



Appeal Decision

by N Jones BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 04/07/2024

Appeal reference: CAS-03162-Y7G8L1

Site address: Land to the north of Brymbo Road, Bwlchgwyn, Wrexham, LL11 5TY

- 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 John Kelly against the decision of Wrexham County Borough Council.
 - The application Ref BRY P/2023/0345, dated 19 April 2023, was refused by notice dated 6 December 2023.
 - The proposal is the erection of new stabling, hardstanding and fencing (Partly in retrospect).
 - A site visit was made 18 June 2024.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. A hardstanding area was present at the time of my site visit but fencing, and the design and location of stable buildings, differed to those shown on the proposed plans. For the avoidance of doubt, my decision is made on the basis of the plans considered by the Council and on the basis that partial retrospective consent is sought under Section 73(2)(a) of the Act.
3. The Wrexham Local Development Plan (LDP) was adopted by the Council on the 20 December 2023, after the Council's decision was made. The appeal must be determined in accordance with the current development plan unless material considerations indicate otherwise. I am satisfied that both parties have been provided with an opportunity to make representations on the up-to-date LDP policies relevant to the development.

Main Issues

4. The main issues are the effect of the development on highway safety and on ecology.

Reasons

Highway safety

5. The appeal site is in an elevated position above Brymbo Road and comprised, at the time of my visit, an overgrown enclosure bounded by some trees on its north-eastern edge

separated by post and wire fencing from a lower-level hardstanding area closest to the road. The proposal is to locate two timber buildings within the enclosed hardstanding area which would give a total of 5 stables and some storage space.

6. LDP Policy DM1 is a criteria-based policy which, where relevant, development proposals must meet, including not giving rise to highway safety problems on site or in the locality. LDP Policy T1 says proposals will be supported, amongst other things, where they do not have an adverse impact on highway safety.
7. The 5 stables are intended to house foaling mares, and once the mares have foaled, the stables would be used as accommodation for them for the first six months, before the foals are weaned from their mothers and put out to pasture. Although there is no reason to believe that the keeping of horses in general would be inherently more intensive than the keeping of farm animals, the appellant describes the previous use of the appeal site as a paddock and muck heap and does not dispute the Council's assertion that the intended use of the appeal site would be likely to generate a greater volume of vehicular movements than any previous uses. Given the likely need to undertake close monitoring of any stabled mares in advance of foaling, as well as attending to the daily needs of the animals after foaling has taken place, from the evidence before me, I consider that the proposed use would be likely to generate more frequent activity than the use of a paddock or muck heap.
8. I saw during my site visit that the access is impeded by existing roadside boundaries. I also saw, consistent with the Highway Authority's observations, that although the road is subject to the national 60mph speed limit, owing to its gradient and alignment, traffic speeds on this part of Brymbo Road are generally low. However, and whilst there is no evidence of any recorded accidents nearby, I have not been provided with any speed survey data to indicate that the Highway Authority's precautionary visibility requirements would not be necessary to ensure that vehicles approaching uphill from the bend to the east of the appeal site and downhill from the bend to its west would have sufficient warning of vehicles turning into and out of the site and that those emerging from the site would have a clear view of approaching traffic.
9. Whilst I saw, consistent with the appellant's assertion, that the required visibility could be achieved to the east, and a planning condition could secure the replacement of the existing boundary fence with a post and rail fence and hedge as intended to the back of the splay, the Council raises additional concerns that the consequent removal of the bank may harmfully affect, amongst other things, the character and appearance of the area. Details of the required visibility splay, and any associated works, have not been included on the submitted drawings. Consequently, consultees and interested parties would not therefore have been given an opportunity to comment in relation to these concerns. Moreover, in relation to achieving the required visibility to the west of the access, there is no evidence before me that the land which would be required to provide that visibility is within the appellant's ownership or control. Accordingly, I do not consider this is a matter which could be left to a planning condition.
10. I conclude that the proposal would harm highway safety and would therefore conflict with LDP Policies DM 1 and T1.

Ecology

11. LDP Policies NE1 and NE2 seek the protection of internationally, nationally and locally designated sites and protected species. The Council does not however assert that the appeal site is subject to any such designation or refer to any protected species which it considers may be present. Submission of the application to the Council pre-dated the

requirement in Planning Policy Wales (Edition 12) (PPW) of the submission of a green infrastructure statement with all planning applications, nevertheless, LDP Policy SP14 says development will only be permitted where it seeks to protect, conserve and enhance the natural environment including, amongst other things, 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. Recognising the need to reconcile the benefits of development with the need to protect, conserve and enhance natural heritage networks, LDP Policy SP19 seeks to maintain and where appropriate enhance green infrastructure and sets out criteria which development will be expected to meet, including providing mitigation where loss of green infrastructure is unavoidable. Its explanatory text confirms that proposed development should demonstrate how the services provided by green infrastructure have been considered and integrated into the proposals at the design stage. The Council's Local Planning Guidance Note 32 'Biodiversity and Development' (LPGN 32) provides detailed guidance on how development proposals will be considered, including establishing a good evidence base through site appraisal and ecological surveys.

12. The Council states that the appeal site was previously vegetated but other than a Google Streetview photograph dated 2009 which shows the site as overgrown at that time, I have been provided with little other evidence of the enclosure's condition before development took place. Nevertheless, whilst the appellant asserts that there are no ecological assets on the site, no evidence to support that contention is provided and given the nature of vegetation within the site and on its boundaries at the time of my visit, I disagree. Moreover, PPW states that where a site has been cleared prior to development its biodiversity value should be deemed to have been as it was before any site investigations or clearance took place. In such cases, habitat status will be presumed to be good in the absence of any evidence to the contrary. Given the need to integrate ecological considerations into the site selection and design stage of development, including for any visibility splays, this is not a matter which could be left to a planning condition.
13. Accordingly, in the absence of evidence to the contrary, it has not been demonstrated that the appeal scheme would not harm ecology and it therefore fails to comply with LDP Policies SP14 and SP19 and PPW and LPGN 32 advice.

Conclusion

14. For the reasons given above I conclude that the appeal should be dismissed. The appeal is dismissed.
15. 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 this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Minister's wellbeing objectives as required by section 8 of the Act.

N Jones

INSPECTOR