

**TOWN AND COUNTRY PLANNING ACT 1990 SECTION 78 APPEAL AT
Cattle Shelter, Burgess Lane, Penley, Wrexham, LL13 0ND**

COUNCIL'S STATEMENT OF CASE

**PLANNING REF: P/2021/1162
PINS REF: CAS-01843-F2G6M0**

1.0 THE SITE



- 1.1 The application site is located on the west side of Burgess Lane, approximately 1km north of the A539 between Overton and Penley. It consists of a hard surfaced, uncovered storage area to the south of the farm buildings, with a parcel of agricultural land of 3 hectares.
- 1.2 Access to the site would be achieved via the unclassified public highway, Burgess Lane.

2.0 PROPOSAL

- 2.1 The application sought planning consent for the retrospective change of use of land from an agricultural yard to a B8 use, for waste collection, storage and distribution.
- 2.2 The application was received by Wrexham County Borough Council ('the Council') on the 29 October 2021.

3.0 HISTORY

- 3.1 The following represents the most relevant planning history pertinent to the determination of this application and subsequent appeal:

- P/2019/0293 – Prior approval for cattle feed store building. Approved 20/05/2019.
- P/2018/0788 – Cattle Shelter. Approved 04/02/2019.
- P/2014/0276 – Extension to agricultural building. Granted 01/12/2014.
- P/2009/0789 – Amendment to P/2008/0847. Granted 02/11/2009.
- P/2008/0847 – Agricultural Building. Granted 06/10/2008.
- P/2008/0390 – Agricultural Building. Refused 02/06/2008.

3.2 On separate land located to the east of the application site, the following planning application was considered pertinent to the determination of this application:

- P/2009/0611 – Change of use of agricultural building to employment. Refused 28/04/2009.

4.0 DECISION

4.1 This application was put before Wrexham County Borough's Planning Committee on the 07 February 2022. A copy of this committee report is attached to this appeal statement as Appendix A, whilst a copy of an addendum report for the Committee Meeting is attached as Appendix B. The application was considered by the members of the Planning Committee and subsequently refused for the following reason:

'The site development is likely to increase the amount of traffic using Burgess Lane. Due to there being inadequate visibility at its junction with the A539, its restricted width and lack of passing places, the development will have a detrimental impact on highway safety. The proposals therefore conflict with policy GDP1(d) of the Wrexham Unitary Development Plan.'

4.2 The refusal notice was issued by the Council on the 07 February 2022. A copy of the refusal notice is attached as Appendix C to this statement.

4.3 There have been no material changes to the Development Plan for the Wrexham County Borough or to National Planning Policy and guidance since the time of the determination of this planning application.

5.0 COUNCIL'S CASE

5.1 The Council's reason for the refusal of this planning application, and the policy basis to support this decision are detailed in full within the decision notice attached as Appendix C to this appeal statement. It is noted that it is on this ground that the appellant has submitted this appeal.

5.2 The Council is mindful that the officer's report put before the members of the Planning Committee, did recommend the approval of this planning application. However, the Council notes that the Planning Committee is in no way bound by the recommendation of its officers, and is entitled to arrive at its own planning judgement as the decision maker. As such, the Council is of the

opinion that it has not acted unreasonably in arriving at this decision, which is line with the requirements of the Town and Country Planning Act 1990, and also the Wrexham Council Constitution.

- 5.3 The Council notes that the Planning Committee exercised its planning judgement in arriving at this decision, giving full consideration to all the available evidence before them, including site specific considerations. In this instance, this included the planning history of the application site and property opposite; the presentation from the Planning Officer during the meeting; local evidence and concerns provided in the objection response from the Community Council; and local evidence and concerns raised in the 12 letters of objection received from members of the public in relation to highway safety and the nature/condition of Burgess Lane. The specific points raised by the Community Council and the objectors to the application are detailed within the Committee Report attached as Appendix A.
- 5.4 The Council's Planning Committee considered the nature of the development, the likely number and nature of vehicle movements that would be generated as a result of the operation of the site, and also the existing highway conditions along Burgess Lane. This was balanced against the benefits of the development. In this regard, the Council specifically considered that Burgess Lane, off which the application site would be accessed, is a narrow and unadopted road, which is in a relatively poor condition, which contains no passing places, and has limited visibility at the junction with the application site. All such matters were raised by the Highway Department in the consultation response provided.
- 5.5 In its assessment on this matter, the Council considered that the use of Burgess Lane was not acceptable from a highway safety and capacity perspective. Therefore, the proposal conflicts with the requirements of Policy GDP1(d) of the Wrexham Unitary Development Plan, which requires that all new developments:
- 'Ensure safe and convenient pedestrian and vehicular access to and from development sites, both on site and in the nearby locality.'*
- 5.6 In balancing these various factors, the Council arrived at the decision that the development could not be accessed using the existing highway network without resulting in the creation adverse safety conditions for users of the highway. This is particularly pertinent as no alternative means of access to the application could be achieved, meaning that the development would be solely reliant on the use of motor vehicle along Burgess Lane.
- 5.7 Whilst no objection to the proposal was registered by the Council's Highways Department, a number of concerns were still raised, which were taken into account by the Planning Committee. The full consultation comments made by the Highway Department are included in full within the Committee Report, however the following summary is provided for ease of reference:

- Burgess Lane is narrow with few suitable passing places. The lane is in poor condition and would not benefit from any significant increase in vehicle movements.
- Visibility splays at the Burgess Lane/A539 junction are inadequate in both directions. Visibility is obstructed at this junction by the existing hedgerow.
- Visibility from the existing access serving the proposed development site is inadequate in the northerly direction – although this could be adequate by cutting back a small section of hedgerow.
- Visibility from the existing access serving the proposed development site is adequate in the southerly direction.
- There would be sufficient parking and turning provision within the site.
- If the proposed development was considered to generate significant additional traffic movements, it would be difficult to support the proposal given the narrow nature of Burgess Lane.
- Although current vehicle movements are presently low, the development may be considered to have the result of a significant increase as the business develops. In this instance, it may be appropriate for passing places to be constructed along Burgess Lane through a S278 agreement

- 5.8 It is noted that the applicant did not provided a detailed highway assessment from a qualified engineer to demonstrate that the impact of the development upon the highway network would be acceptable and not result in harm, specifically in regard to highway safety. Furthermore, the applicant did not provide a plan showing/detailing the visibility splays which could be achieved from the access road, although this was assessed by the Highway Department. As such, the Council did not agree that this matter had been satisfactorily demonstrated to such an extent that merited the approval of this planning application in light of the highway and access concerns raised by the Community Council, Objectors to the application and also by the Highway Department.
- 5.9 In the planning balance, the Council considered that the limited benefits of the scheme (which are solely to the applicant), would not outweigh the harm that would be created to users of this public highway. As such, in this instance the tilted balance warranted the refusal of this planning application. The Council is of the opinion that this is a correct planning judgement and decision that was reasonable to arrive at.
- 5.10 The Council is not aware of any evidence put forward either at the time of the determination of this application, or subsequently through this appeal submission, which suggests that the decision that has been made was incorrect or should have been different. Furthermore, the Council is of the opinion that no planning conditions could be reasonably imposed within the decision notice, which would make the level of harm acceptable, or provide suitable mitigation to address the level of harm that would be caused by this proposed development - specifically in relation to the condition and nature of the public highway or the access arrangements to the application site.

- 5.11 Therefore, the Council remains of the opinion that the correct decision was arrived at in refusing this planning application. No information or assessments have been provided by the applicant through this appeal to the contrary which demonstrates that this was an incorrect decision. As such, the Council remains of the view that the development would have a detrimental impact on highway safety along Burgess Lane were this appeal to be upheld, which would not be outweighed by the limited benefits of the scheme. As such, the proposal continues to conflict with Policy GDP1(d) of the Wrexham Unitary Development Plan.

6.0 CONCLUSION

- 6.1 The proposed development would be accessed of a narrow lane, which is in a poor condition, which could not safely accommodate the increase in traffic levels arising from this proposal. Furthermore, the applicant has failed to demonstrate that safe access to and from the site onto Burgess Lane could be achieved.
- 6.2 The development would have a detrimental impact upon highway safety along Burgess Lane and as such, would be contrary to the requirements of Policy GDP1(d) of the Wrexham Unitary Development Plan, in that it would not ensure safe vehicular access to and from the site.

'Ensure safe and convenient pedestrian and vehicular access to and from development sites, both on site and in the nearby locality.'

- 6.3 The Council is mindful of the applicants views on this proposal, and the comments submitted with this appeal. However, the Council disagrees that an incorrect decision was reached in refusing this application, and that the harm that would be caused outweighs the limited benefits of the scheme.
- 6.4 Therefore, the Council respectfully requests that this appeal be dismissed.

7.0 CONDITIONS AND OBLIGATION

- 7.1 In the event of the appeal being allowed the Council respectfully requests that the planning permission be subject to conditions set out within the Planning Committee report attached as Appendix A of this appeal statement.

8.0 APPENDICIES

Appendix A: Planning Committee Report dated 07 February 2022

Appendix B: Planning Committee Addendum Report dated 07 February 2022.

Appendix C: Decision Notice.