

Town and Country Planning Act 1990 Section 78 Appeal

Appeal relating to Engedi Chapel, High Street,
Brymbo, Wrexham, LL11 5BL

Local Planning Authority Statement of Case

1.0 INTRODUCTION

- 1.1 This statement will form the Council's case for its reasoning to refuse planning permission for the demolition of the existing building known as Engedi Chapel, High Street, Brymbo and for the erection of a block of flats consisting nine two bed apartments with associated access and parking provision.
- 1.2 As a procedural matter and for the avoidance of doubt, the building is known locally as *Engedi Chapel*. The Council registered the application on its records as *English Methodist Chapel* as this was stated on the applicant's submissions as point 4 of the standard application form. The *English Methodist Chapel* is in fact the building located immediately to the south of the application site. However, the Council is satisfied that the planning application was determined on the basis of the correct building as identified on the applicant's 'red line' location plan.
- 1.3 The planning application was refused for one reason:
- The lack of a financial contribution towards a shortfall in education provision will result in a detrimental impact upon existing community infrastructure and the capacity of local schools to accommodate the proposed development. To allow the development without such provision would be contrary to Policy GDP2 of the adopted Wrexham Unitary Development Plan.*
- 1.4 The Council has made reference to the relevant policies and supplementary planning guidance notes in the Questionnaire as previously submitted.

2.0 THE COUNCIL'S CASE

- 2.1 Policy GDP2 of the Wrexham Unitary Development Plan (UDP) requires that, where proposals which may have an impact upon existing infrastructure provision, measures should be proposed to offset that impact, including planning obligations to provide financial contributions.
- 2.2 Policy GDP2 and Local Planning Guidance Note 27 – Developer Contributions to Schools sets out the mechanism for when monetary contributions should be made to offset a shortfall in education infrastructure provision.
- 2.3 Prior to the Council's determination, the proposal had been considered on the basis of this policy requirement – it is content that it was justified to seek a contribution in line with UDP requirements.
- 2.4 In this instance, whilst the applicant had gone to efforts to demonstrate that their proposal would not be viable set against all development costs, and existing land and property values in the area, the Council does not consider that the benefits of the redevelopment of the site as proposed outweighs the harm that may be caused to existing education provision in the locality by adding pressure to the shortfall in capacity.

- 2.5 Further, whilst the Council acknowledges that there may be urban regeneration benefits to the proposed scheme as well as a provision towards a housing need, exempting this proposal from a requirement to make contributions towards additional education infrastructure provision in the locality would transfer a burden that would not otherwise exist to the Council and at a time when the same economic circumstances means that it has less finance to meet any additional demands placed upon it. It is on this basis that the Council is satisfied that the policy GDP2 holds significant weight in this instance regardless of the viability arguments put forward by the applicant. The dilapidating condition of the existing building and the financial commitment already made by the applicant in their purchase of the building is not necessarily the responsibility of the Council.

3.0 APPELLANT'S APPLICATION FOR COSTS

- 3.1 Guidance on the award of costs is found in Section 12 Annex: *Award of Costs* in the Welsh Government's Development Management Manual. Circumstances in which costs can be awarded are referred to in section 2.0 of the same document.
- 3.2 The Council notes that the appellant is requesting the Inspector to *'review the Council's handling of the application and to assess whether a fair and reasonable decision has been taken, given the strength of the appellant's evidence, the strength of the Officer's recommendation, compared to the rather weak and unjustified judgement and decision taken by the Planning Committee...'*
- 3.3 The appellant also seeks for the Inspector to *'seriously consider the awarding of costs against the Council in this instance...'*
- 3.4 In the first instance, the Council is of the strong opinion that the appellant has provided no specific justification in their 'application for costs' as to how the Council has behaved in an unreasonable manner and how they have been disadvantaged.
- 3.5 The applicant refers to in their grounds of appeal that the Council had not given due consideration to the findings of the Viability Assessment which was provided by the applicant as part of the determination process. The Council disputes that the presence of the viability Assessment was ignored when the decision to refuse planning permission was made. The Council considered, in this instance, that the proposal simply does not meet the requirements of planning policy GDP2 in that the development would provide for a sufficient financial contribution towards a known shortfall in education infrastructure provision.
- 3.6 The issue of whether the benefits of the development (i.e. the provision of dwellings) outweighs the harm that would be caused by placing additional unmitigated demand upon local education provision is a fine balance. Policy GDP2 lays out a clear and accepted policy requirement and in this instance the Council considers that although the applicant's own scheme may be

unviable, the harm that may be caused to education provision in the locality by the implementation of this development is of greater importance. The Council is perfectly entitled to take this view in giving due consideration to the development plan in force and for this reason it considers that no unreasonable behaviour has been demonstrated.

- 3.7 For the above reason, the Council respectfully requests that the appellant's application for costs in dismissed.

4.0 SUGGESTED CONDITIONS

- 4.1 In accordance with established guidance, the Council hereby list suggested conditions should the Inspector be mindful to allow the appeal.

1. The development hereby permitted shall be commenced before the expiry of five years from the date of this permission.

Reason: To comply with Section 91(3) of the Town and Country Planning Act, 1990.

2. The development shall only be carried out in strict accordance with the details shown on the approved drawing(s) numbered 16-08-101 P6, 16-08-102 P8, 16-08-103 P7, 16-08-104 P7, 16-08-106 P11, 16-08-107 P10 and as contained within the application documentation.

Reason: To define the scope of the planning permission

3. No part of the development shall commence until samples of all external facing and roofing materials and a specification for all windows frames and external doors have been submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in strict accordance with such details as are approved.

Reason: To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area.

4. No development shall commence, to include the demolition of any building, until detailed bat avoidance, mitigation and compensation measures, including those measures described in the approved ecological report of Greenspace Environmental Ltd ref: 1649 002R dated March 2017 have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the details as may be approved.

Reason: In order to ensure the protection of species which would otherwise be harmed by the carrying out of this development.

5. Prior to the first occupation of the development, a compliance audit shall be carried out by a qualified ecologist, independently of the appointed principal ecologist, in accordance with details which have been submitted to and approved in writing by the Local Planning Authority. A copy of the completed audit reports should be submitted to and approved in writing by the Local Planning Authority after each phase of development.

Reason: In order to ensure the protection of species which would otherwise be harmed by the carrying out of this development.

6. 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 amenities of the occupiers of nearby properties.

7. No part of the development shall commence, to include any demolition, until a Construction Phase Methodology and Traffic Management Plan including provisions for material and plant delivery storage areas and contractor parking has been submitted to and approved in writing by the Local Planning Authority and the Plan as is approved has been implemented.

Reason: To protect the amenities of the occupiers of nearby properties and in the interests of highway safety.

8. Development shall not begin until an appropriate photographic survey, equivalent to an English Heritage Level 1 study, of the existing building(s) has been carried out in accordance with details to be submitted to, and approved by, the Local Planning Authority. The resulting digital photographs should be forwarded on a CD to the Local Planning Authority and the Development Control Archaeologist, Clwyd-Powys Archaeological Trust, 41 Broad Street, Welshpool, Powys, SY21 7RR. Email: markwalters@cpat.otg.uk Tel: 01938 553670. After approval by the Local Planning Authority, a copy of the photographs should also be sent to the Historic Environment Record Officer, Clwyd Powys Archaeological Trust for inclusion in the regional Historic Environment Record.

Reason: To provide for a record of a building or buildings of local architectural or historic interest.

9. The vehicular parking and turning areas as shown on approved drawing(s) No(s). 16-08-101 P6 shall be fully laid out, surfaced and drained and all of the parking spaces marked out prior to first use of the development. These areas shall thereafter be permanently retained and kept free of any obstruction, and made available solely for the parking and turning of motor vehicles at all times. For the avoidance of doubt, the turning area shall be made available solely for turning of motor vehicles.

Reason: To provide for the parking and turning of vehicles clear of the highway and to ensure that reversing by vehicles into or from the highway is rendered unnecessary in the interest of traffic safety.

10. Prior to the first occupation of the development, a footway shall be provided along the entire site frontage in accordance with the details as shown on the approved plan number 16-08-101 P6.

Reason: In the interests of providing a safe means of pedestrian refuge along the site frontage for users of the site.

11. Prior to first use of the development hereby approved the vehicular access shall provide visibility splays of 2.4 metres x 33 metres to the south measured to the nearside edge of the adjoining highway, and 2.4 metres x 33 metres to

the north measured to the centreline of the adjoining highway. Within these splays there shall be no obstruction in excess of 1 metre in height above the level of the adjoining highway. The splays shall thereafter be permanently retained clear of any such obstruction to visibility.

Reason: To ensure that adequate visibility is provided at the proposed point of access to the highway.

12. No part of the development shall commence until a scheme for the comprehensive and integrated drainage of the site indicating how foul water, surface water and land drainage will be dealt with has been submitted to and approved in writing by the Local Planning Authority. The scheme as approved shall be implemented in accordance with a timescale to be agreed as part of the submitted details and maintained thereafter.

Reason: To ensure that effective drainage facilities are provided for the proposed development, and that no adverse impact occurs to the environment or the existing public sewerage system.

13. No part of the development shall commence, to include any demolition, 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.

Reason: To protect the amenities of the occupiers of nearby properties.

14. Notwithstanding the detail contained in the approved plans and documentation, all windows in the first and second floor of the building in any elevation that faces north shall only be glazed and re-glazed using obscure glass and shall remain permanently fixed shut at all times.

Reason: To protect the amenities of the occupiers of nearby properties.

15. No private surface water run off shall be permitted to flow from the development site onto the adjoining highway. An Aco drain or similar shall be provided across the approved access to intercept any such run off prior to first use of the development.

Reason: In the interests of highway safety.

16. Prior to the first use of the development hereby approved, a means of enclosure shall be erected along the site frontage in accordance with a design which has been submitted to and approved in writing by the local planning authority. The enclosure as built shall be retained thereafter.

Reason: In the interests of ensuring that the parking provision is segregated from the pedestrian provision to protect public safety.

4.0 CONCLUSION

- 4.1 The Council considers that to allow this proposal would impose a significant burden on existing infrastructure provision without the prospect of any mitigation to offset the negative impacts of the development. In this regard, it respectfully requests that this appeal is dismissed.