



Ein cyf/Our ref: qA1472984

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By E-mail: Dafydd@blueprintarchitectural.com

30 November 2021

Dear Mr Edwards,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77.
APPLICATION BY TRAILWALK LIMITED.
RESIDENTIAL DEVELOPMENT FOR UP TO 15 UNITS INCLUDING SEGREGATED
ECOLOGICAL AREA FOR GREAT CRESTED NEWTS ON LAND AT SCRAP YARD,
LLWYNEINION ROAD, LEGACY, RHOSLLANERCHRUGOG, WREXHAM, LL14 4ET.
APPLICATION NO: P/2020/0072.**

1. Consideration has been given to the report of the Inspector, regarding your client's planning application, Local Planning Authority reference: P/2020/0072.
2. On 30 October 2020, in accordance with Section 77 of the Town and Country Planning Act 1990 ("the 1990 Act"), the planning application was called in for decision by the Welsh Ministers. Under the provisions of the Government of Wales Act 2006, the power to determine applications under Section 77 of the 1990 Act has been transferred to the Welsh Ministers, these functions have been exercised by me as Minister for Climate Change.
3. The Inspector recommends planning permission be refused. A copy of the Inspector's report ("IR") is enclosed. All references to paragraph numbers, unless otherwise stated, relate to the IR.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Main Issues

4. I agree the main considerations are those listed at IR41:
- Whether the development would comply with the sustainability and placemaking principles.
 - The effect of the proposed development on ecological interests, with regard to protected species; and the implications of the proposed drainage strategy on the integrity of the River Dee and Bala Lake Special Area of Conservation (“SAC”).
 - Whether the development would be acceptable in terms of safeguarding mineral workings.
 - Whether any identified harm would be outweighed by any benefits and other matters in favour of the development.

Principle of Development - Whether the development would comply with the sustainability and placemaking principles

5. The appeal site lies outside the settlement limits defined by the adopted Wrexham Unitary Development Plan (“UDP”). Both adopted development plan and national planning policy advocate strict control of development in the countryside. Policy PS1 of the adopted UDP states new development for housing should be directed to sites within defined settlement limits, whilst Policy H5 states new dwellings in the countryside should only be permitted where a number of policy exemptions are satisfied. The Inspector states there is no dispute the development proposed in this instance does not satisfy any of the policy exemptions specified in Policy H5. (IR 42)
6. The Inspector notes the application site is largely detached from facilities and services and is not readily accessible by modes of public transport or a dedicated pedestrian footpath. The Inspector considers the development would therefore run counter to the sustainability and placemaking principles which underpin both national and development plan policy. (IR 43)

Ecological Matters

Protected Species

7. The Inspector notes the ecology report confirms the existing building on site has moderate bat roost potential and is currently being used by bats. The European Protected Species (“EPS”) licensing regime would offer controls over the existing bats on site and mitigation measures. The Inspector also notes appropriate measures would need to be put in place to minimise the risk of harm to great crested newts. The indicative site plan shows the provision of a dedicated habitat for great crested newts. The Inspector is satisfied mitigation measures would prevent any unacceptable impacts on the maintenance of the populations of both bats and great crested newts. The Inspector is satisfied there would not, therefore, be any conflict with the legislative or policy framework in this respect. (IR 44-45)

River Dee and Bala Lake SAC

8. The site is located within the catchment area of the River Dee and Bala Lake SAC. The proposed drainage strategy involves foul effluent disposed to a private treatment plant before being discharged to a private pipe in adjacent land which outfalls into an open watercourse. Natural Resources Wales (“NRW”) objects to the principle of the proposed arrangement. The Inspector notes Welsh Government (“WG”) advice in

Circular 008/2018 states any development discharging domestic sewage should connect to the foul sewer where it is reasonable to do so. Development proposals which include a connection to a non-mains drainage facility would only be considered acceptable if a connection to a public sewer is not feasible due to the greater risk of failures leading to pollution of the water environment. (IR 46)

9. The Inspector notes Dwr Cymru Welsh Water (“DCWW”) has confirmed the site is some 390m from the nearest public sewer, with alternative public sewers some 590m away. The Inspector acknowledges the nearest public sewers are within private dwellings and may not be accessible as well as the implications of topography, vegetation and other site constraints in the wider area. However, the Inspector has not had sight of a detailed feasibility assessment which discounts a connection to the mains sewer. Furthermore, whilst some calculations have been provided to indicate the costs of connecting to the main sewer are greater than providing the proposed private treatment facility, the Inspector considers this falls some way short of a financial viability assessment relating to the development as a whole. (IR 47)
10. In the absence of any cogent evidence to discount a connection to a public sewer on feasibility or viability grounds, the Inspector finds the development is in conflict with the thrust of the advice contained within WG Circular 008/2018. Moreover, the Inspector notes the proposed means of drainage gives rise to concerns over the effects on the River Dee and Bala Lake SAC which is not currently meeting its phosphate targets. The Inspector notes NRW advises any proposed development which might increase the amount of phosphate (or phosphorous) within a river SAC catchment could lead to damaging effects to the SAC. For this reason, the development has been screened and subject of an Assessment under the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”). The proposed development would see foul effluent discharged to a private waste water treatment plant on site, with treated effluent discharging with surface water flows into an open watercourse. The Inspector states the applicant’s case is heavily reliant on standard technical specification information and does not appear to be based upon a site-specific assessment or a detailed design proposal. The Inspector recognises the application is made in outline only, however, drainage is not a reserved matter and WG Circular 008/2018 states developers should make a full assessment of the suitability of any proposals for non-mains sewerage at project design stage. (IR 48-50)
11. Notwithstanding such matters, the Inspector has not seen any evidence to confirm the levels of phosphate anticipated by the applicant would ensure an acceptable impact upon the water environment. The Inspector is of the view whilst NRW has also failed to provide any project-specific evidence in this respect, its advice is clear any development which might increase the amount of phosphate (or phosphorus) within a river SAC catchment could lead to damaging effects to the SAC. Phosphate targets are not currently being met at the River Dee and Bala Lake SAC and any further loading of phosphates into the environment would inevitably exacerbate the existing damaging effects on the characteristics of the SAC. (IR 51)
12. The applicant’s evidence indicates the waste water treatment facility could be maintained by a management company. The Inspector states NRW has noted a greater risk of failures leading to pollution of the water environment arising from private treatment facilities and there is a lack of a robust assessment in this case of the likely implications of a failure. The Inspector concludes the development proposal would give rise to likely significant effects on the integrity and qualifying features of the SAC, which cannot be satisfactorily mitigated and there are no imperative reasons of overriding public interest to justify the proposals. Therefore, the Inspector also concludes the proposal would conflict with the Habitats Regulations as well as the planning policy position set at a national level. The Inspector further considers the

scheme would conflict with the general thrust of Policy EC6 of the adopted UDP which seeks to conserve biodiversity interests. (IR 52-53)

Minerals Safeguarding

13. The site lies within a mineral buffer zone surrounding Llwyneinion Quarry, as defined by the adopted UDP. Policy MW11 seeks to resist new sensitive non-mineral development within buffer zones designated around active and inactive mineral sites in order to avoid conflicts arising from existing or future workings on such sites. Whilst the Inspector accepts the practical effect on future mineral workings may be limited by the presence of existing houses in the area, the development would clearly conflict with the aims of Policy MW11 and national policy. The Inspector concludes that no persuasive evidence has been submitted to demonstrate the development would not result in the prospective dwellings being subject of the harmful effects of quarrying, which could result in a more restrictive environment for mineral operators. Such concerns therefore serve to reinforce the Inspector's overall findings regarding the suitability of the site for residential development. (IR 54-55)

Other Material Considerations

14. The Inspector notes the Council's environmental health representatives are satisfied matters relating to contaminated land could be addressed through the imposition of planning conditions. (IR 56)
15. The Inspector notes the Coal Authority has identified the site as falling within the defined 'Development High Risk Area' as a result of its coal mining legacy. However, the applicant has obtained appropriate and up-to-date coal mining information to inform a Coal Mining Risk Assessment Report. Whilst the Inspector notes there are concerns over the indicative layout submitted, the application is in outline form only, with layout reserved for subsequent determination, and The Coal Authority is satisfied planning conditions which require site investigation works prior to the commencement of development would prevent any material harm. (IR 57)
16. The Inspector states it is likely some mature trees would need to be removed to facilitate the development. However, given the wider context of the site, and the ability for an integrated scheme of landscaping to be provided, the Inspector does not consider such matters weigh significantly against the proposal. The Inspector is satisfied there is no policy conflict in this respect. (IR 58)
17. The Inspector is satisfied all matters associated with access, traffic and highway safety could be satisfactorily addressed through reserved matters applications. Furthermore, whilst a public footpath (Esclusham Above public footpath No.4) crosses the site, the indicative layout indicates provision could be made for the footway to cross the site unobstructed. (IR 59)

Benefits & Other Matters in Favour of the Development

18. The Inspector notes the arguments in favour of the scheme relate to the site's former uses and the development would utilise what is predominantly previously developed land, whilst also enhancing the appearance of the site. The Inspector also notes there is support in this respect from UDP Policy PS3, which provides a preference for the re-use of previously developed land, and UDP Policy EC15, which states action will be taken to protect and enhance general amenity through the reclamation and restoration of derelict sites and through the improvement of untidy sites. Nevertheless, the Inspector is of the view such provisions are qualified and fall some way short of providing blanket support for new residential development, particularly where such

proposals raise significant sustainability and other concerns in accordance with national policy. The Inspector considers whilst the re-use of previously developed land and improvements to the site's appearance clearly weigh in favour of the development, Planning Policy Wales Edition 11 ("PPW") recognises not all previously developed land is suitable for development. This may be, for example, because of its unsustainable location, the presence of protected species or valuable habitats, or because it is highly contaminated. (IR 60-61)

19. The Inspector has considered the potential for the former use to resume which, in itself, could generate numerous HGV journeys as well as other adverse implications. Nevertheless, the Inspector is of the view there is a lack of any cogent evidence to enable a detailed comparison of impacts and no compelling evidence has been submitted to suggest such a use would be resumed should the planning application fail. The Inspector therefore attributes limited weight to such arguments. (IR 62)
20. The Inspector is of the view the development would make a positive contribution to the housing land supply within the County Borough. It would also make provision for public open space and would have a positive impact on the local economy, not least through the construction process. Nonetheless, whilst such matters weigh in favour of the development, the Inspector states they need to be considered within the context that the emerging Local Development Plan is at an advanced stage of preparation and would provide a framework to address housing and open space requirements. (IR 63)
21. The Inspector notes the evidence which indicates the site has suffered from instances of anti-social behaviour in recent years. However, the Inspector considers the evidence is largely anecdotal and is not in itself a determinative factor, not least because there may be other means of addressing such problems. (IR 64)

Planning Balance & Overall Conclusions

22. Whilst a number of site constraints could be satisfactorily mitigated through the imposition of suitably worded planning conditions, the Inspector considers the proposal represents an unsustainable form of development which would conflict with the sustainability and placemaking principles which underpin national and local policy.
23. The Inspector notes it has not been satisfactorily demonstrated that a connection to the mains sewer would not be feasible or financially viable. Such a concern, along with the fact the development would introduce new sensitive development within a designated minerals buffer zone, serve to reinforce the foregoing concerns regarding the location of development. The development would therefore conflict with the aims of Policy PS1, Policy GDP1, Policy H5 and Policy MW11 of the UDP, as well as the thrust of PPW, Future Wales and WG Circular 008/2018. (IR 65)
24. The Inspector notes the Habitats Impact Assessment at Annex C of the Report also demonstrates the scheme would have implications for the integrity of the River Dee and Bala Lake SAC. The Inspector considers a grant of planning permission would therefore represent a breach of the Habitats Regulations and would conflict with the thrust of the advice contained within planning policy, including Policy EC6 of the adopted UDP, PPW, Future Wales and Technical Advice Note 5: Nature Conservation and Planning. (IR 66)
25. The Inspector concludes that such harm and associated policy conflict is not outweighed, either individually or cumulatively, by the benefits and other material considerations that weigh in favour of the development. The Inspector considers the foregoing concerns demonstrate why planning permission should be withheld in this instance. (IR 67)

26. The Inspector concludes the application would be in direct conflict with Future Wales, the UDP, and PPW, and it should therefore be refused. The Inspector has taken account of all matters raised but finds nothing which leads to a different recommendation. The Inspector recommends the application for planning permission is refused. (IR 69)

Formal Decision

27. I agree with the Inspector's reasoning and conclusions. For the reasons given, in exercise of the power referred to in paragraph 2 of this decision letter, I hereby refuse planning permission for planning application P/2020/0072.

Well-being of Future Generations (Wales) Act 2015 ("WFG Act")

28. The Welsh Ministers must, in accordance with the WFG Act, carry out sustainable development. In reaching my decision on the application, I have taken into account the ways of working set out at section 5(2) of the WFG Act and 'SPSF1: Core Guidance, Shared Purpose: Shared Future – Statutory Guidance on the WFG Act'. My assessment against each of the ways of working is set out below.

Looking to the long-term

29. The decision takes account of the long-term benefits of the sustainability and placemaking principles, supporting the Welsh Government's objective to maximise well-being and to create sustainable places through placemaking. Refusing planning permission for the proposed development prevents an unsustainable form of development in a rural area and protects the integrity of the River Dee and Bala Lake SAC.

Taking an integrated approach

30. I have considered below the impacts from this decision on the Welsh Government's well-being objectives, which incorporate the well-being goals set out in section 4 of the WFG Act. Where an objective is not set out, the effect of this decision is neutral.
- Make our cities, towns and villages even better places in which to live and work – positive effect
 - Embed our response to the climate and nature emergency in everything we do – positive effect.

Involving people/Collaborating with others

31. Within the framework of a statutory decision making process, which is governed by prescribed procedures, the application was subject to publicity and consultation, providing the opportunity for public and stakeholder engagement. Representations received through these procedures have been considered and taken into account in making a determination on this application.

Prevention

32. Although the decision would result in the refusal of a housing scheme, the decision to refuse the application prevents unsustainable development from taking place and protects the environment from development which may have a detrimental impact on a watercourse. The decision, by preventing unsustainable development outside the

settlement limit and the environment, helps meet the Welsh Government's well-being objectives focussed on and addressing the climate and nature emergency, and making our cities, towns and villages even better places to live and work.

33. A copy of this letter has been sent to Wrexham County Borough Council.

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change