



PLANNING APPEAL STATEMENT

FOLLOWING REFUSAL OF APPLICATION P/2018/0469

**Relating to 8 houses on land opposite Madras Primary School, corner of Overton Road and
Holly Bush Lane, Penley, Wrexham LL13 0LQ**

**Prepared by Halls Holdings Limited
Halls Holdings House
Bowmen Way
Battlefield
Shrewsbury
Shropshire
SY4 3DR**

December 2018

1. Introduction

1.1 Application P/2018/0469 for outline consent for 8 houses was refused (see Appendix 1) by Wrexham County Borough Council on the 16th July 2018. The reasons for refusal specified were;

1. “The proposal for residential development lies outside Penley settlement limit and does not meet the criteria set out within UDP Policy H5 where housing outside settlement limits will be allowed. The proposal would encroach into open countryside, harming the character and appearance of the area and conflicting with UDP Policy H5 and EC5”.

2. “Insufficient information has been submitted with the application to demonstrate the impact of the development on the setting of the Grade II listed building opposite the site. The application fails to accord with UDP Policy EC9”.

1.2 Site Description

The appeal site is a rectangular shaped level grass field used for grazing livestock. It has an existing gateway off its western boundary. It is situated between houses (to the north), the A539 to the south and the village church to the east. It is a 0.3ha/0.75 acre site and therefore 8 dwellings (mainly semi-detached) mean this is a low-density development.

2. Council Handling of the Planning Application

The LPA received the application on the 7th June 2018. The validation date was not confirmed at any point. They wrote to the Agent in a letter dated 11th June referring to a determination date of the 2nd August. The site Notice expired on the 9th July. The Agent spoke to the planning officer on the 13th July and she confirmed she would be recommending the application for refusal. The decision notice was dated the 16th July. The officer report (Appendix 2) is dated the **19th July being 3 days after the application was refused**. This suggests the outcome was decided and the report was devised afterwards. Evidence to support the view that a rushed approach was taken by the Officer to this application is;

1. The officer report does not have a title referring to the application number or the address.
2. The conservation officers' comments are not visible online on the Council's website.
3. The reply from the Community Council had not been received as at the date of determination. This is stated on page 1 of the Officer Report. The agent emailed the officer on 10th July asking for a copy of the community council's comments having spoken at the meeting in the previous week. A reply was not received.
4. The application was determined before the ecology officer replied to the consultation.

2.1 Planning officers report – Under Paragraph 9.7.2 of the Development Management Manual – revision 2 – May 2017 the officer report should have been produced “to uphold the transparency of the planning system, explaining the material considerations and their of relative weight in coming to a decision.” There was no consideration of Appeal Decision APP/G6955/A/17/3186707 “Big Green Farm” in the report so the officer did not correctly carry out her role. That is a material consideration which has been ignored.

- 2.2** Paragraph 9.7.14 of the Development Management Manual requires a full copy of the full statutory response to be included as an annex to the report. The official consultee reply from the conservation officer herself had not been provided to the agent or shown on the council website. Paragraphs 9.7.17 to 9.7.19 have not been followed.

Consideration of the reasons for Refusal

3. Refusal reason one: - Policy H5

It is agreed that the site is not currently within a development boundary. When considering this policy and carrying out the planning balance the officer should have correctly considered the 3 strands of sustainability;

3.1 Environmental Strand

The officer acknowledges the nearest shop is within 500m of the site. The secondary school is 600m away. The nearest bus-stop is on the other side of the road. A footpath / pavement adjoins the site. Weight in favour of the scheme was confirmed by the planning officer.

A clear hedgerow around three boundaries of the site is referred to. The scheme on the site is referred to as “discordant” and “disjoined” in relation to the existing settlement by virtue of the hedgerow boundary along the eastern part of the site which clearly separates it from the church, field and development beyond.

3.1.1 “Discordant”

The site is opposite established development, adjoining the church and it has dwellings along its north-west boundary leading along Hollybush Lane. The Lane continues to numerous houses and the Village Hall. Due to the Village Hall and the proliferation of road signs by the appeal site, the site is clearly central to the village with development on 3 sides. Due to the pavement, signs and layby the site clearly adjoins various facilities. The scheme will therefore be read in conjunction with existing adjoining developments. The proposed scheme is therefore not discordant.

3.1.2 Hedgerow on the Eastern Boundary

The site is a field used for grazing. The church is a village church. A field hedge could be expected to form the boundary between the grazing field and a churchyard. How could a hedge be an alien feature in this village location?

The officer states “furthermore the development beyond comprises the Penley Employment Park with the bulk of the dwellings located towards the eastern end of the settlement”.

The appellant disagrees – there are several dwellings, buildings and facilities in very close proximity to the appeal site.

The officer states the development as considered would be “primarily read in conjunction with its relationship to the development along the A539 rather than the dwellings along the lane to the north and to this effect, is considered would exacerbate the incongruity of residential development on this site, in the context of its relatively formal formation which

is not considered would be particularly complimentary to the existing context within the vicinity and along the A539”.

The application was submitted in outline with an indicative layout plan. Approval of layout / external appearance was not sought. There is scope for siting, layout, design and external appearance to be adjusted and set out at reserved matters stage. The officer’s comments were therefore premature.

3.1.3 Roadside Hedgerow

Currently the roadside boundary is a hedge of approximately 80 metres in length. The proposed access will require removal of approximately only 8 metres of hedgerow which is considered minimal. There is scope to plant say 8m on each side of the entrance as beneficial mitigation.

3.1.4 Landscape and Visual Impact Assessment

The Assessment concludes the scheme will not have a significant effect on the village or Special Landscape Area. Therefore, the officer’s concerns on the “visual relationship” are not correct or robust. Bearing in mind the amount of development (buildings) nearby and facilities (pavement, layby, street lights, signs) in very close proximity, the site is effectively an infill location.

To conclude it is considered the overall environmental effect is not negative. It has scope for a positive outcome with tree planting in the south and eastern boundaries and more hedge planting.

It is the Appellant’s agents considered opinion that the proposed tree/hedge planting will be beneficial. Therefore, overall it is considered the environmental dimension is positive representing sustainable development.

3.2 Social Strand

Bearing in mind proximity to schools, the bus-stops and the Village Hall strong weight should be applied. The officer stated the site is “relatively well” connected to the settlement and for this reason, “**moderate weight**” is attached to the social dimension of sustainability.

3.3 Economic Strand

“Classification of the field”.

The officer says “no evidence was submitted to demonstrate the classification of the field”. As a result the Officer has automatically assumed the scheme “would result in a loss of Best and Most Versatile land (BMV)”. The Officer didn’t ask for classification to be provided. As the officer made no attempt at dialogue to obtain a classification from the agent, she has not given the applicant opportunity to promote and defend the application. Her determination was premature, unjustified and unfair.

The site is basic long term low input pasture land, limited in use and output. It is therefore not versatile, so there is no loss of Best and Most Versatile (BMV) land. The agent has checked and the land is Grade 3 on the former MAFF Classification. The majority of land in the locality is Grade 3.

The officer accepts there are economic benefits. The officer concluded “on balance it is considered that the economic dimensions of sustainable development associated with the scheme would be **largely positive**, given the loss of BMV land is not determinative on considering whether a proposal represents sustainable development or not”.

3.4 Conclusion of Sustainability

The Planning Officer accepted in her report that the economic and social strand requirements are met. As demonstrated in this statement the Planning Officer has not robustly justified refusal on the basis of a shortfall on the environmental strand.

3.5 Policy EC5 – Special Landscape Area

The first ground for refusal also briefly refers to Policy EC5 which relates to Special Landscape Areas (SLA). The appeal site is within a SLA. The refusal ground says “the proposal would encroach into open countryside, harming the character and appearance of the area conflicting with EC5”.

The Planning Officer report does not provide any consideration or debate on EC5. It makes no reference to the detailed 35 page Landscape and Visual Appraisal (LVA) submitted by the appellant. Therefore the appellant considers the LPA has not given a robust justification for its refusal based on suggested impact upon the SLA.

- 3.5.1** The conservation officer in her consultee reply (Appendix 3) refers to the “Historic Landscape of Maelor Saesneg” so we assume she was providing the landscape input for the council and there is not a specific landscape officer.
- 3.5.2** The conservation officer made no reference to potential impact upon the church. This implies she was not concerned about potential influence on the landscape or setting of the church.
- 3.5.3** The conservation officer clearly considered the appellant’s LVA, (she refers to it in her email to the Planner, see Appendix 3). Whilst she has chosen to comment on landscape issues she has not referred to the influence of the appeal site on the SLA. She made no comment on it. Logically, therefore she could not have been concerned about potential impact upon the SLA.
- 3.5.4** The planning officer in her report under “sustainable development” makes no reference to the SLA. She had no input from any technical colleagues to justify refusal on SLA grounds/Policy EC5 but still chose to make that recommendation. It is an incorrect conclusion; the scheme is not contrary to Policy EC5.

Second reason for refusal – policy EC9

4. Potential Impact of the Development on the Setting of the Listed Building Opposite the Site

The officer’s report states “insufficient information has been submitted with the application to demonstrate the impact of the development on the setting of the Grade II Listed Madras CP School located opposite the site. An assessment having regard to the original setting of the property, along with views to and from the property are required at a minimum, and how these elements contribute to the character of the property. The application has failed to define and analyse the setting of the building or fully evaluate the impact of the

development on it. The Conservation Officer objects to the application and recommends refusal”.

4.1 Agent’s Response

- 4.1.1** The officer did not ask the agent **at any point during the determination period** for an assessment of the Listed Building. Her determination was therefore premature and unjustified. It is totally unreasonable to refuse an application due to insufficient information without giving the agent the opportunity to provide that information. The officer failed in her role to engage with the applicant / agent. As a result, a cost award is sought.

When the application was submitted the Council refused to validate the application without a Tree Survey being submitted, but the Planning Officer was content to determine the application without any comment being received from the Tree Officer as confirmed in the officer report.

- 4.1.2** Neither the Planning Officer or the Conservation Officer suggested that the development would have an unacceptable impact upon the listed building.

4.2 Heritage Impact Assessment (HIA)

An assessment was commissioned by the appellant in November 2018. A copy is attached to this appeal (Appendix 4). A summary is provided below:

“The Madras Primary School, a Grade II Listed Building, was built in 1811. It was listed as recently as 2005, for its “special historical interest as an early estate school, the first in Wales to practise Andrew Bell’s monitorial System, and for its architectural interest as a striking building of distinctive picturesque character that retains one of the few surviving thatch roofs in the district” (Cadw Ref Number: 86965 and CPAT PRN 371540).

The HIA has plenty of background historical information relating to the area and the school. The main element of the listing description (above) relates to historical interest, the original teaching method and its architectural interest. **It does not refer to setting.**

The historical interest and previous teaching method (relating to an individual person) can not be directly or indirectly affected by the development because they are not tangible characteristics / values. These values will remain whether the development takes place or not.

4.3 Architectural Interest

The single storey building with thatch roof is unusual. The distinctive picturesque interest, the front elevation and the thatch roof will remain with or without the proposed development.

Considerable change has taken place within its curtilage / setting. The setting recorded on the 1838 title map has experienced significant subsequent change:

- The school house was built to the north west
- The school itself has been extended at the rear in 1905
- The modern school house is on the southeast side

- The church in existence since 1811 has been replaced
- The 1968 road widening scheme radically altered the road frontage

4.3.1 The original 1811 school was a low single storey style with small multiplane openings being retained at the front. The rear elevation has been severely compromised by the addition of large high windows up to the roofline.

4.3.2 Description of the Listing

The Listing (see Appendix 1 in Appendix 4 HIA) states “the roof structure is late 19th Century” therefore it is not certain whether the building originally had a thatch roof”. Later it states “openings are all altered”.

We have not found any evidence to demonstrate that the original had a thatch roof. It was extended at the rear in 1905.

The listing then refers to a “1960’s extension in pale brick with flat roof, mostly now enveloped by a later and less sympathetic red brick extension of 1999”. This is clear evidence and acknowledgement of the series of unsympathetic changes that have cumulatively compromised the historic character of the building and reduced its significance.

4.4 Paragraph 5.12 of the HIA states “providing mitigation is in place to maintain the hedged boundary, it is assessed that the small-scale residential development set back well beyond the hedgerow, would have a minor adverse impact on the setting of the listed building”.

Paragraph 5.13 continues saying “moreover mitigation in the form of additional tree planting along the southern boundary of the proposed development has the potential to make a positive visual impact on the overall setting of the school site”.

4.5 The Conservation Officer (in the refusal grounds) sought an assessment of the setting of the listed building. Paragraph 6.3 of the Appellant’s HIA concludes;

- The application site is not within the curtilage of the heritage asset
- The site makes no contribution to the surroundings in which the building is understood, experienced or appreciated
- The application site makes no contribution to the significance of the heritage asset

4.6 Conclusion in Relation to Potential Impact on the Listed Building

Significant changes have compromised the historic character and setting of the building. The proposed development cannot influence the history of the building. The HIA concludes that with mitigation, the scheme is not detrimental to the listed building.

5.0 Other relevant Planning Appeals in Penley

The appellant’s Design and Access Statement referred in detail to an Appeal decision at Big Green Farm, ref APP/H6955/A/17/3186707. That appeal decision (Appendix 5) is entirely relevant to this appeal. The planning officer did not take that appeal into account in the officer report. This is a failure to consider all relevant material considerations. That appeal is fundamental to this appeal.

6.0 Planning Balance and Conclusion

It is the appellant's views that the proposal is sustainable development. The requirements of the three strands are met. Therefore, under PPW No 9 para. 4.2.2 where the relevant plan policies are out of date, there is a presumption in favour of sustainable development. As the LPA has a housing supply of 0 years, the proposed scheme is compliant with para. 4.2.2 and the scheme should be approved.

The potential impact upon the listed school building has been considered. A bespoke Assessment has been commissioned which defines the extent of the setting of the building. It concludes that the scheme will not trigger an unacceptable impact upon the listed building or its setting.

Determination of the application appeared to be rushed by the planning officer. Potential off site benefits, a pedestrian crossing, were discussed on the telephone. The officer made no attempt to seek further information on the listed building or SLA.

She did not communicate with the agent to invite further information or suggest withdrawal to avoid refusal. Planning principles encourage proactive working. There was no proactive working from the planning the officer on this occasion.

The Big Green Farm appeal demonstrates that the correct planning balance determined that development is policy compliant whilst there is a housing supply of 0 years.

On that basis this appeal should be allowed.

Appendix 1	Decision Notice
Appendix 1a	Two plans to accompany decision notice
Appendix 2	Planning Officer's Report
Appendix 3	Conservation Officer's Consultee reply
Appendix 4	Heritage Impact Assessment
Appendix 5	Big Green Farm appeal decision
Appendix 6	Highway Officers Consultee Reply

Other documents submitted with initial planning application

- Tree Report
- Ecology Report
- Design and Access Statement
- Landscape and Visual Assessment (LVA)
- Plans to Accompany LVA