

**TOWN AND COUNTRY PLANNING ACT 1990 SECTION 78 APPEAL AT
LAND WEST OF CAE PLAS TEG, OFF TYN Y CESTYLL ROAD, GLYN
CEIRIOG, WREXHAM**

COUNCILS STATEMENT OF CASE

**PLANNING REF: P/2015/0902
PINS REF: H6955/A/16/3148505**

1.0 THE SITE

- 1.1 The appeal site is located on land to the west of Cae Plas Teg, Tyn Y Cestyll Road, Glyn Ceiriog, Wrexham. It is Greenfield land outside of the settlement limit, in open countryside and within a Special Landscape Area (SLA).

2.0 PROPOSAL

- 2.1 The proposal is in full and is for the erection of 2 no. dwellings.
- 2.2 Planning permission was refused on 20.01.2016 for the following reasons:

2.2.1 The site is Greenfield and is located outside of any settlement limits and within a Special Landscape Area as defined in the Wrexham Unitary Development Plan. The development would be materially detrimental to the appearance of the locality and would represent an undesirable visual intrusion into the rural landscape. The impact of the development cannot be minimised from nearby and distant viewpoints and the development therefore conflicts with Policies PS1, PS2, PS4, GDP1, EC5 and H5 of the Wrexham Unitary Development Plan.

2.2.2 Insufficient information has been submitted in support of the proposal to demonstrate that the existing trees on site would not cause a significant reduction in light to the proposed dwellings which would be to the detriment of the future occupiers of the dwellings. This would lead to pressure to reduce tree heights and canopies or fell these trees and as such the proposal does not provide for the conservation of trees contrary to Policies PS2, GDP1, EC4 and EC5 of the Wrexham Unitary Development Plan.

2.2.3 Insufficient information has been submitted in support of the proposal to demonstrate that the development of the site would not cause detriment to species or habitats of local or national importance (Bats). The proposal is therefore contrary to Policy EC6 of the Wrexham Unitary Development Plan, Chapter 5 of Planning Policy Wales (Edition 6) and the guidance contained in Technical Advice Note 5 - Nature Conservation and Planning.

3.0 PLANNING HISTORY

- 3.1 Pre-application Planning Enquiry ref: ENQ/2014/0326 - Erection of two dwellings. (Response letter dated 18/11/2014 is at Appendix 1)

4.0 LOCAL AND NATIONAL PLANNING CONTEXT

- 4.1 Planning Policy Wales (PPW) Edition 8, in particular Chapters 2 and 9.
- 4.2 Technical Advice Note 1: Joint Housing Land Availability Studies.

4.3 The site lies outside of any settlement limit and within an SLA as defined in the current development plan for the area, which is the Wrexham Unitary Development Plan (UDP) 2005. Policies PS1, PS2, PS3, PS4, GDP1, H5, EC4, EC5 and EC6 of that document are relevant. Copies of the relevant UDP policies are contained in the submitted questionnaire bundle and a summary of each relevant policy is detailed below:

- **PS1 Settlement Limits**

Policy PS1 is a strategic policy stating that new development for housing, employment and community services will be directed to within defined settlement limits/employment.

- **PS2 Development and the Environment**

Policy PS2 is a strategic policy stating that development must not materially detrimentally affect countryside, landscape/townscape character, open space, or the quality of the natural environment.

- **PS3 Recycling of Land**

Policy PS3 states that “Development should use previously developed brownfield or underused land in preference to greenfield land wherever possible, particularly so where Greenfield land is of ecological, landscape or amenity value...”

- **PS4 Settlement Pattern**

UDP Policy PS4 states that “Development should maintain the existing settlement pattern and character and be integrated with the existing transport network to help reduce the overall need to travel and encourage the use of alternatives to the car.”

- **GDP1 Development objectives**

Policy GDP1 is a detailed policy that seeks to secure a satisfactory standard of development. In respect of this appeal the Council makes specific reference to part a):

- a) Ensure that built development in its scale, design and layout and in its use of materials and landscaping, accords with the character of the site and makes a positive contribution to the appearance of the nearby locality.

- **H5 Housing in the Countryside**

Policy H5 states that “Outside of defined settlement limits new dwellings will only be permitted where:

- a) The proposal is for the conversion or sub-division of an existing building, or is for affordable housing where there is a proven need for such a development; or
- b) The proposal comprises infill; or
- c) The proposal is needed to house a key worker”.

- **EC4 Hedgerows, Trees and Woodland**
Development proposal should provide for the conservation and management of hedgerows, trees, orchards, woodland, wildlife...Development which results in the loss or significant damage to valuable trees, important hedgerows or ancient woodland sites will not be permitted.
- **EC5 Special Landscape Areas**
Within Special Landscape Area, priority will be given to the conservation and enhancement of the landscape. Development other than for agriculture, small scale farm based and other rural enterprises...will be strictly controlled. Development will be required to conform, to a high standard of design and landscaping, and special attention will be paid to minimising its visual impact both from nearby and distant viewpoints.
- **EC6 Biodiversity Conservation**
'Development 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 conservation value of the site. Where such development is permitted, damage should be kept to a minimum, and compensatory measures should be provided...'

4.4 The LDP2 2013-2028 will eventually replace the UDP, and that plan is in the process of being prepared. The timescales for its preparation and delivery is given as follows:

Key Stages and Timetable

Stage	Date
Delivery Agreement(DA)	Approved by Welsh Government - 10th December 2014
Call for Candidate Sites	Thursday 29th Nov 2012 – Thursday 28th Feb 2013  NOW CLOSED - No further sites will be accepted.
Issues and Options	Stakeholder Consultation 2nd March – 10th April 2015
Preferred Strategy	October – November 2015
Deposit Local Development Plan	November – December 2016
Alternative Sites Consultation	January – March 2017
Submission to Welsh Government for Examination	June 2017
Public Examination	Autumn 2017 (dependent upon Planning Inspectorate)
Publication of Planning Inspector's Report	Winter 2017 (dependent upon Planning Inspectorate)
Adoption	March 2018 (dependent on Planning Inspectorate)
Monitoring	Annually

Details of the full delivery agreement is available on the Council's web site.

5.0 THE COUNCIL'S CASE

Principle of Residential development

- 5.1 UDP Policy PS1 directs new housing development to land within defined settlement limits. The appeal site lies outside of the settlement limit for Glyn Ceiriog and therefore the proposals conflict with policy PS1. Whilst the UDP does not entirely prevent residential development outside of settlement limits, in accordance with policy H5 it is only likely to be permitted where proposals are for the conversion of a suitable building, the subdivision of an existing dwelling, small scale affordable housing on sites adjacent to a settlement limit and key rural worker housing. None of these exceptions to the otherwise strict control over housing developments on sites outside of settlements apply to the appeal proposals. The proposed development therefore does not accord with UDP Policy H5.
- 5.2 The proposal is to develop a Greenfield site for housing which has not been previously developed. The development would not therefore accord with UDP Policy PS3 and Para 4.9.1 of PPW which confirms that wherever possible, brownfield sites should be used in preference to Greenfield sites.
- 5.3 Para 4.7.8 of PPW confirms that, new housing development should be located adjoining existing settlements. Though the appeal site does adjoin the settlement limit, there is a strong and definite development boundary between the built development and the countryside, and to allow this development would not maintain the existing settlement pattern and character contrary to UDP Policy PS4. The development would materially detrimentally affect the countryside, landscape character and quality of the natural environment. There is Public Right of Way (LLANSANTFFRAID GLYNCEIRIOG footpath no.18) to the west and south west of the site allowing views into the site from these directions. The site can also be seen from the Valley floor to the east of the site and from more distance viewpoints across the Valley. The site is also visible from the north and would be more so once the proposed alterations to the boundary are made to create the vehicular access point. The drastically different site levels will also impact on the boundary vegetation around the site access which will need to be remodelled for visibility and involves the removal of a large section of native hedgerow. The development would not make a positive contribution to the appearance of the locality, or accord with the character of the site, and would detrimentally affect the openness of the countryside contrary to Policies PS2 and GDP1 of the UDP.

- 5.4 The Council acknowledges that it is only required to determine applications in accordance with the adopted UDP unless material considerations indicate otherwise. The lack of a 5 year housing land supply is a relevant material consideration.
- 5.5 Wrexham does not currently have a 5 year supply of land for housing. The most recent Joint Housing Land Availability Study (JHLAS) (2014) found that Wrexham has a housing land supply of 3.1 years. Furthermore in accordance with paragraph 8.1 of TAN1 (Jan 2015) Wrexham is now unable to demonstrate whether it has a 5 year housing land supply because the UDP plan period expired in 2011.
- 5.6 The Wrexham Local Development Plan Preferred Strategy, which was recently subject to public consultation (closed on 1 April 2016), identifies a requirement for 11,715 new homes to meet the housing needs of the County Borough over the period of 2013-2028. Taking into account existing supply this equates to a requirement for sufficient land to be brought forward for 6,738 houses to be built.
- 5.7 The selection criteria for choosing new housing sites is raised in para 9.2.9 of PPW, and it confirms that the following should be examined:
- the availability of previously developed sites and empty or underused buildings and their suitability for housing use;
 - the location of potential development sites and their accessibility to jobs, shops and services by modes other than the car, and the potential for improving such accessibility;
 - the capacity of existing and potential infrastructure, including public transport, water and sewerage, other utilities and social infrastructure (such as schools and hospitals), to absorb further development, and the cost of adding further infrastructure;
 - the scope to build sustainable communities to support new physical and social infrastructure, including consideration of the effect on the Welsh language (see 4.13), and to provide sufficient demand to sustain appropriate local services and facilities;
 - the physical and environmental constraints on development of land, including, for example, the level of contamination, stability and flood risk, taking into account the possible increase of such risk as a result of climate change (and see Chapter 13), and the location of fragile habitats and species, archaeological and historic sites and landscapes (Chapters 5 and 6);
 - the compatibility of housing with neighbouring established land uses which might be adversely affected by encroaching residential development; and
 - the potential to reduce carbon emissions through co-location with other uses.

The Council considers that some of these items are not satisfied by the proposed development.

- 5.8 The Council recognises that where a JHLAS shows a land supply below the 5 year requirement, TAN1 advises that the need to increase supply should be given considerable weight when dealing with planning applications, **but only** where the development would otherwise comply with development plan and national planning policies. It does not automatically follow that every site proposed for housing should be granted permission. The Council contends that the proposed development represents a clear departure from both local and national planning policies as described above, and the residential development of the site is not considered acceptable despite the need for additional land for housing in the County Borough. Given the small contribution the development would make the overall supply of housing in Wrexham and the detrimental impact the development will have upon the character and appearance of the countryside and special landscape area, the lack of a 5 year housing land supply is not sufficient to justify departing from UDP policies in this instance.

Weight Afforded to the UDP 2005

- 5.9 The Council acknowledges that paragraph 2.7.1 of Planning Policy Wales advises that development plan policies be given decreasing weight when they are outdated or superseded. However whilst the UDP plan period has now expired, its use of settlement limits (as part of a settlement strategy) remain broadly consistent with Planning Policy Wales. As such policies PS1, PS2, PS3 and PS4 are not considered to be out of date. The Council contends that these policies should continue to be afforded considerable weight.

SLA

- 5.10 The Council considers that the development will cause an unacceptable visual intrusion because it introduces built development within the SLA where priority is given to the conservation and enhancement of the landscape, and where development is strictly controlled. The Village is enclosed by steep-sided spurs of the Berwyn Mountains. This upland landscape character is intrinsic to the sense of place and tranquillity of the Ceiriog Valley. The main settlement is concentrated along the valley bottom however the upper slopes has a scattering of stone-built and rendered cottages and farms. Slate is the predominant roofing materials and forms an important element of the built character of the area. The application site forms a large steep field that is bounded by Tyn y Cestyll Road, a very narrow and enclosed single track to the north. To the east the site bounds the residential cul-de-sac of Cae Plas Teg which sits at a much lower level than the application site.
- 5.11 Due to its elevated position and steep topography, the application site is prominent within wider views through the village as such, even where the principle of development on this land could be accepted, the design of the buildings, their scale and landscaping would be very

important to ensure a positive integration within the landscape. In considering the designs submitted, the form of the buildings is more modern than any of the existing buildings within the locality. Whilst the concept of having more contemporary designs would not necessarily be opposed, the contrast in this instance would be too stark given the prominence of the site and also the scale of the dwellings. Any new dwellings within this location should sit discreetly within the hillside and be of a more traditional form.

- 5.12 Any dwellings in this location should be more diminutive in scale than that proposed; generally building plots and positions have developed organically and this is not replicated in the proposed site layout. The proposals as presented would result in an over-dominant design that detracts from the existing built character of the village as well as the existing landscape character. The development of this site as proposed would be materially detrimental to the landscape and would fail to accord with the character of the site or make a positive contribution to the appearance of the nearby locality, and the impact of the development has not been minimised from nearby and distant viewpoints within the special landscape area contrary to UDP Policy EC5.
- 5.13 At 2.14 of the appellant's grounds of appeal, the case officer's delegated report has been paraphrased and the first issue raised by the appellant is that the comments suggest that the principle of development in the location of the appeal site is not considered to be unacceptable. The appellant has misunderstood the content of the delegated report and it is clear at the beginning of the full version of the paragraph that it is intended to confirm that the proposed scale and design of the development is appropriate even if the residential use of the site were to be acceptable in principle. The report then goes on to state the reasons for this. The principle of development in this location is unacceptable and, turning to the second issue raised by the appellant, this is the reason why amendments to the design of the dwellings were not sought as part of the application process.

Ecology

- 5.14 The trees along the site boundary were subjected to a preliminary ground level roost assessment which aims to categorise trees based on any features they have which may support bats. The trees are inspected at ground level using binoculars; in most situations the survey cannot conclusively confirm absence of features as they may be hidden, obscured or high in the canopy out of sight of the surveyor. The survey can detect low-level features but not necessarily all of those which a tree might possess and therefore it is difficult to ascertain their true potential for supporting bats. The surveyor identified at least one tree, a Pedunculate oak labelled BRP 1 in the submitted Ecology Survey Report dated March 2015 (see Appendix 2), as possessing features which may be used by bats. The survey should

have detailed all the trees on site, their size, species and the rationale for scoping out further survey.

- 5.15 In addition to any direct impacts on roosts the survey work should have identified any indirect impacts caused by the development such as addition of artificial lighting and lighting from car headlights, any removal of vegetation which acts as flight line corridors and potential loss of foraging areas. The Ceiriog Valley supports several rare bat species and, as the site is currently undeveloped and dark, it is ideal as a feeding or foraging route for these bats. Without adequate bat activity surveys of the site and emergence surveys of the identified tree BRP 1, the true impact of the development on bats cannot be adequately established.
- 5.16 The Council notes the appellant's assertion (at point 4.2 Grounds of Appeal) that this reason for refusal is unfair because additional information was not requested as part of the application process. The Council did not request this information because of the objection to the residential development of this site in principle. In the absence of submission of this additional information as part of this appeal the proposal remains contrary to UDP policy EC6.
- 5.17 The Council contends that the suggestion by the appellant that bat surveys could be dealt with by planning condition is inappropriate in that it would be contrary to the provisions of Technical Advice Note 5 (TAN 5) Nature Conservation and Planning 2009 (see Appendix 3). Section 6.2.2 of TAN 5: Nature Conservation & Planning states that "it is essential that the presence or otherwise of a protected species, and the extent that they may be affected by the proposed development, is established **before** the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. It is considered best practice that such a survey is carried out before planning application is submitted. Planning permission should not be granted subject to a condition that protected species surveys are carried out and, in the event that protected species are found to be present, mitigation measures are submitted for approval." It is quite clear from the submitted Ecology Report that there is a reasonable likelihood that bats are present on site and that emergence surveys are thus required.

Trees

- 5.18 The potential impact of shading levels cast by existing trees has been considered in the Arboricultural Report dated March 2015. The report author concludes that shade cast across the site should not necessarily be attributed to the trees however; the Council's own desktop research of aerial views of the site would contradict this assumption with such evidence indicating seasonal canopy shade extending across the site as far as the eastern and north-eastern boundaries (see google earth image at appendix 4). The steep gradient of the site will also have a

seasonal impact upon natural light levels, particularly during afternoon periods, the trees along the western boundary may exacerbate the issue further placing them under a level of increasing pressure from residents to have tree heights and canopy spreads reduced. Canopy shade, particularly when based upon limited or seasonal evidence is an arboricultural reason to object to this proposal. Further in depth information on shade cast should have been provided as part of the original application submission, along with appropriate considerations within the designs of the dwellings to mitigate light loss or maximise all natural light penetration.

- 5.19 The Council notes the appellant's assertion (at point 3.2 Grounds of Appeal) that this reason for refusal is unfair because additional information was not requested as part of the application process. The Council did not request this information because of the objection to the residential development of this site in principle.
- 5.20 In the absence of submission of this additional information as part of this appeal, the proposal remains likely to lead to pressure to reduce tree heights and canopies, or to fell these trees, otherwise there would not doubt be a significant reduction amenity to the future occupiers of the development. The proposal does not therefore provide for the conservation of trees is in the interests of their visual and ecological value in maintaining the quality of the landscape, and the development is contrary to Policies GDP1, EC4, PS2 and EC5 of the Wrexham Unitary Development Plan.

6.0 SUMMARY

- 6.1 The main issue to consider is whether the development is acceptable as being located outside of the settlement limit and within an SLA, and whether the benefits of development outweigh any harm.
- 6.2 The development would not maintain the existing settlement pattern, accord with the character of the site, or make a positive contribution to the appearance of the locality. Development of this scale would be materially detrimental to the amenities of the countryside and would represent an undesirable visual intrusion into the Special Landscape Area. It has not been demonstrated that nature and trees will be conserved and the development conflicts with Policies PS1, PS2, PS3, PS4, EC4, EC5, EC6, H5 and GDP1 of the Wrexham UDP.
- 6.3 Therefore, whilst it is acknowledged that recent evidence demonstrates the Council's deficit in a 5 year land supply, to which the proposed development would make only a very minor contribution, this is not sufficient to warrant the grant of permission given the significant harm identified above.

7.0 CONCLUSION

- 7.1 The Council is of the opinion that the housing development is not justified for this location, and the Inspector is therefore respectfully requested to dismiss the appeal. Should the appeal be allowed, the following planning conditions are suggested:
- 7.1.1. 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
- 7.1.2 The development shall only be carried out in strict accordance with the details shown on the approved drawings numbered:
* GC-AA-100,
* P-001 Rev A,
* P-002 Rev A,
* P-003 Rev A,
* P-004 Rev A,
* P-005 Rev A,
* P-006 Rev B, and
as contained within the application documentation.
Reason - To ensure that the development fully complies with the appropriate policies and standards.
- 7.1.3 Prior to their use on the development samples of all external facing and roofing materials shall be 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.
- 7.1.4 No development shall commence until an ecological mitigation plan which includes methods for protecting bats, breeding birds and reptiles has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in strict accordance with the approved mitigation plan.
Reason – To protect named species/habitats/biodiversity which would otherwise be damaged/lost by the development hereby permitted.
- 7.1.5 No development shall commence until a drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The scheme shall provide for the disposal of foul, surface and land water, and include an assessment of the potential to dispose of surface and land water by sustainable means.

Thereafter the scheme shall be implemented in accordance with the approved details prior to the occupation of the development and no further foul water, surface water and land drainage shall be allowed to connect directly or indirectly with the public sewerage system.

Reason - To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment.

- 7.1.6 Within three months of commencement of development, full details of a hard and soft landscaping scheme together with a timescale for implementation of works shall be submitted to and approved in writing by the Local Planning Authority.

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

- 7.1.7 The landscaping scheme submitted and approved in connection with condition no. 7.1.6 shall be fully implemented in all respects within the agreed timescale and in strict accordance with the approved scheme.

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

- 7.1.8 The landscaping scheme as carried out in connection with condition no. 7.1.7 shall be permanently retained. Any planting becoming severely damaged or seriously diseased, or is in poor physiological condition and/or are removed without the written permission of the Local Planning Authority shall be replaced with trees or shrubs and within a timescale all to be submitted to and approved in writing by the Local Planning Authority.

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

- 7.1.9 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 Method Statement as is approved. The Method Statement shall include the following:

1) A specification for tree protection fencing and ground protection measures that comply with **British Standard 5837:2012**;

- 2) A Tree Protection Plan showing the location of the trees 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;
- 3) 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;
- 4) Details of general arboricultural matters including proposed practices with regards to cement mixing, material storage and fires;
- 5) Details of the frequency of supervisory visits and procedures for notifying the findings of such visits to the Local Planning Authority;
- 6) Method for protecting retained trees during demolition works;
- 7) 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 trees.

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| 7.1.10 | <p>No part of the development shall commence until a scheme detailing the proposed retaining wall at the access point construction of the following has been submitted to and approved in writing by the Local Planning Authority. The scheme as is approved shall be fully implemented prior to first use of the development.</p> <p>Reason - In the interests of highway safety.</p> |
| 7.1.11 | <p>No part of the development shall commence until a scheme detailing the proposed retaining wall at the access point construction of the following has been submitted to and approved in writing by the Local Planning Authority. The scheme as is approved shall be fully implemented prior to first use of the development.</p> <p>Reason - In the interests of highway safety.</p> |
| 7.1.12 | <p>Prior to first use of the development hereby approved the vehicular access shall be laid out in strict accordance with plan no. GC AA 100. The visibility splays shall thereafter be permanently retained clear of any such obstruction to visibility in excess of 1 metre in height.</p> <p>Reason - To ensure that adequate visibility is provided at the proposed point of access to the highway.</p> |
| 7.1.13 | <p>Prior to first use of the vehicular access hereby approved, the access shall be surfaced with hard bound materials</p> |

(e.g. bituminous macadam) for a minimum distance of 5 metres behind the adjoining highway.

Reason - To ensure that no deleterious material is carried onto the highway, in the interests of highway safety.

7.1.14 The vehicular parking and turning areas as shown on approved drawing No. P- 001 Rev A shall be fully laid out, surfaced and drained 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.

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.

APPENDICIES

Appendix 1

Pre-application enquiry response letter dated 18 November 2014.

Appendix 2

Appendix 2 of the Ecological Survey Report dated March 2015 – Site Plan

Appendix 3

TAN 5 Nature Conservation and Planning 2009.

Appendix 4

Google Earth Image