



Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 01/11/11
Ymweliad â safle a wnaed ar 01/11/11

gan Alwyn B Nixon BSc(Hons) MRTPI
Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 29/11/11

Appeal Decision

Hearing held on 01/11/11
Site visit made on 01/11/11

by Alwyn B Nixon BSc(Hons) MRTPI
an Inspector appointed by the Welsh Ministers
Date: 29/11/11

Appeal Ref: APP/H6955/A/11/2152468

Site address: Land off Brymbo Link Road, Brymbo, Wrexham

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 Brymbo Developments Ltd against the decision of Wrexham County Borough Council.
- The application Ref P/2005/1486, dated 12 December 2005, was refused by notice dated 6 December 2010.
- The development proposed is residential development.

Appeal Ref: APP/H6955/A/11/2152483

Site address: Land adjacent to Phoenix Drive, Brymbo, Wrexham LL11 5BT

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 Brymbo Developments Ltd against the decision of Wrexham County Borough Council.
- The application Ref P/2009/0939, dated 10 November 2009, was refused by notice dated 6 December 2010.
- The development proposed is erection of a supermarket and small retail units and associated car parking.

Decisions

1. **Appeal APP/H6955/A/11/2152468:** The appeal is dismissed.
2. **Appeal APP/H6955/A/11/2152483:** The appeal is dismissed.

Procedural matters

3. A draft section 106 unilateral undertaking relating to the implementation of both developments and the completion of the proposed highway running through the former steelworks site redevelopment area ("the spine road") was submitted prior to the Hearing. At the Hearing the Council tabled a number of comments relating to the drafted undertaking. At the close of the Hearing I allowed a period of 14 days for the completed signed and dated undertaking to be submitted. I have had regard to this undertaking in arriving at my decisions.

Appeal APP/H6955/A/11/2152468

Preliminary matters

4. The application to the Council sought outline planning permission with all detailed matters reserved for later consideration and I have dealt with the appeal on the same basis.

Main Issues

5. The main issues in this appeal are the effect of the proposed development on the character, appearance and openness of the area, having regard to prevailing policies concerning the protection of green barriers and development in the countryside; and second, whether exceptional circumstances exist which are sufficient to justify the development, notwithstanding any harm and conflict with policy identified in terms of the first issue.

Reasons

6. The site is a wedge-shaped area of about 2.275ha located at the south-eastern extremity of, but largely outside, the operational area of the former Brymbo steelworks site. The former steelworks site has been reclaimed following approval of a scheme in 1997 which provided for mixed use redevelopment of parts of the reclaimed area and restoration of the remainder to open uses. The site lies between an area of housing recently completed as part of the steelworks site redevelopment and playing pitches of the Brymbo steelworks sports and social club grounds. A small part of the site was formerly crossed by the southern end of the steelworks access road leading from the link road to the steelworks from the A525 about 3km to the south, and up to 25% of the site appears from old aerial photographs to have been roughly vegetated, possibly indicating that it formed part of the steelworks area. However, the remainder was evidently grassed open land used for recreational purposes such as golf driving practice. During the land reclamation process the site was used to accommodate settling lagoons; these have now been removed and the site compacted and levelled. Neither the approved reclamation scheme nor the development masterplan which has guided the location and type of development permitted on the former steelworks site has suggested built development on the appeal site.
7. The locality is characterised by areas of open countryside interwoven with a complex pattern of villages and smaller areas of development, reflecting the industrial history of the area. The site itself is in the south-western corner of a tract of countryside between Brymbo and The Lodge to the north; that part of the steelworks site earmarked for built development to the west; Brynteg to the east; and Tanyfron to the south.
8. The development plan for the area is the Wrexham Unitary Development Plan (UDP), adopted in 2005. The appeal site lies outside the settlement limit defined for Brymbo, which includes those parts of the reclaimed steelworks site on which new built development is envisaged. It is also outside the defined settlement limit for Tanyfron, which lies to the south of the link road. As such, the site is subject to UDP policy H5 concerning housing in the countryside. The appeal proposal plainly does not accord with any of the circumstances under which, exceptionally, new housing development may be permitted outside defined settlement limits.
9. In addition to lying outside any defined settlement limit the site forms part of a Green Barrier, designated under policy EC1 of the UDP. The explanatory text to policy EC1

notes that there are several instances where existing settlements come into close proximity and where there is a need to maintain a belt of countryside free from development. The identified purposes of a Green Barrier include preventing the coalescence of urban areas and villages with other settlements; safeguarding the countryside from encroachment; protecting the setting of urban areas and villages; and assisting in urban regeneration by encouraging the recycling of derelict and other urban land. Policy EC1 states that development will only be granted permission if it is for a use of land which maintains the openness of the Green Barrier and does not conflict with the purpose of including land within it. The UDP states that predominantly urban uses involving substantial built development or night-time lighting are not considered suitable uses in a Green Barrier. The Green Barrier designation in the UDP aligns with national policy guidance in section 4.7 of Planning Policy Wales (PPW) concerning managing urban form by means of Green Belts and local designations such as green wedges.

10. The proposed development would plainly be inappropriate development within the Green Barrier. Paragraph 4.7.14 of PPW confirms that a presumption will apply against inappropriate development. Substantial weight should be attached to any harmful impact which a development would have on a Green Belt or a green wedge. Inappropriate development should not be granted planning permission except in very exceptional circumstances where other considerations clearly outweigh the harm which such development would do to the Green Belt or green wedge. Given the clear alignment of the Green Barrier designation in the UDP with the green wedge and equivalent local designations referred to in PPW I consider that these guiding principles apply equally to the consideration of inappropriate development within the Green Barrier.
11. The proposed housing development would represent a substantial encroachment of urban form into the countryside. The south-eastern limit of the new housing on the former steelworks site is positively delineated and contained by the wooded embankment edge to the lower development plateau. Development of the appeal site would seriously erode the setting of the new urban form in this location, giving rise to a large, poorly-related enclave of housing extending into the surrounding Green Barrier. The development would significantly erode the tract of countryside which provides separation between the new housing area on the former steelworks site and built areas to the east and Tanyfron to the south. Although the new housing already built has resulted in a degree of physical contiguity with housing in Tanyfron, the appeal proposal would significantly increase this and further erode the separate physical identity of the two areas. Taking all this into account I conclude that the proposed development would cause serious and substantial harm to the Green Barrier.
12. Section 4.7 of PPW notes that local designations such as green wedges do not convey the permanence of a Green Belt. However, in this case I note that the current Green Barrier designation is confirmed by a relatively recently-adopted UDP; moreover, the inclusion of the site within the designated Green Barrier is carried forward into the emerging LDP which is currently undergoing examination. There is nothing before me to suggest that issues of soundness exist in relation to the intended continuation of this designation in the LDP.
13. The primary consideration in favour of the development put forward in this case relates to its implications for the progression of the adjacent steelworks site redevelopment proposals. The stated purpose of the proposed housing scheme is as "enabling development" to part fund the completion of the spine road through the

former steelworks site. The spine road is currently completed through roughly the southern third of the redevelopment site; the remainder is unbuilt and there is no established mechanism to fund its construction.

14. The unilateral undertaking is put forward as the mechanism which would ensure that the spine road is completed if the proposed housing development and the retail development ("the supermarket development") are granted planning permission, upon commencement of either development. Although the obligations on the land owners are for the most part framed negatively (in other words they would preclude various actions relating to the implementation of the housing and commercial development permissions until matters relating to the completion of the spine road have been attended to), I consider that the provisions of the undertaking would nonetheless secure the stated objective. In essence, it provides that neither development permitted would be able to commence until a bond has been provided to the Council in respect of the spine road construction cost; that neither the supermarket development nor more than 90% of the housing shall be occupied until the entire spine road construction has been completed; and furthermore obligates the owners to complete the spine road within 12 months of the commencement of either the housing development or the supermarket development and enables the Council to step in and complete the spine road construction if this not done.
15. The construction of the spine road is not necessary in order to provide the housing development with adequate access to the highway network or to address highway capacity or highway safety issues arising from the traffic generated. Notwithstanding this, I acknowledge that completion of the spine road would be directly related to the development insofar as the spine road would be needed to provide access from the housing to the school and other local facilities planned as part of the steelworks site redevelopment. In addition, completion of the spine road would provide better and more direct access to local facilities in Brymbo than the lengthier and poorer quality existing routes. For these reasons I accept that the submitted obligation in relation to the housing development concerning part funding of the completion of the spine road is a matter which should properly be taken into account in determining whether planning permission should be granted in this case.
16. Funding of the completion of the spine road would also enable the comprehensive redevelopment of the former steelworks site to be progressed, including the delivery of the local community and heritage facilities and employment development which are envisaged and the improved links with Brymbo village centre. This would clearly be of benefit to occupiers of the housing already completed on the former steelworks site and to the local community generally. As such, this is a significant material consideration weighing in favour of the proposals. However, in considering these factors I am mindful that the core of the argument advanced for granting planning permission for this substantial departure from the development plan is purely in order to solve the infrastructure funding difficulties that have arisen in relation to progressing the redevelopment of the former steelworks site.
17. Given the role of the spine road in delivering the local facilities envisaged on the former steelworks site I find it surprising that such a substantial amount of residential development has been permitted to take place without arrangements to ensure that key elements of the planned redevelopment can be delivered in a timely manner. It may be that, following the Council's original resolution in 2006 to grant planning permission for the appeal proposal upon completion of a section 106 obligation in the terms stated at that time, the appellant presumed until the Council's reconsideration

of the matter in December 2010 that the issue of funding completion of the spine road was effectively resolved. However, it is plainly unsatisfactory that a form of development which would significantly breach the clearly-established principles of the development plan should be permitted on the basis that it would resolve infrastructure funding difficulties related to other development proposals. Despite the longstanding identification of the spine road funding issue, there is little to suggest that other potential ways of making up the spine road construction funding gap now identified which would not be so seriously at odds with the development plan, in particular with its Green Barrier provisions, have been exhaustively examined. This lessens the weight which I attribute to this consideration as a factor in favour of the proposal.

18. I attach little weight to the argument concerning the objective of utilising previously developed land for development, given that the minority of the site falls within the definition of such land and furthermore is of open character and within the Green Barrier. The temporary former use of the site for settling lagoons in connection with the steelworks land reclamation does not alter my view on this matter. There is no evidence of a particular need for additional housing land in this locality, or evidence which indicates that this proposal is an appropriate response to any wider shortfall of provision within the local authority area.
19. Taking all of these matters into account I find that considerations do not exist which clearly outweigh the harm which the proposed housing development would do to the Green Barrier, as identified above. As such, the very exceptional circumstances required to justify the inappropriate development proposed are not present in this case. Consequently the appeal does not succeed.

Appeal APP/H6955/A/11/2152483

Preliminary matters

20. The application to the Council sought outline planning permission with all detailed matters reserved for later consideration and I have dealt with the appeal on this basis.

Main Issue

21. The main issue is whether the proposed development would be appropriate in terms of its scale and location, having regard to prevailing policies concerning new retail developments.

Reasons

22. The site of the proposed development has an area of 1.3ha and lies broadly centrally within the mixed use redevelopment area of the former steelworks site. As such, it lies within settlements limits defined in the UDP but outside of any defined district shopping centre or town centre. It comprises part of an area previously envisaged for light industrial units, for which planning permission was granted in 2006.
23. The submitted proposal is for a convenience store of some 1,672 sqm gross internal floor space and six small retail units, giving an overall total of 2,300 sqm retail floor space. Around 180 car parking spaces would be provided. The site lies adjacent to the spine road route through the mixed use redevelopment area; access would be via a spur road leading off the spine road. However, the section of the spine road so far completed terminates some way to the south; the appeal site thus lacks access to the

surrounding highway network at present, either to the link road to the south or to Brymbo village centre to the north.

24. UDP policy S4 states that large scale retail development will be located within the shopping area of Wrexham town centre and within district shopping centres. It seeks where possible the re-use of vacant or underused land or buildings, so as to enhance existing centres and achieve integration with existing shopping centres. However, policy S4 also goes on to say that where a need is demonstrated for large scale retail development and there is no site available within the town centre or within district shopping centres, then a sequential approach to site selection will be taken, beginning with edge-of-centre sites and then moving to out-of-centre sites. In considering both types of sites, development should where possible use vacant, underused or derelict land, or buildings suitable for conversion; and should be accessible by a choice of transport and not give rise to serious traffic congestion or road safety problems that cannot be addressed. UDP policy S6 allows small scale shopping developments within settlement limits, subject to certain limitations. However, the proposal does not fall within the ambit of this policy, since it excludes developments with a sales floor area exceeding 300 sqm.
25. A retail assessment of the proposal was submitted during the course of the application. In summary, the assessment identifies a qualitative and quantitative need for convenience retail provision within Brymbo, and concludes that the proposal would assist in addressing this need, enabling main food shopping to be undertaken locally and reducing the need to travel for residents in the area. The assessment further concludes that no sequentially-preferable sites are available to accommodate the proposed development and that it would not harm the vitality or viability of other district centres.
26. The Council agrees with the conclusions of this assessment. Moreover, the Council has allocated the site as a new district centre in its emerging LDP, in conjunction with the ongoing delivery of new development on the reclaimed steelworks site. Although the LDP examination is still in its early stages, there is nothing to suggest that this allocation is contentious.
27. Based on the foregoing, I conclude that the appeal site represents a potentially acceptable location for a retail development of the scale and type which is proposed. However, the development's effectiveness in forming a facility that would adequately relate to the existing community of Brymbo and would complement and relate to the existing facilities there is critically dependent on the construction of the spine road link northwards from the site. Without this the retail proposal would not acceptably relate to the existing development pattern, since there would be no direct route from Brymbo to the site. Instead, the only available links would be via the existing circuitous minor roads of the locality.
28. The submitted section 106 undertaking potentially addresses this issue, by seeking to put in place an arrangement that would secure completion of the spine road before the supermarket development is brought into use, utilising capital generated by the sale of the proposed supermarket and housing sites. However, the commencement terms of the finalised deed of undertaking are that the primary obligations relating to the completion of the spine road are only triggered upon the grant of planning permission for both the supermarket development and the housing development. In the light of my decision that planning permission for the housing development should be withheld I do not give any substantive weight to the section 106 undertaking in relation to the supermarket proposal.

29. I have considered whether the present objection to the supermarket development arising from the non-completion of the spine road link to Brymbo could be overcome by means of a negatively worded condition preventing the development being brought into use until the road link has been provided. However, the appellant is clear that the only identified means of funding the remainder of the spine road in the present circumstances is by utilising the combined sale values of the housing site and the supermarket site. In the absence of planning permission for the proposed housing development, and given also that expenditure to extend the spine road from its existing termination point south of the supermarket site will be necessary to provide site access in any event, I see no prospect of the spine road link to the north being completed on the basis of the capital generated by the sale of the supermarket site alone. Moreover, since a condition requiring payment is not acceptable, without a triggering of the section 106 undertaking's obligations there is no means of ensuring that income generated from the sale of the supermarket site would be used to assist funding of the spine road completion. No other way of achieving the road construction appears to be under consideration at this time. On the evidence before me there is no realistic prospect that the highway links necessary to the acceptable operation of the proposed retail development will be delivered within the lifetime of the permission sought.
30. In the light of the foregoing I conclude that the absence of any effective means of bringing about the provision of the highway link northwards from the site on which the retail development's acceptability depends in makes the proposal unacceptable from a highways standpoint and as such renders it contrary to clause b) of the final part of UDP policy S4. I find this to be a compelling reason why planning permission should be withheld.
31. In reaching this decision I am aware of the wish for local facilities to serve occupants of the housing already completed on the former steelworks site. However, this does not alter my conclusion that it would be wrong to permit the development without proper resolution of how an effective highway link to the north is to be provided. Neither this matter, therefore, nor anything else raised is sufficient to outweigh the considerations which have led me to my decision. Consequently the appeal does not succeed.

Alwyn B Nixon

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Matthew Ferguson DipTP FIQ Brymbo Developments Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr Simon Greenland BA MRTPI Wrexham CBC

Mr Matthew Phillips MSc MRTPI Wrexham CBC

INTERESTED PERSONS:

Cllr Paul Rogers	Local Ward Representative, Wrexham CBC
Mr Brian Stapley	Brymbo Community Council
Mr R K Williams	Brymbo Heritage Ltd
Mrs Annette Millington	Local resident, Tanyfron
Mrs Jean Edwards	Local resident, Tanyfron
Mr A Davies	Local resident, Tanyfron

DOCUMENTS

- 1 Copy of final completed unilateral undertaking dated 10 November 2011 and associated documentation
- 2 Council's comments on draft unilateral undertaking
- 3 Note of observations made by Brymbo Heritage Ltd
- 4 Plan indicating changes to settlement limit/Green Barrier designations in emerging LDP