

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 28/03/17

**gan Kay Sheffield BA(Hons) DipTP
MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 05.04.2017

Appeal Decision

Site visit made on 28/03/17

by Kay Sheffield BA(Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 05.04.2017

Appeal Ref: APP/H6955/A/16/3164652

Site address: Land south of Ridleywood Lane and east of Bryn Lane, Wrexham Industrial Estate, Wrexham, LL13 9UT

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 of an application under section 73 of the Town and Country Planning Act 1990 which sought to modify conditions subject to which a previous planning permission was granted.
 - The appeal is made by Gardenbreeze Limited against the decision of Wrexham County Borough Council.
 - The application Ref P/2016/0327, dated 05/04/2016, was refused by notice dated 06/06/2016.
 - The application sought planning permission for a B8 storage and distribution warehouse and associated ecological mitigation area including means of access and layout without complying with conditions attached to planning permission APP/H6955/A/12/2188910, dated 06/08/2013
 - The conditions in dispute are Nos 2 and 3 which state that:
Condition 2: Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission. The development shall only be carried out in strict conformity with such details as are approved.
Condition 3: The development hereby permitted shall begin either before the expiration of five years from the date of this permission or before the expiration of two years from the date of the approval of the last of the reserved matters to be approved, whichever is the later.
 - The conditions were imposed in accordance with section 92 of the Town and Country Planning Act 1990.
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Decision

1. The appeal is allowed and the planning permission Ref APP/H6955/A/12/2188910 for a B8 storage and distribution warehouse and associated ecological mitigation area including means of access and layout on land south of Ridleywood Lane and east of Bryn Lane, Wrexham Industrial Estate, Wrexham, LL13 9UT granted on appeal on 06/08/2013 is renewed, subject to the conditions set out in the schedule to the decision.

Preliminary Matter

2. In 2012 an appeal was lodged against the Council's refusal of outline planning permission for a B8 storage and distribution warehouse and associated ecological mitigation area including means of access and layout. I held an Inquiry in June 2013 and based on the evidence at that time I allowed the appeal subject to conditions. The application subject of the appeal which is now before me seeks to vary conditions 2 and 3 of the consent in order to extend the time limits for the submission of
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reserved matters and for the commencement of the development by three and five years respectively. In determining the appeal I have had regard to the tests set out in Welsh Government Circular 016/2014 *The Use of Planning Conditions for Development Management* in respect of applications to renew planning permission.

Main Issue

3. The main issue is whether there has been a material change in circumstances sufficient to justify not extending the lifespan of the planning permission.

Reasons

4. The appeal site lies within open countryside but adjoins the boundary of the Wrexham Industrial Estate, as defined in the adopted Wrexham Unitary Development Plan 1996-2011 (UDP). Although development outside the defined boundary of the estate is prohibited by Policy PS1 of the UDP, under Policy E3 the land is allocated as part of a larger site for a major single user employment project that requires a site of over 30 hectares for an employment development that cannot be accommodated on allocated employment land or employment land with planning permission.
5. The application subject of the appeal was refused by the Council on the grounds that the reason and justification for approving the development to facilitate the expansion needs of a specific end user no longer exist; and as the land lies outside of the defined limit of the Wrexham Industrial Estate any development on the site without sufficient justification would detrimentally affect the countryside and landscape character.
6. In July 2016, subsequent to the Council's refusal of the application subject of the appeal, the Appellant submitted a reserved matters application¹ in respect of appearance, landscaping and scale. It was approved by the Council in September 2016. Whilst several pre-commencement conditions still need to be satisfied the Appellant has indicated that this is in hand. The Appellant has also submitted to the Council a Unilateral Planning Obligation under section 106 of the Town and Country Planning Act 1990 in respect of a financial contribution towards the enhancement of public transport, a travel plan and ecological mitigation and landscape areas.
7. According to paragraph 5.21 of Circular 016/2014 applications to renew planning permission should only be refused where there has been some material change in planning circumstances since the original permission was granted; continued failure to begin the development would contribute unacceptably to uncertainty about the future pattern of development in the area; or the application is premature because the permission has a reasonable time to run. I am satisfied that the application was not submitted prematurely, and in the light of the approval of the reserved matters, the submission of the legal obligation and indication that other outstanding matters are in hand, I have no reason to conclude that the permission would not be implemented. The key test is therefore whether there has been any material change in planning circumstances since the original permission was granted.
8. At the time of the previous appeal the site was owned by Kingmoor Park Properties (KPP) and the proposed occupants were Norbert Dentressangle Logistics Limited (NDL) who operated a haulage and distribution business from the land to the south of but divorced from the appeal site. Today the site is owned by Gardenbreeze, a subsidiary

¹ Application Ref: P/2016/0722

company of KPP, and NDL has been taken over by XPO Logistics (XPO) who operate a distribution business from the land previously occupied by NDL.

9. The allocation for a major single user employment project under Policy E3 of the UDP includes the land between the site and XPO's current operations. At the time of the previous appeal this land was the subject of an application² to renew permission for a mixed Class B2 and B8 development granted on appeal³ in 2010. Whilst the Council resolved to grant permission, it is understood that the issuing of the decision is pending the completion of a legal agreement.
10. There is also continued interest in the use of this land as a power station. The examination of an application for a Development Consent Order was completed on 19 January 2017 and the decision of the Secretary of State is due later this year. The land therefore remains unavailable and as the appeal site forms only part of the land allocated under Policy E3 of the UDP, it would not fulfil the requirement for the use of the allocation by a major single user employment project. On this basis and given the location of the site outside the defined boundary of the Wrexham Industrial Estate, the development continues to be contrary to Policies E3 and PS1 of the UDP.
11. Whilst the original permission restricted the occupation of the site to a single occupier, it was not made personal to NDL or its successors in title. However, it was quite clear from the evidence that the proposed warehouse was required in order to allow the continued presence and expansion of NDL. Although a final decision has not yet been reached, XPO has confirmed its intention to develop the appeal site for its own use. Notwithstanding this the site is being marketed and the Appellant has indicated that there has been interest from major user occupiers who require a large level site with excellent transport links.
12. Although the development of the site for the expansion of XPO would mirror the circumstances surrounding NDL in the previous permission, the lack of a final decision regarding the investment required introduces an element of doubt. This is reinforced by the marketing of the site. These matters are in contrast with the evidence in respect of the previous appeal, and the development of the site by parties other than XPO would represent a significant change.
13. Planning Policy Wales (PPW) has been reviewed at intervals during the period since the previous appeal. However there has been no significant change in the guidance regarding economic and employment growth. There is a continued need to ensure that the growth of output and employment in Wales as a whole is not constrained by the shortage of land for economic uses. Local planning authorities are required to facilitate the provision of sufficient land required by the market, except where there are good reasons to the contrary.
14. Whilst in its draft form at the time of the previous appeal, Technical Advice Note 23: Economic Development was adopted in 2014. It reiterates the need in PPW to guide economic development to the most appropriate locations rather than prevent or discourage such development and it sets out three tests in order to help balance the economic, social and environmental issues.
15. The first test is with regard to alternatives and if the land is not made available is it likely that the demand could be met on a site where development would cause less

² Application Ref: P/2013/0270

³ Appeal ref: APP/H6955/A/09/2113258

harm, and if so where. At the time of the previous appeal, it was found that none of the available employment land on other parts of the Wrexham Industrial Estate or the Council's area was suitable for the scale of the development proposed. Although no substantive evidence has been submitted, the expression of interest in the site from other major user occupiers may also be an indication of the lack of suitable and deliverable sites for the scale of development proposed.

16. The quantitative oversupply of employment land in the Council's area recognised in the previous appeal still exists and the findings of the Employment Land Review⁴ (ELR) suggest that the Council as a whole has sufficient employment land to meet its needs. However, the ELR has identified Wrexham Industrial Estate as an exception "where high demand combines with a constrained overall land supply". In order to address this issue the review states that "consideration should be given to identifying additional land on Wrexham Industrial Estate, exclusive of ecological mitigation, which may require the provision of mitigation land elsewhere".
17. The document BP5: Wrexham Industrial Estate Expansion Selection, February 2016 (BP5) is a background paper to the emerging Local Development Plan (LDP). It highlights the need to allocate a further 20 to 30 hectares in the LDP in order to provide sites which can satisfy the needs of existing businesses and be marketed to future investors. An area which includes the appeal site has been identified as offering the best potential for accommodating a new extension to Wrexham Industrial Estate. BP5 had regard to the tests in TAN 23 and based its recommendation on an analysis of the land surrounding the estate in respect of environmental factors, accessibility and infrastructure provision.
18. It is acknowledged that the UDP is still the development plan whereas the LDP is an emerging plan. According to PPW the weight to be attached to emerging plans in determining planning applications will in general depend on the stage it has reached, but does not simply increase as the plan progresses towards adoption. In determining what weight to give to an emerging LDP careful consideration needs to be given to the underlying evidence. The qualitative research undertaken as part of the LDP process indicates a growing land supply shortfall, relative to identified demand at Wrexham Industrial Estate⁵. This shortfall provides weight in support of the appeal. It also raises concerns that the UDP is no longer ensuring the provision of sufficient land required by the market at Wrexham Industrial Estate, contrary to the guidance in PPW. According to PPW, in instances where policies of an adopted plan are considered to be outdated for the purposes of determining a planning application, the plan should be given decreasing weight in favour of other material considerations such as national planning policy.
19. The second test relates to jobs. I have no figures regarding the jobs which would be secured through the expansion of XPO onto the site or of the potential numbers if the site were to be developed for a different end user. However, BP5 recognises that one of the key barriers to supporting business growth and attracting inward investment is the poor supply of appropriate development sites and suitable buildings. Whilst the actual number of jobs created on the site would be dependent on the nature of the end user, there would be jobs generated by the development both directly on the site and in the wider economy. The benefit to the economy recognised in the previous appeal is still evident.

⁴ Joint Wrexham and Flintshire Employment Land Review, Final Report October 2015

⁵ Paragraph 2.2 of BP5: Wrexham Industrial Estate Expansion Selection, February 2016

20. The final test is whether the development has any special merit in terms of any special contribution towards policy objectives. The vision for the region set out in the North Wales Local Authorities - Economic Ambition: A Strategy for Change, 2014 seeks to improve productivity, competitiveness and growth in the North Wales economy. The extension of time to allow the implementation of the planning permission would support businesses in the realisation of their growth aspirations, encourage inward investment, and further the development of a key sector of the economy. If the development was carried out for an end user other than XPO, the development would still create additional jobs in an area where there has been a historical need and contribute towards policy objectives.
21. The Council raised concerns that the location of the site outside the defined boundary of the Wrexham Industrial Estate would detrimentally affect the countryside and landscape character of the area. However, I am satisfied that the effects would not differ from those considered as part of the previous appeal. Furthermore in reaching the recommendation regarding the extension of the Wrexham Industrial Estate the assessment made in BP5 had regard to the effect on the landscape. My conclusion therefore remains the same, that the development would not be detrimental to the character and appearance of the area, in accord with Policy PS2 and GDP1 of the UDP.

Conclusions

22. Whilst the Appellant has confirmed that it is wholly intent on the proposed building being occupied by XPO, there is an element of doubt and the land could be developed for another end user. Nevertheless either form of development would be contrary to Policies E3 and PS1 of the UDP, as at the time of the previous appeal.
23. The need to allocate additional employment land as an expansion of the Wrexham Industrial Estate was recognised at the time of the previous appeal. The assessments undertaken as part of the LDP process confirm a continued need and the appeal site now forms part of an area of land recommended for allocation as an extension to the Wrexham Industrial Estate. I acknowledge that the LDP is still to be examined and I have no evidence of representations in respect of the recommended allocation. However, PPW requires local planning authorities to facilitate the provision of sufficient land required by the market, except where there are good reasons to the contrary. Apart from the principle of the use of this land for employment purposes, there are no other matters which go against the development.
24. I consider that the appeal site would make a significant contribution towards the need identified in the background papers to the emerging LDP for increased provision of employment land at Wrexham Industrial Estate. On this basis I conclude that the variation of condition 3 to extend the period for the commencement of the development is justified.
25. If there was certainty that XPO would develop the site I consider the approval of the reserved matters application by the Council would negate the need to extend the time period in respect of condition 2. However, there is the potential that the site could be developed for another end user with requirements which differ from the approved scheme. If such a situation arose it would be necessary for further approval to be obtained and on this basis I consider a variation of condition 2 to extend the time limit for the approval of such matters is justified.
26. On the evidence before me I am satisfied that the other conditions attached to the original permission remain reasonable and necessary.

27. 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.
28. For the reasons given above, and having had regard to all other matters raised, the appeal is allowed.

Kay Sheffield

INSPECTOR

Schedule of Conditions

- 1) Details of the scale and appearance of the buildings and the landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission. The development shall only be carried out in strict conformity with such details as are approved.
- 3) The development hereby permitted shall begin either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
- 4) The development shall only be carried out in strict accordance with the details shown on the approved drawings numbered 500_C, 503, 560_A, 1250, 1251, 1252_C, 1253_C, 5000 and Figure 12 contained within the Transport Statement Addendum dated February 2012.
- 5) The occupation of the site shall be restricted to a single occupier and neither the plot nor any building on that plot shall be subdivided for use by any other occupier.
- 6) The development shall be carried out in accordance with the drainage scheme reference C602/SBS/JTJ/U0365 by Shepherd Gilmour Infrastructure Ltd dated 13 October 2011. The approved scheme shall be implemented in accordance with a timescale to be agreed in writing by the local planning authority and maintained thereafter.
- 7) No development shall be commenced until a scheme of dust mitigation measures has been submitted to and approved in writing by the local planning authority. Such a scheme shall be as recommended in Section 4.6 of the report by Royal Haskoning titled 'Bryn Lane Wrexham: Air Quality, Noise and Vibration Assessment reference 9X0457' and shall be implemented as approved during the construction phase of the development.

- 8) No development shall be commenced until a scheme of noise and vibration mitigation measures has been submitted to and approved in writing by the local planning authority. Such a scheme shall be as recommended in Section 3.5.2 of the report by Royal Haskoning titled 'Bryn Lane Wrexham: Air Quality, Noise and Vibration Assessment reference 9X0457' and shall be implemented as approved during the construction phase of the development.
- 9) No development shall be commenced until a scheme has been submitted to and approved in writing by the local planning authority to ensure that the rating level of any noise generated by reason of this development shall not exceed the permissible boundary noise levels specified in Table 3.8 of the report by Royal Haskoning titled 'Bryn Lane Wrexham: Air Quality, Noise and Vibration Assessment reference 9X0457' at any time. Measurements and an assessment shall be made in accordance with BS 4142:1997 Method for Rating Industrial Noise Affecting Mixed Residential and Industrial Areas. The development shall only be carried out in accordance with the approved scheme.
- 10) Prior to the first use of the development hereby approved the vehicular accesses serving both the proposed development site and the existing access (serving Norbert Dentressangle) to Bryn Lane shall provide visibility splays of 2.4 metres x 120 metres in both directions measured to the nearside edge of the adjoining highway. Within these splays there shall be no obstruction in excess of 1 metre in height above the level of the nearside edge of the adjoining highway. The splays shall thereafter be permanently retained clear of any such obstruction to visibility.
- 11) Prior to the first use of the development hereby approved the vehicular access serving the proposed development along Bryn Lane shall provide adequate forward visibility by providing a stopping sight distance of 120 metres for vehicles approaching the proposed access from the north.
- 12) No part of the development shall be commenced until a scheme detailing the construction of the following has been submitted to and approved in writing by the local planning authority:
 - (a) Detailed layout, design, drainage and construction of the proposed new footway/carriageway along Bryn Lane; and
 - (b) Detailed layout, design, drainage and construction of the proposed new right hand turning lane serving the proposed developmentThe scheme as approved shall be fully implemented prior to the first use of the development.
- 13) A Final Travel Plan shall be submitted to and approved in writing by the local planning authority following the first anniversary of the first use of the development, in accordance with a timetable to be agreed in writing with the local planning authority.
- 14) No part of the development shall be commenced until a scheme to deal with potential contamination at the site has been submitted to and approved in writing by the local planning authority. This scheme shall include a phased investigation approach to identify the extent of any contamination and any measures required to remediate the site, including post-development monitoring.
- 15) No part of the development shall be occupied until a Verification Report which demonstrates that the remedial works approved as part of condition no. 14 have

been satisfactorily carried out, has been submitted to and approved in writing by the local planning authority.

- 16) The development shall be carried out in strict accordance with the following arboricultural plans and reports submitted and approved as part of this application:
 - (a) Arboricultural Implications Assessment Report Ref: TEP.3080.003 version 3 dated March 2012; and
 - (b) Tree Implications and Protection Plan Ref no. D3080.002 ANo development or other operations shall take place except in strict accordance with the reports as approved.
- 17) The hard landscaping scheme approved as part of the reserved matters application shall be fully implemented in strict accordance with the approved drawings within three months of the first use of the development with the exception of soft landscaping which shall be carried out in the first available planting season (November to March) or seeding season (April to September) following the first use.
- 18) The landscaping scheme pursuant to condition 17 shall be permanently retained for the lifetime of the development. Any planting becoming severely damaged or seriously diseased, or which is in poor physiological condition and/or is removed without the written permission of the local planning authority shall be replaced within a timescale to be submitted to and approved in writing by the local planning authority.
- 19) No part of the development shall commence until a Landscape Management Plan, including long term design objectives, management responsibilities and maintenance schedules for all landscaped areas has been submitted to and approved in writing by the local planning authority. The landscaping shall be managed and maintained in strict accordance with the approved details.
- 20) As part of the reserved matters application a long term Ecological Management Plan and Ecological Method Statement shall be submitted to and approved in writing by the local planning authority. This information shall demonstrate how existing features of ecological/wildlife interest will be protected, identify any areas of compensation and demonstrate management in the long term. The recommendations as approved shall be fully implemented in accordance with timescales to be agreed in writing before any part of the development commences on site.
- 21) The access road and footways shall be progressively constructed to base coat standards from Bryn Lane. Details of wildlife friendly kerb stones and gully pots to safeguard amphibians from harm through incidental capture as part of these works shall be submitted to and approved in writing by the local planning authority prior to their installation. Such works shall be completed prior to the first occupation of the building hereby approved.
- 22) No part of the development shall commence until an updated Bat Roost and Bird Breeding Assessment, carried out by a qualified ecologist, has been submitted to and approved in writing by the local planning authority. The report shall include an Ecological Method Statement demonstrating/identifying any measures of protection/compensation/mitigation. The recommendations as approved shall be implemented in strict accordance with timescales to be agreed in writing before any part of the development commences on site.

- 23) 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 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 those to be retained with their crown spreads, Root Protection Areas, Construction Exclusion Zones, and the location of protective fencing and ground protection measures accurately plotted;
 - (c) A full specification, including any related sections, for any access, driveway, path, underground services or wall foundations within Root Protection Areas or Construction Exclusion Zone of trees to be retained, and methods for avoiding or minimising 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; and
 - (f) Details of all proposed tree works, including felling and pruning.
- 24) The development hereby permitted shall be constructed to achieve a minimum Building Research Establishment Environmental Assessment Method (BREEAM) overall 'Very Good' standard and achieve the mandatory credits for 'Excellent' under issue Ene1 - Reduction of CO2 Emissions (or subsequent equivalent quality assured scheme) in accordance with the requirements of BREEAM 2011. Prior to the commencement of development, a programme for the provision of 'Interim' and 'Final' Certification shall be provided for the written approval of the local planning authority. The development shall be carried out entirely in accordance with the approved assessment and certification.