

## **Appendix 2: Appeals that have been dismissed**

**Application reference:** P/2013/0003

**Appeal reference:** APP/H6955/A/13/2196178

**Site Address:** Land south of Pincroft, Afoneitha Road Penrycae

**Application reference:** P/2013/0819

**Appeal reference:** APP/H6955/A/14/2220097

**Site address:** Land opposite the Cemetery, Stryt Las, Rhosllanerchrugog.

**Application reference:** P/2014/0480

**Appeal reference:** APP/H6955/A/14/2229480

**Site Address:** Land opposite St Peters Close, off Llay New Road, Rhosrobin

**Application reference:** P/2014/0815

**Appeal reference:** APP/H6955/A/15/3095184

**Site Address:** Land adjoining Trewythen Hall Care Home, Vicarage Lane, Gresford

**Application reference:** P/2015/0254

**Appeal reference:** APP/H6955/A/15/3138885

**Site Address:** Land north of Minera Hall Road, Minera, Wrexham

**Application reference:** P/2015/0399

**Appeal reference:** APP/H6955/A/15/3139131

**Site Address:** Land south of Big Green Farm Ellesmere Lane, Penley



## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 13/06/13

gan Robert Gardener BSc (TownPlan)  
MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 31/07/13

## Appeal Decision

Site visit made on 13/06/13

by Robert Gardener BSc (TownPlan)  
MRTPI

an Inspector appointed by the Welsh Ministers

Date: 31/07/13

**Appeal Ref: APP/H6955/A/13/2196178**

**Site address: Land south of Pinecroft, Afon Eitha Road, Penycae, Wrexham LL14 2PF**

**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 W Roberts against the decision of Wrexham County Borough Council.
- The application Ref PEN P/2013/0003, dated 02/01/2013, was refused by notice dated 11/02/2013.
- The application proposed residential development.

### Decision

1. The appeal is dismissed

### Procedural matters

2. The application is made in outline but with access included for consideration now. That access would be from a cul-de-sac from Afon Eitha Road which serves a development of 9 houses, known as Pinecroft. This and the cul-de-sac are nearing completion on land immediately to the north of the appeal site. The use of this access arrangement to serve the site is not objected to.
3. All other matters are reserved for subsequent consideration. However, an indicative layout was also submitted. Although clearly for illustrative purposes only, it shows that residential development would be confined to a relatively flat area of the land commensurate with that of Pinecroft. The lower levels and slopes at the site edge and alongside the Afon Eitha, which forms its southern boundary in a deep cutting, would be excluded. On that basis, the Council accepts that the site could be developed without the loss of trees of reasonable value in those areas, a matter of potential objection. The Countryside Council for Wales does not object while, at a local level, further investigation suggests that, so long as an area is protected for the passage of great crested newts, there is no objection to the development of the remainder on bio-diversity grounds. These possible issues are therefore capable of being resolved.

### Main Issue

4. The determining consideration in this case is whether or not there are very exceptional circumstances which would justify the proposal contrary to the strong presumption

against inappropriate development within the Green Barrier and outside the settlement limit of Penrycae.

## Background

5. The previous planning history of the site has been referred to extensively, particularly by the appellants. I draw on that shortly but register here the following:
  - a) The appeal site was once part of a larger parcel of land owned by the appellants which was put forward, by way of an objection to the draft plan, for inclusion as a residential development site in what is now the adopted Wrexham Unitary Development Plan 1996-2011 (WUDP)<sup>1</sup>.
  - b) It seems that it was inferred that that portion which is the appeal site was liable to flooding from the Afon Eitha. The site was therefore removed from the submission. Despite the continued objection of the Council, following the local inquiry into objections the remainder was included as an allocated residential site in the WUDP, Ref: Number 7 of Policy H1.
  - c) Site 7 was placed within the settlement limit of Penrycae, was subsequently granted planning permission and is the site of the housing development Pinecroft to which I have referred. The appeal site, which the appellants refer to as their 'residual land', was placed outside the settlement boundary and within the Green Barrier.
  - d) A planning application made in 2004<sup>2</sup> for outline planning permission for residential development on the appeal site was refused and a subsequent appeal dismissed in February 2005<sup>3</sup>. Again, the Inspector's conclusions on several of the issues have been relied on and I comment on those shortly. Although planning permission was refused, he also recorded that neither the Environment Agency Wales nor the Council had any evidence of flooding events having affected the site. Since then Hydraulic Modelling has shown that flooding considerations do not preclude development of other than a small area immediately adjacent to the river. More recently, EAW has confirmed that it has no objection to the proposal.
  - e) The appeal site was put forward as an Alternative Site for residential development in response to public consultation for the draft Wrexham Local Development Plan (LDP). This proposal was resisted by the Council. However, the LDP was eventually withdrawn since the Inspector undertaking its examination considered that the plan revealed a considerable shortfall in the required supply of housing land.

## Reasons

6. While I understand the appellants' view that, had the true risk of flooding been properly understood, the site would most likely have been included in the WUDP as an allocated site, placed within the settlement limits of Penrycae and outside the Green barrier, none of those outcomes can be conclusively presumed. Although Green

<sup>1</sup> Adopted February 2005

<sup>2</sup> Council ref: PEN P/2004/0974

<sup>3</sup> Ref: APP/H6955/A/04/1168185

Barriers do not share the same permanence as Green Belts, it is not possible, or appropriate, to now re-run that part of the UDP process within the confines of this appeal. The Inspector in 2005 came to a similar conclusion, although clearly the adoption of the UDP was a much more recent occurrence and the plan likely to have been more up to date then than it is now.

7. The proper place for that debate may in due course be the LDP. I understand that the preparation process is to start again and final adoption is not expected until 2016. The Council fully accepts that the appeal proposal would not prejudice that process or is premature to it. Nor should the LDP currently attract any weight here. It is appropriate, however, to take into account the actual harm the proposal would make to the Green Barrier and its purposes as well as any changed circumstances since the adoption of the WUDP.
8. The Council acknowledges that the WUDP is out of date. Nevertheless, as the operative development plan, it remains the starting point for the consideration of new development proposals. The boundary to the Green Barrier and the settlement are coincidental as defined for purposes of the WUDP. Notwithstanding the appellant's views that the site does not meet the assessment criteria for inclusion, the fact is that it is in the Green Barrier where WUDP Policy EC1 limits development required to meet a specified range of purposes. In so doing, it continues to closely follow the Welsh Government's continued policy in respect of Green Barriers<sup>4</sup> as stated in Planning Policy Wales<sup>5</sup> (PPW). The proposed residential development is not one of those purposes and, in accordance with PPW, is inappropriate development for which very exceptional circumstances need to be shown if it is to be granted planning permission. It is that test, not whether the Green Barrier boundary should be changed, which is to be applied to this case.
9. In addition, the proposal is contrary to Strategic Policy PS1, which states that new housing development is to be directed to be within defined settlement limits. Nor does it accord with the housing in the countryside exceptions set out in Policy H5. Strategic Policy PS2 is that development must not, amongst other matters, detrimentally affect the countryside or the natural environment.
10. Inappropriate development in Green Barriers is harmful by definition. In addition, as the Inspector found in 2005, the site exhibits the major Green Barrier attribute of openness. That does not, to my mind, imply that he was dubious as to its value as part of the Green Barrier. Moreover, the appellant's repeated claim that this was the site's *only* identified attribute which somehow undermines its Green Barrier credentials is entirely misplaced. It is clear of development and still retains this important characteristic. That is so despite the fact that boundary hedges, trees and shrubs have continued to grow and now provide a greater degree of enclosure. Nor is it inherent openness compromised by the construction of Pinecroft, since that site is outside Green Barrier. Notwithstanding that Green Barrier policies including, it seems to me, where they should apply should be reviewed as part of the development plan, there has been no material change in the physical circumstances of the site or its location which suggest that its inclusion as part of the Green Barrier in the WUDP is now obviously wrong. Residential development would undoubtedly considerably

<sup>4</sup> 'Green Barriers' here have the same meaning as 'green wedges' in PPW

<sup>5</sup> Planning Policy Wales Edition 5 October 2012

reduce the degree of openness which the site currently contributes to the Green Barrier. This would cause further harm to the Green Barrier.

11. PPW explains that Green Barriers serve the same purpose as Green Belts. The purpose of this Green Barrier has not been explained or assessed in response to the proposal. Even so, from the submissions I am able to form a view on those concerning encroachment into the countryside, managing urban form and protecting the setting of an urban area. The site is at the edge of the built-up area of the Penycae, now determined by Pinecroft. To the east, at a lower level and bounded by a dense hedge, are recreational facilities, in the Green Barrier, while the Afon Eitha, in a deep cutting, forms an obvious physical boundary to the south. Beyond these is open countryside extending east and west around the periphery of Penycae, again within the Green Barrier. The area on the opposite, west side of Afon Eitha Road, extending southwards, is built-up and within the settlement. Consequently, the site, roughly triangular, is bounded on 2 sides by existing built development. It is generally unkempt and overgrown, having possibly been previously developed, a factor to which I return shortly.
12. Notwithstanding his finding that the site's openness was a major Green Barrier attribute, the 2005 Inspector concluded that it had a poor appearance and was largely unrelated topographically to the surrounding landscape. From what I could see that is still the case and I agree with the conclusion he then reached that residential development here would not have a detrimental effect on the character of the countryside or environment. It seems to me, however, that the Inspector was applying the test in Policy PS2 rather than whether encroachment into the countryside would follow. The appellant attempts to draw further support from the views of the Landscape Officer, prepared in the context of the aborted Examination into the LDP. I have not been provided with the full text but am not persuaded that it amounts to acceptance that the site should be considered as being more within the village than the countryside. Rather it appears to acknowledge that the northern part (*of the site*) is the only part (*of the site*) which has development potential which relates to the settlement limits and avoids site constraints. What 'relates to' actually means is not explained but I am not persuaded that it means 'part of' as the appellant implies. Otherwise, his views on where development on the site could best take place are not in dispute. Similarly, the response of the Countryside Council for Wales that it has no objection to the proposal must be taken in the context of that organisation's wildlife function. It does not state, as the appellant might wish, a lack of concern at the loss of part of the Green Barrier or, indeed, the countryside generally since it makes no comment on either. Again, it is acknowledged that biodiversity issues can be met.
13. The site is at the edge of the settlement and in the countryside for policy purposes. While it is of relatively poor visual quality, the proposal would result in it being encroached upon, contrary to one of the purposes of the Green Barrier. However, in its present and, it seems, longstanding, poor condition it adds little to the setting of Penycae such that there would be little conflict with that Green Barrier purpose. As to managing urban form, I agree that the Afon Eitha would be a firm and defensible edge to the settlement. However, as anticipated by the Inspector in 2005, unlike then Pinecroft now provides a suitably strong demarcation for that purpose in any event.
14. As such, I find harm to the Green Barrier because the proposed development is inappropriate, would result in loss of openness and encroach into the countryside.
15. As to possible exceptional circumstances, for the reasons I have given I am unable to attach significant counter weight to the history of misunderstanding over the

constraints on the site or the views that the site does not meet the assessment criteria for Green Barriers. There are, however, other matters put forward.

16. The first is that the Council is unable to identify a 5-year supply of land for housing as required by Welsh Government; the Council recognises that this may be a justifiable reason for granting planning permission. That was not the situation before the Inspector in 2005. When the appeal application was determined the latest available information, for 2011, was that there were 3.9 years available. The latest figure is 3.5 years, showing that the situation has worsened. The Council's position is that evidence has not been produced that sites within existing settlements which comply with the WUDP strategy are unacceptable. However, it is reasonable to assume that there are insufficient such sites otherwise there would not be the identified shortfall in the supply of housing land.
17. The development at Pinecroft is nearing completion and, although the present lack of activity suggests it may have stalled, I have no reason to doubt that this is not an area where people would wish to live. Indeed, Penycae is one of those urban villages in WUDP where priority was given to new housing development for several reasons. The LDP no longer has any standing but I understand that that strategy was to be continued. I accept that the site would make only a modest contribution but nevertheless WUDP establishes that sites in this category (9 dwellings or fewer) are cumulatively significant. Moreover, the allocated Penycae site, H7 (Pinecroft), has not achieved the 12 units expected and the appeal site could redress the resulting local shortfall.
18. PPW expects that to qualify housing land is either genuinely available or will become available. The Council points out that it has not been shown that dwellings on the site would be built within 5 years and so help make good the shortfall as claimed. Clearly early development cannot be assured but the present economic climate is likely to affect all possible sites, not just this one. However, the land has all necessary services already available and is in a sustainable location. There is nothing to suggest that the appellants would not make it available for development; indeed, the application and this appeal suggest otherwise.
19. The housing land supply situation is a substantial factor in favour of the proposal. However, what has not been addressed is, if, as seems likely, the release of sites outside settlements is necessary in advance of the preparation of the LDP, whether it is inevitable that they need be in the Green Barrier rather than areas with less stringent planning controls.
20. The second is that the site is claimed to be previously developed, or brownfield, land. Welsh Government has made it clear, by way of PPW for instance, that the development of such land is to be preferred. If it is previously developed land, its release for residential development would (a) help remedy the housing land situation, (b) in a location around an existing settlement as referred to in PPW and (c) possibly reduce encroachment onto greenfield land elsewhere.
21. While also mentioned at the 2005 appeal, the Inspector expressed no view on the accuracy of the claim. He remarked that there were buildings and hard surfaces around much of the site but there was no reference then to any buildings on it. The appellant simply says that it was once used for industry, without explanation. The Council points out that the site was previously mineral workings and had no permanent structures or associated fixed surface infrastructure. If that was so, having

regard to PPW<sup>6</sup>, it is difficult to accept that it should now be treated as previously developed land.

22. The appeal site is not within a built-up area and so the preference expressed in PPW for the re-use of previously developed land does not strictly apply. Nevertheless, it is recognised that such land around settlements could fulfil a similar purpose and had it been shown with greater certainty that the site is indeed previously developed it would have attracted weight accordingly. However, as I have explained, there is considerable doubt that the site meets the definition. The appellant's claim must be treated as unproven and little weight can be given to it.
23. In summary, it has not been shown that, despite the unfortunate misunderstanding when the WUDP was in preparation, the Green Barrier status of the land no longer applies. I have identified harm to the Green Barrier because of the inappropriate development proposed and the loss of openness which would result. A purpose of the Green Barrier is to prevent encroachment into the countryside, not to protect its visual qualities. The proposal would encroach into the countryside as defined in the WUDP. PPW explains that substantial weight should be attached to such harm.
24. Many of the factors raised in support relate to lack of objection on grounds of, for instance, sustainability, biodiversity, effect on trees and the availability of services. However, all new development would be expected to satisfy such requirements. That the proposal would not create a precedent is not in question nor is the fact that it would not prejudice the preparation of the LDP. Such matters are neutral. As such, none of these add to the reasons against the proposal but nor do they offer the exceptional circumstances necessary to outweigh the Green Barrier harm identified.
25. I have given particular attention to the 2 matters which may have had such significance. For the reasons I have given, I am unable to give weight to the possibility that the site should be treated as previously developed. The shortfall in the 5-year supply of land for housing has far more substance and the Council has not seriously undermined the appellant's case in that regard. However, it is not apparent that, in the interim pending the now delayed LDP, the use of Green Barrier land such as this is necessary or desirable.
26. On that basis, I do not consider that very exceptional circumstances have been shown sufficient to outweigh the presumption against inappropriate development such as this in the Green barrier. I have concluded that the appeal should fail.

*R.G Gardener*

Inspector

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<sup>6</sup> Figure 4.1

## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 18/12/14

gan Iwan Lloyd BA BTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 8 Ionawr 2015

## Appeal Decision

Site visit made on 18/12/14

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 8 January 2015

**Appeal Ref: APP/H6955/A/14/2220097**

**Site address: Land opposite the Cemetery, Stryt Las, Rhosllanerchrugog, Wrexham LL14 2DB**

**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 W D Stant against the decision of Wrexham County Borough Council.
- The application Ref RHO P/2013/0819, dated 21 November 2013, was refused by notice dated 27 January 2014.
- The development proposed is development of 14 affordable dwellings, associated infrastructure works and amenity space.

### Decision

1. The appeal is dismissed.

### Procedural matters

2. The planning application is submitted in outline with access, layout, scale and landscaping considered at this stage. Two layouts were submitted with the appeal. The Council clarified that it had considered plans refs: J024.1.0.100 REV B and 101 REV B (the first a layout of the development and the second the layout with landscaping). This layout is the same as that presented with the appeal, plan ref: J024.1.0.101 REV C (albeit with a difference reference number) and that shown in the design and access statement. No prejudice would therefore arise in my dealing with the appeal and layout plan J024.1.0.101 REV C.
3. I consider that sufficient information has been provided with the application and in the design and access statement to indicate that Article 3 of Part 2 of the statutory instrument<sup>1</sup> is met.
4. A planning obligation dated 20 May 2014 has been submitted which covenants that the development would only provide affordable housing on the site which would be managed by or in the ownership of a Registered Social Landlord (RSL). There is also a clause which prevents the disposal except to a RSL.

<sup>1</sup> 2012 No. 801 (W.110) Town and Country Planning, Wales, The Town and Country Planning (Development Management Procedure) (Wales) Order 2012

5. The Welsh Government has issued a direction on 16 September 2014 that the proposal is not an environmental impact assessment development within the meaning of the 1999 Regulations (as amended).

### **Main issues**

6. I consider the main issues are:

- Whether the proposal would be inappropriate development in the green barrier, and
- Whether there are other considerations which clearly outweigh the harm to the green barrier, thereby justifying it on the basis of very exceptional circumstances.

### **Reasons**

#### *Green Barrier*

7. The site lies to the south of Stryt Las between housing developments on this side of the road, and opposite a Cemetery located on the north side of the road. The site is some 2.5ha and is located outside the settlement limit as defined in the Wrexham Unitary Development Plan (UDP). It is also in a green barrier and special landscape area.
8. Planning Policy Wales Edition 7 July 2014 (PPW) indicates that when considering applications for planning permission in Green Belts or green wedges, a presumption against inappropriate development will apply. The construction of new buildings in a Green Belt or in a locally designated green wedge is inappropriate development unless it is, amongst other things, for the following purpose: limited infilling (in those settlements and other development sites which have been identified for limited infilling in the development plan) and affordable housing for local needs under the development plan policies.
9. UDP Policy EC1 indicates that within green barriers, development will only be granted permission if it is for agriculture, forestry, essential facilities for outdoor sport and recreation, cemeteries and other uses of land which maintain openness of the green barrier and do not conflict with the purpose of including land within it.
10. The development proposed would not fall within these limitations or could be considered as other uses of land, since it involves the construction of buildings for residential purposes. The coverage of buildings, roads and infrastructure on the site would inevitable and significantly reduce openness of the site.
11. As for the purposes of including the land within the green barrier, PPW paragraph 4.8.10 indicates that local designations such as green wedges may be justified where the land is required to serve the same purpose to a Green Belt, although they do not convey the permanence of a Green Belt. This area of green barrier to the south of Stryt Las forms part of a larger swathe of land which extends to the south and is within the same UDP designation. Penycae and Rhosllanerchrugog are urban villages constrained by the green barrier land. Should the development site be built on, then the distinction between these urban villages would be lost, and therefore, I conclude that the green barrier land the subject of this appeal would prevent the coalescence of these settlements and assist in safeguarding the countryside from encroachment. The proposed development would conflict with the purpose of including the land within the green barrier. The proposal therefore conflicts with UDP Policy EC1.

12. Green wedge policies are reviewed as part of the development plan review process. The general policies controlling development in the countryside apply in green wedges, but there is a general presumption against development which is inappropriate in relation to the purposes of the designation.
13. The Council's strategic policy UDP PS1 directs new residential development to sites within the defined settlement limits. UDP Policy H5 permits exceptions to the development of land outside defined settlement limits. Limited infilling is one such exception, but the site has not been identified as a candidate for limited infilling in the UDP. Infilling is generally defined as one or two dwelling units. The development of this size would not meet this particular exception. Policy H8 allows in exceptional circumstances affordable housing to be built within rural settlement limits and other limited affordable housing proposals on the edge of settlements. This is permissible where no more than 5 dwellings can be accommodated on a site which forms a logical extension to the settlement limit and the development reflects the surrounding townscape and landscape form.
14. The Council indicates that the policy is inapplicable to Rhosllanerchrugog, since this is an urban village as defined in the UDP. The policy does not preclude affordable housing on the edge of settlements and settlements in this context of the policy is not restricted to particular parts of the Authority. However, the proposal clearly exceeds the upper limits of this policy. The proposal would occupy the central portion of the site with a pond and play area either side. This configuration would appear as an unorthodox incursion on the land with undeveloped areas either side. The development would not provide a form and layout which unifies the development with the pattern of development found in the locality. The part semi-circular layout is an unusual configuration and a response to the mine shafts situated on the site, but it is not a layout which reflects the built development in the vicinity of the site. Development of the site in my view cannot be regarded as a logical extension to the settlement and the proposal conflicts with UDP Policy H5.
15. I consider the proposal would fail to meet the permitted exceptions of the development plan and affordable housing for local needs policies and thereby conflicts with UDP Policies PS1, EC1, H5, and H8. I consider the proposal also fails to meet the limited circumstances set out in paragraph 4.8.16 of PPW.
16. The development of the site would erode the openness of the green barrier and conflict with the purposes of including land within it, particularly in preventing the coalescence of the settlements and safeguarding the countryside from encroachment.
17. I conclude that the proposal represents inappropriate development in the green barrier. By definition, the harm identified by reason of inappropriate development in the green barrier is given substantial weight against the development.
18. I note the points about the classification of the site as a green barrier and whether it is in fact within the green barrier designation. As a matter of fact the site is within the green barrier and whether this should be re-classified is a matter for the process of review of the development plan.

#### *Other considerations*

19. It is accepted that there is a deficiency in the 5 year housing land supply. This point is not contested and the Joint Housing Land Availability Study 2013 concludes that there is 3.4 years of housing land supply. The housing land supply situation is a substantial factor in favour of the proposal.

20. The second point relates to the deliverability of the site for affordable housing. It is argued that 5 affordable housing units on the site as directed by Policy H8 is unviable and that given the pressing need, site constraints due to previous mining activity and viability; 14 units would better serve the needs of the community. A housing association would prefer a larger scheme and costs could be spread across a phased development. It is also argued that viability is not a consideration, and the RSL grant or funding is only agreed after the permission is granted. The appellant contends that the planning obligation provides sufficient weight on the matter of deliverability for the development to proceed on the basis of providing affordable housing to meet the community needs.
21. The Council indicates that in order to contribute to the supply of housing, sites must be free from constraint in relation to planning issues, physical impediments, ownership constraints and be economically viable. The Council's viability appraisal indicates that the development costs of the site would exceed the development value of the site and that it would be highly unlikely that it would proceed within the next 5 years. However, the appellant indicates that the analysis is flawed on development costs. Either way the matter cannot be conclusively determined if an 'open book' approach has not been followed by the parties. In this regard, the matter is neutral, and not a point in favour of the development.
22. The submission of a planning obligation for a proposal which fails to meet the relevant policy for the reasons previously set out, fails the three tests of Regulations 122 of the Community Infrastructure Levy Regulations 2010, and the policy tests of Circular 13/97.
23. Turning to the issue whether the site is previously developed land. In relation to the definition in PPW, the matter cannot be conclusively presumed, since there is no fixed surface infrastructure on the site, and I am not aware that the mineral extraction was subject to restoration procedures. The matter is regarded as a neutral point and is not a factor in favour of the development.
24. As the site is not in a settlement the preference to use previously developed land, if this applies in this case, is not necessarily endorsed by PPW, as not all such land is suitable for development. The housing land supply could equally be met on sites outside settlement limits that are not constrained by the green barrier and with less stringent planning controls.
25. All other issues raised such as the planning history of other appeal developments, the mitigation put forward on ecology issues, and the provision of a play area, are all neutral factors, not matters in favour of the development.

#### *Conclusions on green barrier*

26. In my view, the balance of the argument which is purported to be in favour of the proposal does not clearly outweigh the harm to the green barrier and would not diminish the substantial weight against the development by reason of inappropriateness. I therefore conclude that the proposal is unacceptable having regard to the strict control over development in the green barrier contained in national and local policies. For the reasons given above, and having regard to all other representations submitted, I conclude that the appeal should be dismissed.

*Iwan Lloyd*

INSPECTOR

## Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 20/05/15  
Ymweliad â safle a wnaed ar 20/05/15

**gan Declan Beggan BSc (Hons) DipTP  
DipMan MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru**

**Dyddiad: 03/07/15**

## Appeal Decision

Hearing held on 20/05/15  
Site visit made on 20/05/15

**by Declan Beggan BSc (Hons) DipTP  
DipMan MRTPI**

**an Inspector appointed by the Welsh Ministers**

**Date: 03/07/15**

**Appeal Ref: APP/H6955/A/14/2229480**

**Site address: Land Opposite St. Peters Close, Off Llay New Road, Rhosrobin  
Wrexham, LL11 4RB**

**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.
- The appeal is made by Castlemead Group Ltd against the decision of Wrexham County Borough Council.
- The application Ref GWE P/2014/0480, dated 1 July 2014, was refused by notice dated 3 November 2014.
- The development is the erection of 117 dwellings, including provision of roundabout to provide access, new internal access roads, public open space and retention of existing footpath route.

### Decision

1. The appeal is dismissed.

### Background

2. The appeal site is located in open countryside adjacent to, but outside, the settlement boundary of Rhosrobin. It lies within a Green Barrier as designated by the adopted Wrexham Unitary Development Plan 1996-2011 (UDP), which separates Old Rhosrobin, New Rhosrobin and Pandy.
3. The site is roughly rectangular in shape and extends to approximately 4.74 hectares of land that historically has been in agricultural use although has not been put to that purpose for some time. The site is grassed over and split into four parcels of land that are separated by a combination of trees, hedges and post and wire fencing. An unmade public footpath bisects the site in an approximate east-west direction. The site is bounded by Wrexham cemetery to the north, with agricultural land to the north-west, residential development to the south, Llay New Road to the west, whilst to the north east are a small group of dwellings, and the south east borders railway lines beyond which are agricultural fields. Whilst in proximity to the settlement boundary of Rhosrobin it nonetheless retains its rural character.
4. The proposed development is for 117 dwellings, including provision of a roundabout to provide access, new internal access roads, public open space and the retention of an

existing footpath route. 25 % or 29 dwellings would be provided for affordable purposes, with an additional contribution for payment in lieu of a proportion of an affordable dwelling. The scheme would provide for a variety of open space throughout the site equating to some 1.004 hectares. The existing footpath would be retained and upgraded. The agricultural land to the north-west, which is outside of the application site and equates to 1.106 hectares is proposed to be dedicated to nature conservation.

5. On the day of the hearing the Appellant submitted a Section 106 Unilateral Undertaking that makes provision for 29 affordable dwellings, a financial contribution in order to secure the full 25% of affordable housing requirement, provision for the management and maintenance of on-site open space, and the long term management and maintenance of off-site habitat mitigation.
6. The application was considered by the Council's Development Control Committee on 3 November 2014 when Members resolved, contrary to officers recommendation, to refuse planning permission for the scheme due to it being located outside the defined settlement limits and within a designated green barrier, contrary to policies in the UDP.

### **Main Issues**

7. I consider the main issues to be:
  - whether the development is inappropriate development in a green barrier, and if so, whether any very exceptional circumstances exist to clearly outweigh this harm;
  - the effect of the development on the character and appearance of the area; and
  - the effect of the loss of agricultural land.

### **Reasons**

#### ***Development in the Green Barrier***

8. The site lies within a green barrier as designated in the UDP. Policy EC1 of the UDP refers to development in green barriers only being granted planning permission if the proposal is for agriculture, forestry, outdoor sport and recreation, cemeteries and other uses which maintain its openness and do not conflict with the purpose of including land within it.
9. Green barriers have not got the permanence of the green belt and are subject to review as part of the development plan process. It was argued that Planning Policy Wales Edition 7 July 2014 (PPW) acknowledges that circumstances will change over time to ensure that sufficient development land is made available, therefore policy EC1 should be afforded limited weight as it relates to an out of date UDP, and has not been reviewed in line with national policy to determine whether it still serves the purposes for which it was intended. It is maintained that PPW presumes in favour of sustainable development where development plan policies are out of date.
10. I note the concerns raised by the Inspector into the initial Examination of the Wrexham Local Development Plan (LDP) in regards to the Council's approach to green wedges which did not have adequate regard to national policy. Nonetheless, the fact is the site is within a designated green barrier as defined by the UDP, and whilst that may change in the future within the recommended LDP, that plan is at an early stage

of preparation and is not expected to be adopted until sometime after 2018. The LDP is therefore afforded little weight in this process.

11. The Council cited two recent appeal decisions<sup>1</sup> where the green barrier designation was upheld, and it was argued those decisions did not suggest policy EC1 was out of date.
12. Whilst the UDP plan period expired in 2011, policy EC1 is consistent with PPW. Where reference is made to green wedges, these have effectively the same meaning as green barriers in this regard. PPW states a presumption against inappropriate development, with substantial weight to be attached to any harmful impact which a development would have on a green wedge/barrier designation. It confirms that inappropriate development should not be granted planning permission except in very exceptional circumstances where other considerations would clearly outweigh the harm.
13. The proposed development does not fall into any of the categories of development deemed not to be inappropriate in the green barrier in PPW and policy EC1 of the UDP. The main parties agree that the proposal would represent inappropriate development in the green barrier.
14. Paragraph 4.8.18 of PPW is quite clear, that other forms of development would be inappropriate development unless they maintain the openness of the Green Belt or green wedge and do not conflict with the purposes of including land within it.
15. Notwithstanding that part of the site would be set aside for public open space, the fact remains that a substantial part would be developed over, which would unavoidably and significantly reduce its openness. Therefore the proposed development would not maintain the openness of the green barrier and as a result constitutes inappropriate development, and is therefore contrary to policy EC1 of the UDP and PPW.
16. The Appellant argues the site does not perform a significant green barrier function due to its enclosed position relative to existing nearby development, and that in any event a green wedge will always be retained to the north of the site. One of the purposes of the green barrier/wedge according to PPW and Policy EC1 of the UDP is to prevent coalescence of urban areas and villages with other settlements. In this instance it serves to prevent coalescence of the adjacent settlements of, Old and New Rhosrobin, and Pandy. The green barrier in proximity of the site extends over a wide arc from the south east to the north and west, and it serves to constrain the urban villages of Old and New Rhosrobin and Pandy. The development of the site would result in the distinction between the villages being lost and would therefore be contrary to national and local policies that seek to prevent the coalescence of settlements.
17. I also consider the development would represent an unnecessary and undesirable encroachment into the countryside thereby conflicting with one of the purposes of including land within the green barrier/wedge. The development, therefore, amounts to inappropriate development in the green barrier/wedge on this basis as well.
18. In conclusion, the development constitutes inappropriate development in the green barrier and is therefore contrary to Policy EC1 of the UDP and PPW.

<sup>1</sup> Ref APP/H6955/A/13/2196178 & APP/H6955/A/14/2220097

### **Very Exceptional Circumstances**

19. The Appellant argues that PPW presumes in favour of sustainable development where development plan policies are outdated or superseded by other material considerations, and that national policy requires Local Planning Authorities to provide a 5 year supply of housing land. It is maintained the development of the site would bring significant planning and community benefits due to its sustainable location on the edge of an existing built up area negating the need to extend infrastructure to rural areas, it would supply much needed housing to the County with 29 of those houses being affordable, permanently secure land for wildlife and habitat purposes, provide significant green spaces throughout the development, upgrade an existing public right of way, assist in highway safety in the area, would bring about economic benefits by securing local jobs in the construction industry and spending in local shops, in addition to supporting local services and facilities. It is argued these constitute very special circumstances needed to outweigh any harm to the green barrier.

#### *Sustainable development, five year land supply and affordable housing*

20. It is a long standing planning policy position that the countryside should be safeguarded from uncontrolled and sporadic development, with development primarily directed to existing settlements; otherwise unrestrained encroachment of the countryside would occur.
21. Policy PS1 of the UDP seeks to direct development for housing to within defined settlement limits, whilst policy PS2 refers to development not detrimentally affecting the countryside. The Appellant argues both of these policies should be given limited weight due to the lack of five year housing land supply, and the fact that it is inevitable such development will have to take place outside existing settlement boundaries to meet such need. The Council argue that as the site lies outside defined settlement limits it does not accord with policies PS1 and PS2.
22. Notwithstanding the Appellant's view that the proposed development is located in a sustainable location in regards to its position relative to the settlement boundary, has access to, and would support local services and facilities, and benefits from good transport links, I do not consider these would overcome the fact that the site is located in open countryside. Chapter 4 of PPW is concerned with planning for sustainability and whilst it presumes in favour of sustainable development, it also stipulates that building in the open countryside must continue to be strictly controlled. For the reasons given above, I do not consider that the proposal would be a sustainable form of development in the context of PPW.
23. PPW requires local planning authorities to ensure that sufficient land is genuinely available or will become available to provide a 5 year supply of land for housing. For land to be regarded as genuinely available it must be a site included in a Joint Housing Land Availability Study (JHLAS). There is no dispute between the parties regarding a deficiency in the 5 year housing land supply as required by PPW; currently down to 3.1 years as stated in the most recent JHLAS of 2014.
24. Technical Advice Note 1: Joint Housing Land Availability Studies (TAN 1) advises that where land supply is below the 5 year requirement 'the need to increase supply should be given considerable weight when dealing with planning applications provided that the development would otherwise comply with the development plan and national planning policies'. The Council argue the Appellant has not presented any compelling

reason to make an exception to the adopted UDP policies and that it does not consider the lack of a five year land supply, by itself, is a valid reason to grant planning permission.

25. The lack of a 5 year housing land supply weighs heavily in favour of the proposed development. Also 29 dwellings for affordable needs and an affordable contribution, also weighs in its favour. I acknowledge the Council's continued failure to meet housing land supply and that the LDP was withdrawn in part, due to a significant shortfall in the supply of housing being planned, nonetheless, whilst the UDP plan period expired in 2011, it still needs to be read as a whole and the lack of a 5 year housing land supply should not be used to justify development in otherwise inappropriate locations such as the appeal site. The benefits from the proposal in terms of the contribution to housing land supply does not outweigh the considerable conflict with the development plan and national planning policy, and the balance clearly falls in favour of dismissing the appeal.

#### *Other benefits*

26. I acknowledge the scheme would bring about benefits for wildlife and habitat purposes, provide significant green spaces throughout the development, upgrade an existing public right of way and assist in highway safety in the area, however, these benefits do not outweigh the considerable conflict with the development plan and national planning policy.
27. I recognise that PPW encourages economic development, but this has to be weighed against the UDP and PPW policy in relation to green barrier/wedge policies. The arguments put forward on grounds of economic benefit would not diminish the substantial weight against the development by reason of inappropriateness.
28. I have considered individually and cumulatively these other considerations and these do not clearly outweigh the harm by reason of inappropriateness. In conclusion the development is contrary to Policy EC1 of the UDP and PPW.

#### ***Character and Appearance***

29. The Appellant argues the site is well screened from vantage points in the locality, is enclosed by existing local development to which it relates to and does not project into an area of unbounded open countryside. The Council argue that in heading towards the site, once the A483 is crossed, the impression is one of leaving a built up area behind to be replaced by a rural environment; if the site were developed this rural impression would be eroded.
30. I observed views into the site from the nearby public highway which identified it as a rural landscape, with corresponding rural views from within the site looking outwards. Contrary to the Appellant's opinion that the scale of the change would be limited, and that any adverse effects on the landscape would be low or slight, I consider the built development would be obvious and would have an adverse effect that would be substantial for the site itself and medium for the wider landscape, thereby detracting from the existing rural character of the area.
31. Whilst being in proximity of other built development, the site does serve an important purpose in the visual transition from the adjacent urban edge to open countryside. Irrespective of the retention of parts of the landscaped boundary or additional planting, nevertheless, development of fields would detract from and, in my opinion, unacceptably harm the open character and appearance of the area thereby conflicting

with Strategic Policy PS1, which refers to new development for housing being directed to within defined settlement limits.

### **Agricultural Land**

32. An Agricultural Land Classification (ALC) for the site, and the adjacent land to be dedicated to nature conservation was carried out in accordance with MAFF's guidance and criteria<sup>2</sup>. It classified the soil as being made of 4.8 ha or 75% of the overall land as being Grade 3a, and 1.6 ha or 25% being Grade 3b. Grade 3a land is described as very good agricultural land, whilst Grade 3b is classed as moderate quality agricultural land. Whilst the classification relates to an area larger than the appeal site, nonetheless, the submitted details do appear to indicate the majority of the site is at least Grade 3a land. The assessment stated that as the site is not of the 'Best Most Versatile' land, and has restricted access, it is unlikely to be used in arable production.
33. Whilst not forming part of the Council's reason for refusal both parties at the hearing were asked to give their views on the loss of agricultural land. Policy EC2 of the UDP only permits development on agricultural land of grades 1,2 or 3a if it does not lead to the irreversible loss of that land.
34. PPW states that the best and most versatile agricultural land, which includes Grade 3a, should be conserved as a finite resource for the future and that land in grades 1, 2 and 3a should only be developed if there is an overriding need for the development, and either previously developed land or land in lower agricultural grades is unavailable.
35. The lack of a 5 year housing land supply and failure to meet the UDP's housing target could represent an overriding need, however policy EC2 does refer to higher quality land only being developed if there is no other lower quality sites available. At the hearing the Council confirmed that the bulk of available brownfield land has already come forward for development over the duration of the UDP and due to development pressures within the County, the majority of new development sites are anticipated to be on greenfield sites, with the bulk of them focussed on Wrexham and the northern part of the County.
36. In addressing the 5 year land supply shortfall, I appreciate it is likely that the Council will require the release of some greenfield sites adjacent to existing settlements, however, there is no evidence before me that this could not be achieved using lower grade agricultural land elsewhere. I conclude the proposal conflicts with policy EC2 of the UDP and PPW.

### **Other Matters**

37. Interested parties raised objections in regards to the scheme's drainage feeding into local drains that were already overloaded. The Appellant's surface water drainage report recommended the site be drained via infiltration techniques. Neither Natural Resources Wales, nor Welsh Water raised any objections to proposed development on drainage grounds and I have no reason to take a different opinion.
38. Objections have also been raised that there are not enough services locally to cope with the increase in population the scheme would bring about, however, I note the

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<sup>2</sup> Agricultural Land Classification of England and Wales. Guidance and criteria for grading the quality of agricultural land. MAFF, 1988

Council's Education Department did not raise any objections to the proposed development, nor am I aware of any objections or concerns raised in regards to capacity issues from local health practices or the local health board.

39. Objectors raised issues relating to highway safety, effects on wildlife and the existing public right of way. I am satisfied from my inspection of the site and reading of the submitted technical reports and responses from statutory consultees that the development could be acceptably managed in regards to these issues via appropriately worded planning conditions had I been minded to allow the appeal. Reference has been made to the potential for detriment to residential amenity due to construction traffic; however, I am satisfied that this matter could be adequately regulated by means of an appropriately worded planning condition, whilst devaluation of property is not itself a material consideration as it is a matter of private, rather than public interest.
40. Whilst the Welsh Spatial Plan does envisage Wrexham as being a key hub, however such growth cannot be at the expense of the designated green barrier, the character and appearance of the area, and higher quality agricultural land.

### ***Overall Conclusion***

41. I conclude that the development is inappropriate development in the green barrier and very exceptional circumstances do not exist to clearly outweigh this harm. In addition the development would cause unacceptable harm to the character and appearance of the area and result in the loss of higher quality agricultural land. After taking account of all the evidence before me, and for the reasons given above, I conclude that the appeal should be dismissed.

*Declan Beggan*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT**

Mr N Thorns BSc (Hons) DipTP MRTPI

Appellant's Agent

Mr R Shackleton

Director for Castlemead Group Ltd

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr M Phillips MSc MRTPI

Planning Officer

### **THIRD PARTIES**

Mr S Griffin MCIOB

S.G. Estates

Ms A Gray

Local Resident

### **DOCUMENTS SUBMITTED AT THE HEARING**

- 1 Council's notification letter and list of those notified
- 2 Copy of Inspector's Report into Preliminary Findings of the Wrexham County Borough Council Local Development Plan
3. Copy of UDP Policies H7 and CLF6
4. Extract of plans of UDP indicating green barrier designation in vicinity of appeal site
5. Copies of appeal decisions, Ref APP/H6955/A/13/2196178 & APP/H6955/A/14/2220097
- 6 Signed Section 106 Planning Obligation, dated 20 May 2015
7. Appellant's written submission regarding an application for costs



## Penderfyniad ar gostau

Gwrandawriad a gynhaliwyd ar 20/05/15  
Ymweliad â safle a wnaed ar 20/05/15

**gan Declan Beggan Bsc (Hons) DipTP  
DipMan MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru**  
Dyddiad: 03/07/15

## Costs Decision

Hearing held on 20/05/15  
Site visit made on 20/05/15

**by Declan Beggan Bsc (Hons) DipTP  
DipMan MRTPI**

**an Inspector appointed by the Welsh Ministers**  
Date: 03/07/15

**Costs application in relation to Appeal Ref: APP/H6955/A/14/2229480**

**Site address: Land Opposite St. Peters Close, Off New Llay Road, Rhosrobin,  
Wrexham, LL11 4RB**

**The Welsh Ministers have transferred the authority to decide this application for costs to me as the appointed Inspector.**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Castlemead Group Ltd for a full award of costs against Wrexham County Borough Council.
- The hearing was in connection with an appeal against the refusal of planning permission for the erection of 117 dwellings, including provision of a roundabout to provide access, new internal access roads, public open space and retention of an existing footpath route.

## Decision

1. The application for an award of costs is refused.

### The submissions for Castlemead Group Ltd

2. The costs application was submitted in writing and refers to the unreasonable behaviour of the Council that has caused unnecessary or wasted expense in pursuing an appeal where permission should have been granted. A full award is sought. At the hearing reference in particular was drawn to paragraph 7 of Annex 3 of the Circular 23/93<sup>1</sup>.
3. The Applicant asserts that the Council had failed to show good reason why the application should be refused contrary to the sound and professional advice of officers and had relied instead on outdated development plan policies that were contrary to Planning Policy Wales Edition 7 July 2014, and advice contained within Technical Advice Note 1: Joint Housing Land Availability Studies. The Applicant maintains that concerns raised by the Inspector into the initial Examination of the Wrexham Local Development Plan (LDP) with regards to a significant shortfall in the supply of housing land have not been acted upon expeditiously in the formulation of the recommended LDP in order to provide for an up to date planning framework for the area, thereby resulting in the application being refused through no fault of the applicant. In

<sup>1</sup> Circular 23/93 Award of Costs Incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings

addition, the Council Planning Committee acted unreasonably as they should have assessed the proposal with the benefit of a site visit prior to making their decision.

### **The response by Wrexham County Borough Council**

4. The response was made orally at the hearing. The Council referred to the fact that the Planning Committee are not bound by an officer recommendation and Members are entitled to give more weight to extant planning policies of the UDP. It was contended recent appeal decisions have taken a similar stance as regards applying the UDP green barrier policy and that national planning policy in this regard hasn't fundamentally changed, notwithstanding that the UDP as a whole is now time expired. It was explained the Planning Committee makes decisions on an individual basis and has recently permitted development in the green barrier; however in this instance the existing policy was upheld. The Council argue any concerns over housing strategy raised by the Inspector into the previously withdrawn LDP should be addressed in the recommenced LDP and cannot be resolved through individual applications. It was stated that any reference as to what the outcome of the decision would have been had the Planning Committee Members visited the site is speculation, and ultimately Members are not obliged to visit a site but instead rely on officers to articulate the site environment. The Council asserted that it had not acted unreasonably and had not caused the Applicant to incur wasted expense.

### **Reasons**

5. Circular 23/93 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
6. Consideration of planning applications and appeals involves matters of judgement which at times are finely balanced. Paragraph 9 of Annex 3 to Circular 23/93 makes it clear that Local Planning Authorities are not bound to adopt the professional advice of their officers. In this case, the decision was made in the light of local concerns and Members concerns regarding development outside defined settlement limits and within a green barrier. The Council considered the Applicant had not put forward any compelling reasons to make an exception to the adopted UDP and that the lack of a five year housing land supply was not considered to be a valid reason to grant planning permission.
7. I consider there were sound planning reasons for the Council's case founded on an extant development plan policy background, and national planning policy in relation to development outside settlement limits and within a green barrier. The Council's consideration of the sensitivity of the site as regards to its designation within the adopted UDP would have been weighed against the Applicant's arguments for permitting the development. The Council's stance was supported by evidence in the form of a statement that was elaborated upon during the hearing. Consequently there was no unreasonable behaviour in regards to the outcome of the Council's decision. Nor was it unreasonable that Members of the planning committee did not visit the site prior to making their decision, as it was perfectly reasonable for them to rely on officers' articulation of the issues and the environment in which the site was located, rather than visit the site.

8. I therefore consider that the Council has not behaved unreasonably having regard to the advice contained within paragraph 7 of Annex 3 of Circular 23/93. An award of costs is not justified.

**Formal Decision**

9. I refuse the application for an award of costs.

*Declan Beggan*

INSPECTOR

## Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 27/10/15  
Ymweliad â safle a wnaed ar 27/10/15

gan Kay Sheffield BA(Hons) DipTP  
MRTPI

Arolygydd a benodir gan Weinidogion Cymru  
Dyddiad: 25/11/15

## Appeal Decision

Hearing held on 27/10/15  
Site visit made on 27/10/15

by Kay Sheffield BA(Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers  
Date: 25/11/15

**Appeal Ref: APP/H6955/A/15/3095184**

**Site address: Land adjoining Trewythen Hall Care Home, Vicarage Lane,  
Gresford, Wrexham, LL12 8US**

**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 failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Trewythen Hall Limited against Wrexham County Borough Council.
- The application Ref P/2014/0815, is dated 31 October 2014.
- The development proposed is the siting of extra care facility, creation of internal access road and associated works.

### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are: whether the proposal would comply with local and national policies designed to protect the green barrier from harm and if not; whether there are very exceptional circumstances sufficient to outweigh the harm; the effect of the development on highway safety; and also on protected species.

### Reasons

3. The Council confirmed that had it been able to determine the application it would have refused permission. The areas of concern it identified are reflected in the main issues. The Council also identified the policies of Wrexham Unitary Development Plan, 2005 (UDP) which it considered relevant to the appeal. However, in discussion at the hearing, it was agreed that Policy EC1 had been omitted and Policy EC3 was not relevant. The Appellant asked for regard to be given to Policy H11 which addresses elderly persons' residential care homes, nursing homes and development for specialist health care facilities.
4. The proposed extra care facility would consist of twenty self-contained bungalows designed for independent living with the Appellant providing a rapid response service in times of emergency. The scheme would be similar to the existing self-contained units to the east of the Hall. It was evident that the Appellant monitors existing residents in these units and alerts relatives of any concerns. Although reference was

made to the possibility of facilities at the existing Care Home being made available to future residents of the proposed units, no firm plans were put forward in evidence. Whilst I accept that the rapid response service and close presence of the staff at the Care Home may give residents the confidence and support necessary to live independently for longer, I am not convinced that the level of support proposed amounts to the residential, nursing or specialist health care services stated in the policy. I am therefore in agreement with the Council that Policy H11 of the UDP is not relevant in this instance.

#### *Green barrier*

5. The site lies between Vicarage Lane and Trewythen Hall. It is an area of open land outside but adjoining the settlement boundary of Gresford which also form part of the green barrier as identified in the UDP. 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"*.
6. 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 4.8.17 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.
7. 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.
8. Openness is not primarily about visual impacts but about the absence of development that would cause urban sprawl. The Appellant considered that the openness of the site would not be compromised by the development as the site is enclosed by its landscaped boundaries. Despite the low density of the proposal, the erection of twenty bungalows would result in a significant amount of built development. Although the access roads and car parking may have a limited effect, overall the proposal would fail to maintain the openness of the site.
9. 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 size of the 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.
10. 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 and PPW. This carries substantial weight against the appeal.

*Very exceptional circumstances*

11. PPW states in paragraph 4.8.15 that inappropriate development should not be granted planning permission *"except in very exceptional circumstances where other considerations clearly outweigh the harm which such development would do to the Green Belt or green wedge"*. The very exceptional circumstances advanced by the Appellant include the current supply of housing land and the identified need and suitability of the site for the type of accommodation proposed.
12. The most recent published figures indicate the Council has a 3.1 year housing land supply. The proposal in providing suitable accommodation into which older people could move would help satisfy a recognised need for housing for the elderly and the release of larger properties as a consequence of the development would help increase housing supply. In circumstances where a Council is unable to demonstrate a five year housing land supply paragraph 6.2 of Technical Advice Note 1: Joint Housing Land Availability Studies states 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"*.
13. The provision of housing solely for occupation by the elderly would complement the existing accommodation provided at the Care Home and the existing bungalows associated with it. The design of the units would also allow future occupants to live independently. However, with no firm proposals for increased levels of care other than the possibility of transfer to the Care Home, the level of support proposed is limited to the close presence of the staff of and an emergency rapid response service operated by the Care Home. The Council expressed concern about the availability of such services if the Care Home ceased to operate. Whilst the speed of response may be faster than other telephone systems available to the elderly, I consider that the level of support proposed does not essentially require a location adjacent to the existing Care Home.
14. The Council expressed concern that to allow development of this site could set a precedent for the release of similar sites in the green barrier which lie on the edge of a settlement. It is the particular circumstances of housing schemes for the elderly which sets them apart from other residential developments. I am not convinced that the proposed development with the only confirmed planned support being an emergency rapid response service would be sufficiently different for it to be reasonable to anticipate that other schemes of a similar nature may not come forward.
15. Although the site adjoins the settlement boundary to the north and east and is bounded to the west by Vicarage Lane, it is nevertheless within the countryside with no physical boundary with the adjoining open land to the south. There is also open land to the west of the road. The development would infill the area between the Hall and Vicarage Lane which would have the effect of extending the built development further along the road frontage. It would also reduce the gap between the settlement and the cluster of properties to the south. I accept that views into the site from Vicarage Lane and other local vantage points are restricted by the mature tree planting along the road frontage and within the area generally. In addition the bungalows would be set back from the road in landscaped grounds and being single storey would be relatively low lying. Although there may only be glimpsed views of the proposal through the trees, it would still represent an extension of the settlement into the countryside.

16. The Council stated that the site is within an area classed as Grade 2 agricultural land whereas the Appellant described the site as parkland in association with the Hall. The mature trees within the site include not only native species, but also species including the Monkey Puzzle which are associated with planned landscapes such as parklands. Whilst the land may not be used productively at present, I have no substantive evidence that the land is not Grade 2 agricultural land or that it could not revert to such use.
17. I am aware that the Council has been asked to consider the appeal site as a candidate site in both the emerging Local Development Plan (LDP2) and the earlier version of the plan (LDP1), withdrawn in 2012. In its consideration of the site as part of LDP1 the Council concluded that the site displayed significant constraints which could not be overcome to allow development in this location. With the exception of insufficient school capacity, the constraints identified by the Council relevant to this development include the presence of protected trees, the ecology of the site and highway safety issues. These are addressed in other sections of the decision.
18. The LDP2 is at an early stage and the current timetable indicates the plan will not be ready for adoption until 2018. The status of the site should be a matter addressed as part of LDP2 and the Council is of the opinion that the importance of the site's current purpose and function as a green barrier is still regarded as relevant and material. It is clear from paragraph 4.8.11 of PPW that green wedges should be established through development plans. I accept that in paragraph 4.8.13 there is a need for local planning authorities to ensure that *"a sufficient range of development land is available which is suitably located in relation to the existing urban edge and the proposed green wedge"*. However, there are several impediments to the site's development.
19. 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. Whilst the dwellings would provide accommodation which would allow the elderly occupants to live independently, the type of support proposed does not necessarily require a site adjacent to the existing Care Home. Furthermore the development would represent an encroachment into the countryside with the potential to set a precedent for the release of other sites in similar locations. Therefore I conclude that in this case the considerations do not clearly outweigh the harm 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.

#### Highway safety

20. The Council initially indicated that visibility splays of 2.4m by 56m were required at the access onto Vicarage Lane. However, based on the results of a traffic survey undertaken by the Appellant, the Council revised its requirements and confirmed to the hearing that visibility of 2.4m by 40m measured to the nearside kerb in both directions would be acceptable. Assessment of the situation during the site visit confirmed that a short section of the stone boundary wall impinged on the required visibility to the south east. However, I am satisfied that the required visibility could be provided and it is a matter which could satisfactorily be addressed by condition.
21. The Appellant opined that due to the nature of the road and the recorded speed and volume of traffic the visibility splay could be measured to the centre line. Although in some instances it may be appropriate for visibility splays to be measured other than along the nearside edge, it is more usual for the nearside wheel track to be used as an

alternative. Whilst the volume of traffic using Vicarage Lane may not be high, it includes tankers from the nearby milk depot as well as cyclists and pedestrians and, as evidenced at the hearing, people using mobility scooters. I accept that there is no evidence of any recorded accidents on this stretch of road, nevertheless given those using the road, I do not consider it would be acceptable to reduce the visibility requirements below those requested by the Council which accord with Technical Advice Note 18: Transport.

22. There are no footpaths along Vicarage Lane and there is a high level of on-street parking between the site and the junction with Chester Road to the north. The Council is concerned that this does not provide a safe route for pedestrians from the site to the local shops and bus stops on Chester Road. It is clear from the discussion at the hearing that existing residents on the site walk or use mobility scooters between the site and Chester Road and I observed staff from the Hall and local residents walking along Vicarage Lane as I also did. Whilst it would be preferable to segregate pedestrians from the main highway the Council confirmed this was not possible.
23. Notwithstanding this, the route is within a 30mph area and the nature of the road together with the parked cars actively slow vehicles. Pedestrians do have to be more aware of the traffic when using a shared surface rather than when there is a dedicated footway and I accept that some residents may choose not to walk to local services. However, I do not consider the situation to be significantly different from numerous roads in rural settlements. Furthermore, I do not consider that the increase in the use of Vicarage Lane by pedestrians as a result of the proposed development would be so significant as to be detrimental to highway safety.
24. I therefore conclude that, subject to the provision of the stated visibility splays, the proposal would not harm highway safety, in accord with Policy GPD1(d) of the UDP.

#### *Effect on protected species*

25. The ecological appraisal submitted as part of the application included an Extended Phase 1 Habitats Survey which dated from 2013. The proposed layout of the development shown within the report differs slightly from the scheme before me. The appraisal concluded that the site has the potential to support roosting, foraging and commuting bats as well as badger, reptiles and various species of nesting birds. Habitats with the potential to support these protected species were reported to have been found within the development footprint and to have the potential to be impacted on by the scheme. The appraisal concluded that, without mitigation, the scheme would have the potential to result in a number of adverse impacts on the biodiversity value of the site, in particular potential impacts to the use of the site by bats. It was recommended that bat surveys be undertaken to establish the use of those trees lost to the scheme by roosting bats and to assess the overall value of the site to foraging and commuting bats.
26. It was also recommended that reasonable avoidance measures be undertaken to avoid harm to reptiles, badgers and nesting birds during construction works. Enhancement measures and the creation of a habitat management plan were also proposed to ensure that no long term adverse impacts on the biodiversity value and interest of the site would result from the scheme. The parties were agreed that reasonable avoidance measures with regard to badgers, reptiles and nesting birds could be satisfactorily addressed by condition and I have no reason to disagree.

27. A further report was submitted as part of the Appellant's final comments on the appeal. A daytime survey of the trees identified within the initial survey as having low to high potential to support a bat roost found no evidence of a bat roost located within the trees. Based on this lack of evidence the report concluded that bat activity surveys were not considered necessary. Whilst the likelihood of bats foraging across the site and their use of boundary tree belts as foraging and commuting habitat was recognised, the report considered that the trees to be felled would not result in the loss of important habitat for bats, the connectivity would not be broken and the foraging and commuting habitat would be maintained by the retention of the majority of trees on the site and the boundary tree belts. In addition new garden facilities would provide more suitable bat foraging habitat compared to the species poor grassland which is currently present.
28. Whilst this report was submitted at a late stage in the process the Council was able to consider its contents and presented written comments to the hearing. The Council remained concerned that there was insufficient evidence to confirm that the proposal would not have an adverse effect on bats. Whilst the roost assessment gave an indication of the potential value of the trees, the Council was concerned that fissures within the canopy might remain unseen. Indeed the report stated that bat absence is very difficult to prove definitively due to their mobility and size and that bats can rest in tiny spaces such as behind bark or within dense ivy. The Council was also concerned that the assessment failed to demonstrate how the site as a whole would be used for foraging, swarming, mating, feeding or commuting bats at various times of the year. It was anxious that the effect of the development on all these activities should be established as they would all have the potential to impact on the conservation of the species at a local level.
29. I accept that the later report did not identify any bat activity and the author was of the opinion that tree felling and tree treatment could proceed without the need for further bat survey work or bat mitigation. However, I am not convinced that the survey work undertaken is sufficient to ensure there would be no adverse impact on the conservation of the species. I am aware that the protection afforded by the legislation relates to any structure or place which any wild animal of a listed species uses for shelter or protection at any time even when the animal is not there. 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.
30. Paragraph 6.2.1 of TAN 5 also states that consultation should take place with the Countryside Council for Wales, now Natural Resources Wales (NRW), before granting planning permission. NRW objected to the planning application unless it could be satisfied by the submission of additional information to show that the development would not have adverse effects on the favourable conservation status of bats. It was confirmed to the hearing that NRW had not been made aware of the later report. I am concerned that NRW would be prejudiced by the lack of opportunity to consider whether the contents of the report overcame the concerns it had raised.

31. 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 EC6 of the UDP.

*Other material considerations*

32. The development would necessitate the removal of several trees some of which are protected by a Tree Preservation Order. The submitted evidence confirms that the protected trees to be removed have a limited life span. Moreover, it is proposed that suitable replacements would form part of a comprehensive scheme for the landscaping of the site. Given the condition of the existing mature protected trees and subject to the planting of suitable replacements as part of the landscaping of the site, which can be addressed by condition, I consider the loss of the trees to be insufficient reason to dismiss the appeal.
33. An intermediate pressure gas pipeline runs from Vicarage Lane along the roadside boundary of the site before turning towards the north east. The submitted drawings indicate that the pipeline would skirt the bungalows and in crossing the gardens to three of them would be within approximately 5m of those properties. The parties confirmed to the hearing that the pipeline operator, Wales and West, raised no objection to the development. However it did indicate that its apparatus may be at risk during construction works. In its response the Health and Safety Executive (HSE) stated that the risk of harm to future occupants of the development was sufficient to refuse permission on safety grounds.
34. I accept that the assessment undertaken by the HSE only took account of the basic details of the scheme and its response indicated that additional information might overcome its concerns. However, the parties confirmed to the hearing that no further details had been provided. Moreover, HSE also indicated that it was prepared to provide the necessary support in the event of an appeal. I have been advised that the HSE were not notified of the appeal.
35. The parties were of the opinion that the presence of a gas pipeline in close proximity to residential properties did not prevent the development from taking place. They agreed that precautionary measures would be needed during the construction phase and future occupants would need to be made aware of its presence in the use of their gardens. The parties were also in agreement that these issues could be satisfactorily addressed by way of a condition requiring a Construction Method Statement.
36. Whilst such a condition may be appropriate in some circumstances I consider that to impose such a condition would require a greater degree of certainty that the safety of residents would not be affected. Given that no further details were submitted to the HSE in response to its recommendation that the application be refused I am not convinced by the evidence that the safety of residents would not be compromised. Moreover, to reach a positive decision on the proposal without the HSE being aware of the appeal would, in my opinion, constitute prejudice.
37. In addition to the issues already covered, local residents expressed concern about loss of outlook. However, I am satisfied that the separation distance between the proposed bungalows and nearby residential properties, together with the orientation of the bungalows would ensure that there would be no unacceptable level of harm to the living conditions of the occupiers of nearby dwellings with regard to outlook or privacy.

## Conclusions

38. 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. In addition I have identified potential harm to protected species and issues of safety regarding the proximity to the gas pipeline. Whilst I am satisfied that issues relating to highway safety and the loss of TPO trees are matters which can 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 and planning permission is refused.

*Kay Sheffield*

Inspector

## APPEARANCES

### FOR THE APPELLANT:

|                                      |                                          |
|--------------------------------------|------------------------------------------|
| Jamie Bradshaw BA(Hons) MSc<br>MRTPI | Planning Consultant, Owen Devenport Ltd  |
| Berwyn Owen DipTP MRTPI<br>MRICS     | Director, Owen Devenport Ltd             |
| Julie Barr BA DipLA CMLI             | Principal, Tirlun Barr Associates        |
| Jon Addy BSc MSc MCILT               | Principal Transport Planner, SCP         |
| Peter Haycox                         | Of Trewythen Hall Limited, the Appellant |

### FOR THE LOCAL PLANNING AUTHORITY:

|                   |                         |
|-------------------|-------------------------|
| Janet Sutherberry | Senior Planning Officer |
| Emma Broad        | Ecology Officer         |

## DOCUMENTS

1. Council's letter of 23 September 2015 regarding the arrangements for the hearing.
2. List of suggested conditions submitted by the Council.
3. Copy of Policy EC1 of the Wrexham Unitary Development Plan.
4. Additional comments from the Ecology Officer on behalf of the Council.
5. Additional highway comments on behalf of the Council.
6. Plan showing the route of the gas pipeline.
7. Historical map of the site submitted by the Appellant.
8. Colour copy of the plan forming part of the Tree Preservation Order provided by the Council.

## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 28/01/16

gan Kay Sheffield BA(Hons) DipTP  
MRTPI

Arolygydd a benodir gan Weinidogion Cymru  
Dyddiad : 23 Chwefror 2016

## Appeal Decision

Site visit made on 28/01/16

by Kay Sheffield BA(Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers  
Date : 23 February 2016

**Appeal Ref: APP/H6955/A/15/3138885**

**Site address: Land north of Minera Hall Road, Minera, Wrexham, LL11 3YE**

**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 RLP Limited against the decision of Wrexham County Borough Council.
- The application Ref P/2015/0254, dated 26 March 2015, was refused by notice dated 1 June 2015.
- The development proposed is residential development including means of access.

### Decision

1. The appeal is dismissed.

### Procedural matters

2. The outline planning application was supported by an illustrative layout plan which indicated a development in excess of fifty dwellings. Although the application form stated that details of access were not reserved for subsequent approval, the decision notice issued by the Council and the appeal form show all matters to be reserved. The Appellant has confirmed access should be treated as a reserved matter and I have determined the appeal on this basis.
3. Although at the time the planning application was determined edition 7 of Planning Policy Wales (PPW) was in force, it was replaced by edition 8 in January 2016. The Council took account of the latest edition in its appeal statement and the Appellant has had the opportunity to review its case in the light of it. I have had regard to edition 8 in my determination of the appeal.

### Main Issues

4. The main issues are: whether the proposal would comply with local and national policies designed to protect the green barrier from harm and, if not, whether there are very exceptional circumstances sufficient to outweigh the harm; the effect of the development on flooding; and the effect on visual amenity.

## Reasons

5. The appeal site is an irregularly shaped parcel of agricultural land which rises up from its southern boundary with Minera Hall Road. It lies outside but adjacent to the settlement limit of Minera which adjoins the site on its western edge. To the north there are playing fields and to the east there is agricultural land, although there is no physical definition of the boundary with the latter.

### *Green barrier*

6. The appeal site lies within the green barrier as defined in the Wrexham Unitary Development Plan, 2005 (UDP). 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"*.
7. For the purposes of national policy the designation of green barrier is synonymous with the term green wedge. Paragraph 4.8.14 of 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 proposed development does not fall within any of the specific uses listed in Policy EC1 or PPW.
8. 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.
9. 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 maintaining a separation between Minera and Coedpoeth, although I acknowledge that the development would not result in the coalescence of the two settlements.
10. 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 and PPW. This carries substantial weight against the appeal.

### *Very exceptional circumstances*

11. PPW states in paragraph 4.8.15 that inappropriate development should not be granted planning permission *"except in very exceptional circumstances where other considerations clearly outweigh the harm which such development would do to the Green Belt or green wedge"*. One of the very exceptional circumstances advanced by the Appellant is that the Council does not have a five year housing land supply. In such circumstances paragraph 6.2 of Technical Advice Note 1: Joint Housing Land Availability Studies states that 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"*.

12. The appeal site is located on the edge of the settlement and the Council has estimated that the proposed development would result in a 25% increase in the number of dwellings within it. The settlement is served by a local bus service and a wider service is accessible within easy walking distance of the site. There is also a local primary school, although I understand it is full to capacity. The only other services listed as being within the settlement are a church, public house, sports field and play area. The existing facilities and services within the settlement are therefore limited for the scale of development proposed. It would be necessary for residents to travel to other settlements for employment, shopping and other facilities and services and although there is a bus service, it is highly probable that a majority of residents would be reliant on the private car. These factors limit the sustainability of the development and do not satisfy one of the objectives of PPW which is to minimise the demand for travel, especially by private car.
13. The Appellant also contends that there has been inconsistency in the Council's consideration of residential applications as it has granted permission for other large residential developments on land outside but adjoining settlement boundaries. Sites at Ruabon and Summerhill have been cited. The Appellant has also suggested that there are few if any other opportunities to extend the settlement of Minera although the Council has indicated that there is permission on a small site to the west of Eversley Court.
14. Although there are similarities between the proposal and the examples of other schemes brought to my attention by the Appellant in that they are for residential development on sites outside of a recognised settlement, I do not have sufficient details to be able to make a reasoned comparison between them and the appeal before me. In view of the current lack of housing land supply, there may be circumstances where residential development of land outside recognised settlements may be supported. However, the proposals would need to satisfy all other planning considerations and represent a sustainable form of development. In view of my concerns regarding the development I do not consider it meets these requirements.
15. The Council in its consideration of housing land supply as part of the emerging Local Development Plan (LDP2) has indicated it might potentially result in utilising some green barrier land in some locations. However, the Council has indicated that it is unlikely that any changes to the settlement limit of Minera would take place and therefore only small windfall sites or small scale infill developments might be allowed, although there may be scope for small scale affordable housing schemes. In its assessment of the appeal site and adjacent areas of land as a potential candidate site the Council has indicated that the site is unlikely to be considered as suitable for development, although it notes that the assessments are on-going and that the sites will be tested further. However the LDP2 is an emerging plan and at the stage it has reached little weight can be attributed to it.
16. Although the lack of housing land carries significant weight, the site's current purpose and function as part of a green barrier is still relevant and material to the consideration of the appeal. The proposal would represent an encroachment into the countryside in a location which is not highly sustainable and which would have the potential to set a precedent for the release of other sites in similar locations. I conclude that in this case the considerations do not clearly outweigh the harm 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.

### *Flooding*

17. In determining planning applications paragraph 13.4.2 of PPW requires that development should not increase the risk of flooding elsewhere by loss of flood storage or flood flow route; or increase the problem of surface water run-off. PPW goes on to state that it is essential that the advice of Natural Resources Wales (NRW) is obtained and given due weight as a material consideration in determining planning applications. There must also be good reasons for not following the advice of NRW.
18. Potential for flooding was identified as a matter of concern by the Council in its second reason for refusing planning permission. In order to try and address the matter the Appellant submitted a Flood Consequences Assessment (FCA) as part of the appeal. Neither the Council nor NRW considered the FCA fully addressed its concerns and considered that further clarification was required with regard to the flood risk associated with the unnamed watercourse which crosses the site. The Council also raised an issue with regard to ownership of the downstream culvert.
19. From the evidence before me I consider that additional information is required to fully understand the flood risk prior to establishing the principle of development. It is not a matter which could be satisfactorily addressed by way of a condition as suggested by the Appellant. In the absence of this information I find that the development would potentially have a detrimental effect on flooding in the area, contrary to Policies GDP1 (i) and EC13 of the UDP and paragraph 13.4.2 of PPW.

### *Visual amenity*

20. The site adjoins the settlement boundary to the west and is bounded to the south by Minera Hall Road. It is nevertheless within the countryside with open land to the north and east. The development would extend the built development further along the road frontage, decreasing the gap between Minera and Coedpoeth. I accept that the extent of the development along Minera Hall Road would not exceed the settlement boundary on the southern side of the road. I also noted during my site visit that on this side of Minera Hall Road there is little sense of a gap between the settlements because of the extent of the frontage development. However, I do not consider this sufficient reason to extend the settlement on the northern side of the road.
21. In approaching the site along Minera Hall Road from the east views of the site would be broken by existing tree and hedge planting. However, the creation of a new access, which would necessitate the removal of a significant part of a mature hedge, would open up views into the site. Furthermore the land rises quite steeply from the road and in this setting dwellings relatively close to the road frontage would appear as dominant features in the street scene in comparison with the existing development to the west. Overall I consider that the development would create a significant visual extension of the settlement into the countryside.

22. I have noted that in pre-application discussions officers of the Council indicated that the line of the eastern site boundary parallel with the gas main would be acceptable. However, the gas main is underground and does not create a physical feature above ground. The proposed development would therefore not be contained within any existing defensible boundaries or features and although the boundary runs almost parallel with the A525 Ruthin Road further to the east, this relationship is not discernable in the immediate surroundings of the site. In these circumstances I consider that the proposed development would appear incongruous and would form an undesirable visual intrusion into the landscape contrary to Policies PS2 and GDP1 (a) of the UDP.

*Other material considerations*

23. The Council has indicated that the scale of development proposed would attract contributions towards primary school educational facilities, affordable housing, management and maintenance of on-site public open space and the management and maintenance of on-site habitat corridors secured by way of an obligation under S106 of the Town and Country Planning Act 1990. The Appellant has questioned the need for contributions in respect of primary school facilities, and open space provision. It also considers that affordable housing could be addressed by condition. However, I do not consider that these matters carry sufficient weight to overcome the concerns I have identified.
24. Other issues raised by interested parties include the effect of the development on the local highway network and sewerage system. I have no definitive evidence that the increase in traffic generated by the development would cause detriment to highway safety or that the local sewerage system does not have sufficient capacity to be able to cope with the discharges from the development.

**Conclusions**

25. 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. In addition there is the potential risk from the development to flooding and harm to visual amenity. For these reasons, and having had regard to all other matters raised, the appeal is dismissed.

*Kay Sheffield*

Inspector



## Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 07/06/16  
Ymweliad â safle a wnaed ar 07/06/16

**gan Nicola Gulley MA MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru**

**Dyddiad: 07.07.16**

## Appeal Decision

Hearing held on 07/06/16  
Site visit made on 07/06/16

**by Nicola Gulley MA MRTPI**

**an Inspector appointed by the Welsh Ministers**

**Date: 07.07.16**

**Appeal Ref: APP/H6955/A/15/3139131**

**Site address: Land south of Big Green Farm, Ellesmere Lane, Penley, Wrexham**

**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 R & C Homes Ltd against the decision of Wrexham County Borough Council.
- The application Ref MAE P/2015/0399, dated 22 May 2015, was refused by notice dated 20 October 2015.
- The development proposed is described as 26 dwellings with car parking, private amenity space and access to Ellesmere Lane.

### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is the effect of the proposed development on the character and appearance of the area.

### Preliminary Matters

3. The description of the proposed development on the application differs from that on the appeal form. The appellant confirmed at the Hearing that the correct description of development is that contained on the appeal form and I will determine the appeal on this basis.
4. The adopted development plan for the area is the Wrexham Unitary Development Plan (1996 – 2011). I am advised that work has commenced on the preparation of the local development plan (LDP) for the County Borough for the period 2013 – 2028 and that a draft document will be placed on deposit in November and December 2016.

### Reasons

#### *Background*

5. The appellant contends that the Council is unable to demonstrate a 5 year housing land supply and that the proposal would assist in meeting the shortfall in provision and in the need for 11,715 new homes identified in the LDP Preferred Strategy.

6. Technical Advice Note 1- Joint Housing Land Availability Studies (TAN 1) (2015) paragraph 8.2, advises that local planning authorities (LPA) that do not have an adopted LDP or have a UDP that has passed its plan periods, such as Wrexham County Borough Council, will be considered not to have a 5 year housing land supply. In addition, paragraph 6.2 of the guidance states that where an LPA is unable to demonstrate a 5 year housing land supply the need to increase the supply of land will be given considerable weight when dealing with planning applications provided that the proposal would otherwise comply with the development plan and national planning policies. The Council accepts that it cannot demonstrate a 5 year housing land supply and that the emerging LDP indicates that there is a need for new housing development to take place in the County Borough. I will therefore give the need for new housing weight in this decision.

#### *Character and appearance*

7. The appeal site comprises 2.5 hectares of agricultural land located between the settlement of Penley and the outlying residential estate of Hillcrest. Penley has a range of services including a shop, schools and community facilities. The settlement has public transport links with the larger settlements of Wrexham and Whitchurch which offer a wider range of services. Although the settlement has been subject to considerable post war development the area around the appeal site retains much of its traditional rural character with low density houses laid out in a linear pattern along the lane and interspersed with mature trees, hedgerows and the pastoral lowland farm land characteristic of the English Maelor. Whilst there are exceptions to the development pattern I have described, most notably around the Hillcrest Estate, this does not undermine the predominant character of the area.
8. UDP Policies PS1, PS2, PS3, PS4, GDP1, H5 and EC5 seek to ensure that all new development is sustainable, located within defined settlement boundaries and respect the built and landscape character and appearance of the area. The appellant contends that: Penley is a sustainable settlement that has, and will continue to be, the focus of new development; the proposal is an opportunity for large scale infill development which would unit two parts of the settlement; and the proposal would have little visual impact on the character or appearance of the area. Furthermore, the appellant maintains that the SLA is a large-scale designation that does not accord with the requirements of Planning Policy Wales (PPW), Edition 8 (2016) because it is not based on an assessment of the area. In support of this, the appellant has presented a copy of the Inspectors' Preliminary Findings in respect of the emerging LDP which raises similar concerns in respect of housing need and the designation of SLAs.
9. The Council and local residents accept that Penley is a sustainable and that that additional growth will be required in the settlement. However, they contend that the proposal is outside the defined settlement boundary and in an SLA and as such would result in an illogical extension which would have an adverse affect on the character of Penley and the visual qualities of the surrounding landscape. In addition, local residents maintain that any future housing developments in the settlement should be on previously developed sites.
10. The development proposes the construction of 26 dwellings built at a density of 13 dwellings per hectare and, I am advised, would be set out around a central access road. Whilst I accept that the proposed development would make a contribution to meeting short term housing needs and note the appellants comments in respect of uniting Penley, I nevertheless consider that the arrangement of the proposed dwellings coupled with the high density of the scheme would result in an urban form

of development that would appear incongruous when viewed in conjunction with the existing, low density, linear development that characterises this part of Penley.

11. With regard to the SLA, I am mindful that the evidence presented by the Council, which includes an extract of the Wrexham Landscape Character Area Guidance (2007), supports the designation of an SLA in this area and that the Inspectors Preliminary Findings related to the approach to landscape protection in the emerging LDP and not the UDP. In this instance, the proposed development would occupy most of the undeveloped land between the residential properties on the western side of Ellesmere Lane and Tudor Drive. In doing so, I consider that the development would result the loss of an area of open land that forms an integral part of the character of the settlement and of the SLA and, as a consequence, have a detrimental effect on the character of the area and the visual qualities of the landscape.
12. In light of the above, I conclude the proposal would have an adverse impact on the character of the settlement and landscape qualities of the area and would conflicts with the objectives of UDP Policies PS1, PS2, PS3, PS4, H5, GDP1 and EC5.

### **Other Matters**

13. The appellant has provided details of two recently approved housing schemes at Tudor Drive and East of Ellesmere Lane, which it is suggested are similar forms of development to that proposed because they situated outside the defined settlement boundary and within the SLA. Based on the information provided and my observations on site, it appears that these are linear developments of 7 no. and 9 no. detached dwellings that are located adjacent to and opposite existing development. As such I do not consider that these developments directly parallel the circumstances of this appeal. I have in any case, determined the appeal before me on its own merits.
14. In addition, at the request of the local residents I visited sites at Penley Industrial Estate (North) and Tupa, Penley Hall Drive. Whilst I agree that, on the basis of the evidence presented, these sites appear to be previously developed and located close to existing residential and employment sites. The future use of the sites is not however, a matter for me but one for the Council to consider as part of the LDP process.
15. I note that as part of the application process that Council had requested the provision of 6.5 no. affordable houses and financial payments necessary to ensure improvements in the capacity of schools in the settlement, public open space and public footpaths. As part of the Hearing the appellant submitted a signed unilateral undertaking for proposal which satisfactorily addressed all of these requirements.

### **Conclusions**

16. In reaching my decision I have had regard to all the matters raised in support of the scheme including the existing use of the site. However, whilst I recognise that the proposal would make a positive contribution to the supply of new housing within the County Borough, this does not outweigh my concerns regarding the effect of the proposed development on the character of the area and the visual qualities of the SLA. For the reasons given above, I conclude that the appeal should be dismissed.

*Nicola Gulley*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

|                                       |                                |
|---------------------------------------|--------------------------------|
| Roy Evison                            | Appellant                      |
| Stuart Thomas, BA(Hons), MA,<br>MRTPI | Planning Consultant, Appellant |
| Claire Edwards                        | R & C Homes                    |

### **FOR THE LOCAL PLANNING AUTHORITY:**

|               |                                |
|---------------|--------------------------------|
| Sharon Holman | Wrexham County Borough Council |
| Sean Hanratty | Wrexham County Borough Council |

### **INTERESTED PERSONS:**

|                  |                |
|------------------|----------------|
| Clive Richardson | Local resident |
| John Griffiths   | Local resident |

## **DOCUMENTS SUBMITTED AT THE HEARING**

- 1 Council's Notification of Hearing
- 2 Unilateral Undertaking dated 6 June 2016.
- 3 The Inspectors' Preliminary Findings in respect of the Wrexham Local Development Plan.
- 4 Extract from the Candidate Site Register.
- 5 Wrexham Unitary Development Plan (2011) Policies PS1, PS, PS3, PS4, GDP1, EC5, H5 and CLF5.