



Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 23/02/16
Ymweliad â safle a wnaed ar 23/02/16

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

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 22/04/16

Appeal Decision

Hearing held on 23/02/16
Site visit made on 23/02/16

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

an Inspector appointed by the Welsh Ministers

Date: 22/04/16

Appeal Ref: APP/Q6810/A/15/3134548

Site address: Goetre Uchaf, Off Ffordd Penrhos, Bangor, Gwynedd, LL57 2NT

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 Redrow Homes NW against Gwynedd Council.
- The application Ref C15/0634/25/LL is dated 3 June 2015.
- The application sought planning permission for the 'part re-plan to 174 residential dwellings at existing approved development (Ref: C12/1347/25/LL). The re-plan is proposed to increase the overall number of dwellings from 245 to 266, comprising detached, semi-detached and apartments to include affordable units (35%) with associated parking and garden areas'.

Decision

1. I allow the appeal and grant planning permission for the 'part re-plan to 174 residential dwellings at existing approved development (Ref: C12/1347/25/LL). The re-plan is proposed to increase the overall number of dwellings from 245 to 266, comprising detached, semi-detached and apartments to include affordable units (35%) with associated parking and garden areas' at Goetre Uchaf, Off Ffordd Penrhos, Bangor, Gwynedd, LL57 2NT in accordance with the terms of the application, Ref. C15/0634/25/LL, dated 3 June 2015, and the plans submitted with it, subject to the conditions in the schedule at the end of this decision.

Application for Costs

2. At the Hearing an application for costs was made by Redrow Homes NW against Gwynedd Council. This application is the subject of a separate Decision.

Procedural Matters

3. On the day of the hearing the appellant submitted a Section 106 Unilateral Undertaking (UU) regarding a mechanism for the provision of affordable housing on the site which provides for a number of options before the dwellings are disposed of on the open market without any restrictions. Due to the timing of the submission of the UU the Council were given a further ten days to clarify their position on its contents; in addition the appellant was allowed an opportunity to respond. I have had regard to it in my consideration of the appeal.

4. The Council confirmed at the Hearing that it had neither objection to the principle of development, nor to the detail of the application. The only matter now in dispute between the parties was the mechanism to provide for affordable housing.

Main Issue

5. Bearing in mind paragraph four above, the main issue is whether the appellant's submitted unilateral undertaking satisfactorily addresses the requirement to provide affordable housing on the site, and if not, whether any other mechanism would satisfy that requirement.

Reasons

6. The appeal site is located in the sub-regional centre of Gwynedd as defined in the UDP and represents one of the largest allocated sites within the plan area. Policy CH6 of the UDP requires the provision of affordable housing on all allocated sites in the plan area unless it can be proven to the satisfaction of the Planning Authority that after considering all the relevant factors it would be inappropriate to provide for affordable housing on the site. Clearly the site is expected to provide for a significant number of dwellings including affordable units. Policy CH6 is supplemented by the Council's adopted Supplementary Planning Guidance: *Affordable Housing 2009* (SPG). The SPG states at paragraph 3.15 that a financial or other contribution towards affordable housing on a suitable site will only be acceptable in exceptional circumstances when a need has been established, all other alternatives have been explored and soundly discounted, and when it can be demonstrated that the affordable housing will be provided. The Council's adopted Supplementary Planning Guidance: *Development Briefs 2009* provides guidance to supplement policies in the UDP; it states in regards to the appeal site that planning applications should ensure that approximately 35% of the houses constitute affordable housing. Planning Policy Wales, Edition 8 (PPW) refers to site specific targets for the provision of affordable housing.
7. The UU would provide a cascade approach in regards to the provision of affordable housing whereby the developer would seek to dispose of affordable housing on the site via a Registered Provider (RP) who would provide affordable rented units, then in turn if this is not taken up a RP would be offered the units as affordable housing with intermediate tenures. If the intermediate tenures are not taken up by a RP, then the units would be offered for sale to a 'Qualifying Person' (QP) as an affordable housing unit. Finally if no offer is received from a QP, then the dwelling will be disposed of on the open market and the developer would pay the Council an off-site commuted sum. This whole process would take 24-30 weeks from the granting of planning permission.
8. The appellant argues the submitted UU does not seek to challenge the principal of providing 35% affordable housing but instead seeks to provide a mechanism that would allow the disposal of housing units in the event that an affordable need is not justified. I appreciate that the appellant does not want to be left with the potential burden of properties that cannot be occupied due to lack of interest from those with an affordable housing need. Nonetheless I am not convinced that the period of 24-30 weeks is a sufficient period of time to identify affordable housing demand related to the site. I consider that the period of 24-30 weeks would place an unreasonable constraint on the provision of those affordable units due to the relatively short time frame between individual elements of the cascade being enacted, and also in its overall timing, notwithstanding that development has already commenced on the site. To my mind, at this moment in time, to permit the development with a UU that ties the provision of affordable units to the proposed timescales is unreasonable, and

would undermine policy CH6 of the UDP which seeks the provision of affordable housing on all allocated sites.

9. In addition, in the event that appellant could not dispose of the properties via a RP or QP, then the UU would require the developer to pay the Council an off-site commuted sum. The *Community Infrastructure Levy Regulations 2010* (CIL Regs) make it unlawful for a planning obligation to be taken into account in a planning decision unless it is necessary to make the development acceptable in planning terms, directly related to development and fairly and reasonably related in scale and kind to the development. However, should the stage be reached in the cascading mechanism that there is no need for affordable housing on the site, then it is arguable that a financial contribution is not necessary. Subsequently any requirement of the UU to provide a commuted sum to the Council to use for off-site provision, would run contrary to the CIL Regs. Consequently I am not satisfied the UU meets the requirements of the CIL Regs, nor the additional tests set out in Circular 13/97 on *Planning Obligations*. For the reasons given above therefore, the UU carries very little weight in the determination of this appeal.
10. Technical Advice Note 2: Planning and Affordable Housing, 2006 (TAN2), recognises that both planning conditions and obligations may be used to achieve the development and use of land in a way that contributes to meeting the identified need for affordable housing and to achieve mixed and sustainable communities. Circular 13/97 also recognises there is a choice between imposing conditions and entering into a planning obligation. As it currently stands, as acknowledged by both parties, there is a need to provide for affordable housing in line with local planning policy. The appellant confirmed a RP has agreed in principle to acquire all of the affordable dwellings on the site, and bearing in mind my view that the cascade approach advocated by the appellant in the UU carries little weight, I consider the Council's suggested planning condition, as discussed and amended at the Hearing, would provide an adequate mechanism to ensure the affordable provision is met on the site, and would meet with requirements of policy CH6 of the UDP.

Conditions

11. I have considered the conditions suggested by the Council, given my decision to allow the appeal. In doing so I have had regard to the tests for conditions set out in Circular 016/2014: *The Use of Planning Conditions for Development Management*.
12. I agree that condition 1 is necessary in regards to the imposition of the five year time limit. Condition 2 is necessary as it relates to the listing of the approved plans and documents to facilitate any minor material amendments, and to define the plans with which the scheme should accord for the avoidance of doubt. Conditions 3, 4, 5, 6 & 7 are necessary in the interests of visual amenity. Condition 8, as discussed and agreed by the parties at the Hearing is necessary in the interests of highway safety. Condition 9 restricts the permitted development rights of the affordable units and is necessary in order to maintain their affordability. Condition 10 relating to the provision of affordable housing is necessary for the reasons as discussed above. Conditions 11 & 12 are necessary in the interests of flood control. Condition 13 is necessary in the interests of safeguarding the ecology of the area. Condition 14 is necessary to safeguard the archaeology of the area; however in the interests of precision I have reworded it. Condition 15 is necessary in order to protect a public footpath. Proposed condition 16 which relates to the provisions of the previous planning permission issued for the site is not considered necessary.

Conclusions

13. The proposed development is acceptable in principle and detail. For the reasons given above I have afforded very little weight to the UU submitted by the appellant; however I consider the provision of affordable housing on the site via the Council's suggested planning condition as discussed and amended at the Hearing, would provide a satisfactory mechanism for the delivery of the required affordable units. Subject to the conditions referred to in the schedule below, I conclude that the proposed development would not be in conflict with the relevant policies of the UDP, the Council's Supplementary Planning Guidance related to 'affordable housing', the Council's Supplementary Planning Guidance related to 'development briefs', and PPW.
14. After taking account of all the evidence before me, and for reasons given above, I therefore conclude that the appeal should be allowed.

Declan Beggan

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin no later than five years from the date of this decision.
2. The development shall be carried out in accordance with the approved plans and documents numbered 1074-02-02-301, 1074-02-02-302, 1074-02-02-304revA, 1074-02-02-306, 1074-02-02-308, 1074/S104/01revC, E-SD0806, E-SD900, E-SD910, E-SD906, Snowdon d series, Stour – Avon WE series, Broadway WE series, B2 apartments C series, Alton apartments C series, Oxford Ef series, Letchworth Ef series, Canterbury Ef series, Cambridge Ef series, Broadway-Evesham Ef series, Shrewsbury Ef series, Shaftesbury Ef series, Windsor Ef series, Warwick Ef series, Stratford Ef series, Double garage type 10, Single garage type 1 submitted to the Local Planning Authority, and contained in the form of application and in any other documents accompanying such application unless condition(s) to amend them is/are included on this decision.
3. The roof of all dwellings and garages shall be covered with new natural Welsh slates, the colour of which shall be agreed in writing by the Local Planning Authority or with slates of equivalent colour, texture and weathering characteristic as may be approved in writing by the Local Planning Authority.
4. The external finish of all buildings shall be as agreed in writing with the Local Planning Authority before any work is commenced in connection with this approval.
5. Prior to the commencement of development, written details must be submitted for approval to the Local Planning Authority of all walls, fences, lighting bollards and all/any other street furniture to be erected/placed on the site. The details of the structures erected shall be in accordance with those approved.
6. Within one month of commencement of the development, a landscaping and tree planting scheme shall be submitted to, and approved in writing by the Local Planning Authority.

7. All planting, seeding or turfing comprised in the approved details of landscaping and tree planting shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
8. The parking provision as indicated on the submitted details shall be provided prior to occupation of the dwellings to which they relate to and thereafter retained for those purposes.
9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 as amended (or any order revoking, re-enacting or modifying that Order), no development falling into Article 2, Part 1, Class A to E shall take place on the residential units identified as affordable units specified by condition 10.
10. The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex B of Planning Policy Wales Technical Advice Note 2: Planning and Affordable Housing or any future guidance that replaces it. The scheme shall include:
 - i) the numbers, type, tenure and location on the site of the affordable housing provision to be made;
 - ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
 - iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing;
 - iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
 - v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
11. No development approved by this permission shall be commenced until a scheme for the provision and implementation of a surface water regulation system has been submitted to and approved in writing by the Local Planning Authority. Such a scheme shall be implemented prior to the construction of any impermeable surfaces draining to the system unless otherwise agreed in writing by the Local Planning Authority. Surface water generated from the new impermeable surfaces must be limited to equivalent Greenfield rate for the site, the level of which shall be agreed with the Local Planning Authority.
12. No development approved by this permission shall be commenced until an updated Hydraulic Modelling Assessment is undertaken for the site. The assessment shall be

submitted to and approved in writing by the Local Planning Authority in consultation with Dŵr Cymru/Welsh Water. The scheme shall be carried out in strict accordance with the approved details.

13. An updated bat mitigation assessment must be submitted to the Local Planning Authority for approval prior to development commencing. The development hereby approved, must be carried out in strict accordance with the guidance and requirements contained in the report, unless otherwise agreed in writing with the Local Planning Authority.
14. Details of a management plan/maintenance strategy for the Scheduled Ancient Monument and surrounding area must be submitted to the Local Planning Authority for written approval prior to the commencement of development and any subsequently approved scheme shall be implemented in full thereafter.
15. Public footpath number 11- Pentir community, shall be protected and public access maintained during and after this development.

Richborough Estates

APPEARANCES

FOR THE APPELLANT

Mr M Gilbert BSc Hons MRTPI	Director – The Planning Consultancy
Mr P Murray	Redrow

FOR THE LOCAL PLANNING AUTHORITY

Mr GL Gruffudd BA MSc	Development Management Officer
Ms K Swennie BA Hons, MSc	Senior Development Management Officer
Ms C Owen BA P.Dip	Development Management Manager

THIRD PARTIES

Mr T Chan	Local Resident
Mr R Mc Cann	Local Resident
Ms F Davies	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Council's notification letter and list of those notified
- 2 Copy of Letter from Welsh Water dated 25 January 2016
3. Copy of Drawing No. 1074/S104/01 Rev C
4. Appellant's written cost application