planning permission should not be granted subject to conditions that protected species surveys are carried out, or that any mitigation measures are submitted for approval in the event they are present. It is therefore not appropriate to leave such surveys to a planning condition. These matters of principle must be satisfactorily addressed at this stage, and they have not been.
13. To facilitate development, 13 trees would be removed along the woodland edge. There is little before me which indicates whether suitable replacement tree planting, at a minimum ratio of 3 trees planted of similar type and compensatory size for every tree removed, could be delivered as per the requirements in Planning Policy Wales (PPW), Edition 12 (February 2024). Given my concerns regarding the indicative layout design, and with much of the surrounding land being covered by TPOs, I am not convinced that sufficient planting of a similar type and compensatory size could be delivered on or adjacent to the site.
14. I am not satisfied that the proposal has in the first instance avoided harm to protected species and trees, or that reasonable alternative siting and design options have been fully considered to reduce or avoid those effects. The lack of details around mitigation and enhancement measures means that planning conditions cannot be effectively relied upon, and I note the submitted UU does not extend to any ecological management or financial contributions.
15. For these reasons, the proposal would have potential to cause significant harm to nature conservation and protected species, failing to comply with Future Wales Policy 9, and LDP Policies SP14, NE1, NE2, and NE3, which address development effects on protected species, trees, and woodlands. The proposal would also be contrary to the step wise approach and species survey advice in PPW and TAN 5, respectively.

Highway safety

16. Bethania Road is a two-way single carriageway with a 20mph speed limit which connects with the A539 Llangollen Road to its east and Chapel Street to its west. The Council raises no highway safety issues with the site access arrangements and having visited the site, I see no reason to disagree with them.

17. The Council's concerns relate to the volume increase in vehicles turning right onto Llangollen Road and turning left off that highway onto Bethania Road, with anecdotal evidence of a heavy goods vehicle (HGV) damaging the roof of a corner property when negotiating the junction.
18. While the Llangollen Road junction is narrow and requires careful manoeuvring, the Council accepts that visibility is reasonable and agreed there are no apparent existing road safety issues that would be exacerbated by the proposal. The Council does not dispute the appellant's evidence that the proposal is estimated to generate up to 17 trips during morning and evening peak hours. While I note the concerns about an increase of 33 dwellings along a street serving approximately 100 dwellings, one additional vehicle every 3 to 4 minutes during peak hours would not be significant. In this context, the Council's request for a Transport Assessment, based on guidance in TAN 18: Transport (March 2007) has not been substantiated, as I have seen nothing in this instance which specifies any sensitivities for the A539 to justify seeking an assessment.
19. Although the Llangollen Road junction provides the shortest route for users of Bethania Road heading to and from Wrexham, an alternative route to the appeal site is available via Chapel Street only a short distance further south along the A539. The Council has raised no concerns with conditions at that junction or at the intersection between Chapel Street and Bethania Road. This route provides an alternative option for drivers, including HGVs. The TRICS data estimates between 1 and 2 HGV trips during the day, which is not significant. Construction traffic routes could be controlled through a suitably worded planning condition.
20. I have seen no substantive evidence which suggests the proposed development would impact on the safe operation of the local highway network. The proposal would therefore satisfy LDP Policies SP11, DM1, and T1, which seek to restrict development that would have an unacceptable impact on the safe and efficient operation of the transport network, and support schemes that do not give rise to highway safety problems on site or in the locality.

Pedestrian safety and active travel

21. The parties agree that the site is in a sustainable location with a range of local facilities within reasonable walking and cycling distances. While a footway runs along the site frontage, neither direction along Bethania Road has continuous provision to the nearest junctions.
22. I recognise the lack of a continuous footway could discourage residents from walking to nearby facilities. However, during my site visit I saw pedestrians of different ages navigating Bethania Road including people with pushchairs. The lack of footway provision towards Llangollen Road is for comparatively short lengths over the former rail line bridge and then near the main road junction. The section of highway over the bridge is relatively straight, with good intervisibility along the northern edge of the highway. For pedestrians heading northbound onto Llangollen Road, it involves navigating a straight section with double yellow lines and a narrow verge, whereas pedestrians heading southbound would cross Bethania Road to the pavement which wraps around the corner building. Pedestrians would be aware of approaching vehicles and could seek refuge on the footways before navigating the short unpaved sections.
23. In a westerly direction from the site entrance, the footway continues along the southern edge of Bethania Road and terminates before the row of properties, with no provision until the Chapel Street junction. I also acknowledge the pedestrian risks in walking on the carriageway, including for schoolchildren and parents walking to Ysgol Acrefair during the busier peak morning period. However, the residential character, road alignment along this

section and presence of parked vehicles on the street serve to moderate driver behaviour, such that the road should be driven with caution. Pedestrians can also seek refuge on paved areas, outside the flow of traffic. The short sections of carriageway without a footway do not therefore present a significant impediment to pedestrians.

24. Notwithstanding the above findings, the Active Travel (Wales) Act 2013 requires authorities to take reasonable steps to enhance the provision made for, and to have regard to the needs of, walkers and cyclists. Policy 12 of Future Wales (February 2021) sets out that Active Travel must be an essential and integral component of all new developments. Amongst other things, LDP Policies SP11, DM1, T1 and T2 promote and support increased use of walking and cycling as safe, viable and sustainable alternatives.
25. I agree that cycle parking facilities could be secured via a planning condition, alongside detailed plans as part of the reserved matters. At the hearing, the Council suggested that some works could take place along Bethania Road. While no specific details have been agreed and certain works may be limited to wider sections of the carriageway, there was no firm indication that those works could not be delivered. The Council would have control for works within the highway and could accept or refuse a scheme. I have seen no compelling evidence indicating that a scheme could not be agreed, or that works are not deliverable or go beyond the lifetime of any planning permission, as per advice in Welsh Government Circular 016/2014 'The Use of Planning Conditions for Development Management' (Circular 016/2014).
26. The appellant has also proposed improvement works to the public right of way (PROW) which runs through the TPO woodland on land within their control. However, while I recognise the benefits of enhancing connectivity to Llangollen Road, there is also an alternative pedestrian route which runs from Bethania Road via Hawthorne Avenue, a narrow but paved pedestrian route which fronts onto a row of dwellings before terminating at a bus stop on the A539. As such, and notwithstanding my concerns raised under the first main issue regarding the ecological implications of the PROW improvement works, it is not necessary for me to consider this issue any further.
27. With scope to agree works along Bethania Road, the proposal would not significantly harm pedestrian safety and could contribute towards active travel objectives, thereby satisfying Future Wales Policy 12 and LDP Policies SP11, DM1, T1, and T2.

Land contamination

28. Circular 06/2014 advises that if it is known or strongly suspected that a site is contaminated to an extent which would adversely affect the proposed development, an investigation of the hazards by the developer and proposals for remedial action will normally be required before the application can be determined by the planning authority. PPW advises that where land contamination issues arise, the planning authority will require evidence of a detailed investigation and risk assessment prior to determination of the application, unless it can already be established that remedial measures can be employed.
29. Part of the appeal site was formerly a landfill. The appellant's Desktop Geotechnical and Geo-Environmental Site Investigation report (2021) recognises that the nature of infill materials beneath the ground is not currently known, and a risk of landfill gas has been identified. Before more definite information can be provided on the extent of contamination present, the report advises that a Phase 2 intrusive investigation will be required. I understand the Council's cautious approach in seeking details on intrusive works prior to determining the application. However, in this instance, the appellant's report sets out a series of recommended remedial measures. Recommendations such as

6 rounds of monitoring are not fixed and could be increased subject to agreement of a detailed scheme of intrusive works which would be agreed with the Council in advance.

30. While it is advisable to carry out further investigations prior to submitting an application, much will depend on the specifics of each site. In this instance, I am satisfied that the evidence has set out the impacts of addressing the potential risks from gas deposits. I appreciate the details are subject to further intrusive investigative works and the remedial measures may vary, but there is no suggestion that the recommendations are insufficient to deal with the potential risks highlighted. The results of this work could influence finished dwellings levels, amongst other things, and impact on detailed design matters. However, there is no suggestion in the evidence before me that the likely risks cannot be mitigated for the lifetime of development.
31. The Council's Contaminated Land Officer has agreed that a phased approach towards investigation works would be appropriate based on the available evidence and, in this instance, I have no reason to find that such an approach could not be satisfactorily addressed through the use of planning conditions.
32. Subject to the imposition of suitably worded planning conditions, the proposed development would be acceptable in terms of land contamination risks. It therefore satisfies LDP Policy DM1 where it seeks to safeguard the environment from adverse effects of pollution, and advice in PPW and Circular 016/2014. There is also broad compliance with advice in the Council's Local Planning Guidance Note 23 'Development of Sites with Land Contamination' (2013).

Other Matters, Planning Balance, and Conclusion

33. The Council has raised no objection at this stage to the proposal's effects on existing or future occupants' living conditions, while detailed design matters fall to be determined through submission of reserved matters. In the context of the recently adopted LDP housing strategy, I attach moderate weight to the proposal's contribution towards housing supply. The financial contributions towards primary school education and public open space are neutral because they arise from the needs generated by the development.
34. I have found the proposal to be acceptable in terms of its effects on highway and pedestrian safety, and land contamination. However, even when considered in conjunction with the housing land supply benefits, such findings do not outweigh the identified harm to nature conservation and protected species. For the reasons given above, and taking account of all other matters raised, I conclude that the appeal should be dismissed.
35. In reaching my decision, I have taken into account 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.

I Stevens

INSPECTOR

DOCUMENTS SUBMITTED AT THE HEARING

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| Document 1 | Title Plan, submitted by Prospect Estates Ltd. |
| Document 2 | Contaminated land officer comments, dated 21 October 2022, submitted by Wrexham County Borough Council. |