

**TOWN AND COUNTRY PLANNING ACT 1990 SECTION 78 APPEAL AT
LAND AT KNOLTON BRYN FARM KNOLTON**

COUNCIL'S STATEMENT OF CASE

**PLANNING REF: P/2018/0229
PINS REF: 3217719**

1.0 THE SITE

- 1.1 The appeal site is located about 250m west of the A528 and is located immediately to the south of two existing agricultural buildings.

2.0 PROPOSAL

- 2.1 Outline planning permission is sought for the erection of an agricultural workers dwelling. Approval is sought at this stage for access. All other matters are reserved for subsequent approval

3.0 HISTORY

Application site

- 3.1 P/2004/1362 Siting of caravan on agricultural land. Refused 6.12.2004
- 3.2 P/2010/0027 Outline application for erection of agricultural workers dwelling and associated access and amenity area. Refused 9.3.2010
- 3.3 P/2017/0014 Outline planning application to erect agricultural workers dwelling with associated access. Refused 27.02.2017.

Land to the south

- 3.4 CB2757 Erection of farmhouse, alteration to existing vehicular and pedestrian access and installation of septic tank. Refused 12.4.99

Land to the north

- 3.5 P/2002/0212 Erection of agricultural building. Granted 29.4.2002
- 3.6 P/2007/0957 Extension to existing agricultural building. Granted 20.9.2007

4.0 DEVELOPMENT PLAN

- 4.1 The site lies outside of settlement limit as defined by the Wrexham Unitary Development. Policies PS1, H5, EC4, EC6 and T8 are applicable.
- 4.2 In addition to policy H5 in respect of housing in the countryside, the Council's decision had regard to Technical Advice Note 6: Planning for Sustainable Rural Communities.

5.0 THE COUNCIL'S CASE

Policy

- 5.1 The site lies in open countryside where residential development is normally strictly controlled. The applicant applied in 2017 for a very similar proposal, however the nature and scale of the agricultural business which the dwelling is intended to support has now changed.
- 5.2 Policy H5 sets out circumstances under which new dwellings may be permitted, including where there is an essential need to house a farm or forestry key worker. The policy also sets out the criteria how that need will be assessed.
- 5.3 Policy H5 of the UDP is generally in accordance with PPW and the guidance set out in Technical Advice Note (TAN) 6: *Planning for Sustainable Rural Communities* and the accompanying Practice Guidance: *Rural Enterprise Dwellings*. However, as TAN6 is more up to date that the UDP therefore the appeal proposals were assessed in light of it in respect of rural enterprise dwellings.

Functional Test

- 5.4 The appellant currently farms 556 acres of land comprising of 491 acres of land and a dwelling rented from the Gredington estate as well as 65 acres of land that he owns at Knolton Bryn. The latter includes the application site and the farm buildings adjacent to it.
- 5.5 No details about the location of the rented land have been provided, however the Council is aware that the dwelling the appellant rents and lives in is located near Penley. The proposed dwelling forms part of a plan by the appellant to downsize his business operated from the land he owns at Knotlon Bryn.
- 5.6 Given the nature of the farm business it is accepted that there would be a functional requirement for a farm worker to be readily available at most times.

Time Test

- 5.7 The submitted details would suggest the proposed farm business will have a labour requirement of 1.26 people. It is understood that the appellant would be the only employee therefore the functional requirement relates to a full time employee. As such the time test is satisfied.

Financial Test

- 5.8 The financial details submitted is for the existing business – i.e. 556 acres. The appellant has demonstrated that the existing business is profitable. However given the appellant's intention to downsize it is not considered that evidence of past profitability of the existing business is directly relevant in this instance. The difference in size between the existing and proposed farming enterprises is considerable. The proposed farm enterprise will operate on around 12% on the land of the existing, have 16% of the cattle and 13% of the sheep. This will inevitably result in a considerable reduction in income.

Whilst it is reasonable to conclude that the operating costs would also be proportionally lower operating costs, it is uncertain at this stage that the business would be viable, able to support a full time worker or to sustain the costs associated with the erection of a dwelling.

- 5.9 Paragraph 4.4.1 (c) of TAN6 advises that permanent dwellings should only be supported where a rural enterprise has been established for at least 3 years and profitable for at least one. Paragraph 4.10.1 provides further advice that a rural enterprise should be financially sound and should have good prospects of remaining economically sustainable for at least 5 years. Given the substantial change in the scale of the farming operations, this clearly is not the case. Paragraph 4.6.2 of TAN6 advises that where the case is not completely proven for a dwelling permission should not be granted.
- 5.10 Given the significant change in the scale of the farming business, it is considered that the proposals should be treated as if there were a new going concern and as such the financial case in respect of permanent dwelling is not met. It is accepted that paragraph 4.10.2 of TAN6 states that evidence of actual or potential performance will be required, however in the context of the appeal proposals, for the reasons discussed above past performance cannot be relied upon to give a reliable indication that the business has good prospects to remain financially sound. It is therefore considered that the financial test in respect of a permanent dwelling has not been satisfied.
- 5.11 It is accepted that the accounts for the existing business arguably do demonstrate his ability to run and maintain a profitable business. Furthermore the cash flow projections could be viewed as demonstrating that the business has been planned on a sound financial basis. However it is the Council's contention that these arguably may be relevant in the case of a proposal for a temporary dwelling on a newly established rural enterprise in accordance with advice given in paragraphs 4.6.1 and 4.6.2 of TAN6, rather than for a permanent dwelling. Given that the appellant had applied for outline planning permission and therefore operational development it is reasonable to conclude they he is seeking to erect a permanent dwelling as opposed to a temporary dwelling; the latter would normally be provided by way of a mobile home and therefore constitute a material change of use of land. Accordingly paragraphs 4.6.1 and 4.6.2 are not applicable to the appeal proposals.

Other Dwelling Test

- 5.12 The appellant was in a partnership with his father, Mr E G Owen although it is understood that this was dissolved in 2017. The latter is understood to be the owner of Red Hall Farm, Red Hall Lane, Penley located approximately 2 miles from the application site. It is also understood that the property is tenanted however the site currently has an unused/underutilised traditional farm building that may lend itself to conversion to a dwelling.
- 5.13 It is accepted that the applicant does not own the building, however the Council is not convinced that sufficient evidence has been put forward to

demonstrate that the building is not or could not be made available for conversion to residential use.

- 5.14 The fact that the building would be located approximately 2 miles from the appellant's land does not, in itself, make it unsuitable to fulfil the functional requirement discussed above. This is considered to be a distance that would still enable the appellant to be readily available a most times. Furthermore it would be significantly closer to the land the appellant owns than his current accommodation at The Bryn, Penley, which is approximately 5 miles from the application site.

Other Planning Considerations

- 5.15 Whilst siting is a reserved matter, the dwelling will be situated close to the root protection areas of a number of very significant mature trees. The trees are rated as B2 or moderate quality in the applicant's Arboricultural Impact Assessment. Notwithstanding this, individually and collectively the trees make a significant contribution to the character of the site and to the wider rural landscape.
- 5.16 The Council is not convinced that it is possible to locate a dwelling within the application area without adversely impacting upon the trees or resulting pressure to remove them as a result of shading of the dwelling and its garden, crown dominance, leaf litter or perceived fears regarding the structural condition of the trees.

6.0 CONCLUSION

- 6.1 Insufficient information has been submitted to demonstrate that there is an essential requirement for a dwelling to be erected on the site to accommodate a rural enterprise/farm worker. There is also concern where the development could take place without harm to existing mature trees or undue pressure for them to be removed. As such the proposals do not accord with UDP policies PS1, H5, EC4 or national planning guidance set out in Technical Advice Note 6. The Inspector is therefore respectfully requested to dismiss the appeal.

SUGGESTED CONDITIONS IN THE EVENT OF THE APPEAL BEING ALLOWED

Condition 1

Approval of the following details shall be obtained from the Local Planning Authority before any part of the development is commenced:

- a. the layout of the building(s)
- b. the scale of the building(s)
- c. the appearance of the building(s)
- d. the landscaping of the site

Reason

To comply with the provisions of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012

Condition 2

Plans and particulars of the reserved matters referred to in condition 1 (above) shall be submitted in writing to the Local Planning Authority before the expiry of three years from the date of this permission. The development shall only be carried out in strict conformity with such details as are approved.

Reason

To comply with Section 92 of the Town and Country Planning Act, 1990.

Condition 3

The development hereby approved shall be commenced before the expiry of five years from the date of this permission or before the expiry of two years from the date of approval of the last of the reserved matters required to be approved, whichever is the later.

Reason

To comply with Section 92 of the Town and Country Planning Act, 1990.

Condition 4

The development shall be carried out in strict accordance with drawing no. SA22736/01 Revision D in respect of the proposed site access.

Reason

To ensure that a safe means of vehicular access is provided for the development.

Condition 5

No part of the development shall commence until a detailed Arboricultural Method Statement has been 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 Method Statement as is approved. The Method Statement shall include the following:

- a) A specification for tree protection fencing and ground protection measures that comply with British Standard 5837:2012;
- b) A Tree Protection Plan showing the location of the trees to be removed and retained with their crown spreads, Root Protection Areas, Construction Exclusion Zones, and location of protective fencing and ground protection measures accurately plotted;
- c) A full specification for any access, driveway, path, underground services or wall foundations within retained tree Root Protection Areas or Construction Exclusion Zone, including any related sections and method for avoiding damage to retained trees;
- d) Details of general arboricultural matters including proposed practices with regards to cement mixing, material storage and fires;
- e) Details of the frequency of supervisory visits and procedures for notifying the findings of such visits to the Local Planning Authority;
- f) Method for protecting retained trees during demolition works;
- g) Details of all proposed tree works, including felling and pruning.

Reason

To protect trees within and adjacent to the site that individually and collectively have a high amenity value.

Condition 6

The development shall be carried out in strict accordance with the Great Crested Newt Method Statement dated 22.6.2018 and as amended on 15.8.2018.

Reason

To ensure the development can take place without harm to a statutorily protected species.

Condition 7

Prior to first use of the development hereby approved the vehicular access shall provide visibility splays of 2.4 metres x 160 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.

Reason

To ensure adequate visibility is provided at the point of access to the highway

Condition 8

Prior to first occupation of the dwelling the access shall be surfaced with hard bound materials (e.g. bituminous macadam) for a minimum distance of 10 metres behind the adjoining highway.

Reason

To ensure that no deleterious material is carried onto the highway, in the interests of highway safety.

Condition 9

Notwithstanding the provisions of Part 2, Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting that Order with or without modification), no gate, fence, wall or other means of enclosure shall be erected, constructed or placed across the access within 10 metres of the highway boundary.

Reason

To enable vehicles to enter and leave the site without having to wait on the highway for the gates to be opened/closed in the interests of highway safety.

Condition 10

No private surface water run off shall be permitted to flow from the development site onto the adjoining highway. An Aco drain or similar shall be provided across the approved access to intercept any such run off prior to first use of the development.

Reason

In the interests of highway safety.