
Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 12/02/20

gan Joanne Burston BSc MA MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 24.04.2020

Appeal Decision

Site visit made on 12/02/20

by Joanne Burston BSc MA MRTPI

an Inspector appointed by the Welsh Ministers

Date: 24.04.2020

Appeal Ref: APP/H6955/A/19/3240973

Site address: Land west of Bryn Isa, Vicarage Lane, Gresford, Wrexham LL12 8UR

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 Gower Homes Ltd and the owners (Miss C Houston, Miss K Houston, Mr M Houston and Mrs K Davenport) against the decision of Wrexham County Borough Council.
 - The application Ref P/2018/1063, dated 13 December 2018, was refused by notice dated 29 July 2019.
 - The development proposed is residential development for 44 no. residential dwellings (of which 25% (11 no.) will be affordable), public open space, landscaping, means of highway and pedestrian access, local highway and pedestrian infrastructure improvements along Vicarage Lane, foul sewerage pumping station and new off-street resident parking provision for existing residents.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Gower Homes Ltd and the owners (Miss C Houston, Miss K Houston, Mr M Houston and Mrs K Davenport) against Wrexham County Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal site is located in the Lavister (North West and East) 'Green Barrier'. The Wrexham Unitary Development Plan uses the term 'Green Barrier' rather than 'green wedge'. Nevertheless, the function of the Green Barrier is essentially the same as the Green Wedge as defined in Planning Policy Wales, Edition 10 (PPW), it is only the terminology which differs. In order to maintain consistency with national planning policy, the term green wedge is used in this decision.
 4. A completed agreement under Section 106 of the Town and Country Planning Act (S106) was submitted with the appeal. The S106 makes provision for 25% affordable housing, on-site public open space, and contributions to education provision. I am satisfied that the agreement would accord with the tests set out in the Community
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Infrastructure Levy Regulations and I have had regard to its' provisions in the consideration of this appeal.

5. The adopted development plan for the area is the Wrexham Unitary Development Plan 1996- 2011 (Adopted 2005) (UDP). Whilst it is time expired, until the Wrexham Local Development Plan (LDP) is adopted, the UDP remains operative¹.
6. It has been brought to my attention that the Wrexham LDP is currently undergoing examination prior to being formally adopted. The weight to be attached to an emerging LDP when determining planning applications will in general depend on the stage it has reached but does not simply increase as the plan progresses to adoption. Policies could ultimately be amended or deleted from the emerging plan even though they may not have been the subject of a representation at deposit stage (or be retained despite generating substantial objection). Certainty regarding the content of the emerging plan will only be achieved once the Inspector publishes the binding report.
7. I have had regard to the Ministerial letter dated 26 March 2020², which sets out that high quality new homes in the right locations are essential for our future wellbeing. Accordingly, a number of changes were announced including:
 - Revisions to the 'Housing Delivery' section of Planning Policy Wales, edition 10 (PPW). The changes remove the five-year housing land supply policy and replace it with a policy statement making it explicit that the housing trajectory, as set out in the adopted LDP, will be the basis for monitoring the delivery of development plan housing requirements as part of LDP Annual Monitoring Reports (AMRs).
 - The revocation of Technical Advice Note (TAN) 1: Joint Housing Land Availability Studies (January 2015) in its entirety as a consequence of the policy change to PPW.
 - Publication of the Development Planning Manual, Edition 3 (DPM) which provides additional guidance on the process of monitoring against the housing trajectory.

Further comments on the implications of these changes were invited and have been taken into account in my consideration of this appeal.
8. In reaching my decision, I have also taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective of driving sustainable growth, building better environments and resilient, cohesive communities.

Main Issues

9. As the appeal site is within the green wedge the main issues are:
 - whether the proposal is inappropriate development for the purposes of the development plan and Planning Policy Wales, Edition 10 (PPW);
 - the effect of the proposal on the openness of the green wedge;

¹ This provision is made under the Planning and Compulsory Purchase Act 2004 (Commencement No.6, Transitional Provisions and Savings) Order 2005 – S.I.2005/2847(C.118).

² Letter from Julie James AC/AM Minister for Housing and Local Government, ref: Housing.

- the effect of the proposal on the character and appearance of the area bearing in mind the appeal site's location within a Special Landscape Area (SLA)
- the effect of the proposed development on pedestrian and highway safety;
- housing land supply; and
- if the proposal is inappropriate development, whether the harm to the green wedge by reason of its inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very exceptional circumstances necessary to justify it.

Reasons

10. The appeal site is an undulating agricultural field, currently set to grass. It is enclosed by hedgerows and mature trees along its boundaries. To the north and west is the settlement of Gresford, with Vicarage Lane running adjacent to the northeast boundary. A public footpath is located to the east of the appeal site.

Whether inappropriate

11. Policy EC1 of the UDP only permits development within a green wedge if it is 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"*. Paragraphs 3.71- 3.74 of PPW set out those categories of development which may be regarded as not inappropriate, subject to certain conditions.
12. Policy PS1 of the 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 countryside would be permitted. The appeal site lies outside of the settlement limits identified within the UDP and does not satisfy the circumstances set out in policy H5. Accordingly, the development would conflict with the purposes of including land within the green wedge and would be in conflict with the adopted development plan and, in particular, UDP Policies PS1 and H5.
13. As the development would not conform to any of the specified exceptions, I can find no support for the proposal in relevant policies of PPW or the development plan. Bearing in mind that it is not one of the other forms of development specified in PPW paragraph 3.73, I therefore find that the proposal would amount to inappropriate development in the green wedge. PPW states³ 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 Green Belt or green wedge."*

Openness

14. Paragraph 3.61 of PPW indicates that openness is an essential characteristic of the Green Wedge. It follows that openness is defined by an absence of buildings or other forms of development. The construction of 44 dwellings on a previously open site would therefore harm the openness of the green wedge. Moreover, the fundamental aim of green wedge policy is to keep land permanently open and this would clearly not be the case in this particular instance.

³ Paragraph 3.70

15. PPW advises that substantial weight should be attached to any harm to the green wedge. I have attached such weight in this instance because of the harm that would be caused to the green wedge by reason of the inappropriateness of the proposal and the loss of openness.

Character and appearance

16. The site is within a Special Landscape Area (SLA) and forms part of the Gwersyllt, Llay, Gresford, Borrass Landscape Character Area (LCA). The appellants' Landscape and Visual Impact Assessment (LVIA) states that the LCA is characterised by *"valuable lowland plateau of well drained agricultural land, sand and gravel extraction, and commuter villages with a mining history, which surrounds Wrexham to the north and east. This character area is a centrally situated lowland terrace which has historically been a favourable area for settlement and farming. Its extent and character are threatened by urban growth, road corridors sand & gravel quarrying."* I note that the overall management strategy is conservation, mitigation, restoration and enhancement.
17. PPW, paragraph 6.3.12 sets out that *"SLA's are non-statutory designations that define local areas of high importance, which may be unique, exceptional or distinctive to the area."* This is reinforced by UDP Policy EC5, which states that *"Within Special Landscape Areas, priority will be given to the conservation and enhancement of the landscape. Development, other than for agriculture, small-scale farm-based and other rural enterprises, and essential operational development by utility service providers, will be strictly controlled. Development will be required to conform to a high standard of design and landscaping, and special attention will be paid to minimising its visual impact both from nearby and distant viewpoints."*
18. The special landscape characteristics of the site includes undulating topography with the site and neighbouring field parcels having a relatively intact field pattern. Essentially, however, the site's intrinsic value arises from the undeveloped and open field, gently undulating upwards towards the settlement of Gresford. This contributes to the countryside's fundamental beauty and the setting of the village.
19. In terms of visibility, due to the site's position and the gently undulating topography, the site is visible from several locations which I observed during my visit. The most elevated portion of the site in the north east corner is visible from many vantage points to the south. However, this is viewed in the context of the surrounding settlement to the east, which presents a severe and distinct edge between urban and rural.
20. The southern part of the site is mostly screened from southerly views due to a combination of the topography and existing trees. However, when nearer to the site, users of the public footpath⁴ would have views across the development area. Given the topography, most of the site is seen when traveling along Vicarage Lane.
21. The soft landscape proposals plan indicates that there would be several pockets of open space and planting would be provided, along with hedgerow reinstatement and retention. Once matured this would soften the visual and landscape effects and somewhat ameliorate the impact of the development, particularly on the more visible parts of the site. It would also present a softened edge to the urban boundary. I also accept that the housing layout will develop different character areas within the site

⁴ Public Right of Way Gresford No 12

allowing an interesting sense of place and individuality, whilst maintaining a link to the overall character of Gresford.

22. However, even considering these measures, the scale of the proposal would fundamentally result in an irreversible and obvious loss of an undeveloped part of the countryside to encroachment, which is a threat to the SLA hereabouts.
23. Consequently, the proposal would, on balance, have a moderately adverse effect upon the landscape character and appearance of the area. This would be contrary to policies PS1, PS2, EC1, EC5 and H5 of the UDP, which together set out, amongst other matters, that development must not materially detrimentally affect countryside and landscape character.

Highway safety

24. The appeal site is located close to the facilities of Gresford. However, the Council is concerned that future occupiers would have to walk approximately 130 metres along Vicarage Lane without the benefit of a continuous footway link to access the shops and services. The Council states that the development does not meet Technical Advice Note 18 (TAN18) guidelines, in particular paragraphs 3.4 and 3.6 which require residential developments to provide safe walking and cycling routes to local facilities and public transport stops.
25. PPW reinforces the provisions of TAN18 and states at paragraph 4.1.33 that *"in determining planning applications, planning authorities must ensure that development proposals, through their design and supporting infrastructure, prioritise provision for access and movement by walking and cycling and, in doing so, maximise their contribution to the Active Travel Act."*
26. Vicarage Lane is of a narrow width, with limited opportunity to construct any footways along its length. The appellant has proposed a number of measures to improve highway safety including: a new priority site access junction; off-street parking; and an off-site footway / give-way priority control system / traffic calming improvement scheme on Vicarage Lane, designed primarily to improve pedestrian provision through the most constrained section of the lane between the site and the centre of the village⁵. With these improvements in place there would remain only a short section of some 80 metres along Vicarage Lane without a footway.
27. I saw that visibility along Vicarage Lane is good, due to the generally straight layout of the road. This will allow for vehicles to wait and pass at wider points on the road. I am mindful that Vicarage Lane currently provides vehicular access for several properties at present, including Trewythen Hall Residential Home and farm units where HGV access is required. The appellants' have provided highway accident data which highlights that no accidents have occurred along Vicarage Lane in the vicinity of the appeal site. Furthermore, as noted above, the proposals show improvements to the lane. I consider such measures would only lead to an enhancement in the ability of drivers to safely negotiate Vicarage Lane.
28. A proportion of Vicarage Lane would be a shared route for vehicles, cyclists, pedestrians, and those with mobility problems. Accordingly, due to the narrow width of the highway, this could lead to potential conflict between these users. This is an important matter to consider, and I agree that a safe route is needed to ensure future residents would feel secure in using the access by foot or cycle.

⁵ As set out on drawing 2479-01-SK02 rev B

29. Although pedestrians, cars and lorries have used Vicarage Lane for years, in my view the development of the site for residential purposes means that the nature of vehicular and pedestrian activity would change significantly. A development of predominantly family housing is likely to mean more activity throughout the day and evening and more pedestrians, including children, mothers pushing prams, elderly people, dog walkers etc. These factors differentiate this scheme from that considered in appeal decision reference APP/H6955/A/15/3095184.
30. Whilst I accept that the time spent in the shared section of the highway would be of short duration so that the actual time for potential for conflict between pedestrians and vehicles would be very short but, in my judgement, given the number of dwellings proposed, the number of additional pedestrians using this route throughout the day would be significantly increased and so the potential for conflict would be greater. Along this stretch of shared highway vehicles are likely to have to impinge on the pedestrian margin if another vehicle is coming in the other direction. Although drivers would be travelling slowly, the more activity generated the more pedestrians are likely to feel intimidated and there would be few areas where they could feel safely out of the way.
31. Although acceptable changes could be made to Vicarage Lane, there are significant shortcomings and safety issues relating to pedestrian safety for the level of housing proposed. It is an existing public highway, but the scale of the development proposed increases the potential for vehicle/pedestrian conflict. As such I find that the proposal would not provide safe links to public transport stops, local shops and facilities as required by TAN 18. Neither would it be consistent with UDP Policy GDP1(d) which seeks to ensure safe and convenient pedestrian and vehicular access to and from development sites, both on site and in the nearby locality.

Housing land supply

32. Housing land supply needs to be soundly based on meeting identified housing requirements based on appropriate household projections and local evidence, which requires an adopted LDP to be in place⁶. Where there is no LDP for an area, transitional and savings provisions apply in relation to the area of any authority in Wales until the LDP for that area has become fully operative. Therefore, any existing development plan (i.e. Unitary Development Plan, Structure Plan or Local Plan) will cease to have effect for the area of the appropriate authority when an LDP becomes operative for that area.⁷
33. Given the revocation of TAN 1 the decision maker has the discretion, based on the evidence and facts of the appeal, to determine the weight to be applied to housing need. In the case before me the Council accepts that there is a shortfall of housing land supply but submits that steps are being taken to address it through the emerging Local Development Plan (eLDP).
34. In this respect I note the appellants' evidence that the eLDP examining Inspector has raised questions relating to housing land supply (HLS) and the release of further land within tier 2 and 3 settlements⁸. I also acknowledge the concerns raised by the

⁶ Part 6 of the Planning and Compulsory Purchase Act 2004

⁷ Paragraph 7.22 DPM.

⁸ The appeal site is adjacent to the tier 2 settlement of Gresford. The Council has provided the examining Inspector with a list of reserved sites, on which the appeal site is listed as amber (constrained).

appellants that the eLDP has an over reliance upon unknown windfalls and the lack of a non-deliverance allowance.

35. I also acknowledge that as part of the evidence base to support preparation of the eLDP the Council undertook green wedge and SLA reviews. These reviews proposed that the appeal site be removed from such allocations.
36. Whilst the eLDP is at an advanced stage, I am mindful that the Plan's examination is still ongoing, and the Inspectors are yet to submit their report. In such circumstances I consider that only limited weight can be given to the eLDP.
37. Nonetheless, it is not for me to make a judgement on the outcome of the ongoing LDP examination. Therefore, as it stands there is a need for housing, a matter which weighs significantly in favour of the appeal.

Other considerations

38. I have fully considered the appellants' reference to other planning and appeal decisions within the local area, said to be made in similar circumstances. However, I am not aware of the full details of these cases to enable a detailed assessment of the schemes. A number of these decisions were also made in other local authority areas which would be subject to different policies than the appeal before me.
39. I note the approach taken by the Inspector to a development in the green wedge⁹. Whilst her decision was to allow the appeal, this was based on the weight attached to the material considerations before her, which is a matter of planning judgement. She concluded that very exceptional circumstances exist, in terms of the increase to housing supply, and that there were no other matters to weigh against the proposal which therefore justified the proposed development within the Green Barrier. This differs in the case before me as I have found harm to highway safety and character and appearance.
40. With regard to those appeal decisions relating to highway matters, whilst the highway management measures used were similar and that the Council might have found a shared highway surface acceptable, the local context and environment in which those schemes operated varies from the appeal now before me. In any event, each case should be treated on its own particular merits. I do not therefore consider the reference to other developments to weigh heavily in favour of the development.
41. The appellants' state that the ongoing Covid-19 pandemic raises "*significant implications for housing delivery and supply, delivery of infrastructure and economic recovery after the Covid-19 crisis is over*" "*Once the Covid-19 impasse is removed it will be at that time a scheme like this will be needed more than ever to restore economic investment, provide new homes and secure jobs that have been mothballed. In our opinion, this translates to suggest that economic considerations must, more than ever, be given significant weight in an appeal like this.*"
42. I accept that the pandemic has caused a worldwide economic slowdown, however, the economy is subject to such ebbs and flows and therefore this situation is not exceptional in itself. The Well-being of Future Generations Act 2015 places a duty on public bodies to carry out sustainable development and in so doing take into account the seven wellbeing goals. Utilizing this approach achieves the right development in the right place. Whilst the proposed development may deliver on growing the Welsh

⁹ Appeal reference APP/H6955/A/17/3182282

economy it fails to facilitate 'accessible environments' and 'limiting environmental impact'. Thus, little weight can be afforded to the economic benefits put forward.

43. The submitted S106 Legal Agreement would satisfy the legal tests for S106 planning obligations and would overcome the concerns raised by local residents in terms of pressure on local education infrastructure. Planning conditions could also be used to address ecological and flooding matters. However, the S106 and conditions do not alter my conclusions in respect of this appeal.

Overall balance

44. PPW states that inappropriate development should not be approved except in very exceptional circumstances. These will not exist unless the potential harm to the green wedge by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
45. Substantial weight must be given to the harm to the green wedge due to the inappropriate nature of the proposed development and the harm that this would cause to openness. Furthermore, significant weight is attached to the harm to highway safety and moderate weight attributed to the harm to the character and appearance of the area.
46. On the other hand, the proposed dwellings would make a make a contribution to housing supply, including the provision of 25% affordable housing. I attach significant weight to this matter. I also afford modest weight to the eLDP (and its evidence base) and little weight to the economic benefits.
47. The proposed development requires off-site highway improvements. Whilst these may benefit the wider area, they are nonetheless necessary to mitigate the increase in traffic arising from the development. Therefore, I give little weight to these factors in the overall balance.
48. The majority of the identified benefits are generic and no more than would be expected from any housing development. The benefits do not address the fundamental issue of the site's location within the green wedge. Taken together the benefits do not comprise the very exceptional circumstances necessary to clearly outweigh the harm to the green wedge.

Conclusion

49. For the above reasons and having regard to all other matters raised, I therefore conclude that the appeal should be dismissed.

Joanne Burston

INSPECTOR