



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 25.04.22

gan **Richard E. Jenkins BA(Hons) MSc MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 14/06/2022

Appeal Decision

Site visit made on 25.04.22

by **Richard E. Jenkins BA(Hons) MSc MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 14/06/2022

Appeal Ref: APP/H6955/A/21/3275733

Site address: Land off Tudor Drive, Penley, Wrexham

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 against a refusal to grant outline planning permission.
 - The appeal is made by Mr J Sadowski against the decision of Wrexham County Borough Council.
 - The development proposed is outline application for up to 17No. dwellings with all matters except access reserved.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the site address and the description of development from the Council's Notice of Decision. As these details are consistent with those outlined on the Appeal Form, I am satisfied that there is no prejudice in this respect. The planning application was submitted in outline, with only access to be determined at this stage. There is sufficient information to deal with the appeal on this basis.
3. Through its Statement of Case, the Local Planning Authority (LPA) indicated a need for a planning obligation to be provided to facilitate the maintenance of open space and the provision of education contributions. The appellant subsequently submitted a Unilateral Undertaking under the provisions of Section 106 of the above Act and the LPA has been afforded the opportunity to provide comment on its content.
4. It is notable that, despite submitting the planning obligation, the appellant disputes the education contributions required by the Council. However, the requirement appears to be based on a formula set out in Local Planning Guidance Note 27: *Contributions to Schools* (LPG Note 27). I note the appellant's concerns about the Council seeking contributions where schools are at 90% capacity, particularly given the lack of reference to this approach in the aforementioned guidance note. However, LPG Note 27 is clear that

developer contributions should apply to schools deemed to have a shortage of places and the evidence in this case indicates that the nearest primary school is operating at 94% capacity (112 of 119 capacity) and the secondary school is operating beyond 100% capacity. Given that the development is anticipated to generate an additional 4No. primary school places and a further 4No secondary school places, I consider the requirement to be both reasonable and necessary. I shall therefore attribute such covenants due weight in the decision making process.

Main Issues

5. The main issues in the determination of the appeal are:

- Whether the proposed development would be acceptable in principle, having regard to the adopted development plan;
- The effect of the proposed development upon the character and appearance of the area, having particular regard to the loss of woodland protected by a Tree Preservation Order (TPO) and its siting within a Special Landscape Area (SLA);
- The effect of the proposed development upon ecological interests; and finally,
- Whether any identified harm would be outweighed by the material considerations advanced in favour of the scheme.

Reasons

6. The appeal relates to an area of land located to the west of Tudor Drive in Penley, near Wrexham. The land was previously used as a wartime hospital between 1943 and 1948, with evidence of this use visible on site, including remains of hard surfacing and some extant structures. Nevertheless, I was able to observe at the time of my site inspection that, by virtue of the fact that the site forms part of a wider area of woodland protected through a Tree Preservation Order (TPO), its previously developed status is less apparent from outside of the site, with it largely blending into the rural landscape. The appeal proposal seeks outline planning permission for up to 17No. residential dwellings, with all matters except for access reserved for subsequent determination.

The Principle of Development, having regard to the adopted Development Plan

7. It is agreed between the main parties that the adopted Wrexham Unitary Development Plan 1996- 2011 (adopted 2005) (UDP) is time expired. It therefore attracts less than full weight. Nevertheless, it remains the adopted development plan for the area and thus represents an important material consideration in the determination of the appeal. The appeal site lies outside of the settlement limits defined by the adopted UDP and is therefore classified as ‘*countryside*’ for the purposes of planning policy. Consistent with the thrust of national policy, the adopted UDP seeks to strictly control development within countryside locations. The UDP also defines the appeal site as within the Maelor Special Landscape Area (SLA).
8. Policy PS1 of the adopted UDP directs development for housing to areas within defined settlement limits, although Policy H5 does allow for new dwellings outside of defined settlement limits subject to compliance with criteria. Nonetheless, the development proposed in this instance would not be justified by the policy tests outlined by Policy H5. Therefore, despite some limited support from Policy PS3 of the adopted UDP, which advises that previously developed land should be used in preference to the use of greenfield land wherever possible, the principle of the development would conflict with both the overarching development strategy advocated by the adopted UDP and the specific aims of both Policy PS1 and Policy H5.

Character and Appearance

9. I have already set out above that, despite incorporating some areas of hardstanding and some structures associated with its former use, the site generally appears to form part of the rural landscape beyond the built-up area of Penley. This assessment is consistent with the fact that it forms part of a woodland subject of a TPO and reflects the fact that the evidence of the former use is not clearly apparent from outside of the appeal site. The vegetation and tree clearance that would be necessary to facilitate the development, coupled with the erection of some 17 No. dwellings, would without doubt injuriously alter the existing rural characteristics of the appeal site. As such, despite being largely screened from the north and west, I consider that the proposed development would represent an unacceptable incursion into the protected woodland and wider rural landscape that forms an important element of the Maelor SLA.
10. I note the findings of the Arboricultural Report that accompanies the appeal proposal. However, whilst that document advises that a number of trees on the site fall into 'Category U', I have not seen anything to indicate that the collective amenity value of the woodland is at risk. I am also not persuaded that the development would be justified by the provision of an ecological enhancement area that could include new tree planting and management proposals for existing trees. On this basis, I find that the proposed development would unacceptably intrude into the protected woodland. Given that the woodland makes a positive contribution to the setting of the village and the wider SLA, I also find that it would cause material harm to the character and appearance of the area and thereby conflict with Policy PS2, Policy GDP1(a), Policy EC4 and Policy EC5 of the adopted UDP.

Ecology

11. The Council objects to the proposed development on the basis that the development would have a detrimental impact upon local wildlife site No.W420: 'Llanerch Panna' which comprises a woodland and associated grassland area, with the majority of the appeal site being woodland within the grounds of a former hospital. It also contends that it has not been satisfactorily demonstrated that there would not be a detrimental impact upon statutorily protected species.
12. Nevertheless, the only cogent evidence submitted with the appeal indicates that the ecological value of the appeal site, which only comprises some 5.7% of the designated wildlife site, is low and that the development could be subject of a number of mitigation and compensatory measures. Great crested newts may use the site for foraging, dispersal or sheltering purposes. Bats have also been found to be present at the site. However, Natural Resources Wales (NRW) has confirmed that, subject to a planning condition being imposed, the development would not be detrimental to the maintenance of the favourable conservation status of the great crested newt populations. It also advises that the proposed development would not be likely to harm or disturb the bats or their breeding sites and resting places subject to the avoidance measures set out in the relevant report being implemented.
13. I have considered the Council's contention that, in the absence of full details, it is not possible to conclude that the mitigation/ compensation would off-set the impacts from the development and protect the integrity of the remainder of the wildlife site. I am also aware that Technical Advice Note 5: *Nature Conservation and Planning* (2009) advises that planning permission should not be granted unless the LPA is satisfied that the development would not adversely impact upon protected species. However, NRW's expert advice is clear that, having regard to the specific circumstances of this case, the

development could proceed without harm to the favourable conservation status of protected species subject to planning conditions being imposed and I have not seen any convincing evidence to lead me to an alternative conclusion. I therefore find that the impact on ecological interests could be satisfactorily mitigated and that there would not be any material conflict with Policy EC6 of the adopted UDP or the advice set out in national policy.

Other Matters and Balancing Exercise

14. I have found above that the proposed development would conflict with the development strategy of the adopted UDP. Given that the woodland makes a positive contribution to the setting of the village and the wider SLA, I have also found that the development would cause material harm to the character and appearance of the area. Nevertheless, I have noted that, given its age, the adopted UDP attracts less than full weight. It is therefore necessary to consider the overarching thrust of national policy and the other material considerations advanced in favour of the development.
15. Planning Policy Wales (Ed.11, 2021) states that: *“Development in the countryside should be located within and adjoining those settlements where it can best be accommodated in terms of infrastructure, access, habitat and landscape conservation.... However, new building in the open countryside away from existing settlements or areas allocated for development in development plans must continue to be strictly controlled.”* In this case, elements of the appeal site are previously developed and it adjoins the existing settlement boundary. The site is also within walking distance of a number of facilities and services, including access to modes of public transport, meaning that it is located in a broadly sustainable location.
16. The Council’s failure to adopt an up to date development plan has also resulted in difficulties maintaining a healthy supply of land for housing. Specifically, whilst the need to maintain a five year supply of housing is no longer a requirement of national policy, the supply of housing is clearly an important material consideration and the evidence suggests that such supply is failing to keep up with identified needs. Indeed, I am advised that the annual housing completions data over the period 2013- 2019 is approximately half that of the annual average requirement levels identified through the emerging Local Development Plan (LDP) process. Consistent with the approach taken in the other appeal decisions cited within the appellant’s evidence, I consider that such matters weigh significantly in favour of the appeal proposal.
17. Nevertheless, I am aware that the emerging Wrexham LDP is at an advanced stage of the Examination process. Indeed, it has been confirmed that the Council is currently consulting on its *‘Matters Arising Changes’* which indicates that the Examination is nearing its end. The evidence indicates that the emerging LDP seeks to address the identified housing shortfall through, amongst other things, the allocation of land for residential purposes. However, despite allocating a number of sites that are identified as being within the *‘countryside’* in the adopted UDP, the appeal site is not allocated for residential purposes in the emerging plan. Rather, it is to remain outside of the defined settlement boundary and within the Maelor SLA. This suggests that the proposed development would be contrary to both adopted and emerging development plan policy.
18. It is important to recognise that national policy indicates that emerging plans should not simply attract increased weight as they progress through the preparation process. However, in this instance, I consider that it represents an important material consideration in the overall balancing exercise. Indeed, it is at the latter stage of the Examination process and clearly deals with the appeal site in a broadly consistent manner to the extant

UDP. I have not seen anything to suggest that its housing strategy is fundamentally flawed and, once adopted, it would offer a plan led solution to the housing land supply issues in the County Borough. As such, and bearing in mind the timescales involved in progressing towards adoption, I do not consider that the material considerations in favour of the development outweigh the aforementioned harm and associated policy conflict.

19. I acknowledge the difference between this finding and the other appeal decisions cited within the appellant's evidence. However, the status of the site in the emerging LDP, and the current stage of the LDP Examination, materially differentiate the current scheme from the earlier proposals. The identified harms and associated policy conflict also differ. The other appeal decisions do not, therefore, lead me to alter my overall conclusion. Indeed, it is a well-established principle of planning that each case should be treated on its own particular merits and it is on this basis that I have considered this appeal.

Overall Conclusion

20. Based on the foregoing analysis, and having considered all matters raised, I conclude that the appeal should be dismissed. In coming to this conclusion, I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (WBFG Act). I have taken into account the ways of working set out at section 5 of the WBFG Act and consider that this decision is in accordance with the 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.

Richard E. Jenkins

INSPECTOR