Penderfyniadau Cynllunio ac Amgylchedd Cymru
Planning & Environment Decisions Wales

Appeal Decision

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by N Jones BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 17/09/2025

Appeal reference: CAS-04107-H5W1Y8

Site address: Land at Bethania Road, Acrefair, Wrexham, LL14 3HP

- 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 outline planning permission.
- The appeal is made by Mr R Cooke on behalf of Prospect Estates Ltd against Wrexham County Borough Council.
- The application Ref P/2024/1387 is dated 30 August 2024.
- The development proposed is a residential development of up to 33 dwellings.
- A site visit was made on 11 June 2025.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal is against the failure of the Council to issue a decision within the prescribed period. No decision was issued within the dual jurisdiction period, but the Council's appeal submissions set out its reasons for considering that permission should be withheld and the appellant and interested parties have been given an opportunity to respond. Although the Council's reasons allege conflict with policies in the Wrexham Local Development Plan (LDP), its decision to adopt the LDP was quashed by the High Court on 19 May 2025. Consequently, the development plan now comprises Future Wales (FW) and the Wrexham Unitary Development Plan 1996- 2011, adopted 2005 (UDP). Planning Policy Wales (Edition 12) (PPW) is also a material consideration. The Council has indicated the UDP policies it considers to be most relevant to the appeal regarding which the appellants were also provided with an opportunity to comment.
3. Notwithstanding that the Council's description of the intended development, the application was made in outline with all matters reserved apart from access. I have therefore used the description of development as given in the application form in the banner heading above and have considered the proposal on that basis. Minimum and maximum scale parameters have been provided for the intended dwellings, with the maximum for each dwelling being a footprint of about 19.5m x 9.5m and a ridge height of 8.5m. I have treated the submitted layout plan, showing a mix of dwelling types and sizes, as being indicative.

4. Although there is a dispute between the parties whether a Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 (as amended) was submitted at the application stage, a UU was submitted with the appeal and provides an obligation by the appellant to pay a financial contribution towards open space and education facilities locally.

Background and Main Issues

5. The appeal site is within the settlement boundary of Acrefair as identified in the UDP, on an unallocated rectangular area of grassland bordered by existing dwellings on Bethania Road, from which access would be taken. It is adjoined by a bar/restaurant and car park to its west, and mature woodland to its east and south, which is subject to a group Tree Preservation Order (TPO). The application site extends into the adjoining woodland where the proposal includes a footpath link to the A539 Llangollen Road to the south. The appellant confirms that the application site area extends to 0.93 hectares.

6. An appeal against the Council's refusal of a previous outline application for residential development of up to 33 dwellings on the appeal site (ref. CAS-02985-G6S1X3) was dismissed in July 2024 due to harm to nature conservation and protected species. However, no concerns about the principle of residential development were raised or its effects on highway and pedestrian safety and active travel, or land contamination, subject to necessary conditions. The Council raises no concerns in relation to these matters with regard to the current proposal or to its effects on existing or future occupants' living conditions or surface water drainage. From my own observations and the evidence before me I have no reason to reach a different view on these matters. Accordingly, the main issues are

    i. the effect of the proposal on nature conservation and protected species;

    ii. the effect of the proposal on the biodiversity interests of the River Dee and Bala Lake Special Area of Conservation ('the SAC'); and

    iii. whether the proposal would make an appropriate contribution to local education facilities and the long term management of public open space.

Reasons

Effects on nature conservation and protected species

7. UDP Policy EC6 says that development either within or close to sites of biodiversity interest will only be permitted where it can be clearly demonstrated that the need for the development outweighs the need to safeguard the intrinsic nature conservation value of the site. However, its requirements are out of step with PPW which recognises that development needs to take place, and some biodiversity may be impacted. Nonetheless, PPW states that it is important that biodiversity and ecosystem resilience considerations are taken into account at an early stage. Accordingly, the current state of biodiversity and ecosystem resilience of a site must be established. Developers should then provide evidence in the Green Infrastructure Statement (GIS) that the step-wise approach has been followed. The step wise approach is that any adverse environmental effects are firstly avoided, then minimised, mitigated, and as a last resort compensated for.

8. The previous appeal decision identified uncertainty in relation to the ecological effects of the intended development. In response, the appellant has submitted a site plan incorporating replacement tree planting and an updated Preliminary Ecological Appraisal (PEA) (January 2025). The PEA confirms the value of the woodland as habitat for commuting and foraging bats and states that if the proposed development is carried out in a manner that retains all trees that display suitable roosting features, with a buffer to

the trees, and a sensitive lighting scheme is implemented ensuring that there is no increase in lighting along the woodland edge, the impact on roosting bats is likely to be negligible. The PEA identifies two trees with potential roost features and also recommends amongst other things that tree removal is avoided during the pathway improvement works.

9. There is little substantive evidence before me to show how the components of the step wise approach have been re-applied to the proposal or that any re-evaluation of the approach to the development has been considered and incorporated, such as through alternative layouts or a reduction in unit numbers closest to the woodland edge, in order in the first instance to avoid harmful effects to reflect the findings of the updated PEA. I accept that layout is reserved for future consideration. Even so, whilst the appellant asserts that the density of the development could be controlled at the reserved matters stage, the statutory definition of layout as an aspect of reserved matters does not include the number of dwellings. The quantum of development as sought in this case is for a maximum of 33 dwellings to be developed to the maximum scale parameters. The submitted indicative layout indicates 33 dwellings of a mix of types and sizes which could be provided within the range of the application's given scale parameters. However, even at the range shown, the indicative layout denotes that a substantial part of the appeal site would be occupied by development which would meet the woodland edge with little scope to incorporate the protective measures outlined in the PEA to avoid or minimise harm to protected species and habitats, or to avoid the longer-term threats to TPO protected trees, such as from requests for lopping or removal due to proximity or excessive garden shading.

10. UDP Policy EC4 does not permit the loss of valuable trees. However, the submitted GIS fails to identify intended tree loss although the Arboricultural Report and Arboricultural Impact Assessment (ARAIA) confirms that there is little room for development within the site without the removal of all trees. Albeit the PEA indicates that the removal of trees will be restricted to poor condition trees along the woodland edge, one of the roost features recommended for retention appears to be amongst 13 trees in this area identified in the ARAIA as being intended for removal. Moreover, no assessment of the woodland trees, or any indication of pathway works, to demonstrate that tree losses would not occur as a consequence of this aspect of the intended development, have been provided. Whilst replacement tree planting has been indicated on the revised layout plan, given the quantum of the development and conflicting supporting reports, I cannot therefore be sure that a scheme could be provided that would firstly avoid effects, or where effects could not be wholly avoided, that they would be minimised, and that any mitigatory planting would be qualitatively proportionate to any proposed loss as identified through an assessment of green infrastructure value including biodiversity.

11. There would be scope, in accordance with UDP Policy PS11, particularly within the adjoining woodland, to secure biodiversity enhancement as part of the development. Nevertheless, whilst the appellant asserts that its requirements could be met through discussions on density at the reserved matter stage, adherence to the stepwise approach is a matter of principle. Policy 9 of FW states that in all cases, action towards securing the maintenance and enhancement of biodiversity (to provide a net benefit), the resilience of ecosystems and green infrastructure assets must be demonstrated as part of development proposals. I do not consider therefore that it would be appropriate to leave consideration of such details to any reserved matters stage.

12. I conclude that it has not been demonstrated that the proposal would not have a harmful effect on nature conservation and protected species. The proposal therefore conflicts with UDP Policy EC4, Policy 9 of FW and the advice within PPW.

Effects on the SAC

13. The appeal site lies within the catchment of the River Dee and Bala Lake SAC, which is part of the higher tier of statutorily designated sites. Whilst the Council has referred to UDP Policy EC6 as being applicable to SAC sites, as previously indicated, PPW contains more up to date policy advice and states that planning authorities must have regard to the relative significance of international, national, and local designations in considering the weight to be attached to nature conservation interests. It states that development should be refused where there are adverse impacts on the features for which a site has been designated.

14. Natural Resources Wales (NRW) advises that activities such as the discharge of treated wastewater can elevate levels of phosphorus in rivers, the effects of which can cause significant ecological damage. It would be necessary to find that the proposal would not result in an increase in phosphates entering the SAC to conclude that it would not have a likely significant effect on the SAC site's integrity.

15. As a residential development connecting to the public sewerage system discharging into the SAC, the proposal would be a source of additional nutrients with a pathway for impacts on the site's integrity. The proposal would be likely to connect to the Five Fords Wastewater Treatment Works (WwTW) which has had its permit for treating effluent, including its phosphorus limit, reviewed. However, reducing nutrient load in SAC rivers involves multiple sectors, including agriculture, not just wastewater treatment, and revised permit limits have been set as part of a 'fair-share' approach taking into account the measures that have or may be put in place to prevent or reduce the discharge of phosphates from other sources.

16. Albeit that improvement works are scheduled, and that other measures are also available to Dŵr Cymru-Welsh Water (DCWW), such as increased ferric dosing, to ensure that its revised permit limit is met from March 2030, discharges into the SAC through the WwTW would not be entirely eliminated. Where phosphate stripping will be less than 100% effective, improvements in other sectors, including agriculture, must have been, or must be likely to be delivered, within the life of a permission to conclude that the intended development would not have a likely significant effect on the integrity of the SAC and to ensure that the SAC would no longer be failing. NRW indicates that controls on discharges from land are concentrated on compliance with the Control of Agricultural Pollution Regulations. However, there is no indication that these controls are currently securing 100% reduction in phosphate discharges in this sector or are likely to do so within the life of any permission. The appellant has not proposed any measures which would secure that nutrient neutrality could be achieved for the intended development in this case.

17. Accordingly, I am unable to conclude that phosphates would not enter the SAC environment as a result of the development and that such discharges would not be likely to have a significant effect on the site's integrity. However, as I am dismissing the appeal on other grounds, it has not been necessary for me to undertake a Habitats Regulations Assessment as it would not alter the outcome of the appeal.

18. I conclude that the proposal would harm the biodiversity interests of the River Dee and Bala Lake Special Area of Conservation. It would therefore fail to comply with PPW advice.

Contribution towards local education facilities and public open space

19. PPW states that where development plan policies make clear that an element of affordable housing or other developer contributions are required on specific sites, this will

be a material consideration in determining relevant applications. Whilst the Council did not, subsequent to the change in local policy context, specifically identify any UDP policies which require contributions to be made to meet the educational and open space needs which would be likely to arise from the intended development, it has referred me to its supplementary planning guidance documents relating to 'Public Open Space in New Housing Development' (LPGN10) and 'Developer Contributions to Schools' (LPGN27). LPGN27 identifies that UDP Policy GDP2 provides the policy basis for developer contributions where the capacity of infrastructure, including community facilities, is likely to be deficient as a consequence of new development.

20. The illustrative layout includes an area of open space, and the Council confirms that it is not in a position to adopt such facilities. Future maintenance would be required to secure the ongoing benefits of open space for future residents of the intended scheme. In relation to education contributions, the Council confirms that no comments have been received from the Council's Education Officer to the current proposal, but in relation to the similar previous application the intended development is likely to generate nine primary-age pupils and eight secondary-age pupils. The Council indicates that three nearby primary schools are noted to be operating at over 100% of their capacity, and that additional primary capacity would therefore be required to accommodate the number of pupils likely to be generated by the development. It is therefore reasonable and necessary to require the developer's contributions towards these provisions.

21. The UU as submitted demonstrates the appellant's intentions and willingness to provide contributions towards open space and education needs which would arise as a result of the scheme, and which I consider are fairly and reasonably related in scale and kind to the proposed development. Nonetheless, its provisions are tied to the implementation of the previous planning application rather than the current proposal. As I am dismissing the appeal on other grounds, I have not addressed this matter to the parties as it would not alter the outcome of the appeal.

22. I conclude that the proposal would not make an appropriate contribution to local education facilities and the long-term management of public open space and so would conflict with UDP Policy GDP2 and the advice within LPGN10 and LPGN27.

Planning Balance and Conclusion

23. Albeit the principle of the development is acceptable as well as aspects of the intended development including highway and pedestrian safety and active travel, land contamination and the proposal's effects on existing or future occupants' living conditions, these are matters expected of any development and do not outweigh the harm I have identified in relation to the main issues when assessed against the development plan as a whole.

24. For the reasons given, and having taken all other matters into account, the appeal is dismissed.

25. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Minister's wellbeing objectives as required by section 8 of the Act.

N Jones

INSPECTOR