

**TOWN AND COUNTRY PLANNING ACT 1990 SECTION 78 APPEAL AT
LAND TO THE REAR OF BROOKFIELD CLOSE, PENLEY, WREXHAM**

COUNCILS STATEMENT OF CASE

**PLANNING REFERENCE: P/2019/0312
PINS REFERENCE: H6955/A/20/3249747**

1.0 THE SITE

- 1.1 The appeal site is located to the rear of Brookfield, Ellesmere Lane, Penley, Wrexham. It is a Greenfield site located outside of the defined settlement limit of Penley and within a Special Landscape Area.

2.0 PROPOSAL

- 2.1 The proposal is in Full and is for planning permission for 15 dwellings.
- 2.2 Planning permission was refused on 06.01.2020 for the following reason:

The site lies outside the settlement limit and within a Special Landscape Area. To allow the development would be contrary to policies PS1, PS2, PS3, PS4, PS11, GDP1, GDP2, EC4, EC5, EC6, EC13, H5, T8 and T9 of the adopted Wrexham Maelor Local Plan.

3.0 PLANNING HISTORY

- 3.1 No site history

4.0 LOCAL AND NATIONAL PLANNING CONTEXT

- 4.1 Planning Policy Wales (PPW) Edition 10.
- 4.2 Technical Advice Note 1: Joint Housing Land Availability Studies.
- 4.3 The site lies outside 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 that document are relevant. Copies of the relevant UDP policies are contained within the submitted questionnaire bundle.

5.0 PRINCIPLE OF DEVELOPMENT

- 5.1 This greenfield site lies outside of the settlement limit. The principle of development in this location is considered to be unacceptable when assessed against the applicable policies PS1, PS2, PS3, PS4, and GDP1 of the Wrexham Unitary Development Plan with respect to the broad location of development, general principles of development and housing in the countryside.
- 5.2 The proposals do not accord with any of the limited circumstances set out in policy H5 that permit small scale residential development on sites outside of settlement limit (rural exception site, infilling and agricultural workers dwellings), and the proposal is thus contrary to this policy.

- 5.3 PPW requires that Planning Authorities must 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 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 Welsh Government has now dis-applied paragraph 6.2 of TAN1 which advised that considerable weight should be attached to the need to increase housing land supply where local planning authorities were unable to demonstrate a 5 year housing land supply. The weight afforded to this matter therefore is to be determined on a case by case basis.
- 5.5 This Council does continue to take a pro-active stance in supporting appropriate growth in the County Borough where it meets policy objectives and identified local needs. However, it is important to understand that this is not just about increasing housing numbers, but to promote sustained growth in the right location which meets the needs of the local communities. Therefore each site that comes forward will be considered on its merits with the principal considerations focusing on whether the site satisfies all of the relevant planning considerations and represents a sustainable form of development.
- 5.6 In considering the advice set out in PPW (Ed 10), there is nothing that would support this proposal. Although para 3.40 refers to giving consideration to suitable and sustainable greenfield sites within or on the edge of settlements, this forms part and parcel of the site selection process for identifying new sites to be allocated in the Local Development Plan and should only be considered in exceptional circumstances and against a range of criteria. It is not for giving general consideration for proposals outside settlement limits contrary to policy. Para 3.56 indicates that minor extensions to existing settlements may be acceptable, but places this in the context of meeting a local need for purely affordable housing, or where it can be demonstrated that the proposal will increase economic activity. Whilst it is the case that the appeal site has been proposed for allocation as a housing site in the proposed LDP, currently under examination, this Plan has not yet been adopted and little weight can be given to this proposed allocation. It would therefore be premature to allow residential development of the appeal site at this time.

- 5.7 PPW paragraph 3.35 advises that *'In rural areas most new development should be located in settlements which have relatively good accessibility by non-car modes when compared to the rural area as a whole. Development in these areas should embrace the national sustainable place making outcomes and, where possible, offer good active travel connections to the centres of settlements to reduce the need to travel by car for local journeys. PPW includes a presumption in favour of sustainable development.* Given that the bus service does not run regularly and there is access to only a small number of local services and employment opportunities, the appeal is not considered to embrace sustainable place making principles.

6.0 ECOLOGY AND TREES

- 6.1 The site layout proposed does not allow sufficient space for significant and meaningful tree planting to screen or soften the development or break up sightlines within the special landscape area. The proposal is thus contrary to Policy EC4 of the UDP.
- 6.2 The loss of this greenfield land to make way for the development will more than likely lead to the loss of a locally valuable habitats and the site layout does not provide adequate area of compensation to mitigate for the loss. The proposal is thus contrary to Policy EC6 of the UDP.

7.0 HIGHWAYS

- 7.1 Although the village centre is only a relatively short distance from the proposed development site, there are no formal crossing points along Ellesmere Lane, which is poorly lit. The residential development of the site would therefore be to Policies T8 and T9 of the UDP.
- 7.2 The proposed development site would not meet the requirements of the settlement policies (3.4 & 3.6) detailed in TAN 18. These policies require residential developments to provide safe walking and cycling routes to local facilities and public transport stops. The proposed development site is considered to be in an unsustainable location which does not support the opportunity for residents to walk safely to local facilities and public transport stops.

8.0 DRAINAGE

- 8.1 The Council acknowledges that information was submitted in support of the planning application to demonstrate that means of surface water disposal for this site. However the Council has received information (please see appendix 1.) which shows instances of local surface water flooding and the proposed development would likely exacerbate problems of surface water flooding contrary to UDP Policy EC13.

9.0 CHARACTER AND APPEARANCE OF THE AREA

- 9.1 To develop the site and extend the built form into the countryside would extend the pattern of the built-up area creating an urbanising effect. This would erode the amount of open space at the edge of the settlement, significantly detrimentally impacting upon the character and appearance of the area contrary to UDP Policies PS2 and GDP1.
- 9.10 Special attention has not been paid to nearby or distant views within this special landscape area, nor has priority been given to the conservation or enhancement of the landscape contrary to UDP Policy EC5.

10.0 UNILATERAL AGREEMENT

- 10.1 The Council's solicitor has considered the Heads of Terms within the Unilateral Agreement dated 13.03.2020, submitted in support of this appeal, and confirms that the document is fit for purpose and meets the requirements of UDP Policy GDP2.

11.0 CONCLUSION

- 11.1 The key issues are that the residential development of this greenfield land would have a detrimental impact upon the character and appearance of the special landscape area. The site is unsustainably located and the development would have a detrimental impact upon highway safety, ecology, trees, surface water flooding and the visual amenities of the area.
- 11.2 There are insufficient grounds to warrant departing from UDP policies in this instance, despite the lack of a 5 year housing land supply in Wrexham, and the proposed development is unacceptable in principle as failing to deliver development plan and national planning policy objectives.
- 11.3 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:

11.3.1 - Conditions

1. The development hereby permitted shall be commenced before the expiry of five years from the date of this permission.
2. The development shall only be carried out in strict accordance with the details shown on the approved drawing(s) numbered PL10 Rev H, PL15, PL20, PL30, PL40, PL50, PL60 and PL70 and as contained within the application documentation.

3. No facing or roofing materials shall be used other than those detailed on the application form and within the approved application documentation.
4. Notwithstanding the details shown on the approved plans, a schedule of colours for the external front doors and render shall be submitted to and approved in writing by the Local Planning Authority. The dwellings shall be constructed in strict accordance with the schedule as may be approved.
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 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.
7. 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.
8. No part of the development shall commence until an amphibian friendly scheme for the comprehensive and integrated drainage of the site indicating provision for surface water and land drainage has been submitted to and approved in writing by the Local Planning Authority. Any submission should take account of the principles highlighted within the Flood Risk and Drainage Assessment dated September 2015, approved as part of this application. 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:
 - * 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;
 - * Specify the responsibilities of each party for the implementation of the SuDS scheme, together with a timetable for that implementation;

* 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.

9. No part of the development shall be occupied until the sustainable drainage scheme for the site has been completed in accordance with condition no. 8. The sustainable drainage scheme shall be managed and maintained thereafter in strict accordance with the agreed management and maintenance plan.

10. Notwithstanding the details shown on the approved site layout plan, all site boundary treatments to the north, south, east and west shall be of continuous native hedgerow planting in strict accordance with a scheme which has been submitted to and approved in writing by the Local Planning Authority.

11. Within six months of first use of the development the planting scheme submitted and approved in connection with condition no. 10 shall be fully implemented in all respects.

12. Within three months of commencement of development, full details of both hard and soft landscape works, to include some native planting shall be submitted to and approved in writing by the Local Planning Authority. The plan shall include a timescale for the implementation of works, and shall provide for ecological improvement / habitat creation and enhancement in the soft landscape areas for the benefit of biodiversity conservation specifically tailored to the landscape features.

13. The landscaping scheme submitted and approved in connection with condition no. 12 shall be fully implemented in all respects within the agreed timescale and in strict accordance with the approved scheme.

14. The planting scheme implemented in connection with condition nos. 10, 11, 12 and 13 shall be permanently retained. Any planting which becomes 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 within the next available planting season by trees or shrubs of similar size and species to those originally required to be planted.

15. Within three months of the commencement of development a landscaping Management Plan, including long term design objectives, management responsibilities and maintenance schedules for all landscaped areas shall be submitted to and approved in writing by the Local Planning Authority. The landscaping shall be managed and maintained in strict accordance with these details as are approved.

16. 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.

17. Within 3 months of commencement of development 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.

18. 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.

19. The vehicular parking areas as shown on approved drawing(s) No(s). PL10 Rev H 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 of motor vehicles at all times.

20. Prior to first use of the development, the boundary treatments shall be erected on site in strict accordance with approved plan ref: PL10 Rev H. The boundary treatment shall thereafter be permanently retained and no other fences, walls or other means of enclosure shall be erected on any part of the site.

11.3.2 Reasons

1. To comply with Section 91(3) of the Town and Country Planning Act, 1990.
2. To comply with section 71ZA (2) of the Town and Country Planning Act 1990.
3. 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.
4. 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.
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 amenities of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.
7. 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.
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 satisfactory drainage of the site and to avoid flooding in accordance with Policies GDP1 and EC13 of the Wrexham Unitary Development Plan.
10. To protect landscape features which are of significant amenity value in the area and which would ensure a satisfactory standard of appearance the development in accordance with Policies GDP1, PS2 and EC4 of the Wrexham Unitary Development Plan.
11. 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.

12. 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 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.
13. 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.
14. 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.
15. To ensure landscape features are properly considered and protected in accordance with Policies GDP1 and PS2 of the Wrexham Unitary Development Plan.
16. Due to 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.
17. 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.
18. 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.
19. To comply with section 71ZA (2) of the Town and Country Planning Act 1990.
20. 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.

12.0 APPEALLANT'S APPLICATION FOR AN AWARD OF COSTS

- 12.1 The decision of the Council to refuse planning permission was made based upon the Policies contained within the Unitary Development Plan, as are given within the reason for refusal, set out at section 2.2 of this Statement. Though there was discussion of the potential availability of alternative brownfield sites within the Penley area, permission was not refused on the basis that there may be alternative sites locally.

12.2 The Council acted appropriately in the decision making process and respectfully requests that this application for an award of costs is refused.

APPENDICIES

Appendix 1 - Email 14/05/2019 – thelwelldj@aol.com