
Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 10/10/19

gan **Richard E. Jenkins BA (Hons) MSc MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 18.11.2019

Appeal Decision

Site visit made on 10/10/19

by **Richard E. Jenkins BA (Hons) MSc MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 18.11.2019

Appeal Ref: APP/H6955/A/19/3233167

Site address: Woodlands Farm, Dodds Lane, Gwersyllt, Wrexham, LL11 4NS

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Wales and West Housing Association against the decision of Wrexham County Borough Council.
 - The application Ref: P/2018/0997, dated 23 November 2018, was refused by notice dated 1 April 2019.
 - The development proposed is the erection of 23No. affordable residential units with associated parking, landscaping and ancillary works.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 23No. affordable residential units with associated parking, landscaping and ancillary works at Woodlands Farm, Dodds Lane, Gwersyllt, Wrexham, LL11 4NS in accordance with the terms of the application Ref: P/2018/0997, dated 23 November 2018, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. I have taken the site address from the Council's Notice of Decision as it represents a more accurate address than that outlined on the planning Application Form. As this is broadly consistent with that outlined on the Appeal Form, I am satisfied that there is no prejudice in this respect.
3. The appellant has submitted a revised Unilateral Undertaking, under Section 106 of the Act¹. The operative provisions of that document require compliance with obligations relating to: *public open space provision; the provision of affordable housing; and the provision of a Habitat Management Area*. I am satisfied that the Unilateral Undertaking is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related in scale and kind to the development proposed. It satisfies the statutory and policy tests. I shall therefore attribute it due weight in the determination of this appeal.

¹ Signed and dated 8 November 2019

4. The Council's second Reason for Refusal states that: *"Inadequate mitigation proposals have been put forward in respect of Great Crested Newts. The development will therefore adversely impact upon the favourable conservation status of that species and therefore conflict with Policy EC6 of the adopted Wrexham Unitary Development Plan 1996- 2011 (Adopted 2005) (UDP)".*² Nevertheless, in its Statement of Case, the Local Planning Authority (LPA) noted that the appellant had since been in discussions with both Natural Resources Wales (NRW) and the Council's ecologist regarding revised mitigation proposals. Indeed, the Council has since confirmed that, in light of such negotiations, and having regard to the provisions of the submitted unilateral undertaking, the second Reason for Refusal has been addressed, subject to the imposition of suitably worded planning conditions. I have no reason to come to a different conclusion on such a matter and shall, therefore, confine my reasoning to the principal matters of dispute.

Main Issues

5. These are: whether the principle of development is acceptable, having particular regard to the planning policy framework; the effect of the proposed development upon the character and appearance of the area; the effect of the proposed development upon the purposes and openness of the Green Barrier and whether any such harm would be clearly outweighed by very exceptional circumstances; and finally whether the development would result in the unacceptable loss of BMV agricultural land.

Reasons

6. The appeal relates to approximately 1.5 hectares of land located to the north of Dodds Lane on the eastern periphery of Gwersyllt near Wrexham. The site is currently vacant, although it was used for agricultural purposes prior to the appellant's purchase in 2015. The site is bordered by trees and hedgerows and incorporates a hardstanding to the south of the site. The hardstanding was formerly occupied by the buildings of Woodlands Farm which have since been demolished for reasons associated with safety and antisocial behaviour.
7. The appeal proposal seeks full planning permission for the erection of 23No. affordable dwellings, associated parking, landscaping and ancillary works. The site would be developed in an elongated manner and would be dissected by a new vehicular access road that would extend from the existing access onto Dodds Lane. The dwellings would be located on the western side of the proposed access road, backing onto the existing residential dwellings located along Pen-Y-Llyn. The proposed dwellings would therefore have a south-easterly aspect onto the access road, with areas of open space and landscaping on the eastern flank of the proposed estate road.

Principle of Development, Character and Appearance and Green Barrier

8. Despite being time-expired, the adopted Wrexham Unitary Development Plan 1996-2011 (Adopted 2005) (UDP) remains the development plan for the area and the appeal site lies outside of the settlement limits identified within that document. The development would therefore represent development in the countryside for the purposes of planning policy.
9. Policy PS1 of the adopted UDP directs development for housing to areas within defined settlement limits. Policy H5 comprises a criteria-based policy that expands on the principles of Policy PS1, setting out the circumstances where new dwellings in the

² As set out in its Notice of Decision, dated 1 April 2019

countryside would be permitted. Nevertheless, it is common ground that the development proposed in this case does not satisfy the requirements of those policies and I have no reason to come to a different conclusion on this matter. Policy H8 of the adopted UDP allows for affordable housing outside of settlement limits in exceptional circumstances where a proven need can be demonstrated. However, as criterion (a) of that policy restricts such development to no more than 5 dwellings, the appeal proposal would also conflict with the provisions of that policy. It therefore follows that the principle of development would be in conflict with the adopted development plan and, in particular, Policies PS1, H5 and H8.

10. The development would immediately adjoin the existing residential development at Pen-Y-Llyn. Nevertheless, there is little doubt that the appeal proposal would represent a physical incursion into a countryside setting. Indeed, by reason of its scale and nature, the development would inevitably result in the urbanisation of the site and injuriously alter the prevailing rural characteristics of the immediate surroundings. The development would therefore cause harm to the character and appearance of the countryside and conflict with Policies PS1 and GDP1(a) of the adopted UDP which generally seek to protect the countryside and character of the site. It would also conflict with Policy PS2 which states that “*development must not materially detrimentally affect the countryside... or the quality of the natural environment*”.
11. The site lies within a Green Barrier designation defined by the adopted UDP. That designation is akin to the Green Wedge policy tool referred within Planning Policy Wales (PPW)³. Policy EC1 of the adopted UDP states that development proposals within Green Barriers will only be granted planning permission if they are for agriculture, forestry, essential facilities for outdoor sport and recreation, cemeteries and other uses of land which maintain the openness of the Green Barrier and do not conflict with the purpose of including land within it. The development proposed in this case would without doubt comprise ‘inappropriate development’ within the Green Barrier for the purposes of PPW. Moreover, the development would also fail to fall within the types of development permissible by Policy EC1 of the adopted UDP.
12. PPW states that, when considering applications for planning permission within such designations, a presumption against inappropriate development will apply and that substantial weight should be attached to any harmful impact which a development would have on the purposes of the designation. By encroaching into an area of open countryside, and thereby reducing the area of undeveloped land between Gwersyllt and New Rhosrobin, the development would run counter to the purposes of the Green Barrier which seeks to: i) prevent the coalescence of urban areas and villages with other settlements; ii) assist in safeguarding the countryside from encroachment; iii) protect the setting of urban areas and villages; and iv) assist in urban regeneration by encouraging the recycling of derelict and other urban land. There is also little doubt that, given the scale and nature of the development, there would be a material loss of openness at the appeal site.
13. The appeal proposal therefore conflicts with Policy EC1 of the UDP and, in accordance with the advice contained within national policy, such harmful impacts merit substantial weight in the planning balance. Nevertheless, PPW states that inappropriate development should not be granted planning permission except in very exceptional circumstances where other considerations clearly outweigh the harm which such development would do to the designation. Therefore, in order to fully conclude on the Green Barrier policy, it is necessary to consider whether the

³ Edition 10, 2018

arguments advanced in favour of the proposed development amount to 'very exceptional circumstances' that clearly outweigh the identified harm.

14. Given the age of the adopted UDP, and in particular the fact that it is time-expired, there is little doubt in my mind that it attracts less than full weight in the determination of the appeal. Furthermore, in accordance with national policy, the absence of an up-to-date development plan renders the LPA without a five year land supply for housing⁴. PPW requires LPAs to ensure that sufficient land is genuinely available to provide a five year supply of land for housing⁵. As such, and notwithstanding the disapplication of paragraph 6.2 of Technical Advice Note 1: *Joint Housing Land Availability Studies* (JHLAS) (TAN1) and the on-going consultation regarding the wider application of that document, I consider the need to increase the supply to weigh significantly in favour of the appeal.
15. I have fully considered the fact that the emerging Wrexham Local Development Plan (LDP) has been submitted to the Welsh Ministers for Examination and note the Council's contention that the LDP will satisfy the identified housing needs. In this respect, I note the fact that the submitted version of the LDP does not propose a materially different policy context for the appeal site given its inclusion within a Green Wedge designation. Nevertheless, whilst the weight to be attributed to an emerging LDP depends on the stage it has reached, it does not simply increase as the plan progresses. I have not seen anything to indicate that the submitted LDP is to be found sound or indeed that it will be adopted in the immediate future. I therefore consider that the weight to be attributed to such emerging policy should be limited.
16. There is little doubt that the site is located within a broadly sustainable location, accessible to a number of key facilities and services including: Gwersyllt Community Primary School; Ysgol Bryn Alyn Secondary School; Gwersyllt railway station; Gwersyllt Parish Church; and retail facilities. Employment opportunities are also available at the nearby Mold Road Industrial Estate and Rhosddu Industrial Estate. I consider such factors to add weight to the appeal proposal.
17. I have already referred above to the loss of openness should the appeal succeed. Nevertheless, the development would adjoin the built form and, in this respect, I consider that it would represent a logical extension to the village. Moreover, whilst the loss of openness and conflict with the Green Barrier carries substantial weight in the planning balance, I consider that such harmful impacts would be kept to a practical minimum by reason of the proposed design. Indeed, the elongated layout, with the built development confined to the western side of the proposed access road, would ensure that the development would be seen within the context of the existing built form at Gwersyllt. The development would also lie to the north of Dodds Lane, with the nearest form of development at New Rhosrobin lying to the south. Therefore, whilst the appeal proposal would result in the narrowing of the gap between the two settlements, I am satisfied that a physical and visual gap would be retained and their distinctive characteristics preserved.
18. In addition to such matters, I consider the fact that the appeal relates to an application submitted by a housing association for a 100% affordable housing scheme to weigh substantially in favour of the development. Indeed, the evidence indicates that there is a significant need for affordable housing within the area and it would appear that the scheme is deliverable, with the site already in the ownership of a

⁴ TAN1, Paragraph 8.2 (2015)

⁵ PPW, Edition 10, Paragraph 4.2.15 (2018)

Registered Social Landlord (RSL) and Social Housing Grant funding available within the Delivery Program for the next three years.

19. I note the concerns set out in the LPA's Statement of Case which states that the submitted Unilateral Undertaking "...*fails to provide a precise definition of affordable housing, such as social rent, intermediate rent and intermediate shared equity, the likely tenure mix and who will qualify for occupation of the site*". However, I am satisfied that the covenants contained within the undertaking are broadly consistent with national policy, with a clause to ensure that the development would be retained as affordable housing in perpetuity. I note the concerns raised about the exact tenure mix and eligibility for occupation. However, I am satisfied that such concerns could be adequately addressed through the imposition of a suitably worded planning condition, meaning that full weight can be afforded to such positive benefits of the scheme.
20. Based on the foregoing, I consider the fact that the adopted development plan is time expired, the inability of the Council to demonstrate a five year housing land supply, and the sustainable location to weigh substantially in favour of the development. Indeed, when considered alongside the fact that the development would represent a scheme for 100% affordable housing that would make a significant contribution towards meeting local needs, I consider that the matters in favour of the development comprise the very exceptional circumstances required to clearly outweigh both the harm to the Green Barrier and its wider countryside status.

Loss of Agricultural Land

21. It is common ground that the appeal site incorporates best and most versatile (BMV) agricultural land and there is no doubt that such a resource would be lost to the development. The development would therefore conflict with the general aims of Policy EC2 of the adopted UDP which states that development on BMV agricultural land will be permitted if it does not lead to the irreversible loss of that land. Nevertheless, whilst PPW states that such land should be conserved as a finite resource for the future, it also states that such land should only be developed if there is an overriding need for the development, and either previously developed land or land in lower agricultural grades is unavailable, or available lower grade land has an environmental value recognised by a landscape, wildlife, historic or archaeological designation which outweighs the agricultural considerations.
22. I have already set out above the overriding need for housing within the area and the substantial benefits that the development proposed in this case would deliver. In addition, the evidence in this case highlights the fact that a significant proportion of the housing sites identified within the emerging LDP will be delivered on greenfield land and that the housing requirements for the County Borough, including both market and affordable housing requirements, cannot be met without the loss of BMV agricultural land. Indeed, of the 14 sites proposed for allocation in the submitted version of the LDP that currently lie outside of the adopted UDP settlement limits, all contain at least some BMV agricultural land.
23. In light of the foregoing, and bearing in mind the fact that the appeal site would only result in a modest loss of BMV agricultural land, I concur with the view of the LPA's Case Officer that such matters do not represent a sound reason for withholding planning permission. Indeed, I consider the overriding need for development, and the foregoing positive benefits of the scheme, to outweigh such agricultural considerations. Therefore, whilst the proposed development would run counter to Policy EC2 of the adopted UDP, material considerations, including the sequential approach advocated by PPW, indicate that such conflict is justified in this instance.

Other Matters

24. I have considered all other matters raised, including those submitted by interested parties. However, subject to suitably worded planning conditions being imposed, I am satisfied that the development would not represent a material threat to pedestrian or highway safety. Similarly, matters relating to land contamination and drainage can be conditioned, whilst ecological matters can be jointly addressed through the use of planning conditions and the submitted Unilateral Undertaking. The Unilateral Undertaking also makes satisfactory provisions for the issue of public open space. I do not, therefore, consider there to be any other matters that weigh materially against the proposal.

Overall Conclusions

25. Based on the foregoing analysis, I have found that the development would run counter to adopted development plan policies designed to protect the countryside. I have also found that the development would be contrary to the purposes of the Green Barrier. However, the harm to the Green Barrier and the wider countryside and landscape setting would be clearly outweighed by the very exceptional circumstances described above. Furthermore, whilst the development would result in the loss of BMV agricultural land, such harm and associated policy conflict would be justified in light of the provisions of PPW and the particular circumstances of this case. For these reasons, and having considered all matters raised, I conclude that the appeal should be allowed, subject to the imposition of suitably worded conditions.
26. In coming to this conclusion, I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (WBFG Act). I have taken into account the ways of working set out at section 5 of the WBFG Act and consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives, as required by section 8 of the WBFG Act.
27. I have considered the suggested conditions and, having had regard to the advice in Welsh Government Circular 16/2014: *The Use of Planning Conditions for Development Management* (October 2014), have adjusted their wording in the interest of clarity and precision. Reasons for the imposition of each of the conditions are set out in the schedule of conditions attached to this Decision. Given the immediate need for housing, and bearing in mind the advanced stage of the emerging LDP, I agree with the Council that a shorter time commencement period is justified in this case. The Council has suggested a commencement period of two years. However, having regard to the fact that Social Housing Grant funding is available within the Delivery Program for the next three years, I consider a three year period to be reasonable.
28. Whilst not suggested by the Council, I have imposed a condition relating to the provision of affordable housing. As set out above, whilst I am satisfied that the Unilateral Undertaking meets the statutory and policy tests, the Council has raised concerns about the precise definition of affordable housing, the proposed tenure mix and eligibility criteria. Condition No.3 imposed in the attached schedule would address such matters and ensure that the development would comprise 100% affordable housing in accordance with the definition in Technical Advice Note 2: *Planning and Affordable Housing* (TAN2). I am satisfied that there is no prejudice in this respect, not least because it merely ensures that the development would be consistent with the

terms of the application. Finally, I have not imposed the LPA's suggested Condition No.14, as it would be satisfactorily addressed by Condition No.5, below.

Richard E. Jenkins

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be commenced before the expiry of three years from the date of this permission.
Reason: To comply with Section 91(3) of the Town and Country Planning Act, 1990.
- 2) The development shall be carried out in strict accordance with the following plans:
i) 070 Revision P; ii) 110 Revision G; iii) 111 Revision B; iv) 120 Revision F; v) 122 Revision B; vi) 160 Revision B; vii) 161 Revision B; viii) 162 Revision B; ix) 163 Revision B; x) 170 Revision C; xi) 171 Revision B; xii) 175 Revision B; xiii) 176 Revision B; xiv) 200 Revision B; xv) 201 Revision A; and xvi) 202 Revision A.
Reason: To comply with section 71ZA (2) of the Town and Country Planning Act 1990.
- 3) No development shall commence until a scheme for the provision of the affordable housing has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex B of Technical Advice Note 2: *Planning and Affordable Housing* (TAN2) or any future guidance that replaces it. The scheme shall include:
 - i) the tenure mix and location on the site of the affordable housing provision to be made which shall consist of not less than 100% of the housing units hereby approved;
 - ii) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
- 4) No 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.

Reason: To ensure the amenity afforded by the trees within the site is continued into the future in accordance with Policies GDP1, PS2 and EC4 of the Wrexham Unitary Development Plan.

- 5) No development shall commence until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented and thereafter managed and maintained in strict accordance with the details as approved. Those details shall include:

a) a timetable for its implementation, and

b) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.

Reason: To ensure that effective drainage facilities are provided for the proposed development, and that no adverse impact occurs to the environment or the existing public sewerage system in accordance with Policies GDP1 and EC13 of the Wrexham Unitary Development Plan.

- 6) No development shall commence 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.

Reason: In the interests of the amenities of the future occupants of the buildings in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

- 7) Each part of the site subject to the remediation under the scheme(s) approved as part of Condition No.06 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.

Reason: In the interests of the amenities of the future occupants of the buildings in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

- 8) No development shall commence until a scheme of Reasonable Avoidance Measures (RAMs) in respect of Great Crested Newts has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in strict accordance with the scheme as approved.

Reason: In order to protect statutory protected species in accordance with policy EC6 of the Wrexham Unitary Development Plan.

- 9) No development shall commence until the following have been submitted to and approved in writing by the Local Planning Authority:
- a) A detailed plan of mitigation area for Great Crested Newts;
 - b) An Ecological Method Statement including a timetable for the implementation of the habitat mitigation measures;
 - c) A long term Management and Monitoring Plan for the mitigation area; and
 - d) A Biosecurity Risk Assessment.

Great Crested Newt mitigation shall thereafter be provided and thereafter permanently retained and managed in strict accordance with the details as approved

Reason: In order to protect statutory protected species in accordance with policy EC6 of the Wrexham Unitary Development Plan.

- 10) Prior to the construction of the dwellings hereby approved, details and/ or samples of all external facing and roofing materials shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: 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.

- 11) Within three months of commencement of development, full details of a hard and soft landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. Hard landscaping works shall be implemented in full prior to the first occupation of the dwellings hereby granted planning permission. Soft landscaping shall be carried out in the first planting season (November to March) or seeding season (April to September) following the first occupation of the dwellings.

Reason: 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) Prior to first use of the development hereby approved the vehicular access shall provide visibility splays of 2.4 metres x 33 metres in both directions measured to the nearside edge of the adjoining highway. Within these splays there shall be no obstruction in excess of 1 metre in height above the level of the nearside edge of the adjoining highway. The splays shall thereafter be permanently retained clear of any such obstruction to visibility.

Reason: To ensure that adequate visibility is provided at the proposed point of access to the highway in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

- 13) Nothing shall be planted, allowed to grow or erected to a height greater than 0.5 metres in height above the level of the nearside edge of the adjoining highway for a distance of 2.4 metres measured back from the adjoining highway along the entire site frontage of plot 7. The splays shall be provided prior to first use of the development and shall thereafter be permanently retained clear of any such obstruction.

Reason: To ensure that adequate visibility is provided at the proposed point of access to the highway in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

- 14) The vehicular parking and turning areas for each plot as shown on approved drawing(s) No 070 Revision P shall be fully laid out, surfaced and drained prior to the first occupation of that plot. These areas shall thereafter be permanently retained and kept free of any obstruction, and made available solely for the parking and turning of motor vehicles at all times.

Reason: To ensure that adequate visibility is provided at the proposed point of access to the highway in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.