
Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 22/05/18

Ymweliad â safle a wnaed ar 22/05/18

gan Iwan Lloyd BA BTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 03/07/2018

Appeal Decision

Hearing Held on 22/05/18

Site visit made on 22/05/18

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 03/07/2018

Appeal Ref: APP/H6955/A/18/3194493

Site address: Land north of Station Avenue, Chirk, Wrexham LL14 5NA

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 Mr Richard Lomas, Co-op against the decision of Wrexham County Borough Council.
 - The application Ref CHI P/2016/1165, dated 21/12/2016, was refused by notice dated 11/08/2017.
 - The development proposed is outline application for residential development for up to 22 no. units and associated works with all matters reserved expect for access.
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Decision

1. The appeal is allowed and planning permission is granted for outline application for residential development for up to 22 no. units and associated works with all matters reserved expect for access at Land north of Station Avenue, Chirk, Wrexham LL14 5NA in accordance with the terms of the application, Ref CHI P/2016/1165, dated 21/12/2016, and the plans submitted with it, subject to the conditions in the schedule below.

Application for costs

2. At the hearing an application for costs was made by Mr Richard Lomas, Co-op against Wrexham County Borough Council. This application will be the subject of a separate decision.

Procedural matters

3. The planning application was submitted in outline with access only considered at this stage. The description of development was changed from 24 units to 22 following the receipt of revised plans during the course of the application. I have considered the appeal on this basis.
 4. A Unilateral Undertaking dated 15/05/2018 was submitted at the appeal which covenants to set-up a management company to maintain the communal facilities on the site and to manage trees on the site.
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Main Issues

5. These are; the amenity value of the protected trees, their overall condition, and the likely impact of felling them on the character or appearance of Chirk Conservation Area, and in the light of the above whether the proposed development is justified having regard to the reasons put forward in support of it.

Reasons

6. The appeal land is a triangular piece of land within the settlement boundary of Chirk as defined in the Wrexham Unitary Development Plan 1996-2011 (UDP). To the south of Station Avenue are residential properties, to the east of the site is Chirk Recreation Ground, and to the west is the Mondelez Factory and to the north is the Kronospan factory. Chirk railway station is located to the west and Chirk's commercial centre to the east. The Statement of Common Ground (SoCG) notes the matters which are not disputed between the main parties and these include housing land supply, highways and transportation issues, ecology, open space provision, ground conditions and drainage, noise and the sustainability of the site.
7. Part of the appeal site frontage is located in the conservation area which includes hedging and trees protected by tree preservation order (TPO) No. 59. The proposed vehicular access to the appeal site would require the removal of two trees T5 sycamore and T6 lime, as defined by the appellant's Arboricultural Impact Assessment (AIA). Tree T6 is protected by (TPO) and tree T5 is a tree within the conservation area.
8. UDP Policy EC7 seeks to preserve and or enhance the conservation area including views and trees or other elements which contribute to the unique character of the area. Policy EC4 seeks to ensure that development aims to conserve and enhance hedgerows and trees and seeks to resist development which results in the loss or damage of valuable trees and important hedgerows.

The amenity value of the trees and their condition

9. At the hearing there was broad agreement between the parties' arboriculture advisers that T6 could be regarded as a category B2 tree or less with an average life expectancy of some 20 years. The category of trees is defined in BS 5837:2012¹. The submitted AIA follows the applied methodology of BS 5837:2012. A category B2 tree is a moderate quality tree with mainly landscape qualities. It is downgraded from the higher 'A' category tree because of the presence of a significant defect including unsympathetic past management. It was agreed that T6 exhibits some significant faults having lost its leader branch, suffers from dieback in the canopy, discolourisation of leaves and is covered in ivy. It was also agreed that its growth was stunted and suppressed and had a reduced stature in comparison to the adjacent lime tree T7.
10. T5 sycamore is a protected tree because it grows in a conservation area, but is not individually protected by a TPO. This tree is a self-seeded multi-stemmed specimen and is marginally smaller than the T6 lime tree. The bark is included around the branch unions and is also covered in ivy. This tree is categorised as a C2 which is a low quality tree. There was also agreement between the parties' arboriculture advisers that the categorisation of this tree was a fair reflection of its present condition with a life expectancy of some 20 years.

¹ BS 5837:2012 BSI Trees in relation to design, demolition and construction - Recommendations

11. T5 has grown in a recessed position marginally behind the frontage trees. This off-set position results in a largely occluded view of this tree. The tree may have re-seeded in its position because there was a break at this point in the continuity of the frontage lime trees. It is recorded that one TPO lime tree had been lost in this particular position since the TPO was confirmed in 2003. T5 may have taken hold due to the space that came available for it from the loss of the TPO tree. The position, stature, size and condition and species type of this tree does not indicate that the tree is worthy of individual protection as a TPO tree. Although protected as a tree in a conservation area giving notice to the local planning authority to fell the tree would necessitate that a TPO be placed on it in order to ensure its continued protection. TPOs are used to protect trees and woodlands whose removal would have a significant impact on the environment and its enjoyment by the public. I do not consider that T5 would qualify as a tree that would have a significant impact on amenity. I therefore consider T5 has a moderate to low amenity value.
12. T6 forms a linear group of mature lime trees. Its stature and size and present condition is markedly diminished in comparison with other adjacent lime trees in the same row (T4 and T7). The canopy heights of the linear row of trees lower considerably between trees T4 and T7. T6 and T5 are evidently growing in a suppressed state. T6 is a misshapen tree having lost its upper leader. It is at risk of decay and is predisposed for future deterioration as a consequence. I would concur that the tree due to its condition and stature has reduced amenity value, and is somewhat diminished in terms of the visual contribution it makes to the linear row of trees. Whilst diminished because of its condition and stature it provides a moderate amenity value.

The impact on felling on the character or appearance of the conservation area

13. The Conservation Area boundary encompasses the original medieval settlement around the Church of St Mary and Church Street and extends westwards along Station Avenue and Castle Road to include the Chirk Aqueduct and Viaduct, and also to the north taking in part of Holyhead Road², as described in the adopted Chirk Conservation Area Character Assessment and Management Plan (the character assessment).
14. The character assessment notes that Station Avenue is predominantly residential in use and has a quiet and peaceful sense of place, enhanced by narrow widths of the roads and prevalence of trees and greenery. It notes that trees are important features of the conservation area and particularly the high amenity value of trees along Station Avenue. The assessment indicates that the lime trees along the north side of Station Avenue are of high significance enhancing the linear street pattern and channelling views towards the Hand Hotel in the east and the Railway Bridge and approach to Chirk Castle in the west. Furthermore, the character assessment notes that these trees, along with those surrounding the recreational ground help buffer the negative visual impact of the industrial buildings at the Mondelez and Kronospan factory sites.
15. Within the Station Avenue and Castle Road sub-area the assessment notes that the area remained relatively undeveloped, despite the early introduction of the railway and station, until the early 20th Century when redevelopment of the town expanded after the Chirk Castle Estate sold off significant amounts of land and buildings within the village. Many buildings have consistent design features along Station Avenue

² Chirk Conservation Area Character Assessment and Management Plan Adopted 2014

depicted by a strong linear settlement pattern with front gardens and typically enclosed by mature hedging. The lime trees along Station Avenue are noted as a primary feature of the street with branches forming an archway over the road. The assessment notes that the avenue of trees enhances the linear form of the road and their scale and size create a strong sense of enclosure to the street and views.

16. The appellant's Heritage Impact Statement (HIS) notes tree T6 forms part of a linear group which has historical importance. Trees are shown along the whole length on both sides of Station Avenue on the ordnance survey map of 1873. It is noted that a local history group indicates that the trees may have been planted to commemorate the victory of the Battle of Waterloo in 1815. The Council also indicate that the trees are registered as veteran trees by the Woodland Trust. However, the parties were unable to corroborate these points and the HIS indicates that there is no tangible evidence of these factual matters. Having clicked on the Council's hyperlink in their statement of case the inventory of the Woodland Trust does show a group of veteran trees to the east of the appeal site adjacent to the Recreation Ground, but none are shown on the southern boundary of the appeal site along Station Avenue.
17. Several trees are been lost over-time on the southern side of Station Avenue, but from Oakcroft to the west the southern line of lime trees are present with a more recent line of planted limes opposite the Mondelez entrance.
18. There is no dispute that the present collective group of lime trees that remain on Station Avenue have a high amenity value are visually important and have historical significance.
19. However, individually both trees T5 and T6 have diminished amenity value due to their present condition, stature and size and their long-term value is reduced providing moderate amenity value for T6, and moderate to low amenity value for T5.
20. The AIA identifies that the collective group of trees on the southern boundary of the appeal site require long-term management. The proposal ensures that the trees on the appeal site which are to be retained would be managed and maintained by the imposition of planning conditions and by the covenants of the Unilateral Undertaking. A significant area of planting is proposed within the development and on the public open space on the northern quadrant of the site. Replacement tree planting is proposed for both T5 and T6 trees. T6 would be replaced by a lime tree within the range of 4.5-7.5m height and positioned in alignment with existing limes and broadly equidistant apart.
21. The Council asserts that the removal of T5 and T6 would create an unnatural break within the avenue. However, there has been a gap created in the position of the proposed access by the loss of the TPO tree in the approximate position of T5 since 2003 (T15 of the TPO). This gap it seems may have been filled by the self-seeding sycamore T5, which is not a specimen of tree which reflects the avenue of lime trees. Other gaps have historically been formed in the avenue of trees over the years for various reasons. The existence of gaps over the years in the continuity of a line of trees is not an unusual occurrence as trees may fail for a variety of reasons.
22. In my view, the existence of a gap which was formed through the loss of the TPO tree where no specimen lime tree was planted in its place and the present moderate amenity value of both trees T5 and T6 lead to me to conclude that the benefits of re-planting and the potential for appropriate management of the appeal frontage lime trees outweighs the dis-benefits of their removal.

23. In all, there would be a neutral impact on the conservation area, given that T5 and T6 are in general decline, and are of moderate amenity value. A heavy standard replacement tree within the range of 4.5-7.5m height for T6 and a suitable replacement of T5 within the site would take some time to establish to reach the current height of the trees that would be removed. Nevertheless, there would be some immediate visual contribution made by the replacement tree in continuity with the historic avenue of lime trees. In the medium to long-term this contribution would increase and the proposed mitigation measures to properly manage the protected trees as well as the proposed planting scheme in the public open areas are sufficient mitigation measures resulting in an overall neutral impact³.
24. I conclude that the impact of felling the protected trees would preserve the appearance of Chirk Conservation Area, given their present overall condition and their moderate amenity value and the proposed mitigation measures put forward in support of the development.

The reasons in support of the development

25. The reasons put forward in support of the development, in addition to those already listed in respect of planting and landscaping management, include the lack of a 5-year land supply, the site is within the development boundary is sustainable and accessible to services and facilities, the development provides direct and indirect economic benefits and there is an absence of any technical objection from the Council on noise, highways, flooding, ecology and heritage.
26. The UDP is outside of its plan period and the Council is unable to demonstrate a 5-year housing land supply as set out in paragraphs 8.1, 8.2 and 6.2 of TAN1⁴. Where the UDP is outside its plan period the local planning authority has been unable to undertake a current study of its housing supply. As a result, the need to increase supply should be given considerable weight when dealing with planning applications provided that the development would otherwise comply with the development plan and national planning policies.
27. Having regard to these factors, considerable weight applies for the need to increase housing land supply and the proposed development is justified having regard to all other reasons put forward in support of it.

Other matters

28. I note the concerns from interested parties on highway safety, ecology, and the impact of noise from the adjoining factories. However, there is no technical objection raised from the statutory consultees in respect of these matters, and the appellant has provided technical evidence to demonstrate that these matters are acceptable and can be further controlled through the imposition of planning conditions.

Unilateral Undertaking

29. An executed Unilateral Obligation was submitted to the hearing. The Council confirmed that the document complies with the formal requirements of Section 106 of the *Town and Country Planning Act 1990* and is enforceable by it, and was content with its terms. The obligation covenants to set-up a management company and a community facility area which would involve a scheme to be agreed with the Council. The developer is required to transfer the interests of the community facility area to

³ Planning Policy Wales Edition 9 paragraph 6.5.21

⁴ Technical Advice Note 1 – Joint Housing Land Availability Studies

the management company. Future owners of the residential development are required to become members of the management company and to pay a sum to the management company to maintain the communal areas. The obligation deals with the long-term management of the lime trees on the frontage of the development.

30. I am satisfied that the unilateral undertaking is necessary, directly related to the development and fairly and reasonably related in scale and kind to the development and can be given significant weight. The planning obligation meets the statutory test of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and it constitutes a reason for granting planning permission.

Schedule of conditions

31. I have considered the Council's suggested conditions and the appellant's response to them in the light of Circular WGC 016/2014 'The Use of Planning Conditions for Development Management'. In line with discussions on conditions at the hearing, suggested conditions 7 and 14 were deleted and others were altered accordingly. The first three conditions are standard outline conditions and the fourth condition defines the amount of development on the site.
32. Conditions 5, 6 and 20 deals with foul and surface drainage in the interests of the environment and to prevent flooding. Conditions 7, 8 and 9 are necessary in the interests of living conditions in relation to noise, dust and construction traffic. Conditions 10-12 are needed in the interests of highway safety. Condition 13 is needed in the interests of protected species. Conditions 14-19 are in the interests of the visual appearance of the area, and the preservation and the long-term management of trees and hedgerows on the site.
- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
 - 2) Any application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
 - 3) The development shall begin either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
 - 4) The development shall not exceed a maximum of 22 number dwellings.
 - 5) No part of the development shall commence until a scheme for the comprehensive and integrated drainage of the site indicating provision for foul water, surface water and land drainage has been submitted to and approved in writing by the local planning authority. Prior to the submission of those details, an assessment shall be carried out into the potential for disposing of surface water by means of Sustainable urban Drainage Systems (SuDS) in accordance with the principles of sustainable drainage systems set out in Technical Advice Note 15: Development and Flood Risk, and the results of the assessment shall be submitted in writing to the local planning authority.

Where a SuDS scheme is to be implemented, the submitted details shall:

- i) Provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of receiving ground water and/or surface waters;

- ii) Specify the responsibilities of each party for the implementation of the SuDS scheme, together with a timetable for that implementation; and,
 - iii) Provide a timescale for implementation, management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 6) No part of the development shall be occupied until the drainage scheme for the site has been completed in accordance with condition no. 5. The drainage scheme shall be managed and maintained thereafter in strict accordance with the agreed management and maintenance plan.
 - 7) As part of the reserved matters application, a scheme of noise insulation and/or attenuation measures shall be submitted to and approved in writing by the local planning authority. Prior to the occupation of the dwelling houses the approved scheme shall be carried out.
 - 8) All works in relation to the implementation of this permission, including deliveries to and / or leaving the site, shall be undertaken only between the hours of 07.30 and 18.00 Monday to Friday, and 08.00 to 14.00 on a Saturday, and at no time on a Sunday or a Bank Holiday.
 - 9) No part of the development shall commence until an appropriate Dust Management Scheme has been submitted to and approved in writing by the local planning authority. The dust mitigation measures as are approved shall be fully implemented for the entire duration of the construction phase.
 - 10) Prior to first use of the development hereby approved the vehicular access shall provide visibility splays of 2.4 metres x 40 metres in both directions measured to the nearside edge of the adjoining highway. Within these splays there shall be no obstruction above the level of the adjoining carriageway. The splays shall thereafter be permanently retained clear of any such obstruction to visibility.
 - 11) Prior to first use of the development hereby approved, the vehicular access shall be laid out in strict accordance with approved plan ref: SCP/15234/SK01 Rev B.
 - 12) No part of the development shall commence until a scheme detailing the construction of the following has been submitted to and approved in writing by the local planning authority: 1) Detailed layout, lighting, design, drainage and construction of the internal estate road and footways. The scheme as is approved shall be fully implemented prior to first use of the development.
 - 13) An external bat friendly lighting scheme shall be submitted to and approved in writing by the local planning authority as part of the reserved matters application. The scheme shall be fully implemented in accordance with the approved details prior to first use / occupation of the development.
 - 14) With the exception of the hedgerow removal and Trees referenced T5 and T6 required to form the vehicular and pedestrian access, all other existing trees, shrubs and hedges shown on drawing refs: P.585.15.05, 201 Rev B and 202 Rev B shall be permanently retained and shall not be cut down, grubbed out, lopped or uprooted. Any trees, shrubs or hedges removed or being severely damaged or becoming diseased shall be replaced with trees, shrubs or hedging plants of an appropriate size and species all within a timescale to be approved in writing by the local planning authority.

- 15) As part of the reserved matters application, a detailed Arboricultural Implication Assessment dealing comprehensively with all tree issues (including shading of the residential plots) shall be 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 Assessment as is approved. This Assessment shall include all trees with a stem diameter of 75 mm or above (including crown spreads and stems) and the trees shall be colour coded and shown accurately on a topographical land survey.
- 16) As part of the reserved matters application, a Landscaping Management Plan, including long term design objectives, management responsibilities and maintenance schedules for all landscaped areas shall be submitted to and approved in writing by the local planning authority. The landscaping shall be managed and maintained in strict accordance with these details as are approved.
- 17) The landscaping plan to be submitted as part of the reserved matters application shall include replacement planting in respect of tree nos. T5 and T6, within the development frontage.
- 18) No part of the development shall commence until full details for the arboricultural supervision of tree protection measures and any ground works within retained tree(s) Root Protection Areas, as specified by BS 5837:2012 or as shown on a Tree Protection Plan have been submitted to and approved in writing by the local planning authority. The supervisory works shall be carried out in strict accordance with the details as approved.
- 19) No part of the development shall commence until details of underground and overhead services have been submitted to and approved in writing by the local planning authority. The development shall be carried out in strict accordance with the details as approved.
- 20) Only foul water from the development site shall be allowed to discharge to the public sewerage system.

Overall Conclusions

33. I conclude that the impact of felling the protected trees would preserve the appearance of Chirk Conservation Area, and the proposed development is justified having regard to all other reasons put forward in support of it. The proposal does not conflict with UDP Policies EC7 and EC4.
34. The presumption in favour of sustainable development in accordance with the development plan in Planning Policy Wales (paragraph 4.2.4) applies. The considerable weight to the lack of housing land supply also applies.
35. 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 ("the WBFG Act"). In reaching this decision, I have taken into account the ways of working set out at section 5 of the WBFG Act and the Welsh Ministers well-being objectives set out as required by section 8 of the WBFG Act.
36. I therefore conclude that the planning balance would be to allow the appeal.

Iwan Lloyd

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ms Moss	Appellant's agent
Ms Morris	Heritage Consultant
Mr McLoed	Arboricultural Consultant
Mr Aspinall	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms Holman	Planning Officer
Mr Brewin	Arboricultural Officer
Mr Douthwaite	Highway Development Control
Cllr Evans	Ward Member for Chirk

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Council's notification letter and list of those notified
- 2 Unilateral undertaking dated 15/05/2018
- 3 Appellant's copy of the written costs application