
Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 05/01/21

gan Joanne Burston, BSc MA MRTPI
AIPROW

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 2nd February 2021

Appeal Decision

Site visit made on 05/01/21

by Joanne Burston, BSc MA MRTPI
AIPROW

an Inspector appointed by the Welsh Ministers

Date: 2nd February 2021

Appeal Ref: APP/H6955/A/20/3258703

Site address: Land at Tupa, Penley Hall Drive, Penley, Wrexham, LL13 0LU

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 K Barker and Mrs T Wilson against the decision of Wrexham County Borough Council.
 - The application Ref: P/2019/0835 dated 7 November 2019, was refused by notice dated 28 February 2020.
 - The development proposed is described as an *"outline application for 9 dwellings on land at Tupa, part of former Polish hospital/WWII hospital site."*
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Decision

1. The appeal is allowed and planning permission is granted for 9 no dwellings with all matters reserved except for the layout of the buildings at Land at Tupa, Penley Hall Drive, Penley, Wrexham, LL13 0LU in accordance with the terms of the application, Ref: P/2019/0835 dated 7 November 2019, and the plans submitted with it, subject to the conditions set out in the annex to this decision.

Application for costs

2. An application for costs was made by Mr K Barker and Mrs T Wilson against Wrexham County Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. Although the planning application was made in the terms given in the heading to this decision, this was changed by the Council to *'outline application for 9 no. dwellings with all matters reserved except for the layout of the buildings'*. Whilst there is nothing to indicate that this revised description was agreed with the appellant it does give an accurate description of the proposal. For clarity I have used this in my decision.
 4. A unilateral undertaking (UU), pursuant to section 106 of the Town and Country Planning Act 1990, dated 4 January 2021, was submitted and I have taken it into account.
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5. 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 objectives of driving sustainable growth and better environments.

Main Issue

6. The main issue is whether the proposal is consistent with local and national planning policies and if not whether there are other material considerations sufficient to lead to a conclusion contrary to the development plan.

Reasons

Principle of development

7. There is no dispute between the parties that the Wrexham Unitary Development Plan 1996-2011 (UDP), adopted 2005, is time expired. Nevertheless, it remains the development plan for the area.
8. The appeal site is close to, but outside the settlement limit of Penley as identified in the UDP. Therefore, for the purposes of the adopted development plan, the proposal would represent development within the countryside for planning purposes.
9. Policy PS1 of the UDP directs development for housing to areas within defined settlement limits. Policy H5 of the UDP expands on Policy PS1 by allowing new dwellings outside defined settlement limits subject to a number of criteria. From the evidence before me, I find that the proposal would not meet any of the circumstances set out in Policy H5. The development would therefore be contrary to Policies PS1 and H5 of the UDP.
10. Nonetheless, I acknowledge that, given its age, the UDP policies may attract less than full weight, particularly where Planning Policy Wales, Edition 10 (PPW) states¹ 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."*
11. In this respect, Penley benefits from primary and secondary schools, a local shop, other community facilities, bus links and employment opportunities within easy walking distance of the site. There are adequate footway links to services and a local 20mph speed limit that improves the safety for cyclists. Furthermore, whilst concerns have been raised relating to the impact of the development on the local schools, the submitted Unilateral Undertaking makes financial provision for additional school spaces.
12. Accordingly, the appeal site is located in a broadly sustainable area which has relatively good accessibility by non-car modes when compared to the rural area as a whole. Further, given the historic use of the site as a former army and ex-servicemen hospital, the proposal would comply with UDP Policy PS3 which advises that brownfield land should be utilised before greenfield wherever possible.
13. Thus, the conflict with the UDP is a matter which must be weighed in the final balance.

¹ Paragraph 3.56

Highway amenity and convenience

14. The crux of this appeal relates to the likely implications for the use of the unadopted estate road known as 'Penley Hall Drive' that links the A539 to the proposed site access and the lack of an emergency link road. Nevertheless, I also acknowledge that several issues have been raised by local residents which are addressed below under 'other matters'.
15. A private or unadopted road is by definition a highway not maintainable at public expense. The local highway authority is therefore under no obligation to pay for its maintenance. Responsibility for the cost of maintaining a private road usually rests with the frontagers (the owners of properties which front onto such roads). Whilst the local highway authority is not responsible for maintaining a private or unadopted road, it can intervene under existing legislation to repair it.
16. The appeal site is accessed via a private single width track, taken from Penley Hall Drive. This track currently serves 4 residential dwellings. Penley Hall Drive itself is an unadopted estate road which serves Pendas Park Estate. In excess of 100 dwellings are served off this unadopted estate road. The Drive and its junction with the A539 are in frequent use and vehicles travelling to and from the appeal site would have to use it routinely. Therefore, the scheme would be likely to lead to an increase in the number of vehicle movements along the unadopted road and track that adjoins the appeal site to the A539.
17. I saw that visibility along the access road and surrounding road network is good, which allows for vehicles to wait and pass at wider points on the road. In this regard, no accidents have been formally recorded either along the unadopted road or at its junction with the A539. To my mind, the limited increase in traffic and pedestrian movements that result from the scheme would be unlikely to change this or result in any material increased risk to safety. In reaching this opinion, I note that the Highway Authority can require frontagers/road owner to undertake repairs to Penley Hall Drive if there is a danger to traffic using the street².
18. Furthermore, the proposals show an improvement to the surfacing of the private access track and whilst the track is only single width, I consider such measures would lead to an enhancement in the ability of users to safely negotiate the track without leading to significant impact on highway convenience or amenity.
19. During construction operations access along the private access track may be limited. However, this would be short term and existing residential occupiers have a legal right for access. The appellant also states that "*The access road required to serve the application site will be designed and constructed to adoptable standard but until such time as it can be connected to the publicly maintainable highway network, it will be managed and maintained by a management company to be set up for the specific purpose.*" Accordingly, subject to an appropriate mechanism for achieving a 'management company' the long-term maintenance of the access track would be satisfied. Therefore, the proposal would not reduce the main purpose of the road network hereabouts, which is to facilitate movement.
20. Without evidence to the contrary, Penley Hall Drive can accommodate access by emergency vehicles and the road layout would not result in a delayed response to life threatening incidents. Whilst a second emergency access may be useful, any

² Section 230 of the 1980 Highways Act empowers the 'street works authority' to order the frontagers to carry out repairs to a private or unadopted road which are "needed to obviate danger to traffic".

temporary block to highway access such as from roadworks, would be infrequent, and contractors would be required to provide appropriate signage and local information. Moreover, no objection to the proposed development has been raised by the emergency services.

21. On this issue it is therefore concluded that the proposed development would not be harmful to highway safety, amenity or convenience and therefore would be consistent with Policy GPD1 of the Wrexham Unitary Development Plan, adopted 2005, which amongst other matters seek to ensure safe and convenient pedestrian and vehicular access to and from development sites, both on site and in the nearby locality.

Other considerations

Housing Land Supply

22. Following the changes to Planning Policy Wales, edition 10 (PPW), and the revocation of Technical Advice Note (TAN) 1: Joint Housing Land Availability Studies, there is no requirement for Councils to maintain a five-year supply of housing land. Nevertheless, PPW still requires Councils to secure a healthy supply of housing.
23. Moreover, the Wrexham Local Development Plan (LDP) is undergoing examination and therefore the Average Annual Requirement (AAR) methodology should be used for monitoring purposes. The requirement of 7750 dwellings over the plan period would equate to an AAR of 517³ dwellings. The latest annual Housing Land Monitoring Statement 2019 indicates that such figures have not been achieved since 2008.
24. Although the development would only provide a limited number of dwellings, these would help to support a healthy supply of housing land. This carries significant weight in favour of the appeal.

Flood risk

25. I have no substantive evidence that the appeal site is susceptible to flooding or would increase flood risk elsewhere. Whilst I cannot discount the possibility that there would be occasions when there would be excess water, the site is located within Development Advice Map Zone A⁴ and the general layout of the development would be set out to direct any exceedance flows to the attenuation/wildlife area to the east of the site and ultimately to the stream located in Penley Wood. Accordingly, I am not persuaded by the evidence that the flood risk in respect of the development could not be properly managed in accordance with UDP Policies.

Biodiversity

26. The application was supported by an Addendum Report – Extended Phase 1 Survey and Ecological Impact Assessment, July 2019, which was prepared in consultation with Natural Resources Wales (NRW). In summary it states that:
- The boundary features should be retained and managed to improve their diversity.
 - Biodiversity enhancement to include the development of mitigating habitats, to include two small ponds and alternative roost for the recorded Lesser Horseshoe bat roost.

³ rounded up to zero decimal places.

⁴ Three development advice zones (A, B, C) are described on the maps, which are attributed different planning actions. Zones A and B areas are areas of generally low risk (i.e. outside the main river flood plain).

- Biodiversity enhancement by including bird/bat boxes and bird soffit boxes and bat bricks to be considered where feasible.
- Mammal friendly fencing to the rear gardens to allow the passage of hedgehog, small mammal etc.

27. The appellant accepts that there would be a loss of habitat, however the site layout and proposed compensation measures mitigate these losses. These measures can be secured by way of planning conditions, including those suggested by NRW. As such the proposed development accords with the relevant policies of the UDP.

Living conditions

28. The distance retained between the proposed dwellings and existing properties would ensure no loss of privacy, loss of daylight, noise, or overbearing impact upon adjoining residents. Therefore, the proposal would not cause an unacceptable degree of harm to the living conditions of local residents. Whilst the issue of property values has been raised, there is no substantive evidence that the appeal proposal would negatively affect property values.

Conditions and planning obligations

29. The Council and other consultees have suggested a number of conditions which they consider should be imposed in the event that the appeal is allowed. In some cases I have modified or combined suggested conditions in light of the advice contained in Circular 016/2014 The Use of Planning Conditions for Development Management.
30. Given the ongoing need to secure a healthy supply of housing it is necessary for the implementation period of the development to be reduced from 5 to 3 years, particularly as I have afforded significant weight to the delivery of this matter. For the same reason the submission of the reserved matters should also be reduced from 2 to 1 year.
31. From 7 January 2019, all new developments of more than 1 dwelling house or where the construction area is 100 square meters or more, require Sustainable urban Drainage Scheme (SuDS) for surface water. SuDS Schemes must be approved by the local authority acting in its SAB role, before construction work begins. As such the conditions relating to SuDs are not necessary.
32. The conditions restricting permitted development rights are not reasonable or necessary in the interests of either the character and appearance of the area or the living conditions of neighbouring residents. As such, clear justification for imposing the conditions has not been provided.
33. I have no evidence that invasive plant species are present on the site and the spread of such plants is an offence under the Wildlife and Countryside Act 1981. Accordingly, a condition in this regard is not necessary in this case.
34. The Unilateral Undertaking makes a provision for an education contribution, which would relate to 3 primary school places and 2 secondary school places created as a result of the proposal⁵. It also provides for the formation of a management company for the future maintenance of common parts of the development and for the private section of the road which connects the appeal site to Penley Hall Drive.

⁵ The amount of Education contribution required is set out in the Local Planning Guidance Note 27.

35. I find the Unilateral Undertaking to be fairly and reasonably related in scale and kind to the proposed development and I have taken it into account in reaching my decision.

Planning balance and Conclusion

36. I have established that the proposal would not satisfy UDP policy with regard to the location of residential development, which for the reasons explained, carries moderate weight against the appeal. However, I find that this is outweighed by the positive benefits the development would have in respect of additional housing in a sustainable location on a brownfield site.

37. Matters relating to highway convenience and amenity, biodiversity and the location of the site with regard to sustainability are neutral in the final balance as these are expected of all developments.

38. There are no other considerations which are sufficient to outweigh these conclusions and therefore, for the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

Joanne Burston

INSPECTOR

Annex attached to Appeal decision APP/H6955/A/20/3258703

Planning conditions

- 1) The development shall begin either before the expiration of three years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason: To comply with Section 92 of the Town and Country Planning Act, 1990.

- 2) Approval of the following details shall be obtained from the Local Planning Authority before any part of the development is commenced:
 - a. the scale of the building(s)
 - b. the appearance of the building(s)
 - c. the landscaping of the site; and
 - d. the means of access to the site and buildings.

Reason: To comply with the provisions of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012.

- 3) Plans and particulars of the reserved matters referred to in condition 2 (above) shall be submitted in writing to the Local Planning Authority before the expiry of 1 year from the date of this permission. The development shall only be carried out in strict conformity with such details as are approved.

Reason: To comply with Section 92 of the Town and Country Planning Act, 1990.

- 4) The development shall only be laid out in accordance with the details shown on the approved drawing numbered A(100)05 Rev I, dated 18/07/2018.

Reason: To comply with section 71ZA (2) of the Town and Country Planning Act 1990.

- 5) All works in relation to the implementation of this permission, including deliveries to and / or leaving the site, shall be undertaken only between the hours of 7:30 and 18:00 Monday to Friday, and 08:00 to 14:00 on a Saturday, and at no time on a Sunday or a Bank Holiday unless the prior written approval of the Local Planning Authority has been obtained.

Reason: To protect the living conditions of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

- 6) As part of the reserved matters application, details of all of the proposed boundary treatments in and around the site shall be submitted to and approved, in writing, by the Local Planning Authority. The boundary treatments once

approved shall be fully implemented in accordance with the approved details prior to first use of the development.

Reason: To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area and to protect the amenities of the occupiers of nearby properties, in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

- 7) No part of the development shall commence until details of the proposed Reasonable Avoidance Measures (RAMs) have been submitted to and approved in writing by the Local Planning Authority. The details shall include the following:
- Details of a tool box talk on the identification and ecology of great crested newts to be made available to all construction staff employed on the project;
 - Details of an artificial amphibian hibernacula to be constructed adjacent to the site (Details of the design can be found in great crested newt mitigation guidelines - August 2001);
 - Details of a walk over survey of the site prior to commencement of development, and a destructive search (under the supervision of a licensed great crested newt handler) made of any potential great crested newt habitat (such as rubble piles or sheet materials that are on the site) on the site. Any amphibians found should be relocated to the artificial hibernacula;
 - Details of storage of material on pallets off the ground, and bulk materials which are to be delivered on site and used within the day of delivery.
 - Confirmation that excavated trenches will be covered over at the end of each working day with plywood and the edges sealed with sand or soil. Trenches are to be checked each morning for any amphibians. Any amphibians located are to be moved to the artificial hibernacula.

The development shall be carried out in strict accordance with the RAMs as are approved.

Reason: To protect named species / habitats / biodiversity which would otherwise be damaged / lost by the development hereby permitted in accordance with Policies GDP1 and EC6 of the Wrexham Unitary Development Plan.

- 8) As part of the reserved matters application, an external bat friendly lighting scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be fully implemented in accordance with the approved details prior to first use / occupation of the development.
- Reason:** To protect named species / habitats / biodiversity which would otherwise be damaged / lost by the development hereby permitted in accordance with Policies GDP1 and EC6 of the Wrexham Unitary Development Plan.
- 9) No development shall commence until a site species/habitat Conservation Plan has been submitted to and approved in writing by the Local Planning Authority.

The Conservation Plan should include:

- a. Implementation of the proposed mitigation and compensation measures as set out in the Addendum Report - Extended Phase One Survey and Ecological Impact Assessment Land South of Tupa, Penley, Wrexham;
- b. Submission and implementation of a long term post construction surveillance and monitoring scheme. Monitoring methodology and reporting shall accord with the online Wales GCN Monitoring Scheme and shall include monitoring of the bat roost;
- c. The submission and implementation of long term, proposals concerning the tenure, funding arrangements, management and wardening of the compensation area and bat roost;
- d. Details relating to the submission of a compliance audit, carried out by a qualified ecologist, independently of the appointed principal ecologist,

The Conservation Plan shall be carried out in accordance with the approved details.

Reason: To protect named species / habitats / biodiversity which would otherwise be damaged / lost by the development hereby permitted in accordance with Policies GDP1 and EC6 of the Wrexham Unitary Development Plan.

- 10) No development shall commence, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for:
 - a. The parking of vehicles of site operatives and visitors;
 - b. Loading and unloading of plant and materials;
 - c. Storage of plant and materials used in constructing the development;
 - d. The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - e. Wheel washing facilities;
 - f. Measures to control the emission of dust and dirt during demolition and construction; and
 - g. A scheme for recycling/disposing of waste resulting from demolition and construction works.

Reason: To protect the amenities of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

- 11) No development shall take place until a site investigation of the nature and extent of contamination has been carried out and submitted to and approved in writing by the Local Planning Authority.

If any contamination is found during the site investigation, no part of the development shall commence until a scheme specifying the measures that will be taken to remediate the site to render it suitable for the development hereby permitted has been submitted to and approved in writing by the Local Planning Authority.

The site shall thereafter be remediated in accordance with the approved scheme. If during the course of development any contamination is found that has not been identified in the site investigation, no further development shall take place on those parts of the site where that contamination has been found until an additional scheme of remediation has been submitted to and approved in writing by the Local Planning Authority for those parts of the site.

The relevant parts of the site shall thereafter be remediated in accordance with the additional scheme of remediation.

Reason: In the interests of the amenities of the future occupants of the buildings in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

- 12) Each part of the site subject to the remediation under the scheme(s) approved as part of condition 11 (above) shall not be occupied/used until a Validation Report has been completed in respect of that part of the site and submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of the amenities of the future occupants of the buildings in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

- 13) As part of the reserved matters application, a Woodland Management Plan, including long term management objectives, management responsibilities and maintenance schedules for all areas either containing existing woodland or to be planted as woodland shall be submitted to and approved in writing by the Local Planning Authority. The woodland shall be managed and maintained in strict accordance with the plan as approved.

Reason: To ensure landscape features are properly considered and protected in accordance with Policies GDP1 and PS2 of the Wrexham Unitary Development Plan.

- 14) No part of the development shall commence until a detailed Arboricultural Method Statement has been submitted to and approved in writing by the Local Planning Authority. No development or other operations shall take place except in strict accordance with the Method Statement as is approved. The Method Statement shall include the following:

- a. A specification for tree protection fencing and ground protection measures that comply with British Standard 5837:2012;
- b. A Tree/shrub/hedges Protection Plan showing the location of the trees/shrubs/hedges to be removed and retained with their crown spreads, Root Protection Areas, Construction Exclusion Zones, and location of protective fencing and ground protection measures accurately plotted;
- c. A full specification for any access, driveway, path, underground services or wall foundations within retained tree Root Protection Areas or Construction Exclusion Zone, including any related sections and method for avoiding damage to retained trees;
- d. Details of general arboricultural matters including proposed practices with regards to cement mixing, material storage and fires;

- e. Details of the frequency of supervisory visits and procedures for notifying the findings of such visits to the Local Planning Authority;
- f. Method for protecting retained trees during demolition works;
- g. Details of all proposed tree works, including felling and pruning.

Reason: To ensure the work is carried out to accepted arboricultural practices for the long term wellbeing of the tree(s) in accordance with Policies GDP1, PS2 and EC4 of the Wrexham Unitary Development Plan.

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