



Penderfyniad ar yr Apêl

Appeal Decision

Ymweliad â safle a wnaed ar 13/06/13

Site visit made on 13/06/13

**gan Robert Gardener BSc (TownPlan)
MRTPI**

**by Robert Gardener BSc (TownPlan)
MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

an Inspector appointed by the Welsh Ministers

Dyddiad: 31/07/13

Date: 31/07/13

Appeal Ref: APP/H6955/A/13/2196178

Site address: Land south of Pinecroft, Afon Eitha Road, Penycae, Wrexham LL14 2PF

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 outline planning permission.
- The appeal is made by Mr and Mrs W Roberts against the decision of Wrexham County Borough Council.
- The application Ref PEN P/2013/0003, dated 02/01/2013, was refused by notice dated 11/02/2013.
- The application proposed residential development.

Decision

1. The appeal is dismissed

Procedural matters

2. The application is made in outline but with access included for consideration now. That access would be from a cul-de-sac from Afon Eitha Road which serves a development of 9 houses, known as Pinecroft. This and the cul-de-sac are nearing completion on land immediately to the north of the appeal site. The use of this access arrangement to serve the site is not objected to.
3. All other matters are reserved for subsequent consideration. However, an indicative layout was also submitted. Although clearly for illustrative purposes only, it shows that residential development would be confined to a relatively flat area of the land commensurate with that of Pinecroft. The lower levels and slopes at the site edge and alongside the Afon Eitha, which forms its southern boundary in a deep cutting, would be excluded. On that basis, the Council accepts that the site could be developed without the loss of trees of reasonable value in those areas, a matter of potential objection. The Countryside Council for Wales does not object while, at a local level, further investigation suggests that, so long as an area is protected for the passage of great crested newts, there is no objection to the development of the remainder on bio-diversity grounds. These possible issues are therefore capable of being resolved.

Main Issue

4. The determining consideration in this case is whether or not there are very exceptional circumstances which would justify the proposal contrary to the strong presumption

against inappropriate development within the Green Barrier and outside the settlement limit of Penycae.

Background

5. The previous planning history of the site has been referred to extensively, particularly by the appellants. I draw on that shortly but register here the following:
- a) The appeal site was once part of a larger parcel of land owned by the appellants which was put forward, by way of an objection to the draft plan, for inclusion as a residential development site in what is now the adopted Wrexham Unitary Development Plan 1996-2011 (WUDP)¹.
 - b) It seems that it was inferred that that portion which is the appeal site was liable to flooding from the Afon Eitha. The site was therefore removed from the submission. Despite the continued objection of the Council, following the local inquiry into objections the remainder was included as an allocated residential site in the WUDP, Ref: Number 7 of Policy H1.
 - c) Site 7 was placed within the settlement limit of Penycae, was subsequently granted planning permission and is the site of the housing development Pinecroft to which I have referred. The appeal site, which the appellants refer to as their 'residual land', was placed outside the settlement boundary and within the Green Barrier.
 - d) A planning application made in 2004² for outline planning permission for residential development on the appeal site was refused and a subsequent appeal dismissed in February 2005³. Again, the Inspector's conclusions on several of the issues have been relied on and I comment on those shortly. Although planning permission was refused, he also recorded that neither the Environment Agency Wales nor the Council had any evidence of flooding events having affected the site. Since then Hydraulic Modelling has shown that flooding considerations do not preclude development of other than a small area immediately adjacent to the river. More recently, EAW has confirmed that it has no objection to the proposal.
 - e) The appeal site was put forward as an Alternative Site for residential development in response to public consultation for the draft Wrexham Local Development Plan (LDP). This proposal was resisted by the Council. However, the LDP was eventually withdrawn since the Inspector undertaking its examination considered that the plan revealed a considerable shortfall in the required supply of housing land.

Reasons

6. While I understand the appellants' view that, had the true risk of flooding been properly understood, the site would most likely have been included in the WUDP as an allocated site, placed within the settlement limits of Penycae and outside the Green barrier, none of those outcomes can be conclusively presumed. Although Green

¹ Adopted February 2005

² Council ref: PEN P/2004/0974

³ Ref: APP/H6955/A/04/1168185

Barriers do not share the same permanence as Green Belts, it is not possible, or appropriate, to now re-run that part of the UDP process within the confines of this appeal. The Inspector in 2005 came to a similar conclusion, although clearly the adoption of the UDP was a much more recent occurrence and the plan likely to have been more up to date then than it is now.

7. The proper place for that debate may in due course be the LDP. I understand that the preparation process is to start again and final adoption is not expected until 2016. The Council fully accepts that the appeal proposal would not prejudice that process or is premature to it. Nor should the LDP currently attract any weight here. It is appropriate, however, to take into account the actual harm the proposal would make to the Green Barrier and its purposes as well as any changed circumstances since the adoption of the WUDP.
8. The Council acknowledges that the WUDP is out of date. Nevertheless, as the operative development plan, it remains the starting point for the consideration of new development proposals. The boundary to the Green Barrier and the settlement are coincidental as defined for purposes of the WUDP. Notwithstanding the appellant's views that the site does not meet the assessment criteria for inclusion, the fact is that it is in the Green Barrier where WUDP Policy EC1 limits development required to meet a specified range of purposes. In so doing, it continues to closely follow the Welsh Government's continued policy in respect of Green Barriers⁴ as stated in Planning Policy Wales⁵ (PPW). The proposed residential development is not one of those purposes and, in accordance with PPW, is inappropriate development for which very exceptional circumstances need to be shown if it is to be granted planning permission. It is that test, not whether the Green Barrier boundary should be changed, which is to be applied to this case.
9. In addition, the proposal is contrary to Strategic Policy PS1, which states that new housing development is to be directed to be within defined settlement limits. Nor does it accord with the housing in the countryside exceptions set out in Policy H5. Strategic Policy PS2 is that development must not, amongst other matters, detrimentally affect the countryside or the natural environment.
10. Inappropriate development in Green Barriers is harmful by definition. In addition, as the Inspector found in 2005, the site exhibits the major Green Barrier attribute of openness. That does not, to my mind, imply that he was dubious as to its value as part of the Green Barrier. Moreover, the appellant's repeated claim that this was the site's *only* identified attribute which somehow undermines its Green Barrier credentials is entirely misplaced. It is clear of development and still retains this important characteristic. That is so despite the fact that boundary hedges, trees and shrubs have continued to grow and now provide a greater degree of enclosure. Nor is it inherent openness compromised by the construction of Pinecroft, since that site is outside Green Barrier. Notwithstanding that Green Barrier policies including, it seems to me, where they should apply should be reviewed as part of the development plan, there has been no material change in the physical circumstances of the site or its location which suggest that its inclusion as part of the Green Barrier in the WUDP is now obviously wrong. Residential development would undoubtedly considerably

⁴ 'Green Barriers' here have the same meaning as 'green wedges' in PPW

⁵ Planning Policy Wales Edition 5 October 2012

reduce the degree of openness which the site currently contributes to the Green Barrier. This would cause further harm to the Green Barrier.

11. PPW explains that Green Barriers serve the same purpose as Green Belts. The purpose of this Green Barrier has not been explained or assessed in response to the proposal. Even so, from the submissions I am able to form a view on those concerning encroachment into the countryside, managing urban form and protecting the setting of an urban area. The site is at the edge of the built-up area of the Penycae, now determined by Pinecroft. To the east, at a lower level and bounded by a dense hedge, are recreational facilities, in the Green Barrier, while the Afon Eitha, in a deep cutting, forms an obvious physical boundary to the south. Beyond these is open countryside extending east and west around the periphery of Penycae, again within the Green Barrier. The area on the opposite, west side of Afon Eitha Road, extending southwards, is built-up and within the settlement. Consequently, the site, roughly triangular, is bounded on 2 sides by existing built development. It is generally unkempt and overgrown, having possibly been previously developed, a factor to which I return shortly.
12. Notwithstanding his finding that the site's openness was a major Green Barrier attribute, the 2005 Inspector concluded that it had a poor appearance and was largely unrelated topographically to the surrounding landscape. From what I could see that is still the case and I agree with the conclusion he then reached that residential development here would not have a detrimental effect on the character of the countryside or environment. It seems to me, however, that the Inspector was applying the test in Policy PS2 rather than whether encroachment into the countryside would follow. The appellant attempts to draw further support from the views of the Landscape Officer, prepared in the context of the aborted Examination into the LDP. I have not been provided with the full text but am not persuaded that it amounts to acceptance that the site should be considered as being more within the village than the countryside. Rather it appears to acknowledge that the northern part (*of the site*) is the only part (*of the site*) which has development potential which relates to the settlement limits and avoids site constraints. What 'relates to' actually means is not explained but I am not persuaded that it means 'part of' as the appellant implies. Otherwise, his views on where development on the site could best take place are not in dispute. Similarly, the response of the Countryside Council for Wales that it has no objection to the proposal must be taken in the context of that organisation's wildlife function. It does not state, as the appellant might wish, a lack of concern at the loss of part of the Green Barrier or, indeed, the countryside generally since it makes no comment on either. Again, it is acknowledged that biodiversity issues can be met.
13. The site is at the edge of the settlement and in the countryside for policy purposes. While it is of relatively poor visual quality, the proposal would result in it being encroached upon, contrary to one of the purposes of the Green Barrier. However, in its present and, it seems, longstanding, poor condition it adds little to the setting of Penycae such that there would be little conflict with that Green Barrier purpose. As to managing urban form, I agree that the Afon Eitha would be a firm and defensible edge to the settlement. However, as anticipated by the Inspector in 2005, unlike then Pinecroft now provides a suitably strong demarcation for that purpose in any event.
14. As such, I find harm to the Green Barrier because the proposed development is inappropriate, would result in loss of openness and encroach into the countryside.
15. As to possible exceptional circumstances, for the reasons I have given I am unable to attach significant counter weight to the history of misunderstanding over the

constraints on the site or the views that the site does not meet the assessment criteria for Green Barriers. There are, however, other matters put forward.

16. The first is that the Council is unable to identify a 5-year supply of land for housing as required by Welsh Government; the Council recognises that this may be a justifiable reason for granting planning permission. That was not the situation before the Inspector in 2005. When the appeal application was determined the latest available information, for 2011, was that there were 3.9 years available. The latest figure is 3.5 years, showing that the situation has worsened. The Council's position is that evidence has not been produced that sites within existing settlements which comply with the WUDP strategy are unacceptable. However, it is reasonable to assume that there are insufficient such sites otherwise there would not be the identified shortfall in the supply of housing land.
17. The development at Pinecroft is nearing completion and, although the present lack of activity suggests it may have stalled, I have no reason to doubt that this is not an area where people would wish to live. Indeed, Penycae is one of those urban villages in WUDP where priority was given to new housing development for several reasons. The LDP no longer has any standing but I understand that that strategy was to be continued. I accept that the site would make only a modest contribution but nevertheless WUDP establishes that sites in this category (9 dwellings or fewer) are cumulatively significant. Moreover, the allocated Penycae site, H7 (Pinecroft), has not achieved the 12 units expected and the appeal site could redress the resulting local shortfall.
18. PPW expects that to qualify housing land is either genuinely available or will become available. The Council points out that it has not been shown that dwellings on the site would be built within 5 years and so help make good the shortfall as claimed. Clearly early development cannot be assured but the present economic climate is likely to affect all possible sites, not just this one. However, the land has all necessary services already available and is in a sustainable location. There is nothing to suggest that the appellants would not make it available for development; indeed, the application and this appeal suggest otherwise.
19. The housing land supply situation is a substantial factor in favour of the proposal. However, what has not been addressed is, if, as seems likely, the release of sites outside settlements is necessary in advance of the preparation of the LDP, whether it is inevitable that they need to be in the Green Barrier rather than areas with less stringent planning controls.
20. The second is that the site is claimed to be previously developed, or brownfield, land. Welsh Government has made it clear, by way of PPW for instance, that the development of such land is to be preferred. If it is previously developed land, its release for residential development would (a) help remedy the housing land situation, (b) in a location around an existing settlement as referred to in PPW and (c) possibly reduce encroachment onto greenfield land elsewhere.
21. While also mentioned at the 2005 appeal, the Inspector expressed no view on the accuracy of the claim. He remarked that there were buildings and hard surfaces around much of the site but there was no reference then to any buildings on it. The appellant simply says that it was once used for industry, without explanation. The Council points out that the site was previously mineral workings and had no permanent structures or associated fixed surface infrastructure. If that was so, having

regard to PPW⁶, it is difficult to accept that it should now be treated as previously developed land.

22. The appeal site is not within a built-up area and so the preference expressed in PPW for the re-use of previously developed land does not strictly apply. Nevertheless, it is recognised that such land around settlements could fulfil a similar purpose and had it been shown with greater certainty that the site is indeed previously developed it would have attracted weight accordingly. However, as I have explained, there is considerable doubt that the site meets the definition. The appellant's claim must be treated as unproven and little weight can be given to it.
23. In summary, it has not been shown that, despite the unfortunate misunderstanding when the WUDP was in preparation, the Green Barrier status of the land no longer applies. I have identified harm to the Green Barrier because of the inappropriate development proposed and the loss of openness which would result. A purpose of the Green Barrier is to prevent encroachment into the countryside, not to protect its visual qualities. The proposal would encroach into the countryside as defined in the WUDP. PPW explains that substantial weight should be attached to such harm.
24. Many of the factors raised in support relate to lack of objection on grounds of, for instance, sustainability, biodiversity, effect on trees and the availability of services. However, all new development would be expected to satisfy such requirements. That the proposal would not create a precedent is not in question nor is the fact that it would not prejudice the preparation of the LDP. Such matters are neutral. As such, none of these add to the reasons against the proposal but nor do they offer the exceptional circumstances necessary to outweigh the Green Barrier harm identified.
25. I have given particular attention to the 2 matters which may have had such significance. For the reasons I have given, I am unable to give weight to the possibility that the site should be treated as previously developed. The shortfall in the 5-year supply of land for housing has far more substance and the Council has not seriously undermined the appellant's case in that regard. However, it is not apparent that, in the interim pending the now delayed LDP, the use of Green Barrier land such as this is necessary or desirable.
26. On that basis, I do not consider that very exceptional circumstances have been shown sufficient to outweigh the presumption against inappropriate development such as this in the Green barrier. I have concluded that the appeal should fail.

R G Gardener

Inspector

⁶ Figure 4.1