

APPENDIX 2

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Your ref / Eich cyf:
KL/1279/APP
Our ref / Ein cyf:
APP/H6955/A/97/510824/T

Date / Dyddiad: 19 NOV 1997

Dear Mrs Ludlam

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6
APPEAL BY LIVESEY DEVELOPMENTS LTD.
APPLICATION NO: ROS CB01060

1. As you know, I have been appointed by the Secretary of State for Wales to determine this appeal against the decision of the Wrexham County Borough Council to refuse planning permission in respect of an application for the redevelopment of a site with 18 dwellings, including the conversion of existing buildings on land at Gamford Farm, Gamford Lane, Rossett. I conducted a hearing into the appeal on 4 November 1997.

2. From all I have read, heard and seen I consider that the main issues in this appeal having regard to development plan policies and to national planning guidance are, firstly the effect of the proposals on the character and appearance of the area and secondly their effect on highway safety.

3. Turning to the first issue, there is no dispute that the appeal site lies outside the settlement boundary of Rossett defined in the adopted local plan, and within an area designated in the plan as a 'Green Barrier' and an area of Special Landscape Value. Policy H5 of the plan states that new dwellings outside settlement boundaries will only be permitted in certain specified circumstances. The proposal before me would see the demolition of all but one of the existing buildings on the site and their replacement with new dwellings. It was agreed during the hearing that the proposal does not accord with any of the specified circumstances listed in policy H5, with the exception of the one building on the site which is to be retained, converted and extended to provide residential accommodation.

4. You argued that policy H5 establishes a principle that residential development is acceptable outside a settlement boundary additional to those specific circumstances listed in the policy; that is, that the policy is not exclusive. You submitted that it is quite possible for a site with buildings suitable for conversion to residential use to produce a scale of development similar to that which is proposed; that is, developments of this

scale are not unique in the countryside. This may well be true, but I cannot accept that a principle is established by policy H5 which allows existing buildings to be replaced with new build. It seems to me that the limitations established by the policy are quite clear by the use of the words 'will only be permitted where'. My understanding of these words is that they preclude any exceptions other than those specified in sub paragraphs a), b) and c) of the policy. I am in no doubt that the proposal is contrary in principle to this fundamentally relevant policy of the development plan.

5. You are aware that Section 54A of the Act requires that a decision on a planning application shall be made in accord with the development plan unless material considerations indicate otherwise. It seems to me that if this appeal is to be allowed then it must be on the grounds that there are material considerations which outweigh development plan policy.

6. Policy H2 of the approved structure plan and S3 of the local plan deal with the matter of development within a green barrier. They seek to resist development in such an area which would be detrimental to the open character of the area. I acknowledge that the appeal site is already extensively developed with existing buildings of various sizes and has extensive hard surfacing providing access and linking the buildings together. I also acknowledge that the proposal before me would reduce the area covered by buildings and would introduce landscaping to soften the impact of the development and create a more 'open' character to the site.

7. Nevertheless, it is my firm opinion that the existing character of the appeal site and its surrounding area is that of a wholly rural agricultural one. I consider that the open character of the area derives not only from the sporadic development, the fields and hedgerows and so on, but also from the fact that almost everything in this landscape is rural, is agricultural, in use terms. There is a cohesive appearance in the character of the area which gives it its definition as open countryside. Although the appeal site is intensively developed with buildings they are buildings which are agricultural in appearance, and I understand were built for that purpose. The past use of significant haulage traffic was, I understand, predominantly related to the agricultural use of these buildings. Moreover, I saw that it is not uncommon for farms in the area to have substantial farm buildings. I consider therefore that the site does not appear as an incongruous non-conforming use, but rather as an acceptable, albeit substantial, agricultural development in the landscape.

8. The proposed development would completely change the character and appearance of the site. I accept that it would be a high quality development and that the design concept seeks to provide a rural character to it. Nevertheless, only one of the existing buildings would be retained and even this building has little or no existing architectural merit and would be significantly altered in appearance. This is not a proposal

which would retain any of the existing character and appearance of the site. A rural agricultural character would be replaced by a modern housing development in an area of open countryside, a non-conforming use alien and detrimental to its surroundings. I accept that the proposal would not be new development on a greenfield site, but I consider that this particular proposal would not accord with the objectives of the green barrier policies nor with Government policy to safeguard the countryside for its own sake.

9. You have drawn my attention to the fact that the existing buildings are not now in active use; some of the pig sty structures have been removed and other buildings are being neglected. There is also a substantial amount of disused machinery and waste materials stored on land adjacent to the buildings. The removal of eyesores would clearly be of benefit but I am not persuaded that it is necessary to develop the site as proposed in order to effect such visual improvement. In my opinion many of the buildings are not so far neglected that they are of little or no use for the purpose for which they were originally built.

10. I conclude on the first issue that the proposal is not in accord with the relevant policies of the development plan, that it would be detrimental to the character and appearance of the area in that it would replace a rural agricultural development in sympathy with its surroundings with an incongruous intrusive housing development and that there are no material considerations which outweigh this conclusion. I have given careful consideration to the amended elevations of the dwellings which would face Rossett village, submitted since the Hearing, but consider that they do not outweigh the fundamental objection to the proposal set out above.

11. I turn then to the second issue, that of highway safety. Your statement for the hearing included plans showing improvements to the junction of the site with the highway and the provision of a pedestrian footway part way along Gamford Lane. The Council accepted that these improvements met its main concerns, subject to a further extension of the footway, to which you were agreeable. It was the Council's view that although Gamford Lane is substandard both in width and visibility nevertheless the traffic which would be generated by the proposed development would not result in a situation which would justify dismissing the appeal on highway safety grounds.

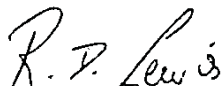
12. A number of local residents have drawn attention to the dangers of the lane and to its use at peak hours as a 'rat run'. The survey data produced by one of the residents was accepted as being reasonable in terms of the peak hour flows which were recorded. The lane has no footways, varies in width from a minimum of just over 4m and has bends which significantly restrict forward visibility. I noted that it is not uncommon for vehicles to have to slow down significantly when passing each other, and there are reports of minor accidents involving, for example, damage to wing mirrors.

13. It seems to me that this is a situation where an increase in traffic using the lane will add to the existing hazards. The appeal site currently generates little traffic, although a resumption of agricultural activity could be on an intensive scale and involve the use of heavy goods vehicles and other slow moving vehicles. In my opinion it is difficult to determine from such speculation with any degree of certainty whether a resumption of use would create worse highway safety problems than would the proposed residential use of the site. Of course it may well be that no intensive agricultural use of the site is resumed, in which case the proposed residential use would in my view add to the hazards of the lane. Any other use of the site would require planning permission and the local planning authority would assess the traffic and highway safety impact in coming to a decision on any application. Whilst I understand the concerns of the local residents, on balance I see no reasoned justification to come to a conclusion which is different to that expressed at the hearing by the Council. Nevertheless, I conclude on this issue that although it is not a matter which justifies dismissing the appeal there is justifiable concern about highway safety on Gamford Lane other than that which can be dealt with by means of the proposed improvements and it is therefore a matter which adds some weight to my overall conclusion.

14. I have considered all other matters raised during the course of the hearing, including the other appeal decisions to which you have drawn my attention, but they do not alter my conclusion that the appeal should be dismissed.

15. For the above reasons, and in exercise of powers transferred to me, I hereby dismiss this appeal.

Yours sincerely



R D LEWIS BSc(Hons) MRTPI
Inspector

APPEARANCES

FOR THE APPELLANT

Mrs K Ludlam	- Ludlam Associates, 634 Wilmslow Road, Didsbury, MANCHESTER, M20 3QX
Mr R Heathcote	- Livesey Developments Ltd.

FOR THE LOCAL PLANNING AUTHORITY

Janet Medcalf	- Planning Officer, Wrexham C.B.C.
Mr R Williams	- Highways Officer, Wrexham C.B.C.

INTERESTED PERSONS

Mr N H Garden	- Gamford Farm, Gamford Lane, Rossett, Wrexham.
Mr H.J.A.Drew	- Cartref, Gamford Lane, Rossett, Wrexham, LL12 0EW

DOCUMENTS

Document 1	- List of persons present at the Hearing.
Document 2	- Notification of the Hearing dated 17 October 1997.
Document 3	- Bundle of 7 letters of representation received in response to the notification.

PLANS

Plan A	- Application plans, location plan scale 1:2500 and plans 034/G/03 - 11 and 13 showing layout, house types, elevations and site coverage.
Plan B	- Revised elevations and associated drawings submitted by the Appellant 10 November 1997.

The Planning Inspectorate

*An Executive Agency in the Department of the Environment and
the Welsh Office*

RIGHT TO CHALLENGE THE DECISION

The attached appeal decision is final unless it is successfully challenged in the Courts. If a challenge is successful, the appeal decision will be quashed and the case returned to the Secretary of State for redetermination. It does not follow necessarily that the original decision on the appeal will be reversed when it is redetermined.

You may seriously wish to consider taking legal advice before embarking on a challenge. The following notes are provided for guidance only.

Under the provision of Section 288 of the Town and Country Planning Act 1990, or Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990, a person who is aggrieved by a decision may seek to have it quashed by making an application to the High Court on the grounds:

1. that the decision is not within the powers of the Act;
or
2. that any of the 'relevant requirements' have not been complied with; ('relevant requirements' means any requirements of the 1990 Acts or of the Planning & Tribunals Act 1992, or of any order, regulation or rule made under those Acts).

The two grounds noted above mean in effect that a decision cannot be challenged merely because someone does not agree with the Inspector's judgement. Those challenging a decision have to be able to show that a serious mistake was made by the Inspector when reaching his or her decision; or, for instance, that the inquiry, hearing or site visit was not handled correctly, or that the appeal procedures were not carried out properly. If a mistake has been made the Court has discretion not to quash the decision if it considers the interests of the person making the challenge have not be prejudiced.

It is important to note that such an application to the High Court must be lodged with the Crown Office within 6 weeks from the date of the decision letter. This time limit cannot be extended.

An appellant whose appeal has been allowed by an Inspector should note that 'a person aggrieved' may include third parties as well as the local planning authority.

If you require further advice about making a High Court challenge you should consult a solicitor, or contact the Crown Office; the Royal Courts of Justice, Queens Bench Division, Strar London WC2 2LL. Telephone: 0171 936 6000.

INSPECTION OF DOCUMENTS

Any person entitled to be notified of the decision in an inquiry case has a legal right to apply to inspect the listed documents, photographs and plans within 6 weeks of the date of the decision letter. Other requests to see appeal documents will not normally be refused. All requests should be made to the Planning Inspectorate, Crown Building, Cathays Park, Cardiff, CF1 3NQ, Telephone: 01222-823889, quoting the Inspectorate's appeal reference and stating the day on which you wish to visit. Please give at least 3 days' notice and include a daytime 'phone number, if possible.

COMPLAINTS TO THE INSPECTORATE

Any complaints about the Inspector's decision letter, or about the way in which the Inspector has conducted the case, or any procedural aspect of the appeal should be made in writing to the Planning Inspectorate, Crown Building, Cathays Park, Cardiff, CF1 3NQ, Telephone: 01222-823889, quoting the Inspectorate's appeal reference. You should normally receive a full reply within 15 days of our receipt of your letter. You should note however, the Inspectorate cannot reconsider an appeal on which a decision letter has been issued. This can be done only following a successful High Court challenge as explained overleaf.

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION (THE OMBUDSMAN)

If you consider that you have been unfairly treated through maladministration on the part of the Inspectorate or the Inspector you can ask the Ombudsman to investigate. The Ombudsman cannot be approached direct; reference can be made to him only by an MP. While this does not have to be your local MP (whose name and address will be in the local library) in most cases he or she will be the easiest person to approach. Although the Ombudsman can recommend various forms of redress he cannot alter the Inspector's decision in any way.

COUNCIL ON TRIBUNALS

If you feel there was something wrong with the basic procedure used for the appeal, a complaint can be made to the 'Council on Tribunals', 22 Kingsway, London, WC2B 6LE. The Council will take the matter up if they think it comes within their scope. They are not concerned with the merits and cannot change the outcome of the appeal decision.