
Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 14/03/17

gan Iwan Lloyd BA BTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 26.04.2017

Appeal Decision

Site visit made on 14/03/17

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 26.04.2017

Appeal Ref: APP/H6955/A/17/3166742

Site address: 86 Erddig Road, Wrexham LL13 7DP

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr & Mrs Andrew and Katherine Shield against the decision of Wrexham County Borough Council.
 - The application Ref WRO P/2016/0783, dated 10/08/2016, was refused by notice dated 2/11/2016.
 - The application sought planning permission for change of use from single residential to house in multiple occupancy (HMO) (in Retrospect) without complying with conditions attached to planning permission Ref WRO P/2012/0185, dated 13/03/2012.
 - The conditions in dispute are Nos. 1 and 2 which state that: "The property subject to this permission shall be occupied by a maximum of 8 students at any one time", (No. 1), "The property subject to this permission shall be occupied by students only", (No. 2).
 - The reasons given for the conditions are: Nos. 1 and 2, "In the interests of highway safety due to the lack of on-street and off-street parking provision", (Nos. 1 and 2).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from single residential to house in multiple occupancy (HMO) (in Retrospect) at 86 Erddig Road, Wrexham LL13 7DP in accordance with the application Ref WRO P/2016/0783 dated 10/08/2016, without compliance with condition numbers Nos. 1 and 2 previously imposed on planning permission Ref WRO P/2012/0185 dated 13/03/2012 imposed therein, and subject to the following new condition:
 - 1) The property subject of this permission shall be occupied by a maximum of 8 residents at any one time.

Preliminary matters

2. Planning permission has been granted in 2012 for change of use from a single residential dwelling to a house in multiple occupation (HMO). This was restricted to student occupation, and limited to a maximum of 8 students. The appellants sought to vary the first condition by replacing the word 'students' with the word 'residents' and to delete the second condition. The Council refused planning permission on the basis that the proposal would in likelihood increase parking demand on nearby streets
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leading to congestion and highway danger to all road users. This appeal considers whether the refusal to vary and delete the conditions is reasonable and necessary. There is no dispute that the restriction on the number of occupants in the HMO should remain. The matter is whether the HMO could be occupied by persons other than students in relation to the issue of highway safety and parking provision in the area.

Main Issue

3. This is the effect of removing and varying the disputed conditions would have on highway safety in relation to parking provision in the area.

Reasons

4. The site is located on the corner of Bath Road and Erddig Road. These roads and those in the wider area are unrestricted by parking or transport orders. The location of the site is some 450m from the town centre shops. The site is situated in a highly sustainable location in terms of access to employment, transport hubs, health and community facilities and shopping areas.
5. The appellants point out that the distinction between a HMO occupied by students and residents would be the same when applying the Council's parking standards as a maximum provision. The Highway's Authority indicates that on the basis that the property still functions as a HMO parking demand in respect of Local Planning Guidance Notes 5/16 guidance would not be considered likely to increase at the development site. Although the officer notes that non students are more likely to own a car and parking demand may well increase.
6. The condition applies an unwarranted distinction between the user and occupants of the site which is contrary to the advice on conditions in Welsh Government Circular 016/2014 'The Use of Planning Conditions for Development Management'. Planning controls are concerned with the use of land rather than the identity of the user and the question who occupies the premises for which permission is to be granted will normally be irrelevant. Conditions restricting occupancy to a particular occupier or class of occupier should only be used when sound planning grounds can be demonstrated.
7. Whether students who occupy the development would have use of a car or that the situation would change under the current proposal is based on assumptions of possible future living patterns and lifestyles of tenants. It is equally possible that both groups would have use of a car or choose not to have access to a vehicle because of the sustainable credentials of the site.
8. The distinction between the users of the property is therefore subjective and not based on evidence to warrant the restrictive condition to be imposed in the first instance because such restrictions should be based on sound planning grounds. In my view, the condition was not applied on the basis of sound grounds given that parking provision would not change from one user group to the other. I appreciate the legitimate concerns of residents and Councillors, but decisions should be based on evidence to demonstrate harm. To this extent, the proposal would not conflict with Policy GDP1 (d) of the Unitary Development Plan.
9. Should there be a serious and significant demand and competition for on-street parking the Council has powers to restrict parking through parking and traffic orders. These are not in place and from what I saw many streets in the area were unrestricted therefore providing opportunity to park based on the available space. I have no

technical evidence to indicate that the residual effects of the proposed development would be severe in relation to highway safety. The evidence indicates a neutral effect based on demand from parking when comparing the proposal to that of the lawful use of the site as HMO restricted to student occupation.

10. I therefore conclude that removing and varying the disputed conditions would not harm highway safety in relation to parking provision in the area. The disputed conditions are unreasonable and unnecessary. The planning balance is therefore in favour of allowing the appeal without the disputed conditions and granting a planning permission with the suggested condition limiting the scale of the development to 8 residents, imposed in the interests of highway safety.
11. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective of supporting safe, cohesive and resilient communities.

Iwan Lloyd

INSPECTOR