

APPEAL STATEMENT

IN RELATION TO THE REFUSAL OF WREXHAM CBC

TO GRANT PLANNING APPROVAL
FOR

CHANGE OF USE OF LAND TO DOMESTIC AND BOUNDARY FENCE
(PARTLY IN RETROSPECT)

AT

6 FOX CLOSE, SUMMERHILL, WREXHAM, LL11 4QH

LOCAL AUTHORITY REF: P/2021/0699

DECEMBER 2021

1. The Appeal

1.1. Full detail on the subject appeal is contained below, this Statement is in five parts as follows:-

1. The Appeal
2. Introduction.
3. The Appeal Proposal
4. Appeal Site
5. Policy Analysis (Comments on the Reasons for Refusal)

2. Introduction

2.1. This Statement sets out the appellant's grounds of appeal in relation to the refusal by Wrexham Borough Council at 6 Fox Close, Wrexham in relation to the change of use of land to domestic purposes and erection of boundary fencing.

2.2. The initial application was made:

2.3. Under application number P/2020/0587 the applicants applied for "change of use of land to domestic and boundary fence (Part retrospective). This application was refused dated 15th December 2020

Reason for refusal being:

1. *The proposal, by virtue of the depth and raised height of this parcel of land, would result in overlooking impacts into the neighbouring property to the south and its associated curtilage, resulting in loss of privacy, to the detriment of its occupiers. The proposal would conflict with UDP Policy GDP1.*
2. *The excessive height of the fence results in an overly dominant feature and appears as a discordant addition in the locality. This is further exacerbated by the extent of tree loss which has occurred to facilitate the proposal, resulting in a development that does not accord with the character of the site and does not make a positive contribution to the locality, failing to accord with UDP Policy GDP1.*

2.4. This refusal was appealed under application APP/ H6955/A/21/3270062.

2.5. This appeal was dismissed dated 2nd June 2021

The basis of the case was to cover the above reasons for refusal

- I. *the living conditions of neighbouring residents, particularly in terms of privacy; and*
- II. *the character and appearance of the area.*

From review of the inspectorate report the applicants proposes the subject application as an alternative solution to the subject fencing scheme. This application has been presented based on the following comments extracted from the Inspectorate report:

The appeal confirmed:

- that the site lies within the settlement boundary of Gwersyllt as defined in the Wrexham Unitary Development Plan (UDP), 2005.
- The site is significantly higher than the rear gardens of No. 6 and rear neighbour. As a result, the existing boundary enclosures provide little effective screening to views into the neighbours' main outdoor amenity space and into rear-facing windows. As those views are from a closer range than from the first-floor rear windows of No. 6 the scheme reduces the neighbours' privacy and appreciably increases the sense of overlooking.

- overlooking would be more occasional and short-lived than would be likely from an area used as a domestic garden.
- The loss of privacy is intrusive and results in an unacceptable impact on the neighbours' living conditions. It is contrary to policy GDP1 of the UDP which seeks that development ensure the amenity of the public.
- The appellant suggests that a 2m fence could be erected within this rear portion of the site to provide effective screening. However, there is no detail of such a screening measure that would enable its efficacy, and any visual impact that would arise, to be assessed. In the circumstances it is not a matter that can be dealt with by planning condition.
- The wooded area immediately to the west of Fox Close does not contain specimen trees of particular individual merit. Nonetheless it provides a pleasant rural setting to the residential estate. No. 6 and the appeal site are prominently sited within a cul-de-sac.
- Whilst the character of the land has changed from its previously undeveloped state, the timber fencing with decorative trellis details that encloses the appeal site is in keeping with the character of the residential estate. Indeed, similar fencing is a feature visible within several nearby properties. The fence's proximity to the much taller house means that, despite its overall height - which is exaggerated by its position on top of a part timber retaining wall feature - it does not look out of place. Any erosion of the woodland is modest, which continues to provide a visual setting to the estate.
- Whilst not cited in the reasons for refusal, the Council has subsequently referred to UDP policy EC4. The scheme does not align well with the expectation that proposals provide for the conservation or management of trees and woodland, *but it has not resulted in the loss of valuable trees, which the policy states should not be permitted. The development would not harm the character or appearance of the surrounding area. Its scale, design, layout and use of materials makes a positive contribution to its locality and thus accords with policy GDP1.*

2.6. Following the appeal decision, the appellant prepared and resubmitted the proposal for the appeal site to Wrexham Borough council

2.7. Application Number P/2021/0699, the appeal application, was submitted to the Council on 13th July 2021. The application was refused under Delegated Powers dated 29th November 2021.

2.8. Reason for refusal was stated as:

The proposal, by virtue of the removal of trees and proposed change of use of this land to residential curtilage, has resulted in harm to the Local Wildlife Site. The need for the development does not outweigh the need to safeguard the intrinsic nature conservation value of this Local Wildlife Site. The proposal conflicts with UDP Policies GDP1 and EC6

2.9. This appeal statement will demonstrate that the proposal would be an appropriate form of development and that there are strong reasons to grant planning permission.

3. THE APPEAL SITE

The appeal is as stated above, seeks the change of use of the land to the west of the dwelling for residential purposes and the retention of the domestic type fencing.

The change of use relates to an area of what was poorly managed land which is set at a higher level than the adjacent residential properties. This will utilise the land more efficiently and effectively for residential purposes without affecting the overall aspects of the adjacent wooded areas.

The new garden land formed part of the original approved red line area that allowed for the residential development of the properties in the first instance, therefore the proposed use is complementary to the residential vernacular.

The revised fencing proposal is residential in character, but we believe addresses the concerns of the inspector and given the raised ground it sits upon it is considered that it is mostly within permitted development limits of 2 metres from ground level.

The proposed fence is as shown below this shows the former fence (subject of the initial application and appeal) and the new panel fence as contoured around the boundary of the property:



When the dwelling was originally constructed the attached garage was formed following the removal of land to the west and the original boundary fence was erected on top of this land. When this land was removed a retaining concrete wall was built and the garden fence erected upon it. The retaining wall is still visible on site and forms the basis of the proposed fencing adjacent to the dwelling.



The subject appeal proposes the replacement of mesh fence with solid panel fence to match the residential boundary of the property. This will respect and prevent any intrusion on the neighbouring property. The existing access to the site is to be maintained and there is no alteration to pedestrian or vehicular access within the frontage of the property.

4. ORIGINAL PERMISSION

Fox Close obtained the benefit of residential planning under application number P/2007/0598. The application site was originally referred to as *"2 Westminster Rise, Summerhill, Wrexham, LL11 4QD"*. The proposal was for *"Residential development comprising 23 no. Dwellings in 5 house types with associated roads, drainage and landscaping works, together with demolition of existing industrial and residential buildings"*. This application was refused under delegated powers of Wrexham Borough Council dated 25th June 2007.

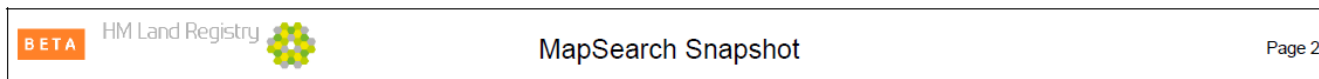
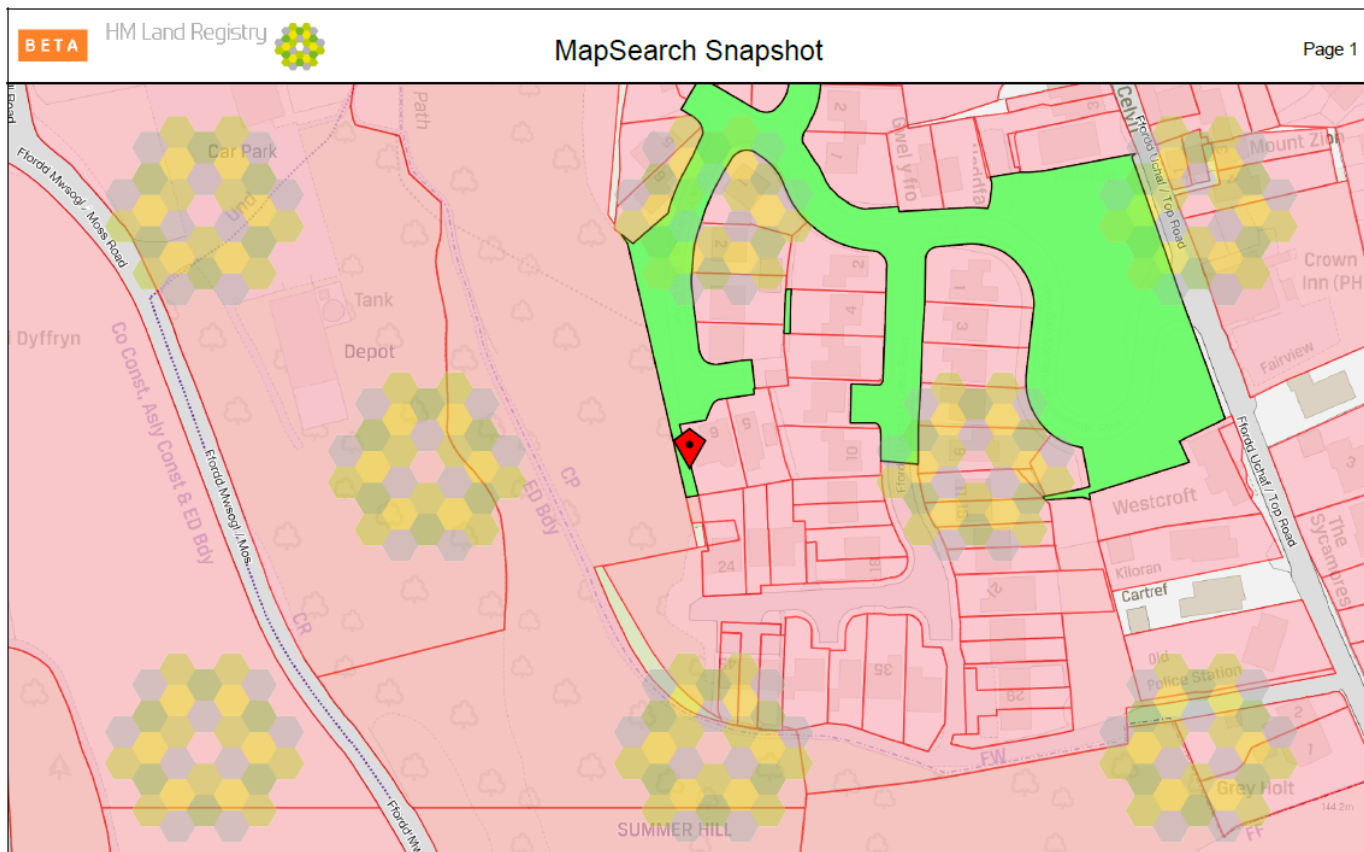
We have however tried to obtain a copy of the above decision from the local Authority, but this has not been successful therefore we respectfully wish for the Inspector to obtain a copy as part of the subject appeal.

It was highlighted however by the council that the land falls within the local development area contrary to the information they put forward in their previous appeal documentation.

We are of the opinion that the subject land formed part of the red line boundary of the original permission. This would in turn we believe mean:

- Permission for residential use was granted on the appeal site,
- For the appellant to purchase from the developer, this land would have been transferred to the developer from the land owner to reflect the approved red line area.
- Contained within the attached TP1. section 15.1 details the positive covenant by the transferee that within 6 months a fence must be placed along the boundary detailed and is a legal requirement of the sale.

The following is an extract of a search document which the applicant received during the purchase of the dwelling.



Title number	Estate information	Address
CYM136103	Freehold	LAND ON THE WEST SIDE OF TOP ROAD, SUMMERHILL, WREXHAM

It clearly shows the strip of land to the side of the dwelling which was not part of the local wildlife site. Furthermore, the dividing line between the local wildlife site and the land owned and developed by the developer is clearly shown. Therefore, it is contended that there was no effect upon the local wildlife site. This was also emailed to the case officer (dated 15th October – Mared Rees-Jones). No response was obtained from this information.

Similarly, within the noted email, the following images were emailed to show the property under construction and present day, which clearly show minimal removal of vegetation between construction and the subject development therefore within this email it was questioned why the LPA stated "ecological effects". The previous inspector also agreed "no adverse impact"



5. REASON FOR REFUSAL

The Statement of case presented by the council under application 2020, **PINS Ref:** 3270062 , **LPA Ref:** P/2020/0587, made no reference to the Moss Valley Local Wildlife Park.

The previous inspector stated (within the first appeal):

The wooded area immediately to the west of Fox Close does not contain specimen trees of particular individual merit. Nonetheless it provides a pleasant rural setting to the residential estate. No. 6 and the appeal site are prominently sited within a cul-de-sac. Whilst the character of the land has changed from its previously undeveloped state, the timber fencing with decorative trellis details that encloses the appeal site is in keeping with the character of the residential estate. Indeed, similar fencing is a feature visible within several nearby properties. The fence's proximity to the much taller house means that, despite its overall height - which is exaggerated by its position on top of a part timber retaining wall feature - it does not look out of place. Any erosion of the woodland is modest, which continues to provide a visual setting to the estate.

The stated reason for refusal of the subject appeal site referred specifically to the trees

The proposal, by virtue of the removal of trees and proposed change of use of this land to residential curtilage, has resulted in harm to the Local Wildlife Site. The need for the development does not outweigh the need to safeguard the intrinsic nature conservation value of this Local Wildlife Site. The proposal conflicts with UDP Policies GDP1 and EC6

However, again the initial inspector of the 2020 appeal stated the following regarding the same appeal site:

*Whilst not cited in the reasons for refusal, the Council has subsequently referred to UDP policy EC4. The scheme does not align well with the expectation that proposals provide for the conservation or management of trees and woodland, **but it has not resulted in the loss of valuable trees**, which the policy states should not be permitted. The development would not harm the character or appearance of the surrounding area. **Its scale, design, layout and use of materials makes a positive contribution to its locality and thus accords with policy GDP1.***

Within the officer report of the subject appeal, it states:

Principle of development: *The application site lies within settlement limit and forms part of Moss Valley Local Wildlife Site. Trees that were previously present on the site have been removed. The Council's Ecologist objects to the application.*

UDP Policy EC6 states that 'Development either within or close to sites of biodiversity interest will only be permitted where it can be clearly demonstrated that the need for the development outweighs the need to safeguard the intrinsic nature conservation value of the site.' 'Measures to improve biodiversity value of sites will be supported.'

The Council's Ecologist states that the proposal does not provide any biodiversity net benefit, the removal of the trees therefore means that it is a substantial loss.

A Landscaping Plan was submitted by the applicant during the course of the application, to show a scheme for native tree planting which was stated as being in a greater number than prior to when trees were on the site, as well as a scheme for a mixed native hedgerow.

However, a landscaping scheme within the residential curtilage of the applicant is not something that the LPA could control by condition.

The Council's Ecologist continues to object on this basis.

For the reasons set out above, the application is recommended refusal accordingly.

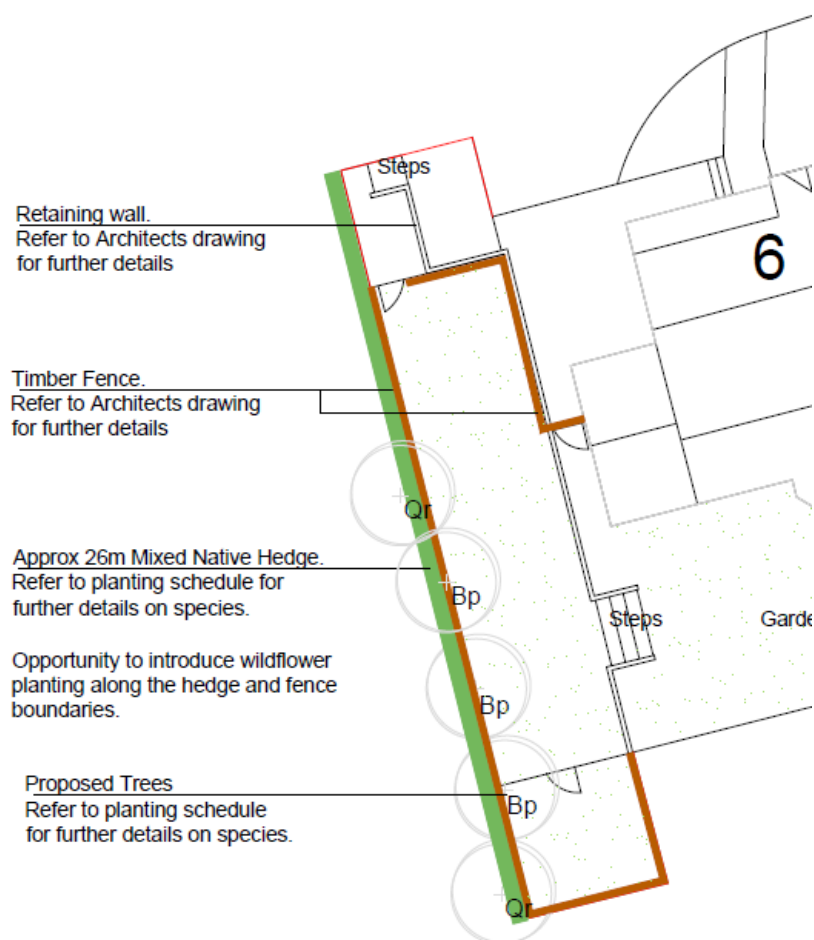
The Council's ecologist did not comment on the original application nor did the Council refer to the biodiversity and wildlife site within the initial officer's report in 2020, prior to the initial appeal or the resubmission application which is subject to this appeal.

The Case officer has also highlighted that the landscaping within a residential curtilage cannot be conditions, but the council's ecologist remains to object. This objection by the ecologist over the biodiversity impact has led to this appeal being submitted

As shown in the following images the proposal has not impacted the adjoining wildlife site and there are significant variations in levels falling away from the appeal site to lower level footpaths. The embankments and trees have not been removed or impacted. Significant vegetation and natural habitat remains.



In addition, a full landscaping scheme was prepared and supplemented the submission, extracted below



The landscaping scheme presented including new planting and a mixed native hedge which would enhance biodiversity. We reiterate that the council refused to consider the landscaping scheme that increased the biodiversity of the area



PLANTING SCHEDULE

Trees					
Qty	Code	Botanical Name	Girth	Height cm	Specification
3	Bp	Betula pendula	12-14cm	350-425	RB; 3x; Extra Heavy Standard; clear stem 200cm
2	Qr	Quercus robur	12-14cm	350-423	RB; 3x; Extra Heavy Standard; clear stem 200cm

Mixed Native Hedge (MNH)						
Total length: 26m (planted in double staggered rows)						
%Mix	Qty	Botanical Name	Size in cm	Root Condition	Density / Spacing	Notes
15	20	Acer Campestre	60-90	B	5/m	1+1; Transplant
5	7	Cornus sanguinea	60-90	B	5/m	1+1; Transplant
15	20	Corylus avellana	60-90	B	5/m	1+1; Transplant
45	59	Crataegus monogyna	60-90	B	5/m	1+1; Transplant
10	13	Ilex aquifolium	60-90	B	5/m	1+1; Transplant
10	13	Prunus spinosa	60-90	B	5/m	1+1; Transplant