



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 4/01/18

**gan Declan Beggan BSc (Hons) MSc
DipTP DipMan MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 07.02.2018

Appeal Decision

Site visit made on 4/01/18

**by Declan Beggan BSc (Hons) MSc
DipTP DipMan MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 07.02.2018

Appeal Ref: APP/H6955/A/17/3186707

**Site address: Former Farmstead, Big Green Farm, Ellesmere Lane, Penley,
Wrexham, LL13 0LP**

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 planning permission.
 - The appeal is made by Wawne Developments Ltd against the decision of Wrexham County Borough Council.
 - The application Ref P/2016/1118, dated 8 December 2016, was refused by notice dated 12 April 2017.
 - The development proposed is described as an "Outline application for erection of upto 13 dwellings including construction of vehicular access."
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Decision

1. The appeal is allowed and planning permission is granted for an application for an "Outline application for the erection of upto 13 dwellings including construction of vehicular access" in accordance with the terms of the application, Ref. P/2016/1118 dated 8 December 2016, and the plans submitted with it, subject to the conditions in the Schedule at the end of this decision.

Application for Costs

2. The appellant made an application for costs which is the subject of a separate decision.

Procedural Matters

3. The description of the site address varies slightly between that given on the planning application form to that stated on the Council's decision notice; the description as given on the latter and copied into the banner heading above is more accurate and it is on this basis that I have determined the appeal.
 4. The proposed development has been submitted in outline with all matters except for access reserved for later determination. The submitted drawings refer to an indicative layout of 15 dwellings, however the permission being sought is for a development of upto 13 dwellings and it is on this basis that I have determined the appeal. The submitted details indicate that access to site will be off Ellesmere Lane, slightly north of the existing access. The submitted layout details give an indication of house
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types/plots and their respective positions within the site, in addition to the internal road configuration. In terms of those matters reserved for later approval I am satisfied sufficient information has been provided to deal with this appeal on this basis.

5. In the event that the appeal is allowed the appellant submitted a signed and dated unilateral undertaking (UU) which requires a commuted sum payment of £1000 per dwelling for provision and/or improvement of public open spaces within the local area, and a commuted sum payment towards the provision, improvement or extension of primary and secondary education facilities in accordance with Council guidance.

Main Issues

6. The main issues in this appeal are:

- Whether the proposal accords with planning policies that seek to strictly control new development outside of development boundaries;
- The effect of the proposed development on the character and appearance of the Special Landscape Area (SLA); and,
- Whether any harm and/or conflict with policy in respect of one or more of the above is outweighed by other material considerations.

Reasons

7. The appeal site is irregular in shape and comprises a range of redundant agricultural buildings and hardstanding, in addition to an existing two storey farmhouse. The site is located in open countryside adjacent to the settlement limit for Penley. The site is accessed from the east via Ellesmere Lane either side of which are found dwellings of varying design and appearance. The northern, southern and western boundaries of the site primarily abut agricultural land. The site is located within a SLA as designated in the adopted Wrexham Unitary Development Plan (UDP).

Settlement Boundaries

8. Policy PS1 of UDP is strategic in nature and seeks to direct new development to within defined settlement limits. Policy H5 permits new dwellings outside defined settlement limits subject to a number of criteria. Policies PS1 and H5 broadly accord with Planning Policy Wales Edition 9 (PPW).
9. The appeal site does not lie within any defined settlement limit and is located in open countryside and therefore its development for residential purposes would run contrary to policy PS1 of the UDP. In terms of policy H5 of the UDP, the appellant does not satisfy any of the criteria that permit dwellings outside of defined settlements boundaries.

Character and Appearance

10. Policy PS2 of the UDP states, inter alia, that development must not materially detrimentally affect the countryside or the quality of the natural environment. Policy PS4 of the UDP seeks, inter alia, that development should maintain the existing settlement pattern and character, Policy EC5 gives priority to the conservation and enhancement of the landscape within SLA's, whilst GDP1 seeks to ensure that development accords with the character of the site and makes a positive contribution to the appearance of the locality.

11. The character of the SLA where the appeal site is located is dominated by gently undulating agricultural land, interspersed by signs of built development. The Council argue the proposed development will cause unacceptable visual intrusion because it introduces large scale development into the SLA. However the existing site has a large scale structure on it in the form of a steel framed agricultural building, in addition to a number of other structures which are not particularly modest in scale; these structures are clearly apparent from viewpoints in the wider landscape and a significant visual intrusion. The existing buildings on the site are seen in the context of the built up part of the settlement, and in visual terms appear as a solid block of structures which reinforces their visual impact.
12. Based on the indicative layout, in all likelihood any new dwellings would punctuate the site with openings allowing more open views into the wider landscape that are currently not apparent; to my mind this would be a positive contribution to the appearance of the locality unlike the current structures. Plainly the redevelopment of the site with upto 13 dwellings would introduce built development into the SLA, however that additional built form would not materially alter its overall character or be any more visually intrusive given the extent and nature of built development that currently occupies the site; the visual impacts of the proposed development from local vantage points would also be mitigated by landscaping to the site boundaries which are currently devoid of such features.
13. The Council maintain the scale and density of proposal would not maintain the existing settlement pattern and character along Ellesmere Lane which tapers out to low density buildings, and which allows for a transition from built development into the countryside. I accept that the settlement pattern along Ellesmere Lane is lower density and 'ribbon' in nature, however, that settlement pattern has to be seen in the context of the pattern of overall built development. The current structures on the site are visually part and parcel of the built up part of the settlement, notwithstanding being located outside of the settlement limit, and in built form are broadly of a scale and density to that being proposed on the appeal site. The proposed development would not be likely to materially make any difference to the scale and density of the overall broad pattern and character of built development that already exists. To my mind the proposed development would not be likely to be at odds with the settlement pattern of Penley when looked at in its totality.
14. The Council raise concerns that the proposed layout would be urban in nature as shown on the indicative layout and doesn't reflect the character of the rural location. The existing dwelling on the site is to be retained which assists in maintaining in part the site's current character. The existing character of the area is influenced by properties along Ellesmere Lane that vary considerably in design, appearance and plot sizes, and general layout, including a substantial number of new dwellings; I see no reason why any new dwellings and their layout on the site cannot be designed in a manner that reflects the general character of the existing dwelling on the site and other dwellings in the immediate area.
15. The Council refer to the access road being overly engineered and unnecessary, however the appellant reports the road layout has been designed to meet the requirements of the standards set by the Council's highway engineers; should the Council deem it appropriate, the internal road layout of any future development could reflect the advice as contained within the Government promoted publication 'Manual for Streets' in terms of having a more distinctive identity.
16. Pulling the threads of the above together, the proposed development would not have any materially detrimental effect on the character and appearance of the area, nor

SLA, and therefore would not run contrary to policies PS2, GDP1 and EC5 of the UDP, or undermine policy PS4, which collectively seek to protect visual amenity and, character and appearance.

Other Material Considerations

17. The Council does not have a 5 year supply of residential land as required by PPW. Clearly the lack of a 5 year supply is a significant material consideration that weighs in favour of the proposal. TAN 1¹, states that the need to increase supply should be given considerable weight when dealing with planning applications provided that the development would otherwise comply with the development plan and national policies. Bearing in mind there does not appear to be any imminent plan led solution to the Council's housing land supply situation, the proposed development of upto 13 dwellings carries significant weight in favour of the proposal.
18. Strategic Policy PS3 of the UDP, whilst not cited in the Council's refusal notice is nonetheless referred to in their appeal statement although it is not being relied upon. The policy states that development should use previously developed brownfield land comprising vacant, derelict or underused land in preference to the use of greenfield land. The Council accept the proposed development constitutes brownfield land; the proposal in this respect would therefore not run contrary to policy PS3. Making the best use of such land in order to protect green field sites is a commonly expressed sustainable objective of PPW. The brownfield status of the application site thus puts significant weight in favour of the proposed development.
19. It is reported Penley is served by a number of services and facilities including a shop, nursery, primary and secondary schools, community centre, village hall, public house and employment opportunities, several of which I noted during my site visit. I am satisfied Penley is relatively well placed to sustainably access services or facilities either within the village or in the wider area; this weighs in favour of the proposal.
20. The appellant drew my attention to Penley being served by public transport in the form of an hourly bus service that runs between the towns of Wrexham and Whitchurch; I noticed a number of bus stops within the village. The site's location abutting the existing settlement means it is within a short walking distance of services and access to public transport. Policy PS4 of the UDP refers, inter alia, to development being integrated with the existing transport network to help reduce the overall need to travel, and encouraging the use of alternatives to the car. In terms of sustainable transport PPW refers to locating development so as to minimise the demand for travel, especially by private car.
21. Due to the services available, and the possibility that future residents of the proposed development could avail of public transport thereby minimising the demand for travel, especially by private car, I am satisfied the proposed development would not run contrary to policy PS4 in terms of encouraging the use of alternatives to the car; this weights in favour of the proposal.
22. PPW states the countryside, in line with sustainability principles should be conserved and where possible enhanced for its own sake, and that new building in the open countryside that is away from existing settlements or areas allocated for development in development plans must continue to be strictly controlled. However PPW also states that development in the countryside should be located within and *adjoining*

¹ Planning Policy Wales Technical Advice Note 1: Joint Housing Land Availability Studies 2015

those settlements where it can be best accommodated in terms of infrastructure, access and habitat and landscape conservation. In this instance the site directly abuts the settlement limit for Penley, the Council's Highways section have raised no highway objections to the proposal, nor are there any ecological interests likely to be unduly affected and I previously found that landscape interests would not be materially detrimentally affected.

Other Matters

23. Third parties raise concerns that the submitted illustrative layout shows 15 No. dwellings despite the fact that the proposal is described on the planning application form as a development relating to upto 13 No. dwellings. Irrespective of the number of dwellings referred to on the submitted illustrative layout, it is clear to me the scheme that is before me is for a maximum of 13 No. dwellings, and as stated previously it is on this basis that I determined the appeal.
24. In terms of the proposed visibility splays, these are required by the Council's highway section for highway safety reasons. Based on the submitted details and my observations during my site visit, it appears the visibility splays can be achieved on highway land without impinging on third party lands; there is no substantive evidence to indicate otherwise.
25. Concerns have been raised that the proposed development would set a precedent for further residential development in designated green barrier land either side of the appeal site, however this is not the case as each application is considered on its own merits depending on the circumstances existing at that time.
26. The applicable plan as edged in red relating to the site is the amended plan bearing the reference SA22725/02N Rev. D Proposed Block Plan; based upon the details as contained within that plan there is no substantive evidence that the site impinges upon third party lands.
27. The Council have raised no objections to the proposed development based on matters such as ecology, flood risk, or neighbouring residential amenity; based on the submitted application details and my observations whilst on the site visit, there is no substantive reason for me to take a contrary view.
28. Whilst I note third party concerns regarding the Council's handling of the planning application that does not alter my assessment of the planning merits of the proposal.

Conditions and UU

29. I have considered the conditions suggested by the Council given my decision to allow the appeal. In doing so I have had regard to the tests for conditions set out in Circular 016/2014: *The Use of Planning Conditions for Development Management* (the Circular).
30. In terms of the Council's suggested conditions Nos. 1-3 relating to submission of reserved matter details and time limits, these are necessary, however I note the time limits for submission of details and commencement of development has been reduced from that stated in the Circular; the Council have given little in the way of explanation as to why this is required, nonetheless, I consider the compressed time frames as suggested are acceptable as this will allow the site to bring forward much needed dwellings sooner. I have used the standard wording for such conditions as stated in the Circular.

31. Condition 4 & 9 require the approval of a dust management scheme and the restriction of the hours of operation of construction activities and associated works; both are necessary in the interests of adjacent residential amenity. Conditions 5, 6 & 11 relate to the submission for approval of further details for the construction of any internal estate roads/footways, a construction traffic management plan, and the provision of visibility splays to the site access; all are necessary in the interests of highway safety.
32. Conditions, 7, 12, 13 & 14 relating to the submission for approval of details relating to Reasonable Avoidance Measures related to amphibians that may be on the site, that development be carried out in accordance with the submitted Protected Species Report, approval of mitigation for bats, and the approval of a Biosecurity Risk Assessment are all necessary in the interests of ecology; I have reworded them slightly where appropriate to meet the tests as set out in the Circular. Condition 8 relates to the approval of drainage details and is necessary in the interests of pollution and flood control.
33. Condition 10 clarifies that the submitted indicative layout does not form part of the application details. It is necessary in the interests of clarity as to what is being approved; I have reworded it slightly to meet the tests in the Circular.
34. I consider that the obligations contained within the UU are necessary, are related to the proposed development, and related in scale and kind, and therefore meet the appropriate tests set out in Section 122(2) of the Community Infrastructure Levy Regulations 2010 and Circular 13/97. Accordingly the Section 106 Agreement should be afforded weight in the determination of the appeal.

Conclusions

35. A decision on the appeal is required to be made in accordance with the development plan unless material considerations indicate otherwise. The proposed development conflicts with national and local planning policies relating to development outside of settlement limits, however, PPW states that development in the countryside should be located within and *adjoining* those settlements where it can be best accommodated in terms of infrastructure, access and habitat and landscape conservation; in these respects the proposed development performs well.
36. The Council cannot demonstrate a five year housing land supply. TAN 1 advises that where land supply is below the 5 year requirement 'the need to increase supply should be given considerable weight when dealing with planning applications provided that the development would otherwise comply with the development plan and national planning policies'. Clearly this is not the case in this instance; however, the fact that the Council has a zero housing land supply weighs heavily in favour of development that can proceed without causing harm to its surroundings, and in particular the SLA.
37. Whilst outside of the settlement boundary, nonetheless the site lies in a sustainable location in terms of access to services, amenities and public transport, and would not cause unacceptable harm to those surroundings.
38. I appreciate the proposed development may not reflect in full the existing residential settlement pattern along Ellesmere Lane, however this would not justify withholding planning permission as the proposal's likely general form and appearance would not appear materially at odds with the overall pattern and character of built development currently along the lane and the settlement as a whole.

39. The above material factors when considered in their totality outweigh the conflict with the local planning policies previously referred to.
40. After taking account of all the evidence before me, and for the reasons given above, I conclude that the appeal should be allowed and planning permission be granted subject to the conditions contained within the schedule at the end of this decision.
41. 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 objective of supporting safe, cohesive and resilient communities.

Declan Beggan

INSPECTOR

Schedule of Conditions

1. Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
2. Any application for approval of the reserved matters shall be made to the local planning authority not later than one year from the date of this decision.
3. The development hereby approved shall be commenced before the expiry of three years from the date of this permission or before the expiry of two years from the date of approval of the last of the reserved matters required to be approved, whichever is the later.
4. No part of the development shall commence until an appropriate Dust Management Scheme has been submitted to and approved in writing by the local planning authority. The dust mitigation measures as are approved shall be fully implemented for the entire duration of the construction phase.
5. No part of the development shall commence until a scheme detailing layout, design, drainage, lighting and construction of the proposed new estate roads and footways has been submitted to and approved in writing by the local planning authority. The scheme as approved shall be fully implemented prior to occupation of any dwellings.
6. No part of the development shall commence until a Construction Traffic Management Plan including provisions for contractor parking has been submitted to and approved in writing by the local planning authority and the 'Plan' as is approved has been fully implemented.
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:
 - a) 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;
 - b) Details of an artificial amphibian hibernacula to be constructed adjacent to the site;

- c) 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) on the site. Any amphibians found should be relocated to the artificial hibernacula;
 - d) Details of storage of material which are to be delivered on site; and,
 - e) 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.
8. No part of the development shall commence until a scheme for the comprehensive and integrated drainage of the site indicating provision for foul water, surface water and land drainage has been submitted to and approved in writing by the local planning authority. Prior to the submission of those details, an assessment shall be carried out into the potential for disposing of surface water by means of Sustainable urban Drainage Systems (SuDS) in accordance with the principles of sustainable drainage systems set out in Technical Advice Note 15: Development and Flood Risk, and the results of the assessment shall be submitted in writing to the local planning authority. Where a SuDS scheme is to be implemented, the submitted details shall:
- i) Provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site, and the measures taken to prevent pollution of receiving ground water and/or surface waters;
 - ii) Specify the responsibilities of each party for the implementation of the SuDS scheme, together with a timetable for that implementation; and,
 - iii) Provide a timescale for implementation, management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
9. 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 07.30 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.
10. The contents of the indicative site plan submitted in support of this application shall not be regarded as representing an approved site layout or scale of development.
11. Prior to first use of the development hereby approved the vehicular access shall provide visibility splays of 2.4 metres x 43 metres in both directions measured to the nearside edge of the adjoining highway. Within these splays there shall be no obstruction above the level of the adjoining carriageway. The splays shall thereafter be permanently retained clear of any such obstruction to visibility.
12. The development shall be carried out in strict accordance with the findings, recommendations and methodology contained within the Protected Species Report produced by EVR Ecology and dated June 2016 submitted as part of this application.
13. No part of the development shall commence until a further survey and method statement in relation to the presence of bats together with an appropriate scheme of mitigation has been submitted to and approved, in writing, by the local planning authority. The measures as are approved shall be implemented in all respects.

14. No part of the development shall commence until a Biosecurity Risk Assessment has been submitted to and approved in writing by the Local Planning Authority. The Assessment shall include appropriate measures to prevent the introduction of Invasive Non Native Species (INNS) during the construction phase, and measures to control INNS as are currently present on site. The measures and proposals shall be fully implemented in strict accordance with the details as are approved.