

Hearing Statement

Appeal Reference: APP/H6955/A/17/3173915

PROPOSED RESIDENTIAL DEVELOPMENT AT:
GAMFORD LANE, ROSSETT, WREXHAM LL12 0BA

LPA reference: P/2016/0712

Prepared by Land Planning Limited

On behalf of Mr & Mrs Taylor

June 2017

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1. Introduction

- 1.1. This Hearing Statement has been prepared by Joanne Ellis-Jones BSc. (Hons), MSc. for Land Planning Limited, on behalf of Mr and Mrs Taylor.
- 1.2. This statement supports our client's appeal for residential development of forty seven dwellings, including 25% affordable housing provision, on land at Gamford Lane, Rossett.
- 1.3. An initial, informal discussion with the planning case officer (Mr Philip Forster as Duty Officer) took place in May 2016. The planning application was submitted in July 2016. In August 2016 Land Planning organised an open day for members of the public to view the proposed plans, discuss the scheme and provide feedback for use in preparation of detailed plans, subject to outline approval. Members of Land Planning also attended the Community Council meeting in September, having been invited to discuss the application.
- 1.4. The proposal represents a number of positive economic and social benefits. We have not identified any environmental harm that would significantly and demonstrably outweigh the benefits associated with the proposal, and we consider the planning permission should be granted accordingly.

2. Appeal Proposal

- 2.1. The appeal proposal seeks outline approval, with all matters reserved, for residential development of forty seven dwellings, including 25% affordable housing provision.
- 2.2. The scheme also illustrates a number of ecological enhancements including the planting of approximately 731 metres of native species hedgerow, additional tree planting and the construction of a pond within the public open space area has also been discussed.

- 2.3. The main access illustrated is directly off Gamford Lane, leading to Darland Lane, which links to Chester Road, which is the main road running through the village leading directly to the main A483.

3. Site and Area Description

- 3.1. The site is situated adjacent to the settlement boundary of Rossett, within the north eastern part of the village. This is Greenfield land within a green barrier and a Special Landscape Area (as defined by the Wrexham Unitary Development Plan).
- 3.2. To the north, north east, west and south west of the site there are residential properties. To the east is a woodland area with agricultural land to the south. The site runs parallel to and is bound by Gamford Lane and has an existing access point to the North West of the site.
- 3.3. The application site is a relatively flat site, currently comprising grazing land. There are existing boundaries to the site, comprising established hedging and trees.
- 3.4. The application site has good accessibility to existing local services, including shops, schools and public transport links and due the size of the site it can offer a significant contribution to the need for local housing.

4. Planning History

- 4.1. There is no planning history on this site that is relevant to the determination of this appeal.

5. Planning Considerations

- 5.1. The National Policy (PPW) provides the commitment to sustainable development. Paragraph 2.14.4 states: 'It is for the decision-maker, in the first instance, to determine through monitoring and review of the development plan whether policies in an adopted LDP are outdated for the purposes of determining a planning

application. Where this is the case, local planning authorities should give the plan decreasing weight in favour of other material considerations such as national planning policy, including the presumption in favour of sustainable development.’

5.2. Paragraph 1.2.2 states that “The planning system must provide for an adequate and continuous supply of land, available and suitable for development to meet society’s needs.”

5.3. Paragraph 2.1.2 states Local Development Plans (LDP) are fundamental to planning for sustainable development and that Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the development plan for the purposes of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise. Conversely, applications that are not in accordance with relevant policies in the plan should not be allowed unless material considerations justify the grant of planning permission.

5.4. Section 5 of TAN1 states where the current study shows a land supply below the 5 year requirement, the need to increase supply should be given considerable weight when dealing with planning applications, provided that the development would otherwise comply with national planning policies. In addition, local planning authorities must take steps to increase the supply of housing land.

5.5. With regard to Local Plan Policies PS1, PS2, PS3, PS4, GDP1, GDP2, EC1, EC2, EC4, EC5, EC13, H5, H7, CLF5 and T8 of the Wrexham Unitary Development Plan (UDP) are noted as applicable in the Committee Report. Within the decision letter, the policies deemed to be contravened by the application were PS1, PS2, H5, EC1, EC5, EC13 and GDP1.

5.6. Policy PS1

5.6.1. New development for housing, employment, and community services will be directed to within defined settlement limits/employment areas.

5.7. Policy PS2

- 5.7.1. Development must not materially detrimentally affect countryside, landscape/townscape character, open space, or the quality of the natural environment.

5.8. GDP1

- 5.8.1. All new development should:-
- 5.8.2. Ensure that built development in its scale, design and layout, and in its use of materials and landscaping, accords with the character of the site and makes a positive contribution to the appearance of the nearby locality.
- 5.8.3. Take account of personal and community safety and security in the design and layout of development and public / private spaces.
- 5.8.4. Make the best use of design techniques, siting and orientation in order to conserve energy and water resources.
- 5.8.5. Ensure safe and convenient pedestrian and vehicular access to and from development sites, both on site and in the nearby locality.
- 5.8.6. Ensure that built development is located where it has convenient access to public transport facilities, and is well related to pedestrian and cycle routes wherever possible.
- 5.8.7. Ensure the safety and amenity of the public and safeguard the environment from the adverse effects of pollution of water, land or air, hazards from industry and quarrying, and associated noise, odour or vibration arising from development.
- 5.8.8. Secure public services (e.g. gas, water, electricity) to development at minimum public cost.
- 5.8.9. Safeguard sites and areas of nature conservation and wildlife interest, and to provide new habitats where there is an unavoidable loss of existing habitats and areas of wildlife interest.
- 5.8.10. Ensure that development does not result in, or is subject to, flooding, soil erosion, landslides or contamination, either on or off the site.

5.8.11. Have regard to the need to safeguard those areas that possess a strong Welsh cultural and/or linguistic identity from development that could harm this identity.

5.8.12. Secure the development of sustainable communities, through the promotion of the economic, social and environmental well-being of the area.

5.9. EC1

5.9.1. Within Green Barriers, development will only be granted planning permission if it is for agriculture, forestry, essential facilities for outdoor sport and recreation, cemeteries and other uses of land which maintain the openness of the Green Barrier and do not conflict with the purpose of including land within it.

5.10. EC5

5.10.1. Within Special Landscape Areas, priority will be given to the conservation and enhancement of the landscape. Development, other than for agriculture, small-scale farm-based and

5.10.2. other rural enterprises, and essential operational development by utility service providers, will be strictly controlled.

5.10.3. Development will be required to conform to a high standard of design and landscaping, and special attention will be paid to minimising its visual impact both from nearby and distant viewpoints.

5.11. EC13

5.11.1. Development which would result in an unacceptable adverse impact on the water environment due to additional surface water run-off will not be permitted.

5.12. H5

5.12.1. Outside defined settlement limits new dwellings will only be permitted where:-

5.12.2. proposals accord with Policies H3, H4, and H8; or

- 5.12.3. proposals comprise infilling subject to Policy GDP1; or
- 5.12.4. an essential need to house a full time agricultural or forestry key worker can be established and
- 5.12.5. the long term financial viability and functional management of the enterprise is proven; and
 - 5.12.5.1. ii) the person, due to the nature of the work, has to live on the site rather than in a nearby settlement; and
 - 5.12.5.2. iii) there are no suitable buildings nearby which could be converted into a dwelling; and
 - 5.12.5.3. iv) the new dwelling is sited adjacent to an existing building, can be landscaped, and is of a form, bulk, design and materials which reflect the locality's rural character. Any permission will be conditioned to limit residential occupancy to essential workers.

5.13. In accordance with the Wrexham Unitary Development plan, being outside the settlement boundary and within an area designated as Green Barrier and Special Landscape Area, the development would be contrary to the local policy. However, in light of the lack of available housing land throughout the Wrexham authority area and the positioning of the site being adjacent to the settlement boundary, it is believed in this instance, development here would create a natural extension to the village, providing much needed homes for all members of the community, including 25% affordable housing provision.

5.14. Within the Planning Committee report, the key objections relate to development of a site designated as Green Barrier, within a Special Landscape Area and within an area that has suffered from periodic surface water flooding.

6. Case for the Appellant

6.1. The proposal constitutes sustainable development in accordance with section 4 of PPW, so should benefit from the presumption in favour of sustainable development.

6.2. To demonstrate this, the following points consider the developments credentials against the key dimensions of sustainable development within figure 4.2 and paragraph 4.2.2 of PPW: “Sustainable development” means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the well-being goals.’

6.3. The Economic Role

6.3.1. The provision of both market and affordable housing in Rossett, a sustainable location, would make a positive contribution to short term construction jobs. In the longer term, the future residents occupying the dwellings would provide significant benefits in terms of increasing potential spending power. This would help to sustain the viability of the range of facilities available in Rossett.

6.4. The Social Role

6.4.1. Situated within a well-integrated sustainable site, the proposed development would provide a built environment that facilitates social integration and inclusive communities;

6.4.2. It will facilitate procurement of affordable and open market housing to meet an identified shortfall;

6.4.3. The proposed scheme provides on-site open space to support the health and well being of the future residents and the existing community.

6.5. The Environmental Role

6.5.1. A detailed drainage scheme will be designed to mitigate impact upon the existing infrastructure, incorporating SuDs where appropriate;

6.5.2. High quality designed homes could be delivered with the use of traditional designs and materials in keeping with the local vernacular;

6.5.3. Access to good public transport facilities will encourage transport modes other than the private car;

6.5.4. The development will be built in accordance with national sustainability standards as prescribed in the Framework.

6.6. The reasons given for refusal on the decision notice relate to development outside the settlement boundary in the Green Barrier and SLA, disposal of surface water is deemed unsustainable, insufficient information regarding protected species was submitted and the removal of hedgerow would have a detrimental impact.

6.7. Settlement Boundary (Policy PS1, H5)

6.7.1. This proposed development is on the edge of the village, adjacent to the settlement boundary. Although Local Policies, PS1 and H5 of the UDP directs residential development to within settlement limits, these policies are now out of date so can only be afforded limited weight.

6.7.2. Section 5 of TAN1 states that where supply of housing land is below 5 years, the need to increase supply should be given considerable weight when dealing with planning applications and local planning authorities must take steps to increase the supply of housing land. This would therefore suggest that building outside of the settlement limits would potentially offer an acceptable solution, where other criteria are adhered to.

6.8. Green Barrier (EC1)

6.8.1. Green Barrier is not a permanent designation and is meant to be reviewed as part of the development plan review process. The Wrexham UDP is out of date and the Local Development Plan is not as yet adopted. It is highly likely that when reviewed, some residential development will be required on land currently designated as Green Barrier, in order to address the current, significant shortfall in housing land supply.

6.8.2. The Green Barrier designation is in place essentially to prevent the coalescence of urban areas and villages with other settlements. In this instance,

it is not believed that this site would create over development or urban sprawl, but would in fact create a natural extension to the village, of suitable, sustainable scale. The Green Barrier would therefore be maintained between settlements and the openness of the Green Barrier would be retained. The nearest settlement would be Trevalyn to the south east which is approximately half a mile away from the southern tip of the site.

6.9. Special Landscape Area (EC5)

6.9.1. With regard to the objection relating to the SLA, comments from NRW merely noted that the proposal may be a Landscape of Interest, but no objection was put forward or any further detail given on any landscape features of specific importance that may be affected by the development. Furthermore, from the LVIA carried out on behalf of the applicant's, it was noted that the key qualities of the landscape within the SLA in this locale have already been partially compromised by the adjacent built form and urban edge of Rossett, and that the integrity of the wider SLA would not be significantly affected by the proposed development, given the proposed tree and hedgerow planting along the southern boundary, and within the site itself. Hence, it is believed that any harm to visual quality and landscape character would be limited and outweighed by the urgent need to increase housing land supply in a sustainable location.

6.10. Disposal of surface water EC13, GDP1

6.10.1. Neil Taunt, Flood Officer for Wrexham County Borough Council commented on the application stating that the site is identified as being at risk of surface water flooding.

6.10.2. Welsh Water and Natural Resources Wales (NRW) did not object to the proposal, but stated that discharging to the mains sewer network would not be acceptable and that a condition of an approval should require a drainage scheme for the site to be submitted to and approved in writing by the local planning authority. It was assumed that any issues relating to the surface water

of the site would indeed be dealt with by condition. Clearly, a full detailed drainage scheme would be produced as part of a reserved matters application. However, as it was noted within the committee report that the lack of evidence regarding surface water drainage was to be a reason for a recommendation for refusal; additional reports were rushed to be prepared in order that they could be submitted prior to the committee meeting. These were not accepted as offering a satisfactory means of drainage.

6.10.3. An alternative means of surface water disposal to a local watercourse would be a straightforward solution; however, there is currently an issue with the truncation of the local drainage network, resulting in surface water flooding in the area during periods of excessive rainfall.

6.10.4. Local enquiries have indicated that the drainage pipe in question had been blocked at some stage, the problems having first occurred after the houses at Pippin Lane were constructed by Charles Church Developments, and this is believed to be the cause of the surface water flooding which occurs periodically in the area, during periods of extreme rainfall.

6.10.5. The Land Drainage Act 1991, provides the local authority with extensive powers to carry out works to maintain existing drainage works. Now that the issue in relation to the drainage problem at Gamford Lane has been identified, the necessary works should be carried out by the drainage board or local authority.

6.10.6. Mr Taunt has discussed the drainage issues in this area with the local authority Engineers. He stated there were ongoing issues associated with a truncation of the existing drainage systems and that they were currently in the process of trying to secure a remedial scheme to reinstate flow within the system, which would resolve the problem of surface water drainage at the application site.

6.10.7. Reinstating the original drain system is proven to be viable and would resolve the current problem, and in the event of the existing drain being successfully reinstated, we believe the Local Authority flood team would accept the use of the drain for the proposed scheme, subject to run-off data.

6.10.8. As the concerns over surface water drainage are a critical factor of this application, Land Planning has taken advice from Barrister, Rachel Watkin, regarding the legal rights of the landowner to drain surface water from the site and the responsibilities of the Local Authority to maintain the local drainage infrastructure. A statement from Rachel Watkin has been included within the appendix.

6.11. Protected Species PS2, GDP1

6.11.1. An extended phase 1 protected species survey was carried out in July 2016. No signs of bats, Great Crested Newts or Badgers were found within the site area.

6.11.2. Clwyd Badger Group noted concerns about badgers in the vicinity, but the results from the Phase 1 survey found no signs of badger activity within the grounds and there were no objections from Gareth Thomas of Natural Resources Wales (NRW) who considered the ecological assessment to have been completed to a satisfactory standard, and agreed with the conclusions that the proposal will not affect any European or fully protected British protected species.

6.12. Removal of Hedgerow Policy PS2, GDP1

6.12.1. In order to comply with required highways improvements, the highways officer suggested that a section of hedgerow along Gamford Lane would need to be removed. This section of hedgerow could either be transplanted further back within the site or a new hedgerow (made up of equivalent native species)

could be planted to retain the hedgerow boundary to the site. Hence, with replacement planting, along with proposed additional hedgerow planting, there is no reason to conclude that the visual amenity and rural integrity of the lane will be unduly affected by the proposal.

6.12.2. A robust landscaping scheme can be secured by the local planning authority at the reserved matters stage to ensure sufficient planting of native species hedgerow is carried out.

7. Planning Obligations

7.1. In accordance with relevant requests from the LPA, the appellant will be providing a Unilateral Undertaking to cover matters relating to the following:

- the provision of a contribution towards education shortfall (£94k for Darland School only based on outline numbers at the present time);
- the provision of a management company for the required open space; and
- the intended mechanism for the provision of the affordable housing.

8. Summary and Conclusions

8.1. This appeal relates to an outline application, with all matters reserved. Therefore, at this stage, only the principle of development at the application site for residential development is sought. The application was refused on five issues and these have been addressed within this statement and the Grounds of Appeal document.

8.2. The contribution the development would make toward addressing the five year land supply deficit, along with the associated social and economic benefits, would outweigh any perceived harm the proposed development would have on the setting of the Special Landscape Area or Green Barrier designation.

8.3. With regard to the concerns of surface water drainage, the original drainage scheme previously worked well, with the drain formerly feeding into the large pond

to the east. It is believed that only since the drain has been blocked, has there been an issue. Reinstating the original drain system would resolve the current problem.

- 8.4. A detailed drainage scheme could have been made a condition of planning consent in the form of a 'Grampian Condition', rather than the application being refused on the grounds that no evidence had been provided to ensure a sustainable drainage scheme can be designed to manage potential flood risk. In accordance with the Land Drainage Act 1991, the local authority has extensive powers to carry out works to maintain existing drainage works.
- 8.5. Now that the issue in relation to the drainage problem at Gamford Lane has been identified, the necessary works should be carried out by the local authority. This should result in the application site being able to be acceptably drained.
- 8.6. In relation to the potential of building outside of the settlement boundary, within an area designated as Green Barrier, the fact that Wrexham County Borough Council does not have a 5 year supply of available housing land should be a material consideration in the decision process. Many of the sustainable settlements in the County Borough are either partially or wholly bound by Green Barriers. It will therefore be difficult to significantly increase the supply of housing land if the current UDP policies, including Green Barrier designations, are strictly adhered to in every case.
- 8.7. This site is adjacent to the settlement boundary, within a sustainable location and it would create a natural extension to the village. Crucially, the site is available and developable and as such, could significantly contribute to the current five year land supply deficit.

10. Appendix

10.1. Advice Note from Rachel Watkin (Barrister)

ADVICE NOTE

Mrs Mary Taylor

LAND AT THE BUNGALOW DARLAND LODGE OFF DARLAND LAND AND GAMFORD LANE ROSSETT LL12 0BA

1. Mrs Mary Elizabeth Alice Taylor ("Mrs Taylor") is the registered proprietor of land known as The Bungalow Darland Lodge Off Darland Land And Gamford Lane Rossett LL12 0BA and registered under title number CYM1486 which comprises her existing dwelling and 5.78 acres of land fronting on to Gamford Lane (the "Development Site"). Mrs Taylor seeks planning permission to erect 47 dwelling and associated infrastructure works on the Development Site.
2. Mrs Taylor submitted an application for outline planning permission on 25 July 2017. The permission was refused on 6 February 2017. Five reasons were provided for the refusal. The third reason was:

"The proposed development is not considered to be satisfactory in terms of design and would not provide sufficient measure to secure a satisfactory form of sustainable development. In particulars the proposal to discharge surface water generated by the development to the combined sewer network is deemed unacceptable and would not meet the sustainability criteria laid out in Section 8 of Welsh Government Technical Advice Note 15 – Development and Flood Risk. The proposal also includes inadequate provision for the disposal of surface water generated from the site which would lead to the possibility of local flooding. To

allow the development would be contrary to policy EC13 of the Wrexham Unitary Development Plan.”

3. Policy EC13 relates to surface water run off and relates to concerns arising from the fact that the development of green field sites usually results in an increase in impermeable land. Surface water should be disposed of as close to the site as possible. Thus, it is essential that the local planning authority can be satisfied that no adverse impact will arise as a result of the development.
4. It is understood that particular concerns have arisen in relation to the Development Site as a result of localised flooding in recent years but that no flooding in the area occurred between 1970 – 2006 save for in instances where there were known blockages.
5. It is understood from a drainage report which is being compiled by Charles Townsend of ELLUC Projects Ltd (the “Report”) that on the occasions of the localised flooding, the Development Site was not flooded and, therefore, it does not act as a catchment area for rain water.
6. Surface water from the Development Site and Gamford Lane drains into a culvert situated on Gamford Lane which connects into a surface water sewer at the junction with Darland Lane from where it travels to the north-west to the boundary between the Cottage Close and Rossett Park developments. The surface water sewer then continues to the north-east but ends at the boundary between the Cottage Close development and Pippin Lane.
7. It is understood that the watercourse previously continued along the site which is now Pippin Lane and would have been positioned within the rear gardens of the 12, 14, 16 and 21 Pippin Lane. It then previously continued through the property known as the Woodlands, Darland Lane, Rossett (the “Woodlands”) and into the pond on Darland Lane.

8. The discontinuance of the watercourse results in the water from Gamford Lane being unable to escape and causes flooding of the highway at the junction between Darland Lane and Gamford Lane and flooding of gardens at Cottage Close and Pippin Lane.
9. It is understood that the flooding referred to has only arising since around 2007/8 and, therefore, it is presumed that the watercourse behind Pippin Lane was discontinued by the developers of Pippin Lane who are understood to have been Charles Church Developments.
10. The flooding has a detrimental effect on the occupiers and occupiers and owners of the properties in the vicinity and also on the users of the highway. At present, planning information has not been obtained to establish whether Charles Church Developments were in breach of any of planning obligations in this regard. However, it is worth considering the duties of both the local counsel and Charles Church Developments in this regard.
11. The case of **Lambert and others v Barratt Homes Limited (1) and Rochdale Metropolitan Borough Council (2) (2010) EWCA Civ 681**, (the “Lambert case”) is one in which developers blocked a drainage ditch and culvert in developing the land which caused water to accumulate and subsequently flood the claimant’s land. In that case, a solution was devised which involved the installation of a catchpit on local authority’s land and the laying of drainage.
12. Whilst the court found that the developer was primarily responsible, it was also held that the local authority had a measured duty of care in relation to the abatement of the nuisance and, therefore, that it had a duty to carry out and pay for the relief scheme, or substantial parts of it. The Court of Appeal considered the extent of the local authority’s duty. The fact that the issue was known to the local authority, that it was likely to amount to a regular occurrence and that the local authority officers were aware of how the issue had arisen were factors taken

into account. Moreover, it was stated that unless it was known that a good cause of action existed against the developer, then it was not possible to take any contribution from the developer fact into account. Therefore, whilst there may be a possibility of claiming the cost from the developer, as this has not been established in the present situation, the local authority is under a duty to carry out works to rectify the problem.

13. It is, however, understood that the local authority accepts that it has a duty to ensure that the highway and the properties at Garden Close and Pippin Lane are kept free from flooding. It is also understood that the Welsh Assembly Government has made funding available for the prevention of flooding. It is, therefore, anticipated that the local authority will, in the short term, be carrying out works to improve the drainage systems either with the cooperation of local home and landowners (who are likely to be willing to consent due to the present adverse affects being suffered) or through the use of statutory powers.
14. In circumstances where there is a duty upon the local authority to resolve the present flooding issues and to remediate the drainage works, it is not appropriate for the same authority to rely on its own breach of duty in refusing planning permission in the present application. In the event that planning permission is not obtained as a result of this continuing breach of duty then Mrs Taylor may consider claiming any loss suffered from the local authority.
15. In addition to the above, it is accepted that the permeability of the Development Site will be reduced by it's development, however, it is understood that through the implementation of the solution which will be proposed in the Report, any run off will be reduced to 5 litres a second. Once the appropriate works have been carried out to remediate the existing drainage works, the Report will supports the fact that the additional run off will not cause any adverse impact to the community or the water environment.

16. In the circumstances, it is accepted that the planning authority may wish to place a condition on any grant of planning consent to the effect that the development works cannot commence until the works to the drainage system, as set out in the Report, have been completed.

**Rachel Watkin
Barrister**

7 June 2017