

**TOWN AND COUNTRY PLANNING ACT 1990 SECTION 78 APPEAL AT
LAND AT TUPA, PENLEY HALL DRIVE, PENLEY , WREXHAM**

COUNCILS STATEMENT OF CASE

**PLANNING REF: P/2019/0834
PINS REF: 3258703**

1.0 THE SITE

- 1.1 The appeal site is located on land at Tupa, Penley Hall Drive, Penley, Wrexham, LL13 0LU. It is a Brownfield site located outside of the defined settlement limit of Penley, within a Special Landscape Area (SLA) and adjacent to trees protected by a preservation order (TPO).

2.0 PROPOSAL

- 2.1 P/2019/0835 - Outline application for 9 No. Dwellings with all matters reserved except for the layout of the buildings.
- 2.2 Planning permission was refused on 28.02.2020 for the following reason:

In the absence of a bone fide safe and satisfactory pedestrian and vehicular access to the application site, the proposed development does not make adequate provision for the safety of all users of the highway contrary to Policies GDP1 (d) and T9 of the Wrexham Unitary Development Plan.

3.0 PLANNING HISTORY

- 3.1 P/2018/0771 - Outline application for 9 No. Dwellings. Permission Refused on 09/11/2018 (copy of decision is at Appendix 1).

4.0 LOCAL AND NATIONAL PLANNING CONTEXT

- 4.1 Planning Policy Wales (PPW) Edition 10.
- 4.2 The site lies outside of any settlement limit as defined in the current development plan for the area, which is the Wrexham Unitary Development Plan (UDP) 2005. Policies PS1, PS2, PS3, PS4, PS11, GDP1, GDP2, EC4, EC5, EC6, EC13, H5, T8 and T9 of the Wrexham UDP are applicable. Copies of the relevant UDP policies are contained within the submitted questionnaire bundle. Local Planning Guidance Note No. 27 'Contributions to Schools' is also relevant and is attached at Appendix 2.

5.0 PRINCIPLE OF DEVELOPMENT

- 5.1 The proposals do not accord with any of the circumstances set out in Policy H5 that permit small scale residential development on sites outside of settlement limits (rural exception site, infilling and agricultural workers dwellings). Additionally, the proposal would not accord with Policy PS1 which relates to the broad location of development, since the site is not within a defined settlement limit. The development of the site would though comply with Policy PS3 which advises that brownfield land should be utilised before Greenfield wherever possible.

- 5.2 Ordinarily this Council would object to proposals that represent a departure from these UDP policies. However the Council is not required to determine a planning application in strict accordance with an adopted development plan *where material considerations indicate otherwise and there are more relevant up to date national policies which should be properly taken in account.*
- 5.3 At the time planning permission was refused, PPW required that Planning Authorities ensure that sufficient land is genuinely available, or will become available, to provide a 5 year supply of land for housing. Technical Advice Note (TAN) 1: Joint Housing Land Availability Studies advises that where a local planning authority does not have an adopted Local Development Plan or where an adopted UDP is outside of the plan period, they will not be able to produce a JHLAS and therefore will not be able to demonstrate whether they have a 5 year housing land supply or not. The UDP plan period expired in 2011 meaning Wrexham is now unable to demonstrate whether it has a 5 year housing land supply. The housing land supply in Wrexham is therefore judged to be zero. The deposit Local Development Plan (LDP) identifies a need to make provision 8525 new homes over the 2013-2018 period in order to deliver a requirement of 7750 homes.
- 5.4 On 26 March 2020, Welsh Government issued a Letter to Chief Planning Officers (CPOs) in response to a 'Call for Evidence' which highlighted failings in the provision of housing across Wales. As a result, the following changes were made to national planning policy:
- Removal of the five-year housing land supply policy in PPW and its replacement with a policy statement that the housing trajectory in the adopted LDP will be the basis for monitoring the housing land requirement;
 - Revocation of TAN 1 in its entirety as a result of the change to PPW;
 - Publication of the DPM (Ed3) which provides additional guidance on monitoring against the LDP housing trajectory.
- 5.5 As the LDP for Wrexham County Borough Council is still undergoing examination, the letter to CPOs specifically refers to the use of the Average Annual Requirement (AAR) methodology for monitoring purposes. The requirement of 7750 dwellings over the plan period would translate into an AAR of 517 dwellings (rounded up to zero decimal places). The latest annual [Housing Land Monitoring Statement 2019](#) indicates that such figures have not been achieved since 2008.

- 5.6 PPW includes a *presumption in favour of sustainable development*. The development of the site would broadly accord with this presumption as it is in a sustainable location on the edge of the settlement limit of Penley, and the development would accord with PPW which states that development in the countryside should be located within and adjoining settlements where it can best be accommodated in terms of infrastructure, access, and habitat and landscape conservation.
- 5.7 This Council does continue to take a pro-active stance in supporting appropriate growth in the County Borough where it meets policy objectives. Despite the fact that the proposal does not fully comply with UDP Policies H5 and PS1, given the sustainable location of the development and its edge of settlement location, the Council accepts that its development for residential use in principle would not cause any detrimental harm to the countryside. This is particularly in comparison to the existing built environment to which this would represent only a minor and logical extension which would square off the existing pattern of development on Penley Hall Drive. The development is otherwise in compliance with Policy PS2, PS3 and PS4 of the UDP and the provisions of PPW.

6.0 ECOLOGY AND TREES

- 6.1 Different from the 2018 planning application is that this proposal now places greater emphasis on tree protection. Dwellings are now to be located in positions considered to be a suitable distance away from the RPA's of the two retained oaks T4 (cat 'B') and T5 (cat 'A') with both trees now afforded additional root and crown protection thorough the provision of the adjacent proposed POS. The linear group of trees (G3) located to the south-west boundary are presented with a reduced and acceptable level of threat from development following amendments to the positioning of the adjacent access road. Submission of an Arboricultural Method Statement (AMS) would be required if the appeal is allowed, and this could be secured by condition.
- 6.2 This proposal includes a buffer zone which provides suitable clearance and protection for the woodland edge with minimal incursion into the estimated combined root protection area. The section of woodland located within the red-line boundary will require a long-term management plan to encourage and promote enhanced diversity in tree stock, age range and biodiversity and should include a methodology for the removal and extraction of the remnants of existing buildings to ensure minimal disturbance and damage occurs to protected trees, flora and fauna.

- 6.3 The ecological assessment submitted in support of the planning application has been carried out to a good standard. The site plan includes areas of habitat creation and enhancement to off-set the loss from the development. Overall the development now complies with the principles of green infrastructure and the layout is acceptable in accordance with UDP Policy EC4.
- 6.4 The development should be carried out under a Reasonable Avoidance Method Statement in relation to the potential presence of Great Crested Newts and Bats in order to ensure that the proposal accords with Policies PS11 and EC6 of the UDP. The indicative layout of the site shows a 'landscape buffer' extending around the majority of the site boundary. The buffer zone will form an important boundary feature in accordance with the ecological recommendations

7.0 CHARACTER AND APPEARANCE OF THE AREA

- 7.1 The Appeal site is located on the northern edge of Penley and to the north of the existing housing development immediately adjoining the settlement limit boundary. This area is semi-rural in character with existing houses to the south and west boundaries, and is accessed from the large modern housing estate off Penley Hall Drive. Building types vary and there is a mixture of detached and semi-detached, two storey dwellings. The site contains six surviving buildings constructed as part of the United States military hospital during 1944, as well as large areas of hardstanding (concrete). All the buildings are derelict and in a poor condition and surrounded by self-regenerated trees, scrub and groundcover plants such as ivy and brambles.
- 7.2 Within SLAs, Policy EC5 advises that development should be strictly controlled with special attention paid to minimising the impact of development from both nearby and distant viewpoints. The designation of a SLA does not exclude residential development but seeks to protect, manage and enhance the character and quality within these areas and ensure that features of the landscape that contribute to character, value and distinctiveness, sense of place and quality are protected from inappropriate development.
- 7.3 The majority of the views are localised to those of the existing residences, people using the PRoW, public open spaces and the roadway close to the site. Many of the residential properties have trees along the southern boundaries of their gardens which in combination with vegetation within the site boundary provide a high level of screening and filtering to views. Views are of mature trees and self-seeded scrub with occasional glimpses through to the derelict former hospital buildings. Further east, views towards the site are heavily screened by the mature linear woodland extending south. Continuing east the layering effect of linear woodland, hedgerow trees and hedgerows provides screening to the site.

- 7.4 The development will have a positive impact upon the character and appearance of the area by removing some of the derelict buildings and by setting development to face onto existing and proposed landscape features, particularly the two veteran oak trees, mature birch trees on the west, scrubby woodland and meadow/ wetland area to the east. The development creates an attractive active frontage to the development with Penley Hall Drive, continuing the character of housing within Penley Hall Drive and Winston Way, with the retention of mature trees in open space.
- 7.5 Consideration has been given to the landscape and visual receptors (described above) surrounding the site as well as to creating an attractive development that makes the most of the existing landscape features. There would be no issues of overlooking or loss of light to the existing nearby dwellings arising from the proposed development, and the 45 degree test for daylight passes when applied to the closest dwelling (No. 12 Penley Hall Drive). The site layout has been carefully designed to meet the Council's adopted separation distances to ensure that the occupiers of both the existing and proposed dwellings will enjoy private outdoor spaces and habitable rooms which will also have the benefit of a good level of natural daylight in the interests of the residential amenity. The site layout plan demonstrates that the site can accommodate the 9 dwellings proposed whilst providing private gardens and off street parking and the development would accord with Policies PS2, GDP1 and EC5 of the UDP.

8.0 HIGHWAYS

- 8.1 The site is located off Penley Hall Drive which is an unadopted residential estate road subject to a 20 mph speed limit. The estate road has not yet been completed and the emergency access / footway-cycle link has yet to be provided. Whilst the highway authority has confirmed that there are no objections in principle to the proposed development, the highway authority does recommend that planning permission is not granted until the estate road serving the development has been completed to an adoptable standard (application consultation response is at Appendix 3).
- 8.2 In reaching its decision to refuse planning permission, the Council assumed that there were highway safety implications as a result of the estate roads, footways, lighting and foul / surface water drainage systems etc. having not yet been adopted. Of course, should the access routes not be maintained, they will undoubtedly fall into disrepair at some point in the future. The highway authority in its latest consultation response (at Appendix 4) has confirmed that there are no highway safety implications. The Council confirms therefore that it no longer objects to the development on the grounds of the impact of the development upon highway safety.

- 8.3 The highway authority has confirmed that the access concern is one of amenity in that the Estate road is incomplete and therefore of an unsatisfactory standard in providing convenient pedestrian and vehicular access. The Council therefore continues to object to the development on the grounds that, in the absence of a satisfactory pedestrian and vehicular access to the Appeal site, the proposed development does not make adequate provision for all users of the highway.
- 8.4 In excess of 100 dwellings are served off this unadopted estate road. The highway authority has advised that it would not normally support any further development until the estate road is completed and adopted. Further, the 3m wide shared footway / cycleway / emergency link has not been constructed through the wooded area at the south western corner of the site. Should the owner of the Estate road (Morris Homes) complete all of the required works and the road be adopted, the proposed development would be supported by the highway authority.
- 8.5 The Chief Officers for Environment and Planning & Regulatory Services continue to work towards resolving the matters at Penley Hall Drive. However, until such time as this has been fully resolved to the Council's satisfaction, the proposed development of the site would run contrary to Policies GDP1 (d) and T9 of the UDP as satisfactory vehicular and pedestrian routes cannot be provided.
- 8.6 The application documents indicate that the small section of private road from the main Estate road, leading to the Appeal site, is to remain private, as will the entire development site. The Council has no objection to the small section of upgraded driveway and the site remaining private, as long as a properly constituted body with defined legal responsibilities is established to maintain it to the common benefit of the residents, in perpetuity. This should form part of a signed Unilateral Undertaking (UU) to be submitted in support of this Appeal. This Council has not yet had sight of any such UU and is therefore unable to assist the Inspector with any assessment of the content.

9.0 CONTRIBUTIONS TO SCHOOLS

- 9.1 The Education Department has confirmed that contributions are required for both primary and secondary education provision (Formal response at Appendix 5) in accordance with the calculations set out in LPGN No.27. The Council advised the Agent of this requirement by email on 11 December 2020 (Email at Appendix 6). The Council has not had sight of any UU that provides for contributions to be made, and is therefore again unable to assist the Inspector with any assessment of the content.

- 9.2 The Inspectors attention is drawn to Policy GDP2 which states that where the capacity upon community facilities (Schools) is likely to be deficient as a consequence of new development, a planning obligation will be required where the developer provides the necessary funding for the Council to provide the additional capacity. In the absence of any UU to secure school contributions, to allow the Appeal would represent a significant loss to the community by exceeding the capacity of local schools, contrary to UDP Policy GDP2.

10.0 CONCLUSION

- 10.1 Whilst representing a departure from UDP Policies PS1 and H5, the development would contribute to the housing land supply whilst, aside from the matters of access, providing an acceptable form of development in compliance with PPW. The proposal would not be to the detriment of the visual amenities of the area, and would otherwise comply with planning policies including GDP1 (a), PS2, PS3 and EC5 which seek to ensure that development does not harm the appearance of area, that it positively contributes to the appearance of the nearby locality, and utilises Brownfield land as opposed to Greenfield Land.
- 10.2 However, there are insufficient grounds to warrant departing from UDP policies PS1 and H5 in this instance, despite the Council not meeting the required AAR of 517 dwellings a year, because the proposed development of the site is contrary to Policies GDP1 (d) and T9 of the UDP where satisfactory vehicular and pedestrian routes cannot be provided.
- 10.3. Further, in the absence of an appropriate UU, there would be a clear lack of appropriate management arrangements for all proposed communal areas including private access driveway, footways, Public Open Space, Woodland and ecology mitigation areas, and hard and soft landscaped areas and planted features. There would also be a lack of adequate contributions to schools to offset the impact of development, to the detriment of the local community. The proposal would therefore run contrary to UDP Policies GDP1 and GDP2.
- 10.4 For the reasons set out above, the Council is of the opinion that the proposed development cannot be justified for this location and the Inspector is therefore respectfully requested to dismiss the Appeal. Should the Appeal be allowed, imposition of the following planning conditions is suggested:

10.4.1 – Conditions

1. Approval of the following details shall be obtained from the Local Planning Authority before any part of the development is commenced:
 - a. the scale of the building(s)
 - b. the appearance of the building(s)

- c. the landscaping of the site
- d. the means of access to the site and buildings

2. Plans and particulars of the reserved matters referred to in condition 1 (above) shall be submitted in writing to the Local Planning Authority before the expiry of 1 year from the date of this permission. The development shall only be carried out in strict conformity with such details as are approved.
3. The development hereby approved shall be commenced before the expiry of 3 years from the date of this permission or before the expiry of two years from the date of approval of the last of the reserved matters required to be approved, whichever is the later.
4. The development shall only be laid out in strict accordance with the details shown on the approved drawing numbered A(100)05 Rev I and as contained within the application documentation.
5. 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.
6. No land drainage run-off or surface water shall be permitted to discharge or connect to the public sewerage system, either directly or indirectly, and foul and surface water shall be drained separately from the site.
7. No part of the development shall commence until a scheme for the amphibian friendly comprehensive and integrated drainage of the site indicating provision for foul water, surface water and land drainage has been submitted to and approved in writing by the Local Planning Authority. Prior to the submission of those details, an assessment shall be carried out into the potential for disposing of surface water by means of Sustainable urban Drainage Systems (SuDS) in accordance with the principles of sustainable drainage systems set out in Technical Advice Note 15: Development and Flood Risk, and the results of the assessment shall be submitted in writing to the Local Planning Authority. Where a SuDS scheme is to be implemented, the submitted details shall:

- i) Provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of receiving ground water and/or surface waters;
 - ii) Specify the responsibilities of each party for the implementation of the SuDS scheme, together with a timetable for that implementation; and,
 - iii) Provide a timescale for implementation, management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
8. No part of the development shall be occupied until the sustainable drainage scheme for the site has been completed in accordance with condition no. 7. The sustainable drainage scheme shall be managed and maintained thereafter in strict accordance with the agreed management and maintenance plan.
9. As part of the reserved matters application, details of all of the proposed boundary treatments in and around the site shall be submitted to and approved, in writing, by the Local Planning Authority. The boundary treatments as are approved shall be fully implemented in strict accordance with the details as are approved prior to first use of the development.
10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting that Order with or without modification), no further development shall take place under Classes A, B, C, D, E, F and G of Schedule 2 Part 1, other than the development hereby granted permission.
11. No part of the development shall commence until details of the proposed Reasonable Avoidance Measures (RAMs) have been submitted to and approved in writing by the Local Planning Authority. The details shall include the following:
- a) Details of a tool box talk on the identification and ecology of great crested newts to be made available to all construction staff employed on the project;
 - b) Details of an artificial amphibian hibernacula to be constructed adjacent to the site (Details of the design can be found in great crested newt mitigation guidelines - August 2001);

- c) Details of a walk over survey of the site prior to commencement of development, and a destructive search (under the supervision of a licensed great crested newt handler) made of any potential great crested newt habitat (such as rubble piles or sheet materials that are on the site) on the site. Any amphibians found should be relocated to the artificial hibernacula;
 - d) Details of storage of material on pallets off the ground, and bulk materials which are to be delivered on site and used within the day of delivery.
 - e) Confirmation that excavated trenches will be covered over at the end of each working day with plywood and the edges sealed with sand or soil. Trenches are to be checked each morning for any amphibians. Any amphibians located are to be moved to the artificial hibernacula.
- The development shall be carried out in strict accordance with the RAMs as are approved.

- 12. No part of the development shall commence until a Biosecurity Risk Assessment has been submitted to and approved in writing by the Local Planning Authority. The Assessment shall include appropriate measures to prevent the introduction of Invasive Non Native Species (INNS) during the construction phase, and measures to control INNS as are currently present on site. The measures and proposals shall be fully implemented in strict accordance with the details as are approved.
- 13. As part of the reserved matters application, an external bat friendly lighting scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be fully implemented in accordance with the approved details prior to first use / occupation of the development.
- 14. The recommendations as are listed in the Addendum Report - Extended Phase One Survey and Ecological Impact Assessment Land South of Tupa, Penley, Wrexham, EDC, approved as part of this application, shall be fully implemented in the construction and landscaping of the development.
- 15. The recommendations as are listed in the Addendum Report - Extended Phase One Survey and Ecological Impact Assessment Land South of Tupa, Penley, Wrexham, EDC, approved as part of this application, shall be fully implemented in the construction and landscaping of the development.

16. A compliance audit shall be carried out by a qualified ecologist, independently of the appointed principle 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.
17. No part of the development shall commence 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.
18. No development shall take place until a phased site investigation of the nature and extent of contamination has been carried out and submitted to and approved in writing by the Local Planning Authority. If any contamination is found during the site investigation, no part of the development shall commence until a scheme specifying the measures that will be taken to remediate the site to render it suitable for the development hereby permitted has been submitted to and approved in writing by the Local Planning Authority. The site shall thereafter be remediated in accordance with the approved scheme. If during the course of development any contamination is found that has not been identified in the site investigation, no further development shall take place on those parts of the site where that contamination has been found until an additional scheme of remediation has been submitted to and approved in writing by the Local Planning Authority for those parts of the site. The relevant parts of the site shall thereafter be remediated in accordance with the additional scheme of remediation.
19. Each part of the site subject to the remediation under the scheme(s) approved as part of condition 18 shall not be occupied/used until a Validation Report has been completed in respect of that part of the site and submitted to and approved in writing by the Local Planning Authority.
20. As part of the reserved matters application, a Woodland Management Plan, including long term management objectives, management responsibilities and maintenance schedules for all areas either containing existing woodland or to be planted as woodland shall be submitted to and approved in writing by the Local

Planning Authority. The woodland shall be managed and maintained in strict accordance with the plan as approved.

21. The existing trees, shrubs and hedges shown on drawing(s) No(s). A(100)05 Rev I to be permanently retained shall not be cut down, grubbed out, lopped or uprooted. Any trees, shrubs or hedges removed or being severely damaged or becoming diseased shall be replaced with trees, shrubs or hedging plants of the equivalent size and species.
22. 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 the Method Statement as is approved. The Method Statement shall include the following:
 - a) A specification for tree protection fencing and ground protection measures that comply with British Standard 5837:2012;
 - b) 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;
 - c) 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;
 - d) Details of general arboricultural matters including proposed practices with regards to cement mixing, material storage and fires;
 - e) Details of the frequency of supervisory visits and procedures for notifying the findings of such visits to the Local Planning Authority;
 - f) Method for protecting retained trees during demolition works;
 - g) Details of all proposed tree works, including felling and pruning.
23. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting that Order with or without modification) and with the exception of those shown on the approved plans, no gate, fence, wall or other means of enclosure shall be erected on the site.

10.4.2 Reasons

1. To comply with the provisions of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012
2. To comply with Section 92 of the Town and Country Planning Act, 1990.
3. To comply with Section 92 of the Town and Country Planning Act, 1990.
4. To comply with section 71ZA (2) of the Town and Country Planning Act 1990.
5. To protect the amenities of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.
6. To protect the integrity of the public sewerage system and prevent hydraulic overloading of the public sewerage system. To protect the health and safety of existing residents and to ensure no detriment to the environment in accordance with Policies GDP1 and EC13 of the Wrexham Unitary Development Plan.
7. To ensure satisfactory drainage of the site and to avoid flooding in accordance with Policies GDP1 and EC13 of the Wrexham Unitary Development Plan.
8. To ensure satisfactory drainage of the site and to avoid flooding in accordance with Policies GDP1 and EC13 of the Wrexham Unitary Development Plan.
9. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area and to protect the amenities of the occupiers of nearby properties.
10. Due to the restricted application site and its relationship with adjoining properties it is considered important to ensure that no additional development as described in the condition is carried out without the permission of the Local Planning Authority in accordance with Policies GDP1 and PS2 of the Wrexham Unitary Development Plan.
11. To protect named species / habitats / biodiversity which would otherwise be damaged / lost by the development hereby permitted in accordance with Policies GDP1 and EC6 of the Wrexham Unitary Development Plan.
12. To prevent the spread of Invasive Non Native Species.
13. To protect named species / habitats / biodiversity which would otherwise be damaged / lost by the development hereby permitted in accordance with Policies GDP1 and EC6 of the Wrexham Unitary Development Plan.
14. To protect named species / habitats / biodiversity which would otherwise be damaged / lost by the development hereby permitted in accordance with Policies GDP1 and EC6 of the Wrexham Unitary Development Plan.
15. To protect named species / habitats / biodiversity which would otherwise be damaged / lost by the development hereby permitted in accordance with Policies GDP1 and EC6 of the Wrexham Unitary Development Plan.

16. To protect named species / habitats / biodiversity which would otherwise be damaged / lost by the development hereby permitted in accordance with Policies GDP1 and EC6 of the Wrexham Unitary Development Plan.
17. To protect the amenities of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.
18. In the interests of the amenities of the future occupants of the buildings in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.
19. In the interests of the amenities of the future occupants of the buildings in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.
20. To ensure landscape features are properly considered and protected in accordance with Policies GDP1 and PS2 of the Wrexham Unitary Development Plan.
21. To ensure the amenity afforded by the trees is continued into the future in accordance with Policies GDP1, PS2 and EC4 of the Wrexham Unitary Development Plan.
22. To ensure the work is carried out to accepted arboricultural practices for the long term wellbeing of the tree(s) in accordance with Policies GDP1, PS2 and EC4 of the Wrexham Unitary Development Plan.
23. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area in accordance with Policies GDP1 and PS2 of the Wrexham Unitary Development Plan. To protect the amenities of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

11.0 APPEALLANT'S APPLICATION FOR AN AWARD OF COSTS

- 11.1 The Council received a planning application for the residential development of the land now the subject of this Appeal, on 7 November 2019. As is normal procedure, and in accordance with PPW's five ways of working, the case officer worked with the agent for the application to reach a position upon which the case officer felt that the application could be supported.
- 11.2 As representations had been made by local residents, the community council and the highway authority which expressed views contrary to those of the case officer, in accordance with the Council's delegation scheme it was necessary to report the application to planning committee for consideration. As is normal procedure, the application was proposed for the committee agenda by way of draft recommendation containing details of the consultation responses, including the response from the Highway Authority. A panel sit every month to consider applications proposed for the agenda to determine if the case officer's recommendation is acceptable before such applications are placed on the agenda for planning committee.

- 11.3 The panel of officers duly considered the proposal in light of the consultation responses and reached a different conclusion from that of the case officer. It is neither unusual nor unreasonable for the panel to take a different view from that of the case officer. In these instances it is normal procedure for the application to be refused or approved at that stage, based on the final submission under consideration. There are cases where additional information may be requested before a decision is made. However, as is clear in this case, the applicant does not have control over the Estate road proposed to access the appeal site, and therefore the objection to the application in this regard could not be overcome. The decision was therefore made that planning permission should be refused.
- 11.4 The Council acknowledges that the panel did assume that the concerns of the highway authority were based upon an element of highway safety implications. Although it would seem natural to some extent to assume that, if left unmaintained, the carriageway and footways would deteriorate over time to a substandard level, thus reducing the level of safe usage for drivers and pedestrians (pot holes, reduced lighting, uneven surfaces etc.), the Council accepts that the highway authority did not raise safety as a concern. Therefore, the reference made to safety within the reason for refusal was in error based upon that assumption.
- 11.5 However, the Council does not accept that it was wrong or unreasonable to refuse planning permission on the basis that the access to the site is unsatisfactory in terms of providing for convenient vehicular and pedestrian movement. The highway authority advised that planning permission should not be granted until the highway improvements (which are outside of the control of the Appellant) have been made, and the Council properly followed that advice in making its decision.
- 11.5 It would not be correct to say that the Council has failed to make any reasonable attempts to resolve the unadopted status of Penley Hall Drive. The Council continues to take the necessary steps as are open to it, in order to resolve matters relating to the condition of the Estate road etc. The Council does not accept that it has disadvantaged the Appellant in not yet securing the improvement works, as it is not incumbent upon the Council to provide satisfactory access routes for the benefit of future private developers of nearby land.
- 11.6 Whilst the Council agrees that the highway authority did not refer to the access routes as being unsafe, it did act reasonably in the decision making process in relying upon its advice that planning permission should not be granted until the necessary improvements to the highway have been made. The Council has provided a proper, justifiable, planning-related reason for the refusal of planning permission and respectfully requests that the application for an award of costs is refused.

APPENDICES

Appendix 1 - P/2018/0771 – Decision Notice

Appendix 2 – LPGN No. 27

Appendix 3 – Highway Authority Consultation Response Dated 14/11/2019

Appendix 4 – Highway Authority Consultation Response Dated 24/11/2020

Appendix 5 – Education Department Response Dated 06/12/2019

Appendix 6 – Email to Agent Dated 11/12/2019