
Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 18/09/17

**gan Declan Beggan BSc (Hons) MSc
DipTP DipMan MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 26.10.2017

Appeal Decision

Site visit made on 18/09/17

**by Declan Beggan BSc (Hons) MSc DipTP
DipMan MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 26.10.2017

Appeal Ref: APP/H6955/A/17/3179242

Site address: Land West of Bedwell Road, Cross Lanes, Wrexham, LL13 0TR

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 (the Act) against a refusal to grant planning permission.
 - The appeal is made by Residential Land Promotion Ltd against the decision of Wrexham County Borough Council.
 - The application Ref SES P/2016/0273, dated 17 March 2016, was refused by notice dated 6 February 2017.
 - The development proposed is described as an 'outline application for residential development (24 dwellings) including means of access to the site'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of the proposed development differs on the planning application form to that stated on the Council's refusal notice. Based on the application documents, I consider the description as given on the Council's refusal notice is more accurate and it is on this basis that I have determined the appeal.
 3. With the appeal documents the appellant submitted a revised illustrative master plan and a Flood Consequences Assessment (FCA). Bearing in mind the plan is for illustrative purposes only, and the FCA addresses one of the reasons for refusal, and interested parties have had the opportunity to make comments on both documents, I consider my consideration of them would not be prejudicial to any of the parties involved in the appeal. Consequently I have determined the appeal with reference to both documents.
 4. The Council's decision notice refers to a number of reasons for refusal including objections raised in regards to the discharge of surface water from the development. The Council have confirmed in their statement of case, that based on the submitted FCA, that they are now satisfied that suitable surface water management, via an appropriately worded planning condition, could be achieved on the site should I be minded to allow the appeal. Consequently I have not considered this matter any further in my decision.
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Main Issues

5. The main issues in this appeal are:

- Whether the proposed development would provide a suitable site for housing having regard to the principles of sustainable development and planning policies that seek to strictly control new development outside of settlement boundaries;
- The effect of the development on the character and appearance of the area;
- The provision of open space;
- Whether the proposed development would be at risk from flooding;
- The effect of the proposed development on biodiversity; and,
- If harm is found in regards to any of the above, whether there are other material considerations sufficient to outweigh the harm.

Reasons

6. The site which is irregular in shape is currently agricultural land which gradually slopes downwards in a northerly direction towards a stream along which can be found a number of mature trees. The majority of the site is located in open countryside outside of the adjacent settlement limit for Cross Lanes; the portion that lies within the settlement limit is located to the southern end of the site adjacent to existing development. The eastern/roadside and western boundaries to the site are bordered by hedging and trees, whilst the southern boundary backs onto existing dwellings. The site benefits from an existing field access onto Bedwell Road. A public footpath runs from Bedwell Road across the site towards the stream.
7. The appeal site lies partly within Flood Zone C2 as categorised by the Development Advice Maps (DAMs) contained within Technical Advice Note 15, Development and Flood Risk (TAN 15) and therefore is at risk of flooding.

Sustainable Development & Settlement Boundaries

8. It is a long standing planning policy position that the countryside should be safeguarded from uncontrolled and sporadic development, with development primarily directed to existing settlements; otherwise unrestrained encroachment of the countryside would occur. However, other appropriate locations outside settlements cannot be discounted and these have to be weighed against national advice supporting sustainable development as detailed in Planning Policy Wales Edition 9 (PPW).
9. Policy PS1 of the adopted Wrexham Unitary Development Plan (UDP) is strategic in nature and seeks to direct new housing development to within defined settlement limits. Policy PS2 of the UDP states, inter alia, that development must not materially detrimentally affect the countryside or the quality of the natural environment. Policy PS4 of the UDP refers to development maintaining the existing settlement pattern and character and being integrated with the existing transport network to help reduce the overall need to travel and encourage the use of alternatives to the car. Policy GDP1 of the UDP seeks, inter alia, to ensure that development is located where it has convenient access to public transport facilities and is well related to pedestrian and cycle routes whenever possible, and secures the development of sustainable communities through the economic, social and environmental well-being of the area. Policy H5 of the UDP permits new dwellings outside defined settlement limits where,

inter alia, it comprises infilling subject to policy GDP1. Policies PS1 and H5 broadly reflect the stance taken in PPW, and advice as contained within Technical Advice Note 6: Planning for Sustainable Rural Communities, insofar as they relate to the control of new housing in the countryside in line with sustainability principles.

10. The appeal site, save for a small portion, is located outside of the settlement limit for Cross Lanes and therefore is in open countryside; for this reason when considered in its totality it would be contrary to Policy PS1 of the UDP. It is also contrary to policy H5 as none of the identified criteria are met.
11. Cross Lanes is served by one convenience store. I appreciate a recent planning permission in the locality will make provision in the future for a children's activity centre and secures the use of a meeting room that can be booked for local community use. Nonetheless the extent of existing or potential services locally is extremely limited, and therefore I consider the site is not particularly sustainably sited in terms of access to shops and services.
12. Technical Advice Note 18: Transport refers to promoting housing development in locations with good access by walking and cycling to primary and secondary schools, whilst PPW refers to locating development so as to minimise the demand for travel, especially by private car. The appellant states the site is within 1.3 km of a primary school in Marchwiell. A proposed footpath from the site would link into an existing footpath allowing access via the settlement towards the A525 and onwards to the primary school in Marchwiell; another pedestrian route could utilise the public footpath that crosses the site and leads towards the A525. I consider these potential routes are highly unlikely to be used or seen as attractive for use by parents walking with young children or older primary age children walking alone as the A525 is a busy 'A' road whose footpath is no more than a metre wide and unlit for a substantial part of its length. Furthermore the public right of way to the north of the site has to cross a stream, in addition to uneven open fields before meeting up with the A525.
13. The site is within walking distance of public transport via bus stops on the A525 which allow access into Wrexham or Whitchurch, however to my mind the level of service is very limited. I appreciate that Wrexham Industrial Estate is located in the wider area thereby offering employment possibilities, and may be accessible to those on a bicycle; however for pedestrians it lacks for a significant part of its length a dedicated footway linking it to the appeal site. In addition there is no evidence before me that any buses serving Cross Lanes would also serve the Wrexham Industrial Estate. I appreciate any future children's activity centre offers the possibility of employment locally; however there is no guarantee any jobs on offer would be filled locally.
14. PPW seeks to locate development so as to minimise the demand for travel, especially by private car; this approach is reflected in part by policy PS4 of the UDP. In sustainability terms I consider Cross Lanes is extremely limited as regards services and facilities available for future occupants of the development, nor is the site well placed to sustainably access services or facilities in the wider area. Whilst I acknowledge certain services and employment opportunities could be accessed locally in some cases, by either walking or cycling, however in my opinion, such an arrangement would not be likely to adequately cater for the general day to day and long term needs of the future occupants of the development without significant reliance on the car as a means of travel; consequently I consider the proposal runs contrary to local and national planning policies that seek to minimise the demand for travel and the use of the private car.

15. I have previously found that the proposed development does not accord with policies PS1 and H5 of the UDP in terms of new housing in the countryside. In addition, policy PS2 of the UDP states, inter alia, that development must not materially detrimentally affect the countryside or the quality of the natural environment. Furthermore PPW states the countryside, in line with sustainability principles, should be conserved and where possible enhanced for its own sake. The proposed development would neither conserve nor enhance the countryside and to my mind has not been justified on a site that is primarily within a rural location; it would therefore detrimentally affect the countryside.
16. Consequently it is in conflict with local and national planning policies that in broad terms seek to control development in the interests of sustainability. PPW states that a plan led approach is the most effective way to secure sustainable development through the planning system. I have previously found that the UDP policies applicable to the proposed development broadly reflect the stance taken in PPW insofar as they relate to the control of new housing in the countryside in line with sustainability principles. The presumption in favour of sustainable development as set out in PPW does not apply having regard to the key principles and key policy objectives of sustainable development¹.
17. Concluding on this first main issue, the proposed development would not provide a suitable site for housing having regard to the principles of sustainable development and planning policies that seek to strictly control new development outside of settlement boundaries, and therefore the proposal would be contrary to local and national planning policies.

Character and Appearance

18. The Council argue the proposed development would result in an unattractive built environment due to the likely form and orientation of the development, the density of dwellings in certain locations and the way the dwellings would be laid out resulting in an overly uniform and bland type of development. Policy GDP1 seeks, inter alia, to ensure that built development in its scale, design and layout, and its use of materials and landscaping accords with the character of the site and makes a positive contribution to the nearby locality.
19. Whilst I share some of the Council's concerns in terms of layout of development, nonetheless, I see no reason why this matter could not, should I be minded to allow the appeal, be subject to later control in the form of a reserved matters approval, thereby safeguarding the visual amenities of the area. I note that the majority of existing landscaping in the form of boundary trees/hedging to the site would be retained and/or augmented which in visual terms would enhance any future detailed scheme for the site, assist in the screening of views of future development from vantage points in the wider landscape, and aid in part the retention of the existing character of the site. As regards the density of development, in broad terms the indicative layout does not appear unduly out of character with the residential development to the south and east of the site, and the indicative layout would indicate dwellings would have a reasonable quantity of space around them, in addition to private amenity space.

¹ PPW paragraphs 4.2.2, 4.2.4, 4.2.5

20. For reasons given above I consider the proposed development would be unlikely to be detrimental to the character and appearance of the area or run contrary to policy GDP1 of the UDP.

Open Space

21. The scheme as determined by the Council did not provide open space within the site. The appellant's submitted revised illustrative master plan indicates an area of open space would be provided to the northern boundary of the site. Policy CLF5 of the UDP requires that development of 10 or more dwellings provide a useable informal public open space within the site at a minimum level of 0.4 hectares per 50 dwellings. This policy is amplified by adopted Local Planning Guidance Note No. 10: Public Open Space In New Housing Development (LPGN 10), which refers to adequate public open space being provided within new housing developments and developers entering into legal agreements in order that funding can be provided for future maintenance of such places and that such spaces are usable. PPW refers to the promotion of attractive landscapes around dwellings, with usable open space.
22. In terms of area, the POS indicated on the revised master plan appears to broadly correlate with that required under the policy. However, to my mind the proposed open space does not appear to be particularly useable due to its irregular shape, the fact that part of it falls away in ground level into the stream bank to the northern boundary of the site, and due to it being over hung by power lines.
23. I appreciate the revised master plan is indicative only, however due to the restricted nature of the site, the fact that any dwellings would be sited outside of the C2 flood zone area, and the number of dwellings proposed for the site, it appears in all likelihood that the open space could not be delivered elsewhere on the site in order to overcome the concerns identified. Furthermore, even if I did not have concerns, the appellant has not provided, as required by policy CLF5 and LPGN 10, a legal agreement regarding any future maintenance; this matter cannot be secured via a planning condition as suggested by the appellant.
24. Pulling the threads of the above together, I consider the open space as indicated on the illustrative master plan would be unusable for the reasons given above; also for the reasons given above there does not appear to be any other likely locations within the site where such development could go based on existing site constraints and the number of units proposed. Consequently I do not consider adequate open space would be provided on the site and therefore the proposal would be contrary to policy CLF5 of the UDP and advice as contained within LPGN 10 and PPW.

Flooding

25. A stream flows adjacent to the northern boundary of the site; this represents a flood risk. Policy EC12 of the UDP relates to '*Development and Flood Risk*' and states development within flood plains will only be permitted if it would not be subject to an unacceptable risk of flooding on site and/or does not result in an unacceptable risk of flooding on or off site, and/or would not adversely affect flood management or maintenance schemes.
26. PPW states that proposals should minimise the risk posed by, or to, development on or adjacent to land liable to flooding; this is a sustainability objective of the planning system in Wales. It also states that meeting the Welsh Government's objectives for sustainable development requires action through the planning system to move away from flood defence and mitigation of the consequences of new development in areas

defined as being of flood hazard to a more positive avoidance of development in areas defined as being of flood hazard; it refers to planning authorities adopting a precautionary approach when considering management and flood risk. Paragraph 13.4 of PPW specifically refers to development management and flood risk and says that development in areas defined as being of high flood hazard should only be considered where the development can be justified in that location, even though it is likely to be at risk from flooding, that the proposal would not increase the risk of flooding elsewhere, and that the development would not increase the problem of surface water run-off.

27. More specific guidance is given in TAN 15 which describes all residential premises as highly vulnerable development. Part of the appeal site is classed as being within an area of the floodplain designated as C2, i.e. 'areas of flood plain without significant flood defence infrastructure' as defined by the DAM referred to within TAN 15. The DAM confirms that the site lies partially within the extreme flood risk outline; the FCA indicates that this part of the site would be utilised for public open space. However the majority of the site lies within Zone A which is considered to be at little or no risk of fluvial or tidal/coastal flooding; the FCA indicates the proposed dwellings would be restricted to that part of the site which is at little or no risk of flooding. I am satisfied in terms of TAN 15 that any dwellings could be prohibited from being located within the identified Zone C2.
28. However, TAN 15 sets out a precautionary framework to guide planning decisions. The principal aim of the framework is to direct new development away from those areas which are at a high risk of flooding. This principle is particularly important in the light of climate change, which is expected to significantly increase the risk of flooding over time.
29. Notwithstanding the appellant's intention to steer dwellings away from the C2 flood risk area, NRW raised a number of significant concerns due to deficiencies with the submitted FCA which related to: the validity of the hydraulic and hydrological modelling which dates from 2009, and which it is maintained, given the passage of time would be expected to be reviewed to ensure that the outputs from the study remain fit for purpose; that the FCA did not use the latest climate change guidance as provided by the Welsh Government which would be used to inform mitigation measures to help ensure the long term resilience of the development; and, that the FCA had failed to consider how physical blockages to the watercourse could affect flood risk to the site and to the proposed development. In respect to this final point, TAN 15 refers to consideration being given to the possibility of flooding caused by blockage and particular attention given to the flooding consequences of such blockage on development. Consequently NRW took the view that this additional information was necessary to ensure that any proposed flood risk mitigation measures are adequately designed to protect the proposed residential development from flooding over its lifetime.
30. Bearing in mind the comments raised by NRW and the overarching precautionary framework to guide planning decisions as set out in TAN 15, in the absence of any other compelling evidence to indicate otherwise, I am not convinced that the proposed flood risk related to the site and potential mitigation measures have been adequately addressed, notwithstanding the appellant's assertions that any dwellings would be located outside of the Zone C2 area. In the absence of this information I cannot adequately assess the risk of flooding to the proposed development. Consequently I

consider the proposed development would fail to satisfy policy EC12 of the UDP, PPW and TAN 15.

Biodiversity

31. Policy GDP1 of the UDP states that new development should safeguard sites and areas of nature conservation and wildlife interest. PPW refers to the promotion of biodiversity and in particular the conservation of native wildlife and habitats. The appellant's Ecological Assessment (EA) indicates that ponds in the wider environment around the appeal site are known to be occupied by Great Crested Newts (GCN), however, it states some of these are separated from the site by a road and residential development which would act as significant barriers to GCN dispersal from the ponds onto the appeal site, whilst other ponds are separated from the site by a stream to the site's northern boundary which it is considered would act at least partially as a barrier to dispersal of GCN from these ponds onto the site; I agree. The EA notes that any potential high quality habitat for GCN is limited and primarily confined to site boundaries with a low risk that they would be present on the site. The EA suggest a number of precautionary measures such as vegetation clearance by an ecologist and a watching brief throughout construction works.
32. The Council maintain insufficient evidence has been submitted to assess the impact that the scheme will have on protected species such as the GCN and therefore the favourable conservation status of those species is likely to be prejudiced. Natural Resources Wales (NRW) concurs with the conclusions of the EA in respect of the potential impacts on the GCN and furthermore considers the proposal would not be detrimental to the maintenance of the favourable conservation status of any GCN populations, subject to an appropriately worded planning condition or obligation. In the absence of any significant evidence to indicate that GCN are resident on the site or would be likely to be detrimentally affected by the proposed development, I am minded to agree with the views of NRW; I see no reason why the interests of the GCN could not be safeguarded subject to an appropriately worded planning condition.
33. The Council argue the appellant has submitted insufficient information in order to assess the impact of the development on the bats in an area which is considered to provide a prime location for them in terms of foraging and commuting. The EA confirms that the trees to the western and northern boundaries of the site have features which could support roosting bats and recommends that trees should be retained, in addition to hedgerows, and that new external lighting should be kept to a minimum and directed towards the centre of the site away from potential bat commuting routes. Whilst noting the Council's concerns, no trees are to be felled as result of the proposed development, whilst any hedging to be removed along the road frontage for visibility purposes related to the proposed access could be replanted again following the line of the splays; I see no reason why the safeguarding of the trees, hedging and/or replacement hedging could not be subject to an appropriately worded planning condition in the event of the appeal being allowed.
34. The EA also confirms that bats use linear habitat features such as lines of trees and hedgerows as navigational markers. NRW raised no objections to the proposed development in terms of impacts on bats and stated that they concurred with the recommendations proposed in the EA. I consider that the mitigation measures referred to in the EA including the retention of boundary trees and where possible hedging or its replacement if removed and the addition of new hedging in places, would adequately safeguard bat foraging and commuting areas, and further control in terms of keeping lighting levels to a minimum, would collectively result in the

proposed development being unlikely to have any significant impact on bats or their conservation status.

35. The Council also raise concerns regarding the impact of the development on the stream corridor located to the north of the site where Otters have been recorded, however they have provided little in the way of explanation as to how the proposed development is likely to detrimentally impact on this species. The EA acknowledges the potential for Otters along the stream and that movement of machinery on the site should be limited to daylight hours in order to minimise the risk of harm to Otters that may enter the site. NRW advise that any detailed design for the site include the dedication of a 10-15 m buffer running parallel to the stream to help ensure the functionality of the water course for Otters. Bearing in mind these comments, and the lack of substantive evidence to indicate the proposal would be detrimental to the favourable conservation status of Otters locally, and the fact that the application is outline in nature, I see no reason why a buffer could not be achieved, and safeguarded as such in the interests of ecology, if the appeal were allowed.
36. The proposed development is therefore not considered to be detrimental to the favourable conservation status of protected species in the locality or any other local biodiversity interests and therefore would not run contrary to policy GDP1 of the UDP and PPW which collectively seek to safeguard ecology interests.

Other Material Considerations

37. The Council does not have a 5 year supply of residential land as required by PPW. Clearly the lack of a 5 year supply is a significant material consideration that weighs in favour of the proposal. TAN 1², states that 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 policies. The proposed development would provide for up to 24 dwellings on the site; this carries considerable weight. However any the benefit of the proposal in terms of the contribution to housing land supply, or for that matter any other benefit put forward by the appellant, does not outweigh the significant shortcomings of the proposal and its conflict with local and national planning policies which seek to promote sustainable development, control the location of new residential development in the countryside, make adequate provision for POS, and the avoidance of development in areas vulnerable to flood risk.
38. In support of the proposal the appellant has raised a number of other decisions that have been permitted due to a lack of 5 year land supply, and also highlights what is considered to be a lack of consistency in decision making within the Council in regards to this matter. I do not have the full details of those schemes and therefore cannot be certain that the circumstances are the same. However in this instance, as referred to above, I have found that any benefit in terms of housing land supply does not outweigh the considerable conflict with local and national planning policies. In any event I have considered the appeal proposal on its own merits.

² Planning Policy Wales Technical Advice Note 1: Joint Housing Land Availability Studies 2015

Other Matters

39. Third parties have raised a number of concerns that the proposed development would be detrimental to, inter alia, highway safety and residential amenity and questioned the sewerage/drainage provision for the proposal.
40. I note the Council's highway engineers raised no objections to the proposal on the grounds of highway safety. There is no substantive evidence that the level of traffic generated by the proposed development would have a detrimental impact on highway safety or result in on-street parking. As regards detriment to residential amenities, as the application is in outline with all matters except for access reserved for a later application, the detailed design and layout of the scheme and its final relationship with adjacent properties would be subject to later approval. Based on my site observations I am satisfied the site could accommodate a form of development that would safeguard adjacent residential amenities in terms of privacy, physical proximity or more general noise and disturbance.
41. Bearing in mind the statutory sewerage and drainage bodies have raised no objections to the proposed development, and the lack of documentary evidence to take a contrary view, I am satisfied these matters could be adequately addressed via appropriately worded planning conditions that would safeguard local amenity and pollution interests, in the event the appeal was allowed.
42. A third party has expressed concerns relating to the effect of the development on a listed building that is located opposite the appeal site. However bearing in mind my findings on the identified main issues in this appeal I do not intend to address this matter any further.

Conclusions

43. I have found that the proposal is not sustainable development that has been justified outside of existing settlement boundaries, would not provide adequate open space, and has not adequately addressed the risk from flooding. Whilst I have found that the proposed development would not be detrimental to the character and appearance of the area or be prejudicial to ecological interests, nonetheless these or any other matters in favour of the proposal would not overcome or outweigh the concerns identified. Therefore after taking account of all the evidence before me, and for the reasons given above, I conclude that the appeal should be dismissed.
44. 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 WBFG Act. In reaching my decision, I have taken into account the ways of working set out at section 5 of the WBFG Act and I 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 set out as required by section 8 of the WBFG Act.

Declan Beggan

INSPECTOR