

MR K BARKER AND MRS T WILSON

RE: AN APPEAL AGAINST REFUSAL OF A PLANNING APPLICATION

**OUTLINE APPLICATION FOR 9 DWELLINGS ON LAND AT TUPA, PART OF FORMER POLISH
HOSPITAL/WWII HOSPITAL SITE**

STATEMENT OF CASE FOR THE APPELLANT

INTRODUCTION

1. This Statement of Case has been prepared in support of an appeal against the decision of Wrexham County Borough Council ('WBC') to refuse outline permission for the construction of 9 new dwellings. The application was received by WBC on 7th November 2019 and given the application reference number MAE P/2019/0835.
2. WBC issued a decision notice on 28th February 2020¹ refusing planning permission for the following sole reason:

¹ Tab 26, page 338

- (i) *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. This Statement of Case should be read in conjunction with the bundle of supporting documents ('the Bundle'). References made within this statement will be to the relevant tab and, if appropriate, page number within the Bundle.
4. This Statement of Case is made on behalf of the Appellants and sets out the planning case and positive merits of the scheme.

THE APPLICATION SITE

5. The Application Site is a brownfield site of approximately 0.98 hectares which formerly housed part of a WWII hospital. The site is located to the north of the A539 and is accessed by Penley Hall Drive as shown on the Site Plan².
6. Both the Application Site and the shared access drive off Penley Hall Drive are within the Appellants' private ownership. Penley Hall Drive currently remains unadopted but the Application Site benefits from an express right of access over Penley Hall Drive. There is currently no public access to, or public right of way over, the Application Site.
7. There are a number of derelict buildings and structures on the Application Site and approximately 29% of the site area is covered by impervious surfaces. Photographs of the existing structures are contained within the Design and Access Report³

² Tab 3, page 39

³ Tab 2, pages 32-36

8. The Application Site is located outside of but immediately adjacent to the established settlement boundary. It adjoins an existing development, within the settlement boundary, of over 100 new dwellings constructed by Morris Homes Limited ("the MH Development").
9. It is recognised within the officer's report⁴ that the Application Site is within a sustainable location with good accessibility, including for pedestrians, to employment, shops, schools, churches and other amenities within Penley. The Application Site is also well served by public transport, with regular bus services operating between Penley and nearby larger settlements (including Wrexham, Oswestry and Whitchurch).

THE PROPOSED DEVELOPMENT

10. The proposal is to construct 9 individual residential dwellings on the Application Site and is fully described in the Design and Access Statement⁵ dated 7th November 2019.
11. The proposals represent the resubmission of a previous outline application, given application reference P/2018/0771, which was refused by WBC on 9th November 2018. The reasons given for refusal of application P/2018/0771 can be seen at paragraph 4.13 of the Design and Access Statement⁶; the Appellants carefully considered WBC's concerns and amended the scheme accordingly before resubmitting this appropriately revised application.
12. The proposal has been deliberately designed so that the footprint of the new buildings is equal to that of the existing derelict buildings and structures so as to

⁴ Tab 27, pages 339 – 343

⁵ Tab 2

⁶ Tab 2, pages 15-16

minimise the impact of the development. It is also proposed that the new dwellings will be constructed out of traditional materials so as to compliment and conform to the existing buildings and other nearby developments.

13. It is recognised that residential development at the Application Site would not cause detrimental harm to the countryside and in fact, by removing the existing derelict buildings, the proposals would have a positive impact upon the character and appearance of the area. In her report, the planning officer states:

“I accept that its [the Application Site’s] 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 [the proposed development] would represent only a minor and logical extension which would square off the existing pattern of development on Penley Hall Drive”.⁷

PENLEY HALL DRIVE

14. The Application Site is accessed via Penley Hall Drive, a private estate road that has been significantly improved as part of the MH Development. Penley Hall Drive has been in use by the occupiers of residential properties within the MH Development as the primary access to those properties for approximately 15 years.
15. The MH Development was granted planning permission in 2003 under reference MAE P/2003/1219⁸. Condition 16 of that permission requires the developer to ensure that all estate roads and footways are progressively constructed to base coat standard from the junction with the A539 across the frontage of each plot prior to the occupation of that plot; the reason being to ensure that the estate road system, which includes Penley Hall Drive, achieves a suitable standard for adoption as public highway.

⁷ Tab 27, pages 340 – 341

⁸ Tab 14

16. The MH Development was built out in stages meaning that whilst some parts have been completed and occupied for around 15 years (1 Penley Hall Drive was sold in 2005), the whole of the development has been completed and occupied for around 5 years. Upon completion of the MH Development WBC sought to moderate traffic speeds by the introduction of a 20mph speed restriction on the A539 through the village, installation of a mini roundabout on the A539/Ellesmere Lane junction, "20" roundels painted on the road surface and the installation of permanently mounted, traffic speed display equipment. The residential development is currently served by a T junction with a ghost island and right turn lane incorporating a pedestrian refuge. Considering the current junction layout it is difficult to envisage what other improvement works could be justifiably required on safety grounds.
17. A Section 278 agreement (presumably between Morris Homes Limited and WBC) is referenced in the consultation response from the WBC Environment and Technical department⁹. In preparation for this appeal, the Appellant requested that WBC provide a copy of this agreement¹⁰. WBC has failed to provide a copy; further submissions on this matter may be required once this document is provided.

REPRESENTATIONS

18. It is understood that representations were received from 7 individuals in response to application reference number MAE P/2019/0835. Whilst these representations have not been made available to view on WBC's website, a summary of the concerns was provided by the planning officer in an email dated 17th February 2020¹¹. All

⁹ Tab 19

¹⁰ Tab 32

¹¹ Tab 23

concerns were addressed in detail in the Appellants' response provided on 24th February 2020¹².

19. A representation was received from the Chief Officer, Environment and Technical department dated 14th November 2019¹³ which deals primarily with highways. The highways concerns constitute the main issue in this appeal and are discussed at length within this statement of case. In relation to layout and surface water drainage, the representation makes several recommendations; whilst all matters are reserved, the Appellants do not have any concerns in relation to those recommendations.
20. A further representation was received from WBC's public protection services manager dated 18th November 2019¹⁴. This representation simply contained a list of conditions which are primarily intended to mitigate the impact of construction and development activities if planning permission is granted for the proposed development. The Appellants do not have any concerns in relation to any of the conditions put forward in this representation.
21. A further representation was received from National Resources Wales ('NRW') dated 2nd December 2019¹⁵. In summary, this representation states that NRW do not have any objection to the proposed development subject to the imposition of the suggested planning conditions set out within the representation. The Appellants do not have any concerns in relation to any of the suggested conditions.

¹² Tab 24

¹³ Tab 19

¹⁴ Tab 29

¹⁵ Tab 20

22. A further representation was received from the local flood authority also dated 2nd December 2019¹⁶. In summary this representation concludes that sufficient information has been provided to demonstrate that a compliant scheme could be deliverable at the Application Site but recommends a pre-commencement planning condition requiring details of the final surface water management scheme. The Appellants do not have any concerns in relation to the proposed condition or advisory note provided.
23. A further representation was received from Welsh Water dated 3rd December 2019¹⁷. This contained a recommendation that the Appellants consult with WBC on their Sustainable Drainage Systems features. The Appellants do not have any concerns about engaging in the recommended consultation process. The representation also includes a suggested planning condition and associated advisory notes; the Appellants have no concerns in relation to the proposed condition or advisory note.
24. Finally, a representation was received from WBC as the SuDS approving body on 7th January 2020¹⁸. This representation simply brought up to date requirements to the Appellants' attention and invited them to consider the appropriate next steps. The Appellants do not have any concerns in relation to this advice.

¹⁶ Tab 30

¹⁷ Tab 28

¹⁸ Tab 31

OFFICER'S APPRAISAL AND DECISION

25. The officer's report¹⁹ details the impact of the proposed development and concludes that the proposal:

- i. Is justified as it contributes to the 5 year housing land supply whilst at the same time being in a sustainable location and providing an acceptable form of development in compliance with PPW;
- ii. would not be to the detriment of the visual or residential amenities of the area;
- iii. would not harm the appearance of the area;
- iv. would positively contribute to the appearance of the nearby locality;
- v. utilises Brownfield land as opposed to Greenfield Land;
- vi. is within a sustainable location which safeguards the amenity of settlement limits against large scale extensions;
- vii. would comply with all other relevant planning policies including GDP1 (a), PS3, PS2 and EC5.

26. Notwithstanding the officer's view of the proposal she concludes, at the final sentence of her report, that *"as Penley Hall Drive is currently unadopted, planning permission cannot be supported"*.

27. In relation to highways, access and parking, the officer's report states:

¹⁹ Tab 27

“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 authority does recommend that planning permission should not be granted until the estate road has been completed.”

28. The correspondence between the planning officer and the Appellant’s representatives must also be considered²⁰. In an email on 5th February 2020²¹ the planning officer stated: *“I have now discussed the proposal with the team and we are of the view that the application can be supported”*. The planning officer goes on to say that the application will be determined at the planning committee on 2nd March 2020.

29. On 25th February 2020 the planning officer sent another email²² to the Appellant’s representatives stating:

“I put the application forward for the March committee agenda as promised, however the Development Control manager disagrees with my assessment of the highway matters and takes the view that we cannot support the application until such time as Penley Hall Drive has been adopted.

I advise therefore that the application will not be reported to planning committee and planning permission will now be refused under delegated powers.

I appreciate that this will be disappointing news for your clients, however they do have the right to lodge an appeal against this decision.”

²⁰ Tabs 21-25

²¹ Tab 21, page 292

30. On 28th February 2020 the application was refused under delegated powers²³.
31. In short, the planning officer considered the proposal to be acceptable and intended to recommend that permission be granted. The development control manager disagreed and overruled her. Furthermore, the Appellant was told the application was going to be determined at committee but, without allowing any time to properly respond, it was instead determined (and refused) by the officer under delegated authority. This sequence of events and the conduct of WBC is clearly unreasonable and wholly unsatisfactory particularly as the access issue had been extant and within WBC's contemplation for at least 18 months and, although the resolution is straightforward, it could only ever been sought by WBC (not the Appellants).

LOCAL PLANNING POLICY

32. WBC does not currently have an adopted Local Development Plan ('LDP') and the UDP is now out of date. The officer's report identifies WBC's resultant lack of a 5 year housing land supply as being a significant material consideration which must be properly taken into account.
33. As of 26 March 2020, TAN 1 has been revoked and replaced with a requirement for the local authority to prepare a housing trajectory which forms part of the LDP. The documentation prepared by WBC in support of its emerging LDP, currently subject to consultation, includes a housing trajectory although this appears to have been prepared specifically in the context of delivering a 5 year housing land supply.

²² Tab 24, page 325

²³ Tab 26

34. Notwithstanding the below submissions, it is the Appellants position that, in the absence of an adopted LDP and in the context of the UDP being significantly out of date, WBC's planning officer's position that the planning application should be determined in accordance with the most relevant up to date national policy, being PPW 10, is correct. The policy reasoning provided by WBC for refusal of the application is the absence of bona fide safe and satisfactory pedestrian and vehicular and the failure to make adequate provision for the safety of all users of the highway contrary to Policies GDP1 (d)²⁴ and T9²⁵ of the UDP.

Policy GDP1(d) of the UDP requires that all new developments: *"Ensure safe and convenient pedestrian and vehicular access to and from development sites, both on site and in the nearby locality"*.

Policy T9 states: *"Development proposals will be required to provide walking and cycling routes, where feasible and appropriate, that link with existing or proposed walking and cycling routes, and integrate with the public transport system. Opportunities for horse riding along these routes will be secured where appropriate"*

NATIONAL POLICY - PPW 10

35. The primary objective of PPW 10 is *"to ensure that the planning system contributes towards the delivery of sustainable development and improves social, economic, environmental and cultural wellbeing of Wales"*²⁶. The officer's report

²⁴ WBC's Unitary Development Plan (1996-2011) page 16

²⁵ WBC's Unitary Development Plan (1996-2011) page 69

²⁶ Planning Policy for Wales Ed. 10, page 6

accepts that the proposals do constitute sustainable development and therefore broadly accord with PPW²⁷.

36. The Application Site is acknowledged within the officer's report to be a brownfield site within a sustainable location. When commenting upon such sites, PPW 10 sets out, at paragraph 3.52²⁸, that planning authorities *"should work with landowners to ensure that suitably located previously developed sites are brought forward for development and to secure a coherent approach to their development"*. WBC has failed to work with the Appellants, as it is obliged to do by national planning policy, to try and ensure that an appropriate brownfield site is brought forward for redevelopment.
37. Considering PPW 10 as a whole, the Appellants concur with the conclusion reached within the officer's report the proposed development is in a sustainable location and provides an acceptable form of development in compliance with PPW. The proposals seek to maximise the use of brownfield land and would have the effect of furthering the primary objective of PPW.
38. Based on the above policy position, the Appellants present a positive case in respect of the appeal proposals.

THE APPELLANT'S CASE

39. The officer's report concludes that the proposed development is acceptable in all aspects aside for the reason for refusal set out at paragraph 2(i) above. In planning policy terms, the development is otherwise considered to be justified.

²⁷ Tab 27, page 340

²⁸ Planning Policy for Wales Ed. 10, page 37

40. It is not clear whether the decision has been made as a result of incomplete works under the Section 278 Agreement, a lack of emergency service access provision and/or the status of the access road (Penley Hall Drive). WBC has not identified any harm which it says would be caused by the proposed development.
41. The comments from WBC's highways department²⁹ state that adoption of Penley Hall Drive cannot take place until Morris Homes, as developer of the adjacent site, provides an emergency access/footpath-cycleway link from the site to the A539 and complete Section 278 highway improvement works at the site access along the A539. It must be WBC's position that these concerns are extremely serious so as to outweigh the benefits of the proposed development (see paragraph 18 above) and warrant the refusal of planning permission.
42. However, despite the passage of several years since the occupation of the last property to be constructed on the adjacent development, WBC as local planning authority and/or highway authority, has not deemed it necessary to enforce completion of these works to ensure safety or benefit of residents. WBC therefore cannot justify refusing the Appellants' application due to the absence of safe pedestrian and vehicular access to the Application Site when the pedestrian and vehicular access to an adjacent (and much larger) residential site, provided by exactly the same road system, is considered not to warrant immediate improvement on safety grounds.
43. Further, it is understood that a requirement to provide an emergency access based purely on the number of properties served was a recommendation taken from a former design guide that was subsequently made redundant by the publication of Manual for Streets in 2007.

²⁹ Tab 19

44. The Appellants understand that Penley Hall Drive is also subject to a 20mph speed restriction, enforced by the provision of speed cushions in addition to "20" roundels marked on the road surface. Footways, adequate to cater for pedestrian needs, have been provided along both sides of roads within the development and lightly used, low speed side roads provide suitable routes for cyclists. The road and footway construction, including surfacing, drainage and lighting, appear to be substantively complete and roads including turning areas are laid out to an appropriate standard. The MH Development has been occupied for over 10 years and a search of Crash Map identifies no associated traffic accidents resulting from its operation³⁰. Aside from completing the formality of adoption, which is fully within the control of WBC, there does not appear to be any significant inadequacy, fault or safety concern with pedestrian and vehicular access to the Application Site.
45. If there are outstanding works to Penley Hall Drive which are the cause of a safety and/or convenience concerns relating to the provision of pedestrian and vehicular to the Application Site, it follows that the same concerns apply to the adjacent, occupied MH Development. It has been open to WBC to take enforcement action to address any such issues for over 10 years; it has chosen not to do so which suggests either a significant failing of its obligations as the local planning authority or that user safety and/or convenience in relation to Penley Hall Drive is in fact not a significant concern.
46. In relation to Policy T9 specifically, it is unclear exactly where WBC consider the proposals to be contrary to that policy. The policy simply requires the provision of walking and cycling, where feasible and appropriate, to connect with existing or proposed routes. It is not feasible for the Appellants to provide walking and cycling

³⁰ Tab 11, page 31

routes along Penley Hall Drive as that road is not within the Appellants' ownership. However, the highway related comments and the Appellants' Design and Access Statement make clear that both the Appellants' proposed development and the Morris Homes development incorporate walking and cycling routes. If considered in conjunction with one another these would effectively connect the Application Site with the A539 and it is therefore unclear why WBC deems the Appellants' proposals to be contrary to Policy T9.

GROUND OFS OF APPEAL AND APPLICATION FOR COSTS

47. The Appellants appeal is submitted on the grounds that:

- (i) WBC has not provided proper, justifiable, planning-related reason for the refusal of planning permission; and
- (ii) The unadopted status of Penley Hall Drive was open to WBC to resolve thereby bringing forward appropriate sustainable development but, contrary to the obligations imposed by national planning policy, it apparently failed to make any reasonable attempt to do so.

48. The Appellants submit that it is appropriate to seek their costs of this appeal on the following basis:

- (i) WBC has failed to provide reasons for refusal which stand up to scrutiny in planning terms;
- (ii) WBC has acted unreasonably and failed to properly exercise its development management responsibilities by refusing planning permission for an development which it is agreed is justified in planning policy terms, without attempting to address an access issue when it is entirely within its control to do so;

- (iii) WBC has failed to provide a copy of the Section 278 Agreement on request and has failed to make sufficient information available for the Appellants to understand the outstanding issue(s);
- (iv) WBC has acted unreasonably in disregarding the suggestion of its highways team to not consider planning application MAE P/2019/0835 until after completion of the existing development, adoption of the access road and completion of the Section 278 improvements;
- (v) WBC has acted unreasonably and failed to properly exercise its development management responsibilities by advising the Appellants that the application would be dealt with by planning committee but, without reasonable notice, suddenly resiling from this and almost immediately determining the application under delegated authority; failing to allow the Appellant's sufficient time to address the issue and failing to do so itself;
- (vi) The Appellants have had no choice but to resort to the appeal system in this instance as a direct result of WBC's unreasonable behaviour.

CONCLUSION

- 49. WBC has failed to provide a clear, justifiable planning-related reason for the refusal of planning permission.
- 50. It is illogical and inconsistent for WBC to refuse permission on the basis that it deems the access road (Penley Hall Drive) to be inconvenient or unsafe whilst taking no action to rectify this despite being in a position to do so and the same road constituting the sole access to over 100 other homes. It is the Appellant's position that the actions of WBC over the past 10 years are contrary to the

position it has taken in respect of their application which, accordingly, cannot sensibly be justified.

51. Aside from the sole reason for refusal, which has not been properly justified, the proposed development is deemed to be acceptable in both local and national planning policy terms.
52. WBC has behaved unreasonably in relation to its consideration of this application and the Appellants now have no option but to proceed with an appeal. The Appellants therefore request that:
 - (vii) outline planning permission be granted for the proposed development;
and
 - (viii) The Appellants be awarded their costs incurred in submitting this appeal.

Aaron & Partners LLP

27 August 2020

