



Appeal Decision

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 14/12/2023

Appeal reference: CAS-02741-K9D8V6

Site address: The Old Fox, Bangor Road, Eyton, Wrexham LL13 0YD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Guy Wilkinson against the decision of Wrexham County Borough Council.
 - The application Ref ERB P/2022/0874, dated 1 October 2022, was refused by notice dated 15 November 2022.
 - The application sought planning permission for conversion and extension of existing buildings to form a dwelling without complying with conditions attached to planning permission Ref ERB P/2018/1035, dated 17 January 2019.
 - The conditions in dispute are Nos. 4, 6 and 7 and these are set out in Schedule 1 to this decision together with the reasons given for the conditions.
 - A site visit was made on 20 September 2023.
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Decision

1. The appeal is allowed, and planning permission is granted for conversion and extension of existing buildings to form a dwelling at The Old Fox, Bangor Road, Eyton, Wrexham LL13 0YD in accordance with the application Ref ERB P/2022/0874 dated 1 October 2022 without compliance with conditions numbers 4, 6 and 7 previously imposed on planning permission Ref ERB P/2018/1035 dated 17 January 2019, but subject to the following conditions.
 - 1) Unless already initiated and carried out in accordance with planning permission Ref ERB P/2018/1035 dated 17 January 2019, within 3 months from the date of this permission the development shall accord with the Assessment of Effects and Mitigation Measures of the Susan Worsfold Bat Activity Survey.

Reason: In the interest of maintaining and enhancing biodiversity.
 - 2) Unless already initiated and carried out in accordance with planning permission Ref ERB P/2018/1035 dated 17 January 2019, within 3 months from the date of this permission the vehicle parking and turning area shall be laid out within the site,

drained, and surfaced in accordance with drawing number P-100 and that space shall thereafter be kept available for such purposes in perpetuity.

Reason: In the interests of highway safety.

- 3) Within 4 months from the date of this permission a surface water drain across the access shall be installed and then maintained for the lifetime of the development.

Reason: In the interests of highway safety.

- 4) No gate, fence, wall, or other enclosure shall be erected, constructed, or placed across the vehicular access.

Reason: In the interests of highway safety.

Procedural Matters

2. The description of the site address is taken from the appeal form and the Council's notice which more succinctly describes the location of the development.
3. Planning permission was granted under reference ERB P/2018/1035 in January 2019 for the conversion and extension of existing buildings to form a dwelling. This was subject to conditions which the appellant objects to, and the development was carried out without compliance with the disputed conditions. The appellant sought to delete the disputed conditions, but this was refused by the Council in November 2022. This is the subject of the appeal.
4. The disputed conditions are set out in full in schedule 1 of this decision, but briefly require, a new footway to be constructed along the site frontage (condition 4), vehicular access visibility splays be instigated and retained (condition 6), and pedestrian visibility splays be instigated and retained (condition 7).
5. No other condition is in dispute. Since the development has been carried out the appeal proceeds under section 73A. Should a new planning permission be granted the previously imposed conditions cannot subsist in the form they were worded. This is because they required something to be done before the use took place. Other conditions require physical works to be undertaken or compliance with approved mitigation. I have not been informed that they have been carried out.
6. I am given to understand that the Wrexham Local Development Plan 2013-2028 (LDP) is close to adoption, and therefore the relevant policy cited DM1 must be given significant weight in the determination of this appeal. I do not consider that policy DM1 is in substance different to the adopted policy GDP1 of the Wrexham Unitary Development Plan 1996-2011 (UDP), in so far as these relate to the issue of highway safety that is central to the disputed conditions. No relevant policies of Future Wales, The National Plan 2040 (FW) have been cited in relation to this appeal.

Main Issue

7. The main issue is whether the disputed conditions are reasonable and necessary.

Reasons

8. The appeal site is in Eyton adjacent to the B5426. There is a primary school and a string of houses along the south side of the road. Adjoining the school there is a lay-by and another alongside the frontage of the Old Fox. The lay-by relating to the appeal site extends across the front of the vehicular access serving the development. This is delineated by a broken white line and extends from where the footway ends to the west of the appeal site and towards the second footway to the east of the site alongside the school.

9. In front of the Old Fox is a small area of paving enclosed by railings which abuts the lay-by. This area in front of the Old Fox was the intended area for a new footway along the whole frontage. This would have linked the footway to the west of the site with the footway to the east, providing a continuous link that would cross in front of the vehicular access serving the site.

Condition 4

10. The proposed footway is required because of a development that was granted planning permission for a dwelling in 2019. The existing pavement to the west of the appeal site roughly begins from the road junction from Crabtree Green and the B5426. It traverses the south side of the carriageway and crosses in front of another access before it reaches and stops before the appeal site access. The pavement tapers very narrowly along this path. Pedestrians would then walk along the edge of the carriageway where the marked-out lay-by tapers out in front of the development's vehicular access and the appeal site frontage before reaching the dropped kerb of the second footway to the east and in front of the school.
11. Parked cars would invariably use the lay-by in front of the appeal site during school term pick-up and drop-off times. However, having viewed the site I do not consider that the present arrangement is dangerous since this gap in the footway provision is a relatively short distance, there is a natural path to follow and parked vehicles in the lay-by would not unduly inhibit this walking route. Given the rural nature of the site and surrounding area, it is likely that the predominant choice of transport to school would be by vehicle, and these could be parked at either lay-by. I do not consider that the lack of a footway would be harmful to pedestrian safety given the very short distance a parent escorting their child to school would take from the lay-by next to the appeal site.
12. I consider it has not been sufficiently explained why this provision is necessary and reasonable in these circumstances to require a new footway at this location. The Council indicate a new footway would be safer, but it has not been shown that this is needed, reasonable in the context of the site or fairly and reasonably relates to the development permitted.
13. I consider the requirement for condition 4 fails these tests for imposing conditions as set out in paragraph 3.1 of Welsh Government Circular Ref: WGC 016/2014 The Use of Planning Conditions for Development Management. I am not persuaded that had planning permission been refused for the development based on the lack of a pedestrian footway and concerns about pedestrian safety this would be sustained. Furthermore, the scale of the development does not justify the requirement as one dwelling would not give rise to a significant increase in pedestrian activity that would warrant it.
14. I therefore conclude that the requirement for condition 4 is unreasonable and unnecessary and therefore its removal would not conflict with UDP Policy GDP1 d) and LDP Policy DM1. I therefore consider that the development is carried out without compliance with condition 4.

Condition 6

15. The Old Fox is within a 20-mph area and the requirement of condition 6 is to provide visibility splays of 2.4 metres by 45 metres in both directions from the access as now constructed. The Council's Chief Officer, Environment and Technical (COET) indicated that visibility in the easterly direction was adequate. However, COET indicates that the westerly direction visibility is impeded as 18 metres visibility is achieved.
16. Planning Policy Wales Technical Advice Note 18: Transport (TAN 18) Table A of Annex B indicates that where road traffic speed is not known the sight stopping distance for 20

mph should be 45 metres (providing an allowance for motorist travelling at 10 kph above the speed limit). However, Table B is designed for roads in built up areas where actual speeds are 60km/h or below. Whilst entering Eytton there is a 30-mph zone and then a 20-mph closer to the appeal site. In this circumstance I would indicate that Table B is appropriate. Table B guidance indicates that a sight stopping distance of 22m is appropriate for a speed of 20 mph. Manual for Streets applies 25 metres for speeds of 20 mph adjusted for bonnet lengths.

17. From my visit I saw that at some 2.4 metres back from the edge of the carriageway this distance could broadly be achieved accounting for the grass-verge and the reasonably level surface. For instance, it is possible to gain sight of a vehicle travelling on the opposite side of the road from the access when viewed towards the turn in the road further west of the site. This distance far exceeds the required standard for sight stopping distances in published guidance. The telegraph pole situated just beyond the traffic calming measure to the west of the access is visible and this is some 22-23 metres when measured from the centre point of the access. I therefore consider that the visibility from the access in both directions is acceptable.
18. I consider that condition 6 is unnecessary since visibility is achieved. The concern about any obstruction within the splays is within the control of the Highway Authority and the Council imposed that no gate, wall, or other enclosure is erected across the access in the previous permission. I have imposed a similar restriction with a modified wording as I must consider re-imposing conditions on any new planning permission that may still subsist. I therefore consider that the proposal to remove condition 6 would not conflict with UDP Policy GDP1 d) and LDP Policy DM1.
19. I conclude that the development is carried out without compliance with condition 6.
Condition 7
20. Condition 7 is a requirement for a pedestrian visibility splay 2.4 metres back from the back edge of the footway to points 3.3 metres either side. The Council accept that this is achieved but oppose the lifting of the condition. Compliance with this condition is not dependant on the implementation of the footway because visibility is achieved before it reaches the back edge of the footway. As restrictions would be placed on erecting any wall within the access there would be no obstruction to this visibility. The condition has been met and the condition as worded is unnecessary.
21. I therefore consider that the proposal to remove condition 7 would not conflict with UDP Policy GDP1 d) and LDP Policy DM1.
22. I conclude that the development is carried out without compliance with condition 7.

Conditions

23. The Development Management Manual clearly states that decision notices for the grant of planning permission under Section 73 should repeat the relevant conditions (which are considered necessary) from the original decision notice.
24. I have re-worded conditions 3, 5, 9 and 10 accordingly from planning permission ERB P/2018/1035. These are now new conditions 1 - 4. I have provided a period of 3 and 4 months respectively for works to be undertaken unless they have already been completed. From my inspection I note that the drain across the access had not been carried out but could not gain access to the parking area or know whether the ecological work had been carried out.
25. I consider that imposing sanctions on the new conditions to require the use permitted to cease should the works/mitigation not be carried out would be unreasonable (should they

have not been initiated in the first place). This is because no such sanction was placed on the conditions of planning permission ERB P/2018/1035.

26. Vehicular access surfacing has been completed and other conditions imposed on planning permission ERB P/2018/1035 are no longer applicable. These are conditions 1, 2 and 8.

Conclusions

27. 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 the Welsh Ministers' well-being objective to make our cities, towns, and villages even better places in which to live and work.

28. For the reasons given above, I conclude that the appeal should succeed. I will grant a new planning permission without the disputed conditions and impose new conditions as stated.

Iwan Lloyd

INSPECTOR

Schedule 1 - Appeal reference: CAS-02741-K9D8V6

Condition 4

The dwelling shall not be occupied until a footway has been constructed along the full length of the site frontage and across the full length of the frontage of The Old Fox in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of pedestrian safety.

Condition 6

Prior to first use of the development hereby approved the vehicular access shall provide visibility splays of 2.4 metres x 45 metres in both directions measured to the nearside edge of the adjoining highway. Within these splays there shall be no obstruction in excess of 1 metre in height above the level of the nearside edge of the adjoining highway. The splays shall thereafter be permanently retained clear of any such obstruction to visibility.

Reason: To ensure that adequate visibility is provided at the proposed point of access to the highway.

Condition 7

Prior to first use of the development hereby approved a pedestrian visibility splay shall be established measured from the centreline of the vehicular access 2.4 metres back from the back edge of the footway to points 3.3 metres either side measured along the back edge of the footway. Within these splays there shall be no obstruction in excess of 0.6 metres in height above the level of the adjoining highway. The splays shall thereafter be permanently retained clear of any such obstruction to visibility.

Reason: To ensure that adequate visibility is provided at the proposed point of access to the highway.