



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: 20.11.2019

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: 20.11.2019

Appeal Ref: APP/H6955/A/19/3231308

Site address: Land Opposite Maesllwyn Close, East of Mill Road, Bronington, Whitchurch, Wrexham, SY13 3HJ

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 outline planning permission.
 - The appeal is made by Messrs BH, EA and CR Williams against the decision of Wrexham County Borough Council.
 - The application Ref: P/2018/1061, dated 26 November 2018, was refused by notice dated 8 February 2019.
 - The development proposed is outline application for residential development with all matters reserved.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the site address and description of development from the Council's Notice of Decision. As those details are consistent with the corresponding information on the Appeal Form, I am satisfied that there is no prejudice in this respect.
3. The Council's third Reason for Refusal, as set out in its Notice of Decision, relates to the effect of the proposed development upon the longevity, health and well-being of the trees on site. Nevertheless, an amended site layout has been submitted through the appeal process that reduces the number of dwellings from six to five. Having considered that information, the Local Planning Authority (LPA) now accepts that, subject to the imposition of suitably worded planning conditions, the development could be designed so as to be compliant with Policy EC4 of the adopted Wrexham Unitary Development Plan 1996- 2011 (Adopted 2005) (UDP). I have no reason to come to a different conclusion on such a matter. I shall therefore confine my reasoning to the outstanding matters of dispute.

Main Issues

4. These are: whether the development proposed is acceptable in principle, having particular regard to the planning policy framework and other material considerations; the effect of the proposed development upon the character and appearance of the area; whether the development proposal makes satisfactory provision for the drainage of surface water; and the effect of the proposed development on local ecology.
-

Reasons

Principle of Development/ Character and Appearance

5. The appeal site is located outside of the settlement limits defined by the adopted UDP and is therefore classified as countryside for the purposes of planning policy. 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 countryside would be permitted. However, the development proposed in this case would not fall within the policy exemptions referred under criterion (a) of Policy H5 and, as the development would not represent 'infilling' or a 'rural enterprise' development, it would also conflict with criterion (b) and (c) respectively. The principle of development would therefore run counter to the strategy of the adopted UDP.
6. The development would be located directly opposite the vehicular access to the existing residential development at Maesllwyn Close. Nevertheless, it would be located on the opposite side of Mill Road to that development and, despite being located within relative close proximity to Ty Melin to the south and Pear Tree House to the north, it would undoubtedly represent both a physical and visual incursion into a countryside setting. Indeed, the residential development of the elongated appeal site would, by reason of its scale and nature, urbanise and injuriously alter the prevailing rural characteristics of the immediate surroundings, to the detriment of the character and appearance of the countryside. The development would thereby conflict with the general thrust of Policies PS1, PS2, PS3, PS4 and GDP1 of the adopted UDP.
7. It is clearly relevant that the adopted UDP is time-expired. Indeed, in accordance with national policy, the absence of an up-to-date development plan renders the LPA without a five year land supply for housing. I therefore consider, despite 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, the need to increase the supply of housing land to be a significant material consideration that weighs in favour of the development. The appeal site is not allocated for housing in the emerging Local Development Plan (LDP), which has been submitted for independent Examination. The fact that the LDP allocates significant areas of greenfield land is material to the determination of the appeal however, not least because it demonstrates that the identified housing need cannot be met without the release of currently protected greenfield land.
8. Nevertheless, having considered all matters raised, I do not consider the matters in favour of the development to justify the harm and policy conflict identified in this case. In coming to this conclusion, I have been particularly mindful of the substantial harm that would arise to the countryside setting. I am also mindful of the limited sustainability credentials associated with the proposed development and the fact that the development would only make a limited contribution to the local housing land supply. It is also notable that the dwellings proposed would not constitute affordable housing¹. Whilst the weight to be attributed to the emerging LDP is limited given that it has yet to be found sound, the fact that the preparation of that document is at such an advanced stage also weighs modestly against the proposed development, not least because it incorporates a strategy that seeks to address the aforementioned housing need. I therefore find the identified harm and fundamental conflict with the adopted development plan to outweigh the various matters in favour of the development.

¹ As defined by Technical Advice Note 2: *Planning and Affordable Housing*

Surface Water Drainage

9. The LPA's second Reason for Refusal relates to the contention that insufficient evidence has been submitted to demonstrate how surface water would be drained from the site. Within this context, it is relevant to note that the evidence indicates that land within the vicinity of the appeal site is identified as being at risk of surface water flooding. The appellants have submitted information through the appeal process to indicate how they envisage the site being drained. However, no evidence has been submitted to support the feasibility of the options discussed. Specifically, no infiltration testing or wider assessment of the local drainage network has been undertaken.
10. I recognise the fact that the application is submitted in outline only. However, as such matters are central to the principle of development, I do not consider the Council's objection to the scheme on such grounds to be unreasonable. Similarly, whilst I acknowledge the requirement for SUDs approval under Schedule 3 of the Flood and Water Management Act, given that the application pre-dates 7 January 2019, it remains uncertain whether the need for such approval would be triggered in this instance. It therefore remains a matter to be addressed through the planning system. For these reasons, I uphold the Council's contention that there is inadequate information to determine whether the surface water could be satisfactorily drained from the site. The development proposal therefore conflicts with the aims of Policy GDP1 and Policy EC13 of the adopted UDP. For the same reasons, it would also conflict with the general thrust of national policy relating to site drainage and flood risk².

Ecology

11. The appeal site represents heavily overgrown scrubland incorporating a range of trees and hedgerows, with the evidence indicating that such features provide a locally valuable habitat for nesting birds, reptiles, hedgehogs and foraging bats. Whilst the Ecological Appraisal submitted in support of the appeal outlines a number of reasonable avoidance measures to avoid disturbances to species, and a number of enhancement opportunities in the form of bat and bird boxes, it remains clear that a significant proportion of the on-site habitat would be lost to facilitate the development and associated works. I note the fact that Natural Resources Wales (NRW) have commented that the development would not be likely to be detrimental to the maintenance of the favourable conservation status of the population of protected species subject to the imposition of conditions. However, the loss of the locally valuable habitat remains unjustified by the need or benefits associated with the development. In coming to this conclusion, I have been mindful that, given the modest size of the site and the type of development illustrated on the indicative plans, it would not be possible to avoid or effectively mitigate against the loss of habitat and neither have I seen anything to indicate that it would be replaced.
12. I therefore find that the development would conflict with the general thrust of Policies PS3, EC6 and GDP1 of the adopted UDP, as well as the aims of national policy.

Overall Conclusions

13. Based on the foregoing analysis, and having considered all matters raised, I conclude that the appeal should be dismissed. 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 (WCFG Act). I have taken into

² Planning Policy Wales (Edition 10, 2018) and Technical Advice Note 15: *Development and Flood Risk*

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.

Richard E. Jenkins

INSPECTOR