

GROUND OF APPEAL.

This appeal is made against the decision of the local planning authority to refuse to grant planning permission in outline for the proposed development of up to 24 dwellings with all matters of detail apart from access reserved for further approval.

The application for planning permission was conceived in response to the lack of a 5 year supply of housing land in the County Borough and indeed acknowledged other recent decisions by the LPA to grant planning permission on sites within the Green Barrier due to the lack of a sufficient housing land supply. The appeal site is located partly inside and partly outside but adjacent to the settlement boundary of Cross Lanes as defined by the adopted UDP and is not designated as Green Barrier.

This appeal will question whether the LPA are taking a consistent approach in dealing with applications for potential developments outside of settlement limits and within Green Barrier.

The LPA set out three reasons for refusal of the application and this statement will deal with each ground in turn below :-

Reason 1 – ***The proposed development would be unsatisfactory and undesirable because the development involves a greenfield site and it is located outside any settlement limits as defined in the Wrexham Unitary Development Plan. The development is unlikely to operate in a sustainable manner taking into account the site's location relative to local services, facilities and public transport connections. The development therefore conflicts with policies PS1, PS2, PS4, GDP1 and H5 of the Wrexham Unitary Development Plan.***

The overarching consideration in this matter (notwithstanding reasons for refusal 2 and 3 which are dealt with below) is the sustainability of the appeal site's location relative to local services, facilities and public transport.

Policy PS1 states that “*New development for housing, employment, and community services will be directed to within defined settlement limits/employment areas.*”

Policy PS2 - “*Development must not materially detrimentally affect countryside, landscape/townscape character, open space, or the quality of the natural environment.*”

Policy PS4 – “*Development should maintain the existing settlement pattern and character and be integrated with the existing transport network to help reduce the overall need to travel and encourage the use of alternatives to the car.*”

It is accepted that development of this site would contravene the above adopted policies. However in a recent appeal decision for development of land outside a settlement boundary the Inspector determined that :-

“The Wrexham UDP (1996-2011) was adopted in February 2005. Paragraphs 8.1 & 8.2 of Technical Advice Note (TAN) 1: Joint Housing Land Availability Studies (2015), state that for those Councils’ where a UDP is out of date and a Local Development Plan (LDP) is not yet adopted, they will not be able to demonstrate whether or not they have a 5 year housing land supply. This means that Wrexham County Borough Council has a zero housing supply figure. Paragraph 6.2 of TAN 1 advises where land supply is below the 5 year requirement ‘the need to increase land supply should be given considerable weight when dealing with planning applications provided the development would otherwise comply with development plan and national planning policies.’ Although the Inspector considers the settlement boundaries are out of date and therefore gives Policy PS1 limited weight, he concludes the pressing need for new housing outweighs the countryside protection policies (policies PS1 and H5) in this case.”

Where a 5 year housing land supply does not exist, TAN1 indicates that the need to increase supply should be given considerable weight when dealing with planning applications. In this case that means that it would be appropriate to approve development proposals in a broadly sustainable location such as Cross Lanes.

In terms of the sustainability of the settlement Cross Lanes enjoys good road links with the centres of Wrexham to the north west and Whitchurch to the south east. The main employment centre of North Wales, the Wrexham Industrial Estate is less than 0.5 of a kilometre to the north via Bedwell Road and around 1.0 kilometre distant if the new road link network is used to access the appeal site. The recently opened Berwyn Prison, a major new employer in the area is located only 1.6 kilometres from the appeal along the new link road which has continuous pedestrian footways.

The village of Marchwiell is located to the north west of the appeal site where primary school provision is available at Ysgol Deiniol which is 1.3 kilometres from the appeal site.

Cross Lanes is located adjacent to the A525 main Wrexham to Whitchurch road which is served by the 146 and X46 bus services. The 146 service runs between Wrexham and Whitchurch via Cross Lanes four times a day in both directions meaning that the site is well served by a sustainable public transport provision. Bus stops on the north west and south eastern bus routes are located around 300 metres from the appeal site. Access on foot to Bedwell Road is proposed to be provided at the southern extremity of the appeal site from where continuous pedestrian footways provide safe access to the bus stops referred to.

Cross Lanes is served by a well stocked local convenience store which caters for top-up shopping as is the case with most rural villages in the County Borough Council area.

Since the original application for planning permission was refused on the 6th of February 2017, planning permission has been granted for the conversion of the former Cross Lanes Hotel to a Children’s Activity Centre under LPA reference P/2016/0953. This development will, according to the application documents, bring up to 38 new full time jobs to Cross Lanes as well as providing a valuable local educational facility.

Additionally, Condition 4 attached to this grant of planning permission secures the provision of a bookable meeting room for local community use, in the interests of reinforcing the sustainability of the settlement.

Having regard to the combination of all of the above, it is difficult to see how the settlement of Cross Lanes cannot be seen to be a broadly sustainable location which could support the proposed development which will constitute a significant contribution to housing land supply in the County Borough. It is contended therefore that the principle of residential development should be supported on the appeal site subject to approval of the details of development via a subsequent submission of reserved matters.

Policy GDP1 – “All new development should:-

- a) 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.*
- b) Take account of personal and community safety and security in the design and layout of development and public / private spaces.*
- c) Make the best use of design techniques, siting and orientation in order to conserve energy and water resources.*
- d) Ensure safe and convenient pedestrian and vehicular access to and from development sites, both on site and in the nearby locality.*
- e) 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.*
- f) 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.*
- g) Secure public services (e.g. gas, water, electricity) to development at minimum public cost.*
- h) 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.*
- i) Ensure that development does not result in, or is subject to, flooding, soil erosion, landslides or contamination, either on or off the site.*
- j) 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.*
- k) Secure the development of sustainable communities, through the promotion of the economic, social and environmental well-being of the area.”*

The details of development and a judgement of how these details comply with Policy GDP1 can be considered by means of an application for approval of the matters reserved to date such as design, siting, scale and landscaping etc.

Policy H5 – *“Outside defined settlement limits new dwellings will only be permitted where:-*

- a) proposals accord with Policies H3, H4, and H8; or*
- b) proposals comprise infilling subject to Policy GDP1; or*
- c) an essential need to house a full time agricultural or forestry key worker can be established and*
 - i) the long term financial viability and functional management of the enterprise is proven; and*
 - ii) the person, due to the nature of the work, has to live on the site rather than in a nearby settlement; and*
 - iii) there are no suitable buildings nearby which could be converted into a dwelling; and*
 - 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.”

It is the appellant's position that the lack of a 5 year housing land supply carries significantly more weight than Policy H5 above having regard to the broadly sustainable nature of the settlement of Cross Lanes and the contribution that development of the site would make to the housing supply situation in the County Borough. This has been the case on a number of other applications for planning permission in the County Borough which have been granted planning permission on this basis.

Reason 2 – *The proposed development is not considered to be satisfactory in terms of design and would not provide sufficient measures to secure a satisfactory form of sustainable development. In particular :-*

- *The proposal to discharge surface water generated by the development to an existing watercourse is not based on any site investigations to determine whether the site could attenuate excess surface water to allow it to discharge at or below the existing greenfield run-off rate, nor has the applicant demonstrated whether sustainable drainage systems can be employed on site in accordance with guidance contained in Technical Advice Note 15 – Development and Flood Risk;***

- ***Insufficient information has been submitted to assess the impact that the development will have on statutorily protected species. In the absence of such information, the development will prejudice the favourable conservation status of those species; and***
- ***The development will result in an unattractive built environment and the wider landscape without making provision for suitable levels of public open space. For the above reasons, to allow the development would be contrary to policies GDP1, EC12, EC13 and CLF5 of the Wrexham Unitary Development Plan.***

With regard to surface water discharge in the first instance and notwithstanding the inference in the application that a controlled discharge to the adjacent watercourse would be the preferred approach, a sequential approach to surface water drainage will be adopted and this methodology is simply controlled by the imposition of a planning condition to this effect. Sequentially the first choice of treatment will be a SUDS infiltration system but only if porosity testing to be undertaken prior to the commencement of development proves that this method will work at the appeal site. If this proves not to be viable then a controlled discharge to the watercourse by means of a storage device and hydro brake. This approach is detailed in the “Flood Consequence Assessment & Drainage Management Strategy” supplied as part of the appeal documents. The Inspector, if minded to uphold this appeal, is invited to apply a relevant condition to the grant of planning permission requiring the sequential approach be adopted.

With respect to second part of this reason for refusal of planning permission which states that the LPA’s opinion, insufficient information was submitted as part of the application for planning permission in order to assess the impact upon statutorily protects species, the appellant fails to understand this statement. A Phase 1 Ecological Assessment prepared by JW Ecological Limited was provided as part of the application. This Assessment concluded, amongst other things, the following points :-

- *No statutorily designated nature conservation sites or local wildlife sites are located within 1 kilometre of the survey area. No protected site issues are thought to exist for the proposals.*
- *No statutorily protected habitats are present on site and all plant species identified within the survey area are considered to be common at local and regional levels. The survey area comprises predominantly improved grassland with limited conservation value. The features of interest on site are primarily located towards the site boundaries and include the mature hedgerows and the associated mature trees on the eastern and western site boundaries and the brook corridor with its associated trees on the northern site boundary. Hedgerows are a UK and local Biodiversity Action Plan (BAP) habitat.*
- *The mature trees at the site boundaries have significant ecological value, including as nesting sites for birds and potentially as roosting sites for bats. These existing mature trees should be retained wherever possible and protected throughout any construction works on site. Any tree loss should be compensated for with new native tree planting.*

- No ponds are located within the proposed development area, six ponds are however shown on OS maps within 250 metres of the site boundary. Four ponds are shown on OS maps to the north of the site. The first of these ponds is a relatively new drainage pond located next to the A525, approximately 115 metres from the survey area. The remaining three ponds are located in a small cluster approximately 205 metres north of the survey area. Records of great crested newts exist for these ponds. Further detailed amphibian surveys of the ponds to the north between March and early June (with surveys commencing before the end of April) would be required in order to determine the current status of great crested newts in the area. Given these considerations, it may be possible to agree a precautionary approach for great crested newts with WCBC and Natural Resources Wales based on the assumption that great crested newts are present in the area but that there is a low risk that they would be present on site. Appropriate precautionary measures would include supervision of vegetation clearance by an appropriately experienced ecologist, a watching brief on site throughout construction works and precautions during construction such as storing waste and spoil in containers and covering excavations at night.
- A number of mature trees on the western and northern site boundaries were found to have features which could support small numbers of roosting bats. Wherever possible these mature trees should be retained.
- No badger setts were identified on site during the phase one survey. Dense vegetation did however restrict access to some parts of the site boundaries. Whilst the presence of badger setts is considered to be unlikely, it is however recommended that as a precaution any clearance of dense vegetation is undertaken with care and with badgers in mind.
- The proposed development site contains areas of potential foraging and refuge habitat for common reptiles towards the site boundaries, however these are not extensive in area. As a precaution, any clearance of tall herb or scrub habitats should be undertaken with care, ideally using hand tools only, in order to allow any reptiles that may be present to disperse.
- The brook on the northern site boundary represents suitable habitat for water voles and a record of this species exists along the brook upstream of the site. If any construction works will come within 7 metres of the top of the bank of the watercourse then further water vole surveys should be undertaken. These surveys can only be undertaken between March and October.
- The brook on the northern site boundary has some limited potential to be used as a corridor by otters. If any construction works will come within 7 metres of the top of the bank of the watercourse then further otter surveys should be undertaken. Movement of machinery on site should be limited to daylight hours in order to minimise the risk of harm to otters entering the site from the watercourse.
- Birds could nest in the trees, hedgerows and scrub/tall herbs on site and these habitats should wherever possible be retained as part of any proposals. Where removals are unavoidable, works to remove/manage potential nesting habitat should where possible be undertaken outside of the bird nesting season
- Any clearance of potential hedgehog refuge areas (for example dense shrubs, wood piles) should be undertaken with care and preferably by hand in order to avoid harm to any hedgehogs which may be present. Where possible, clearance of potential refuge areas should also be avoided during the winter months when hedgehogs may be hibernating.

It is patently clear from the above conclusions taken from the submitted Ecological Assessment that consideration was given to protected species in the preparation of the application for planning permission. No existing trees are to be lost as a result of the development and only a section of road frontage hedgerow will be lost to provide sufficient visibility sightlines. This section of hedgerow can be removed outside the bird nesting season as advised and be mitigated by the planting of a replacement section of hedge. The Ecological Assessment recommends a precautionary approach to site clearance and possibly further work with regard to Great Crested Newts. These outcomes can be controlled by the imposition of suitable planning conditions and the statement that insufficient information was submitted with the planning application is refuted.

The final part of the second reason for refusal makes the statement that the development will result in an unattractive built environment and wider landscape without making provision for public open space. This appeal relates to the refusal of an application for outline planning permission with all matters save for access being reserved. It is therefore difficult to see why the LPA should see fit to include such a reason for refusal of an application which merely sought to establish the principle of development with matters of design, siting and appearance being reserved for later. A meeting was held with the Case Officer in July 2016 whilst the application was live and the appellant was assured that the principle of development is fine and accepted due to the lack of 5 year land supply but some concerns or points of detail were outlined for consideration. These included the following :-

1. The road link to land to the west of the site was considered inappropriate
2. Requirement for public open space / play area was outlined
3. It was pointed out that some dwellings were located in the flood zone to the north of the site
4. Frontage development was mentioned as being a key consideration
5. Variety in house styles was requested
6. Consideration to a reduction in dwelling numbers was requested

Follow up correspondence was promised by the Case Officer but never received so an amended illustrative site layout plan was submitted by email on the 19th of July 2016, the email referred to the meeting and formally submitted an amended illustrative site plan which indicated the following requested amendments :-

1. The road link to the west was deleted
2. A large area of Public Open Space with a Play Area adjacent to the line of the public footpath for the benefit of the wider community was indicated
3. Development was removed from the northern section of the site which could be in the flood plain
4. A reduction in development numbers was considered but 24 dwellings was seen by the appellant as the most efficient use of the land

A copy of the email trail with the Case Officer which includes the email dated the 19th of July is included in the documents which form part of this appeal but again it is contended that as the application was in outline and all matters of design and appearance were reserved, it was not necessary to go to this level of detail and certainly matters of detail are not valid reasons for refusal of the application.

Reason 3 – ***A portion of the application site lies in an area identified as being at high risk of flooding (flood zone C2) as defined by the Welsh Government Technical Advice Note 15 – Development and Flood Risk (TAN15). The applicant has failed to accurately assess the level of flood risk to the proposed development and impact on flood risk elsewhere. As such it has been unable to demonstrate that the proposals are appropriate given the potential of flood risk. Nor has it been demonstrated that the proposals will not have a detrimental impact to adjacent properties / land areas. This is contrary to the requirements of TAN15 and policy EC12 of the Wrexham Unitary Development Plan.***

Since the refusal of planning permission, Betts Hydro Consulting Engineers have undertaken the Flood Consequence Assessment referred to in this reason for refusal and this document is offered as part of this Appeal in order to address this reason for refusal. This document has not been seen previously by the LPA.

The submitted FCA concludes that :-

- *This Flood Consequence Assessment has been prepared to support an outline planning application for a residential development on land off Bedwell Road in Cross Lanes. The total site covers 1.247ha and is predominantly permeable at this time, although the proposed development areas covers a smaller portion of the wider site (1.025ha). The whole site is shown to be located within Flood Zones A and C2 based on the Development Advice Map, however the development area is located within Flood Zone A only.*

The appellant acknowledges that the Inspector selected to determine this Appeal will not have opportunity to consult with Statutory Consultees in relation to the content and conclusions of the submitted FCA although the LPA may make comments in their Statement. Therefore, it is suggested that if the Inspector is minded to uphold this Appeal and determine to grant planning permission, then a suitably worded condition requiring the detailed design of the integrated drainage systems to serve the site could be included to address the further consideration of this matter in compliance with Policies GDP(i) and EC13 of the UDP and paragraph 13.4.2 of PPW.

From reference to the Adopted UDP Inset Map for this area, it would appear that there are very few if any other opportunities to extend the settlement of Cross Lanes.

Paragraph 9.2.3 of PPW states that “**Local planning authorities must ensure that sufficient land is genuinely available or will become available to provide a 5-year supply of land for housing** judged against the general objectives and the scale and location of development provided for in the development plan. This means that sites must be free, or readily freed, from planning, physical and ownership constraints, and economically feasible for development, so as to create and support sustainable communities where people want to live. There must be sufficient sites suitable for the full range of housing types.”

The site which forms part of this Appeal is free from planning, physical and ownership constraints and available for development now. It can therefore be shown that the appeal site is indeed the only site in Cross Lanes which is free and available for development which will contribute to housing land supply in the short to medium term.

The national planning policy guidelines produced by the National Assembly for Wales (PPW) stipulates a *requirement* for each Local Authority to *at all times* to have *at least* a five year supply of building land available. Moreover on the 30th March 2015 the Council's Planning Committee made available Report HCWD/17/15, which outlined the urgent need for the Authority to allocate residential development land ahead of the LDP2 process. The full report was read out at the meeting of the Planning Committee on the 30th March 2015. The pertinent paragraph is reproduced below.

"Housing land availability needs to be soundly based on meeting the housing requirements identified by local planning authorities, which requires an adopted LDP to be in place. As such, where a local planning authority (LPA) does not have an up to date Unitary Development Plan (UDP) or an adopted LDP, there is no 5-year land supply and it is considered to be zero."

The context here is that until LDP2 becomes adopted policy the Authority in Wrexham will be deemed to have a land availability of zero, when the minimum requirement would be to have a five year supply. The Authority during the committee meeting of the 30th March recognised this.

During the same meeting an application was approved (by a ratio of ten votes to two) for residential development (with some commercial portion also) on land at Ruabon, Wrexham that is outside the presently recognised village settlement limit. The scheme proposed (and approved) was for a development scheme of over 300 houses. The decision is not the first such deviation from UDP Policy under the argument/justification of a 'lack of a five year supply' from the applicant supported by the Authority. After the decision was made the committee recognised and minuted that they should be seeking to support future applications to develop land outside recognised settlement boundary limits, with the proviso of the following context :-

"Each site should be considered on its merits with the principal considerations focusing on whether the site meets all other planning considerations and represents a sustainable form of development. This needs careful consideration both from the perspective of coming to a conclusion that a site does meet these tests, thereby resulting in a recommendation for approval, and also if a contrary view is taken, what evidence of planning harm exists to support that position."

This raises the question of the consistency or potential lack of same exhibited by the LPA in considering applications for sites which are situated outside settlements limits where development is proposed in order to contribute to the lack of a 5-year housing land supply. It is quite clear that development of the Appeal site is sustainable, will not

undermine the function of the Green Barrier in this location because land within the Green Barrier is not involved in the development proposals, will not lead to issues of flooding, is well related to the existing pattern of built development in Cross Lanes and does not cause planning harm in any way. The case for granting planning permission for residential development is therefore sound and will make a significant contribution to housing land supply locally and in the County Borough as a whole.

CONCLUSION.

It has been shown that there are exceptional circumstances in the case of the appeal site which outweigh adopted local plan policies which seek to prevent development outside settlement boundaries, the perceived drainage and flooding issues can be addressed by the imposition of a suitable planning condition and the appeal site forms a logical extension to the settlement of Cross Lanes.

Accordingly the Inspector is respectfully urged to uphold this appeal and thereby grant planning permission for residential development in accordance with the application which forms the basis of this appeal.

SECTION 106 / UNILATERAL UNDERTAKING.

An internal email dated the 24th of March 2016 from the Education Department, Denise Garland, to the Case Officer indicates that a contribution to Secondary Education provision would be required but possibly not to Primary Education. As the application was in outline and the ultimate mix of 2, 3 and 4 bedroomed dwellings is not yet known, it is not possible to estimate the actual level of contribution likely to be levied. However it is possible to enter into an agreement based upon a payment formula subject to final development numbers. A Unilateral Undertaking to make payment of monies towards education as a result of the development will be prepared and submitted for consideration in due course.

Furthermore an area of public open space is proposed to be provided on site as part of the development and this may include an equipped play area. If the LPA were minded to adopt the open space then it is accepted that this adoption and the costs of maintenance associated with the adoption should also form part of a Unilateral Undertaking by the appellant in the event that the appeal is upheld. However, if the LPA are not in a position to adopt such an area and it will therefore be administered by a management company made up of residents of the development, then it is felt that this element will not need to form part of an Undertaking from the appellant and can simply be secured by imposition of a planning condition. The LPA are asked to comment in this regard as part of their Statement of Case so that the matter can be addressed in anticipation of the appeal being upheld.

Stephen Jones

D.S. Jones and Co.

For and on behalf of Residential Land Promotion Ltd.

June 2017.