

Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 02/08/17
Ymweliad â safle a wnaed ar 02/08/17

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

Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 30.08.17

Appeal Decision

Hearing held on 02/08/17
Site visit made on 02/08/17

by Kay Sheffield BA(Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers
Date: 30.08.17

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

**Site address: The Bungalow, Darland Lodge, Darland Lane, Rossett, Wrexham,
LL12 0BA**

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 outline planning permission.
 - The appeal is made by Mr and Mrs Taylor against the decision of Wrexham County Borough Council.
 - The application Ref P/2016/0712, dated 25/7/2016, was refused by notice dated 06/02/2017.
 - The development proposed is the erection of 47 dwellings and associated infrastructure works with all matters reserved.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. A Landscape and Visual Impact Assessment (LVIA) and Drainage Appraisal were submitted to the Council at a late stage in the application process and were not taken into account in the determination of the application. However, I am satisfied that these documents were taken into consideration in the appeal submissions and I have had regard to them in reaching my decision.
 3. The Appellants sought to submit to the Hearing a further surface water drainage report which detailed a potential solution to the drainage problems in the local area. Whilst the Appellants stated that the report had been submitted in accordance with the prescribed timetable for the appeal, it had not been received by the Planning Inspectorate within the specified timescale and the Appellants were unable to provide evidence to confirm the date of its submission. Although the Council had a copy of the report, it had not had regard to it in its submissions. Furthermore, no consultation had taken place in respect of the report and interested parties present at the Hearing expressed concern that they were unaware of its contents. Although the Appellants suggested the Hearing be adjourned to allow for consultation to take place, the appeal process should not be used to evolve a scheme. For this reason and in order to avoid the risk of prejudice to the Council and interested parties, I did not accept the report.
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4. Whilst the relevant policies of the Wrexham Unitary Development Plan, 2005 (the UDP) had been omitted from the fifth reason for refusal, at the Hearing the Council confirmed them to be Policies GDP1 and EC5.
5. The application was submitted in outline with all matters reserved for subsequent approval. The appeal has been considered on the same basis.

Main Issues

6. The main issues in respect of the development are:
 - i) Whether the proposal would comply with planning policies designed to protect the Green Barrier from harm and if not, whether there are any very exceptional circumstances sufficient to outweigh the harm;
 - ii) The effect of the development on the character and visual amenity of the area;
 - iii) Whether satisfactory provision could be made for the discharge of surface water generated by the development; and
 - iv) Whether sufficient information has been submitted to assess the effect of the development on statutorily protected species.

Reasons

7. The appeal site lies on the eastern side of Gamford Lane a short distance south of its junction with Darland Lane. Residential properties bound the site to the north and north east, including the grounds of Darland Hall, a Grade II listed building. There is also a row of four dwellings on the eastern side of Gamford Lane which the site wraps around. There is a residential estate with rear gardens adjoining the western side of Gamford Lane and further south is a pedestrian link into the local secondary school and playing fields.
8. The site lies adjacent to but outside the settlement boundary of Rossett as identified in the UDP. It is also within the green barrier and Special Landscape Area. The site consists of three fields currently managed as grassland. A hedge currently separates the southernmost field from the remainder of the site. The boundary with Gamford Lane is marked by a hedge with some hedgerow trees and a post and wire fence forms the south-eastern boundary with adjoining agricultural land. On the other boundaries there is a mix of trees, hedges and fences.

Green Barrier

9. Policy PS1 of the UDP directs new development to within defined settlements and whilst Policy H5 allows new housing in the open countryside it is only in certain circumstances, none of which apply to the proposed development. There was no dispute between the parties that the development would be contrary to these policies.
10. Policy EC1 of the UDP only permits development within green barriers 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".
11. For the purposes of national policy the designation of green barrier is synonymous with the term green wedge. Planning Policy Wales (PPW) makes a presumption against inappropriate development in green wedges. The circumstances under which buildings in a green wedge may not be inappropriate are identified in paragraph 4.8.16 and include those set out in Policy EC1 of the UDP. The proposal does not fall within any of the specific uses listed in Policy EC1 or PPW.

12. Other uses are allowed in the green barrier where openness is maintained. Openness and permanence are recognised in paragraph 4.8.5 of PPW as the most important attributes of Green Belts and although local designations such as green barriers do not convey the permanence of a Green Belt, openness is still considered an important attribute. Although PPW does not specifically define openness, it is generally accepted to be the absence of urban sprawl and encroachment into the countryside.
13. Openness is not primarily about visual impacts but about the absence of development that would cause urban sprawl. The Appellants considered that the openness of the site would not be compromised by the development as the site is adjacent to the settlement and enclosed by its landscaped boundaries. Nevertheless, the erection of 47 dwellings would result in a significant amount of built development which would fail to maintain the openness of the site.
14. The purposes of the green barrier set out in paragraph 5.2 of the UDP reflect those in PPW and include: to prevent the coalescence of urban areas and villages with other settlements; assist in safeguarding the countryside from encroachment; and to protect the setting of an urban area. The location of the site on the edge of the settlement is significant in safeguarding the countryside from encroachment and although the relationship of the proposal with neighbouring built development may limit its effect, I am nevertheless of the opinion that to allow the development would conflict with the purposes of including the land within the green barrier as well as failing to maintain openness.
15. The evidence therefore leads me to conclude that the proposal would constitute inappropriate development within the green barrier which would also fail to maintain openness and conflict with the purposes of including land within it, contrary to Policy EC1 of the UDP. This carries substantial weight against the appeal.
16. According to paragraph 4.8.15 of PPW permission for inappropriate development should only be granted in very exceptional circumstances where other considerations clearly outweigh the harm which such development would do to the green barrier. Exceptional circumstances in this instance were identified as being the current supply of housing land and the relationship of the site to the settlement.
17. The Council is unable to demonstrate a five year housing land supply and according to paragraph 6.2 of Technical Advice Note (TAN) 1: Joint Housing Land Availability Studies, 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. An additional 47 dwellings would help increase housing supply and therefore carries significant weight.
18. Whilst the site lies adjacent to existing built development to the north, these properties are outside the settlement boundary which is marked by Darland Lane. To the west the site is separated from the settlement by Gamford Lane where the existing roadside hedge helps to create a strong defensible settlement boundary. The development would see the removal of this hedge together with an internal hedgerow before culminating on its south eastern boundary on the line of an existing post and wire fence. It would also extend beyond the row of dwellings on the eastern side of Gamford Lane.
19. Although it is proposed that the south eastern boundary would be marked by a new hedge, I do not consider that the relationship of the site to the settlement is sufficient to warrant the encroachment into the open countryside as proposed or create a logical extension to the settlement. It is accepted that the development would contribute

towards the supply of housing. However, I was advised at the Hearing that there are other possible residential sites in the area which are under consideration as part of the local development plan process.

20. The lack of a five year housing land supply carries considerable weight. Moreover the site is located in a sustainable location on the edge of the settlement and the proposed dwellings would contribute towards the supply of housing. However, in this case I am not satisfied that these considerations clearly outweigh the harm to the development would cause to the green barrier. Looking at the case as a whole, I consider that very exceptional circumstances to justify the development have not been demonstrated.
21. I therefore conclude that the proposal would constitute inappropriate development within the green barrier with significant harm to openness. There are no exceptional circumstances sufficient to outweigh the harm to the green barrier which would result from the proposal and to allow the development would therefore be contrary to Policies PS1, PS2, H5, EC1 and GPD1 of the UDP.

Effect on the character and visual amenity of the area

22. The site is located within the Special Landscape Area (SLA) where, according to Policy EC5 of the UDP, priority is given to the conservation and enhancement of the landscape. In the Wrexham LANDMAP Supplementary Planning Guidance (SPG) the appeal site lies within the Dee Terraces Landscape Character Area where the key visual characteristics include a uniformly low-lying flat open farmland with long views where hedgerows permit; a medium to large scale field pattern with fields regular and semi-regular in shape; dispersed pattern of villages, hamlets and farms. Rossett is identified as a rural village under development pressure which is weakening its character and the Dee Terraces landscape is stated to be highly vulnerable to continuing development and recreational pressures, and to economic changes which threaten traditional farming. The SPG and the LVIA submitted by the Appellants have both drawn on LANDMAP database of Natural Resources Wales (NRW).
23. At present Gamford Lane as it passes the site and further to the south is narrow with hedges to both sides and no footway. The boundaries of the rear gardens of the dwellings on the western side of Gamford Lane are set back from the carriageway and separated from it by a drainage ditch and a roadside hedge.
24. The development would provide for the widening of Gamford Lane and the provision of a footway along the site boundary as far south as the existing row of dwellings. Although the indicative layout shows several accesses from the site onto Gamford Lane, the Appellants agreed that there would be a single point of access close to the north eastern corner of the site. Nevertheless the highway works would necessitate the removal of a substantial length of hedgerow and although it would be either transplanted or a new hedge planted, the widening of the road and the extension of the urban landscape further south would significantly alter the character of the lane.
25. According to the LVIA the impact of the development on the landscape would be moderate adverse, reducing to minor to moderate as the establishment of the internal and boundary landscape framework of tree and hedge planting increasingly assimilated the site into the broader landscape setting.
26. However, the proposal would result in a significant amount of built development in open countryside and although it would be on the edge of the settlement it would nevertheless have an impact on the character of the landscape. Whilst it would be possible for the detailed design of the proposal to incorporate existing hedgerows, the

increase in urban form would change the rural character of the field parcels. The removal of the existing hedge to facilitate the widening of Gamford Lane would result in the loss of a strong defensible boundary to the edge of the settlement and the further erosion of its character.

27. I acknowledge that replacement hedge and tree planting along the boundary with Gamford Lane would, in time, help assimilate the development into its surroundings. Nevertheless, the proposal would result in a significant change to the character of the landscape which is already highlighted as being under pressure from development, contrary to Policy EC5 of the UDP.
28. In respect of visual amenity the map of the Zone of Theoretical Visibility (ZTV) contained in the LVIA confirms that the extent to which the development would be visible is strictly limited. Although from more distant viewpoints the development would be screened by intervening vegetation, the development would be visible to receptors using Gamford Lane, together with residents of nearby dwellings.
29. The change to the character of Gamford Lane brought about by the development would affect the visual amenity of receptors travelling along the lane. Although the proposed replacement boundary hedge would, in time, break up the views of the development, the proposal would nevertheless be visible and would extend the built development of Rossett further south. Whilst this would have an effect on the visual amenity of receptors travelling along Gamford Lane, I do not consider it would be significant.
30. There are residential properties in the surrounding area with views of the site, although some are restricted to views from upper floor windows only. Whilst the proposal would alter the outlook from some of these properties I am satisfied that the development could be designed to ensure there would not be an adverse effect on the visual amenity of residents.
31. Although the development would bring about a visual change to the area, on the evidence before me I do not consider that it would cause significant harm to visual amenity, in accord with Policies GDP1 and EC5 of the UDP. Whilst this adds weight in support of the appeal, it has to be weighed in the balance against other factors which include the harm I have identified to the character of the area.

Surface water drainage

32. The surface water flooding map produced by NRW indicates the local area is susceptible to flooding. Local residents stated that at times of heavy rain the junction of Darland and Gamford Lanes floods and standing water on the site was reported. It would appear that the flooding is due in part to a truncated surface water drainage pipe which, to date, has not been rectified. Whilst the Council may have a duty to correct the problem, the parties were agreed that this would reduce the frequency of flooding but not remove it completely.
33. The Flood Consequences Assessment and Surface Water Management Plan which accompanied the application discounted the use of soakaways and concluded that surface water generated by the development would need to be discharged to the local sewerage network. In response to the application both Welsh Water and NRW stated that discharging to the main sewer network would be unacceptable.
34. The subsequent Drainage Appraisal analysed the potential for soakaway drainage as well as drainage to the adjacent culvert/ditch. Although the appraisal suggested that soakaways would work within the site and would be the primary method to be used

for drainage, it indicated that more soakaway tests were required to confirm the initial findings. Given that the appraisal was based on a single soakaway test rather than on the recognised practice of three tests, I share the Council's concerns that if repeat tests were undertaken infiltration rates would be lower.

35. The appraisal also recognised that soakaways may not be suitable for parts of the site. In these circumstances it was proposed to take the rainwater run-off to the adjacent highway ditch, with on-site storage and control of the flow to match the existing water movement. Whilst the management of surface water run off within the site and the control of its discharge from the site could represent an improvement, without a proper functioning surface water network the existing flooding problem would be compounded.
36. It is acknowledged that the design of the surface water drainage system is a matter which in some circumstances could be reserved to the detailed design stage. However, in this instance there is insufficient evidence to confirm that a scheme could be designed to ensure that surface waters generated by the development could be acceptably and sustainably managed to ensure existing surface water drainage problems are not exacerbated, contrary to Policy EC13 of the UDP which does not support development which would result in an unacceptable adverse impact on the water environment due to additional surface water run-off.

Effect on protected species

37. Although the submitted Extended Phase 1 Habitats Survey found no sign of bats, great crested newts or badgers within the site they are known to be in the local area. In respect of great crested newts there are known breeding records within 200m of the site and not all of the local ponds were examined as part of the survey. I agree with the Council that further surveys of all the ponds within the local area are required.
38. Interested parties reported bat activity in the local area and it is known that light associated with built development can affect the ability of bats to forage, commute and breed successfully. The site is currently not subject to any significant levels of artificial lighting and there is the potential that the boundary hedge to Gamford Lane is used by bats for foraging and commuting. Without appropriate surveys it is not possible to determine the level of bat activity on the site and the effect the development would have on the protected species.
39. There are known badger setts in the local area and during my site visit I observed badger tracks on adjoining land which went up to and crossed into the site. Whilst the proposal would not affect the badger setts directly, there is insufficient detail on the level of badger activity within the site to assess the effect of the development on the protected species and the need for mitigation.
40. The Appellants were of the opinion that the need for further information on the protected species identified was a matter which could be addressed by condition. However paragraph 6.2.1 of Technical Advice Note 5: Nature Conservation and Planning (TAN 5) states that the presence of a protected species is a material consideration when considering a development that, if carried out, would be likely to result in disturbance or harm to the species or its habitat. It is essential that the presence or otherwise of protected species, and the extent to which they may be affected by the proposed development, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.

41. I therefore conclude that insufficient evidence has been submitted to ensure that the development would not result in an adverse impact on the conservation of protected species, contrary to Policy GPD1 of the UDP which seeks to 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.

Other material considerations

42. Other concerns raised by interested parties included the effect of the development on highway safety; the setting of the listed building, Darland Hall; and residential amenity.
43. Although Gamford Lane is a rural lane with no footways, it is used by drivers travelling to Holt and Wrexham Industrial Estate as well as by parents dropping children off at the local school. Gamford Lane is therefore well used by drivers and pedestrians and with limited space for two vehicles to pass and no footway highway safety is an issue. The vehicular traffic generated by the development would add to the traffic already using Gamford Lane.
44. The development would be served by a single point of access and the necessary visibility splays would be provided, Gamford Lane would be widened past the site entrance and a footway would be created. These works would not only benefit drivers but would also improve pedestrian links along Gamford Lane to the pathway to the school. Although the development would result in an increase in traffic, I have no substantive evidence on which to conclude it would be detrimental to highway safety.
45. Darland Hall, a Grade II listed building, lies to the north east of the application site. Its grounds, which adjoin the site boundary, play a significant part in the setting of the Hall and the appeal site provides an open aspect beyond its curtilage. However, views of the listed building from the south and west are limited and although the proposed dwellings would be seen in the foreground, I consider that subject to the layout of the site and detail of the properties being sensitively designed any harm to the setting of the listed building could be avoided. Whilst the development would be visible from some of the upper floor windows of the Hall and from some parts of the grounds the existing trees within the grounds would break up views of the development. On balance I do not consider that the proposal would have a significant adverse effect on the setting of the listed building.
46. Other residential properties have views of the site and the development would alter the outlook from these properties. Concerns were also raised regarding disturbance from noise and light. However, on the evidence before me I am satisfied that the development could be designed to ensure that there would be no unacceptable harm to the living conditions of local residents in respect of these matters.
47. I have noted the concerns of local residents that the local doctors, dentists and schools would be unable to accommodate additional residents. However, I have no substantive evidence that new residents would be unable to register with local doctors and dentists and the Unilateral Undertaking submitted by the Appellants makes provision for a financial contribution towards additional places at the secondary school. A similar requirement in respect of primary school places was not identified by the Council.

Conclusions

48. I have found that the proposal would be inappropriate development in the green barrier which would also fail to maintain openness and there are no very exceptional

circumstances sufficient to outweigh this harm. There would also be harm to the character of the area. I am not satisfied by the evidence that the development would not exacerbate existing surface water flooding problems and there is insufficient evidence to confirm the effect of the development on protected species. Whilst I am satisfied that issues relating to visual and residential amenity and highway safety are matters which could be satisfactorily addressed, these do not overcome the concerns I have raised. For these reasons, and having had regard to all other matters raised, the appeal is dismissed.

49. 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.

Kay Sheffield

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Patrick Lomax	Land Planning Limited
Miss Joanne Ellis-Jones	Land Planning Limited
Robert Roger BSc MPhil CMLI	Landscape Architect for Land Planning Limited
Charles Townsend	ELLUC Projects Limited

FOR THE LOCAL PLANNING AUTHORITY:

Philip Forster BSc(Hons) MCD	Development Management Officer
Miss Emma Broad BSc(Hons)	Ecologist
Neil Taunt BSc MSc CWEM CSci CEnv	Senior Flood Officer

INTERESTED PERSONS:

Councillor Hugh Jones	Ward member
Kenneth Tipton	Local resident
Mrs Elvina Jones	Local resident
Simon Draco	Local resident

DOCUMENTS

- 1 Letter and circulation list regarding the arrangements for the Hearing
- 2 Copy of Policy EC 1 of the Wrexham Unitary Development Plan
- 3 Plans confirming the settlement boundary of Rossett
- 4 Copy of infiltration record submitted by the Appellants

Documents submitted after the Hearing:

- 5 Section 106 Unilateral Undertaking
- 6 Conditions agreed between the parties in respect of open space and badgers