



Penderfyniad ar Apêl

Ymweliad safle a wnaed ar 19/06/13

**gan Emyr Jones BSc(Hons) CEng
MICE MCMI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 27/06/13

Appeal Decision

Site visit made on 19/06/13

**by Emyr Jones BSc(Hons) CEng MICE
MCMI**

an Inspector appointed by the Welsh Ministers

Date: 27/06/13

Appeal Ref: APP/H6955/A/13/2194725

Site address: Land at School Lane, Southsea, Wrexham LL11 6SF

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 failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Oak Homes Ltd. against Wrexham County Borough Council.
- The application Ref P/2012/0562, is dated 1 August 2012.
- The development proposed is residential development of 10 two/three bedroom dwellings and 1 detached dwelling and the construction of new vehicular accesses.

Decision

1. The appeal is dismissed and planning permission for residential development of 10 two/three bedroom dwellings and 1 detached dwelling and the construction of new vehicular accesses is refused.

Main Issue

2. I consider the main issue in this case to be whether financial contributions in respect of primary and secondary school provision, and provision and improvement of public open space, are justified.

Reasons

3. Although the appeal relates to non-determination, the Council resolved to grant planning permission subject to the completion of a Section 106 obligation in respect of financial contributions. The contributions sought are £43,560 towards primary and secondary school provision, a commuted sum of £7,500 towards improvement of public open space provision in the community, and a management fee of £2,553.
4. The appellant had requested exemption from such payments on the basis that the contributions, totalling £53,613, would make the development of the site uneconomical in the present financial climate. However, the Provisional Viability Analysis submitted demonstrates that there would be a shortfall of £158,051 before any developer contributions were deducted. In such circumstances, I see little prospect of the scheme progressing until financial circumstances improve significantly, even if no developer contributions were required.

Education

5. *Wrexham Unitary Development Plan* (UDP) policy GDP2 states that where the capacity of infrastructure, including community facilities, is likely to be deficient as a consequence of new development, a planning agreement/obligation will be negotiated whereby the developer provides the additional capacity either on or off-site, and/or provides funding for the Council to provide the additional capacity itself. The supporting text notes that changes in population resulting from new housing can exert pressure on the availability of school places and exceeding the capacity of local schools is cited as one example of where agreements/obligations will be negotiated.
6. Further guidance is given in *Local Planning Guidance No. 27: Developer Contributions to Schools* (LPGN 27). This applies to developments of four or more units and requires a commuted payment calculated by multiplying the additional places required by the pupil cost figure where the potential pupils generated by the proposal cannot be accommodated within existing schools. Schools where contributions are likely to be required include Bryn Alyn Secondary and Penrhyn Primary. In determining Appeal Ref: H6955/A/08/2093202 a colleague considered the LPGN 27 methodology to be robust, founded on policy and unambiguous and I have no reason to disagree.
7. The site lies within the Bryn Alyn catchment and, given its close proximity, most parents would be likely to want to send children of primary age to Penrhyn. According to LPGN 27 a development of eleven 2-3 bedroom dwellings in such a location would require primary and secondary contributions of £21,560 and £22,000, respectively, and these are the sums sought by the Council.
8. As a matter of policy, Welsh Office Circular 13/97 on *Planning Obligations* requires that planning obligations are only sought where necessary, relevant to planning, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development, and reasonable in all other respects. *The Community Infrastructure Regulations 2010* now makes it unlawful to take a planning obligation into account when determining a planning application if it is not necessary to make the development acceptable in planning terms, directly related to the proposed development, and fairly and reasonably related in scale and kind to the development.
9. Contributions towards shortfalls in school places are necessary to make developments acceptable in planning terms, as made clear by UDP policy GDP2. The approach adopted in LPGN 27 of calculating contributions on the basis of the type and number of dwellings proposed and the capacity constraints of existing schools ensures that they are both directly related to the proposed development and fairly and reasonably related in scale and kind to it.
10. The Council is of the view that the guidance makes no provision for consideration of viability issues. Nevertheless, planning decisions should take into account all material considerations existing at the time of the decision and I note that the policy requirements in respect of developer contributions were drafted and approved in different times. Such material considerations include economic circumstances and it could be argued that a particular contribution would be unreasonable in the light of prevailing economic circumstances.
11. Nonetheless, exempting this proposal from a requirement to make contributions towards additional pupil places at Bryn Alyn and Penrhyn 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.

12. Whilst the Council would receive Council Tax payments from the occupiers of the dwellings, these would be revenue payments which would contribute towards the costs of subsequent maintenance and other recurrent expenditure, rather than capital receipts which could be used to provide or enhance existing infrastructure.
13. The appellant suggests that substantial weight should be given to the fact that the Council has already received a capital receipt of £327,805.80 when it sold the land in 2007 after it had been declared surplus to education requirements. I disagree, a planning permission generally runs with the land and a local planning authority should not look more favourable on a proposal because the local education authority was the previous landowner.
14. I, therefore, conclude that the contributions sought are also reasonable in all other respects.

Public open space

15. UDP policy CLF5 requires new development of ten dwellings or more to provide informal public open space within the site at a minimum level of 0.4 hectare per 50 dwellings. This should be conveniently located for users and usable for playing field(s) and/or equipped children's play area(s) and open amenity area(s). Provision is made for financial contributions in lieu for small urban infill housing development where the site is unsuitable for public open space provision or the development would not place significant additional pressure on existing facilities in the vicinity.
16. LGPN 10 on *Public Open Space in New Housing Development* seeks to ensure that adequate public open space is provided within new housing developments. Exceptionally, in suitable limited cases where new developments are in close proximity to existing council owned play and amenity provision, developers should enter into legal agreements in order that funding can be provided to enhance, upgrade, augment and maintain the existing facilities in lieu of providing provision on site.
17. *Technical Advice Note 16: Sport, Recreation and Open Space* (TAN 16) states that Local Planning Authorities will usually be justified in seeking planning obligations where the quantity or quality of provision for recreation is inadequate or under threat, or where new development increases local needs.
18. The appellant's suggest that the residents of Broughton and Southsea are far from deprived with regard to the provision of open space and recreation facilities. Nevertheless, the 2009 *Public Open Space Survey* shows a deficit of equipped play facilities within Broughton Community. The Gatewen Road play area, which is reasonably close to the application site, is quite small and, given the large amount of housing in the Broughton area, inadequate for community needs and in need of younger, toddler/junior play equipment.
19. In my view, the proposal would add to the pressure on existing play facilities in the vicinity such that a contribution to address this is necessary to make the development acceptable in planning terms and would be directly related to it. Nonetheless, the Council has adduced no substantive evidence as to how it calculated the £7,500 sought and I cannot be satisfied that this sum is fairly and reasonably related in scale and kind to the proposed development.
20. Exempting this proposal from a requirement to make any contribution towards alleviating the additional pressure on existing play facilities in the vicinity would impose an extra burden on the Council. This would be at a time when economic

circumstances mean that it has less finance to meet any additional demands. As a result, I have no reason to believe that the contribution sought is not reasonable in all other respects.

Overall conclusion

21. For the reasons given above, in the particular circumstances of this case, I conclude that economic circumstances do not justify setting aside the provisions of the statutory development plan. The financial contribution of £43,560 sought in respect of primary and secondary school provision and a financial contribution for provision and improvement of public open space, although not necessarily for £7,500, are justified. Neither side has submitted any evidence in relation to the management fee, but in my experience it is not unusual for local planning authorities to recover their administrative and legal costs in respect of planning obligations. In the absence of a planning obligation addressing these matters, the appeal should be dismissed and planning permission refused.

E Jones

Inspector