

PLANNING APPEAL AGAINST REFUSAL OF PLANNING PERMISSION

SITE – Land to the rear of Brookfield Close, Ellesmere Lane, Penley, Wrexham, LL13 0SJ

PROPOSED DEVELOPMENT – Erection of 15 Dwellings

DATE OF REFUSAL – 6th January 2020

LOCAL PLANNING AUTHORITY – Wrexham County Borough Council (WCB)

PLANNING APPLICATION REFERENCE - P/2019/0312

APPELLANT'S GROUNDS OF APPEAL

1. Summary

In summary, the Appellant's Grounds of Appeal are as follows :-

- Inaccurate and misleading information on alternative brownfield sites in the village was presented to the Committee by certain Members at the decision-making meeting. This misleading information directly contributed to the decision to refuse planning permission.
- The emerging LDP allocates the appeal site for residential development. It is identified as being in a sustainable location, within the settlement of Penley, and suitable for housing development.
- The Council has no up-to-date adopted Development Plan. The Wrexham UDP is now 8 years time-expired. The emerging LDP (currently being examined) is therefore the most up-to-date expression of development plan policy for WCB.
- The Council has a zero supply of housing land. Housing completions in the first 6 years of the emerging LDP plan period are running at an average of just under 50% of the amount required. The situation with delivery of housing in Wrexham County Borough is therefore critical. This warrants significant weight to be applied in the determination of this appeal.
- In the circumstances where there is a zero land supply and a significant shortfall in housing delivery, the fact that the Appeal site is allocated in the emerging LDF should make it an obvious candidate for early release.
- The Site is acknowledged by the Council as being sustainable development in a sustainable location, in line with National policy and the LDP Strategy.
- The site is straightforward to develop, being relatively flat and with highway access already in place. The Appellant is ready and willing to deliver the development quickly, to help meet the need and demand, and to directly assist with the wider shortage in the 5-year supply and housing delivery.
- The development will deliver smaller houses for younger and lower-income households, many of which will be from the local area. There is clearly an urgent need and demand for such new dwellings in Penley.
- A recent Appeal decision for a site in Rossett has direct relevance to the Appeal proposals.

- The detailed Appeal proposals are sustainable and compliant with the UDP policies quoted in the decision notice.

The Appellant concludes that the appeal proposals are sustainable development, justified by the lack of a 5-year housing land supply, and by the allocation of the site in the emerging LDP.

On this basis, it is respectfully requested that the Appeal is allowed.

2. Unilateral Undertaking

A signed Unilateral Undertaking is included with the Appeal, securing the provision of various planning gains associated with the development, including :-

- an off-site payment of £31,134 towards additional Primary Education facilities at Madras Primary School, Penley;
- an off-site payment of £35,832 towards additional Secondary Education facilities at Maelor Penley Secondary School;
- an off-site payment of £24,000 to upgrade and improve the play area adjoining 22/23 Pendas Park, Penley;
- Formation of a Management Company for future maintenance of common parts of the development.

3. Reason for Refusal

The reason for refusal on the decision notice (attached at **Appendix 14**) is as follows :-

“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”.

4. Webcast of the Decision-making Meeting

A full video of the debate and decision at the meeting of the Planning Committee on 6th January, 2020 is available via the following link :-

https://wrexham.public-i.tv/core/portal/webcast_interactive/463140

It is important that the Inspector views the video to appreciate the information presented by some Members of the Committee, and the influence this had on the decision to refuse planning permission for the Appeal proposals.

4. Detailed Grounds of Appeal

4.1 Misleading Information Presented by Councillors to the Planning Committee

The webcast video shows the full Planning Committee debate on the application, which took place on 6th January 2020.

The Appellant is very unhappy with the way in which certain comments were made by Councillors on the application, and that the proposals therefore did not receive a ‘fair’ hearing at the meeting.

Whilst the Appellant understands and respects the Councillors rights to comment on the application, it does appear that there were concerted efforts by at least two Councillors to unfairly discredit the application.

At the beginning of the debate, one Councillor refers to the village having “*only 3 buses a day*”, when it has a total of 8. The same Councillor lists the services and facilities in the village, but then concludes by saying that the village “*has no services at all*”.

Of most concern however is that misleading information was presented to the Committee by some Councillors regarding potential ‘alternative’ brownfield sites in Penley village, within the Northern and Southern former Polish Hospital Sites.

Another Councillor comments :-

“...just a figure off the top of my head – there must be 30 acres of brownfield sites in Penley”

and

“Why are we building on a greenfield site when it’s 200 yards from a 17-acre brownfield site?”

The Councillors are referring to the two former Polish Hospital sites in the village – one to the north of the village, and one to the south. The southern site extends to 17 acres.

Appendix 1 shows historic plans of the site and a recent Google aerial photograph. Part of the site was developed for housing (Tudor Drive & Hill Crest) in the 1970’s. The plans show that the remainder of the site was cleared of buildings by 1975, possibly earlier, and that the area has since regenerated into a significant natural woodland, adjacent to the Tudor Drive estate.

Residents have confirmed verbally to the Appellant’s Agent that that people from the village have been using the site for walking and recreation for decades, without interference from the owners.

Appendix 2 shows a recent sales brochure for the site, demonstrating how its character has changed significantly. The property was sold at auction in December 2019 to a local buyer.

A Facebook group was set up in late 2019, following the site being placed on the market. The Facebook group has 128 Members. There can be no doubt that they are looking to protect the site from development. **Appendix 3** shows the latest Facebook post, and **Appendix 4** is a summary of the situation as they see it. This shows their aims and objectives, which are :-

1. Preserve the woodland as a natural environment
2. Protect community access to the area
3. Prevent any potentially undesirable use for the woodland

The summary shows there are moves already to protect the trees on the site, to establish the footpaths within it as rights of way, to potentially have it designated as an important green space.

Appendix 5 shows photographs of the site entrance in February 2020, where large metal gates and signs have been erected, to exclude public access. Although this may be a temporary or safety measure, it is nevertheless a provocative and worrying turn of events for the local residents, who have used the site for so long without incident or impediment.

Appendix 6 shows the Penley Inset Map taken from the emerging LDP. This shows a designation of the former Polish Hospital Site (South) as a “Locally Designated Site of Nature Conservation and Geological Importance”. The relevant LDP Policy (NE2) is also shown, indicating that development will only be allowed on such sites in exceptional circumstances.

All of this points to a site that will take a long time to bring forward for development - if indeed it is deemed suitable, owing to the potential public objection.

In the present circumstances, the site is no alternative to an available, suitable, viable and deliverable site such as the appeal site.

The northern former Polish Hospital site is shown on the historic plans and aerial photograph within **Appendix 7**. These show that the former Hospital buildings remained on this site for a longer period than the southern site.

The area of undeveloped land remaining amounts to approximately 14 acres. Added to the 17 acres on the southern site, this gives the approximate figure of 30 acres of brownfield land referred to by the Councillors at Planning Committee.

The northern site has been partially redeveloped for housing over time, and a significant area has been converted into employment uses. At the same time, the aerial photograph and plan within Appendix 7 show that a significant proportion of the site has been cleared and is now open fields, or has naturally regenerated into woodland.

In September 2018, part of the site (where there are some remaining buildings) was the subject of a planning application for the development of 11 dwellings. The site and the proposals are shown in **Appendix 8**.

However, in November 2018, Wrexham Council **refused** planning permission for the proposed development. The decision notice is attached at **Appendix 9**. Another application has recently been submitted for the site, but there is no guarantee this will be approved.

In conclusion, the Appellant believes that supposedly alternative sites were put forward by Councillors as if they were a realistic alternative to the appeal site, when in fact, they were no such thing. The incomplete information presented by the Councillors misled the Committee into refusing the appeal site application.

The Chairman and Chief Planning Officer do state in the video that there is no guarantee that alternative brownfield sites are developable or would come forward for development, and also resist the issue being used as part of the reason for refusal.

However, it is abundantly clear that the damage had already been done, and the comments made by the Councillors on supposedly alternative brownfield sites directly influenced the Committee's opinion on the application. This is clearly demonstrated by the fact that one Councillor (towards the end of the debate) actually suggested that the application should be refused for this reason.

It is both surprising and disappointing that the two most vocal Councillors (who were from the local Wards of Bronington and Overton) appeared completely unaware of the local community's interest in the southern Polish Hospital site, and unaware that planning permission had been refused on part of the Northern site.

The Appellant is therefore most unsatisfied with the manner in which information was presented to the decision-making Committee, and believe that this is sufficient to warrant an application for Costs to accompany this appeal.

4.2 The Emerging LDP – Allocation of the Appeal Site

The Wrexham LDP Deposit Plan was submitted in 2018, and is currently being examined (February 2020). LDP Policy SP2 confirms that development allocations are made in sustainable locations within the overall Settlement Hierarchy. Penley is identified as one of several 'Tier 3 Local Service Centres' in the hierarchy, where 11% of the overall housing allocations are expected to be delivered (para 5.25).

The Inset Map for Penley, and an extract from LDP Policy H1 (Appendix 6) show the allocation of the site for 25 dwellings, under reference number 15.

The allocation includes the appeal site (proposed for 15 dwellings), the 9 dwellings already completed by the Appellant on the Ellesmere Road frontage, and further land to the south.

This additional land (to the south of the appeal site) has been sold to the new occupiers of The Grange, and will not be developed.

The appeal site (together with the developed site) therefore deliver 24 of the 25 dwellings proposed by Policy H1 on the allocated site.

4.3 The 5-Year Housing Land Supply

The Council has no up-to-date UDP and a zero supply of housing land. However, the Welsh Government has dis-applied paragraph 6.2 of TAN1, which attached 'significant weight' to the lack of a 5-year supply in planning decisions. It has stated that it is a matter for the decision maker to determine the weight to be applied.

The WCB housing requirement is set out in the submitted LDP Policy SP1 and Table 5.1, showing the situation at April 2017. Policy SP1 identifies a need to deliver **7750 homes** between 2013 and 2028 (a 15-year period). That equates to a need for **517 dwellings per annum**. The actual amount of land needed to be allocated to deliver the 7750 homes is greater. After allowing 10% for flexibility and for the non-take-up of sites, the total level of housing provision required in the LDP is 8525.

LDP Housing Components	
LDP Housing Requirement (Policy SP1)	7750
10% Flexibility allowance	775
LDP Housing Provision (Policy SP1)	8525
Completions (2013 – 2017)	977
Committed Housing Supply (April 2017)	1994
Sites Pending Section 106 (April 2017)	33
Windfall Estimate (small and large sites, 195 p/a)	2145
Allocations required (Policy H1)	3376

Table 5.1

Source : Page 35 Wrexham LDP Deposit Plan Document

Of the 8525 dwellings required, the table shows that new LDP allocations will make up 3376 dwellings, and unidentified 'windfall' development a further 2145 dwellings. The allocated therefore sites make up 40% of the total requirement. Furthermore, there is only 6 years of the plan period remaining.

More recent evidence from the evidence base for the current LDP Examination (Document BP08b) reveals the more recent housing completions to 2019 :-

Year	WCB Housing Completions	LDP Annual Requirement	Annual Surplus / Shortfall
2013/14	215	517	-302
2014/15	235	517	-282
2015/16	199	517	-318
2016/17	328	517	-189
2017/18	222	517	-295
2018/19	362	517	-155
Total	1561	3102	-1541
Average	260	517	-257

Source :

<file:///C:/Users/User/Downloads/BP08b%20Housing%20Supply%20and%20Delivery%20Tables%20Only%20%20Aug%202019%20R.pdf>

Although there was an increase in completions during 2016/17 and 2018/19, the average for the first 6 years of the LDP remains very low at 260 per annum – just over 50% of the required number. There remains a substantial total shortfall of **over 1500 dwellings**.

In view of the above evidence, we would describe the housing delivery situation in WCB as critical. Therefore, there is an urgent need to dramatically increase housing completion rates above recent levels, in order to meet the LDP requirement and make up the substantial shortfall.

In these circumstances, the lack of a 5-year housing land supply should be given **significant weight** in the determination of this Appeal.

The identified allocated housing sites represent 40% of the total LDP housing requirement. It is therefore vital to the delivery of the LDP housing requirement that these allocated sites are brought forward quickly.

The appeal site is one of these allocated sites. It is available, suitable and viable. It has a willing landowner, and a developer very eager to build the proposed dwellings. Should permission be granted, the Appellant has indicated that, in view of the levels of demand, he would hope to start within 8 weeks of permission being granted (following discharge of conditions), and that the site would be completed within 15 months.

The Appeal site should therefore be an obvious candidate for early release, in order to assist with the critical situation regarding land supply and delivery in the area. The development of 15 dwellings would make an important and immediate contribution to the shortfall.

4.4 Sustainability of the Location & Site

As stated earlier, Penley is identified in the emerging LDP as a Tier 3 Local Service Centre.

The village contains a number of key services and facilities to serve the population in the village and surrounding area, including a Secondary School, two Primary Schools, a Village

Shop and an industrial estate. **Appendix 9** shows that there are 8 daily bus services from the village – 5 to Wrexham (linking with Oswestry and Chester) and 3 to Whitchurch.

Appendix 10 shows an extract from Appendix 1 of the LDP background document “Summary of Representations received on the Deposit LDP”, which is available at :-

http://www.wrexham.gov.uk/assets/pdfs/information_reports/2018/appendix1-ldp-reps.pdf

On page 272, the extract lists the one (unnamed) objection made to the proposed LDP allocated site at Penley (Site H1.15).

The Council’s response to the objection was as follows :-

“The Council are aware of the cumulative highway constraints associated with the development of the site. However, there are no objections subject to the submission of a detailed matters at planning application stage.

Any shortfall in education provision in the area can be mitigated via S106 contributions to offset the impact on education provision.

Ecological mitigation measures can be incorporated into the detailed site proposals that would be submitted at the planning application stage, no objections have been raised by the Council’s ecologist or Natural Resources Wales at this stage.

*Penley is identified in the Settlement Hierarchy as a tier 3 settlement (Background Paper 2b) with a range of services and transport making it **one of the most sustainable and accessible villages in the County Borough. (our emphasis)***

The loss of green field sites cannot be avoided the approach of the LDP is to choose the least constrained sites (Background Papers 4 and 10).

Paragraph 3.2 of BP02b Settlement Hierarchy and Development Potential (which refers to the Urban Capacity Study) confirms that the housing requirement of the plan cannot be met on brownfield sites alone, therefore greenfield allocation is necessary”.

Further evidence on the sustainability of the proposals is included in the Officer’s Report on the application, at **Appendix 11**. In particular, the Officer states on page 8:-

- *“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”.*

- *“PPW indicates that a search sequence should be followed by local planning authorities when identifying sites to be allocated for housing. Whilst this doesn’t strictly apply to the consideration of planning applications, it nonetheless provides useful guidance. The proposal does not entirely comply with the guidance since it is not within existing settlement limits and is not brownfield. However, in terms of being located within a sustainable location with accessibility to employment, shops, church, schools etc. the site is within easy access on foot and is just as accessible as those within the adjoining settlement. There is also a regular bus service to Wrexham, Whitchurch and Oswestry during weekdays.*

In conclusion on the sustainability of Penley as a location for development, and the situation of the site on the edge of the settlement, it is abundantly clear therefore that the Council regards the development of the Appeal site as sustainable.

On this basis, the Appellant considers it highly unlikely that the Examination Inspectors would deem the LDP to be ‘unsound’ as a result of allocating the site for housing development. The allocation of the site is therefore expected to be confirmed upon publication of the Inspectors’ Binding Report.

4.5 Need for New Homes in Penley

As stated earlier, the Appellant built the 9 properties on the Ellesmere Road frontage to the appeal site, approved under the lack of a 5-year land supply. The Developer specialises in smaller and more affordable 2 and 3-bedroom homes, throughout Wrexham, Shropshire and Powys.

Attached at **Appendix 12** is the selling Agent’s letter regarding the earlier development. This reveals that 7 of the 9 properties were sold “off-plan”, within a few weeks of launch, with many households missing out on properties and asking to be added to the reserve list.

Further local households have subsequently expressed interest in the properties to be developed on the Appeal site.

The Appellant regards the level of interest for the earlier phase (and for the appeal site itself) as evidence of significant pent-up demand for new homes within the area, further demonstrating the critical situation with regard to failing delivery.

4.6 Relevant Recent Appeal Decision at Rossett

The Appellant wishes to draw attention to a very recent Appeal decision which has direct relevance to this Appeal.

The Appeal in question is on Land to the North and South of Lane Farm, Rossett Road, Trevalyn, Rossett, Wrexham, LL12 0DS (Reference APP/H6955/A/19/3231048), which is attached at **Appendix 13**.

Within the Inspector's decision, at paragraph 77, he states :-

“Of particular relevance to the determination of this appeal is the fact that the appeal site has been identified within the settlement limits for Rossett and identified as a housing allocation. Indeed, whilst it is proposed to retain a strategic Green Wedge between Rossett and Trevalyn, the appeal site has been omitted from that designation and has also been omitted from the SLA designation. Such factors also weigh significantly in favour of the development, not least because it represents a concession from the LPA that the site ultimately represents a suitable and sequentially preferable housing site despite the inevitable impact that such a development would have on the landscape character and openness of the site”. **(our emphasis)**

We agree with the conclusions of the Inspector that, in the current housing land supply circumstances prevailing in WCB, the fact that a site is allocated in the emerging LDP should have particular relevance to appeal decisions.

4.7 Sustainability of the Proposed Development

The Appeal site decision notice (at **Appendix 14**) refers to the conflict of the appeal proposals with numerous policies from the Wrexham Maelor Local Plan. This should in fact state the Wrexham Unitary Development Plan, which superceded the earlier Plan, and was adopted in February 2005.

The policies referred to are PS1, PS2, PS3, PS4, PS11, GDP1, GDP2, EC4, EC5, EC6, EC13, H5, T8 and T9.

By reference to the Officer's Report (Appendix 11), these policies are addressed below.

Policies PS1 to PS4, and H5

Policies PS1-4 are strategic policies relating to the broad location of development. **PS1** directs development to within defined settlements. **PS2** seeks to protect countryside, landscape/townscape character, open space and the quality of the natural environment. **PS3** requires development to use brownfield sites in preference to greenfield, wherever possible, especially if greenfield land is of ecological, landscape or amenity value, or good quality agricultural land. **PS4** requires development to maintain the existing settlement pattern and character, and to reduce the need to travel.

Policy **H5** sets out the exceptional circumstances where development will be allowed outside of defined settlement limits.

With regard to these policies, we refer to page 8 of the Officers Report, which states :-

“Despite the fact that the proposal does not fully comply with UDP Policies H5, PS1 and PS3, given the sustainable location of the development and its edge of settlement

location, I accept 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 a minor and logical extension which would follow the existing pattern of development on the Ellesmere Lane. The development is otherwise in compliance with Policy PS2 and PS4 of the UDP”.

The Appellant concurs fully with the Officers assessment of the appeal proposals against these policies.

Policy **PS11** supports proposals which improve the biodiversity value of sites. Policy **EC6** seeks to protect the intrinsic nature conservation value of sites. With regard to these policies, we refer to Page 11 of the Officer’s Report, which states :-

*“**Ecology:** The updated ecological assessment submitted 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. The existing hedgerow is also be enhanced and the development should be carried out under a Reasonable Avoidance Method Statement in relation to the potential presence of Great Crested Newts **in order to ensure that the proposal accords with Policies PS11 and EC6 of the UDP.** This will be secured by way of planning condition along with an amphibian friendly drainage”. (our emphasis)*

The Appellant concurs fully with the Officers assessment of the appeal proposals against these policies. It is further noted that there were no objections to the scheme from Natural Resources Wales.

Policy **GDP2** deals with the capacity of infrastructure and community facilities. The Appeal includes a signed Unilateral Undertaking which secures provision of financial contributions to Schools and play areas. The proposals are therefore fully compliant with this policy.

Policy **EC4** deals with Hedgerows, Trees and Woodland. Pages 13 and 14 of the Officer’s Report included a recommended condition (10) which states :-

“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”.

This suggested condition is acceptable to the Appellant and adequately deals with the requirements of EC4.

Policy **EC5** deals with Special Landscape Areas. **Appendix 15** shows that the Appeal site is included in the SLA on the UDP Inset Map.

However, Page 8 of the Officer's Report also states :-

"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 proposed residential development, set against the backdrop of existing housing, will not have a negative impact upon the character and appearance of the area, and the development complies with this policy".

The LDP Inset Map within Appendix 15 also shows that the proposed allocated housing site is to be excluded from the SLA, once the plan is adopted.

Policy **EC13** deals with Surface Water Run-off. We refer to Page 11 of the Officer's report, which states :-

*"**Drainage:** There are no objections to the scheme from either Welsh Water (WW) or Natural Resources Wales (NRW), or the Council's senior flood management officer. A comprehensive drainage scheme will be required by planning condition which secures a scheme of SuDS including on-site soakaways. I have no reason therefore to think that the surface and foul water cannot be properly managed and the development would therefore comply with Policies GDP1 and EC13".*

The Officer's recommended conditions 7, 8 and 9 also deal adequately with this matter.

Policy **GDP1** is a lengthy policy dealing with the detailed development objectives which apply to all proposals. There are numerous references in the Officer's Report to the Appeal proposals being compliant with this policy.

In conclusion on the Development Plan, there are clearly no technical reasons why the appeal proposals are unacceptable.

5. Conclusion

On the basis of evidence presented in this report, the Appeal proposals are justifiable and sustainable development, compliant with the Development Plan.

It is therefore respectfully requested that the Appeal is allowed.

David Parker Planning Associates, on behalf of the Appellant.

28th February 2020