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## Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 2/08/16  
Ymweliad â safle a wnaed ar 2/08/16

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

**Arolygydd a benodir gan Weinidogion Cymru**  
**Dyddiad: 29.09.16**

## Appeal Decision

Hearing held on 2/08/16  
Site visit made on 2/08/16

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

**an Inspector appointed by the Welsh Ministers**  
**Date: 29.09.16**

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**Appeal Ref: APP/R6830/A/16/3148873**

**Site address: Land to the North Side of Bryn Gobaith, St. Asaph, Denbighshire,  
LL17 0DN**

**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 approve matters reserved under an outline permission.
  - The appeal is made by Mr and Mrs C White against the decision of Denbighshire County Council.
  - The application Ref. 46/2014/1061/PR, dated 12 September 2014, sought approval of details pursuant to condition No 1 of outline planning permission Ref 46/2013/0802/PO, granted on 11 September 2013.
  - The application was refused by notice dated 2 March 2016.
  - The development proposed is the development of 1.1 hectares of land for residential purposes.
  - The details for which approval is sought are the layout, scale, appearance and the landscaping of the site.
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### Decision

1. The appeal is allowed and the reserved matters are approved, namely, the layout, scale, appearance and the landscaping of the site submitted in pursuance of condition No 1 of outline planning permission Ref 46/2013/0802/PO, granted on 11 September 2013, and 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 Mr and Mrs White against Denbighshire County Council. This application is the subject of a separate Decision.

### Background

3. The appeal relates to refusal of the Council to grant approval of details for the layout, scale, appearance, and landscaping of 14 no. dwellings submitted in accordance with condition No 1 of outline planning permission Ref 46/2013/0802/PO. It is clear from the Council's statement of case that in broad terms the first refusal reason relates to the density of development which it is argued is a fundamental element of the layout of the scheme, whilst the second reason for refusal relates to the balance and mix of dwellings in terms of size, and it is argued that the size of the proposed dwellings are appropriately dealt with when assessing scale. As none of the refusal reasons relate to the submitted details in regards to 'appearance' or 'landscape', nor is the Council's
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case based on these issues, I do not propose to consider these elements of the reserved matters any further in the appeal process.

## Main Issues

4. The main issues in this case are:

- Whether it is reasonable that the issues of density and mix of housing type be required for agreement at the reserved matters stage; and, if so,
- Whether the scheme provides an appropriate density of development, and mix and balance of house sizes, having regard to the principles of sustainable development, and national and local plan policies.

## Reasons

*Whether it is reasonable that the issues of density and mix of housing type be required for agreement at the reserved matters stage*

5. To my mind the starting point in assessing this issue is *The Town and Country Planning (Development Management Procedure) (Wales) Order 2012* (the Order), which provides a definition of the scope of each of the reserved matters. *Layout* is defined as 'the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development', and *scale* as 'the height, width and length of each building proposed within the development in relation to its surroundings'.
6. The Appellants' have drawn my attention to a body of case law<sup>1</sup>, which draws upon established legal principles including reference to the point that 'as a general rule a planning permission is to be construed within the four corners of the consent itself; i.e. including the conditions in it and the express reasons for those conditions'<sup>2</sup>, and that in construing a planning permission 'the question is not what the parties intended but what a reasonable reader would understand was permitted by the local planning authority'<sup>3</sup>; in addition my attention was drawn to an appeal decision<sup>4</sup> which dealt with the issue of housing mix submitted as part of a reserved matters application which in broad terms concluded that the conditions attached to an outline planning permission did not require the agreement of an appropriate mix of housing at the reserved matters stage. The Appellants' argue that neither of the Council's reasons for refusal based on density and housing mix are matters that can be determined as part of the submitted reserved matters relating to scale and layout, and that should the Council have wished to control such matters it should have been done so via appropriately worded conditions on the outline permission.
7. In regards to issues that can be addressed at the reserved matters stage, the Council argue that the density of a development is a fundamental element of the layout, whilst the size of any proposed dwellings is appropriately dealt with when assessing scale, however, the definition of layout and scale in the Order makes no reference to density or mix of house sizes.

<sup>1</sup> Including, *Telford and Wrekin v SoSCLG* [2013] EWHC (Admin), *R (on the application of Lloyds Pharmacy Ltd. V Leeds CC* [2013] EWHC 4031 (Admin), *(R (on the application of Murray) v Hampshire CC* [2003] JPL 224, *Slough BC v SoSE* [1995] JPL 1128 & *Cotswold Grange Country Park LLP v SoSCLG* [2014] EWHC 1138 (Admin).

<sup>2</sup> *Telford and Wrekin v SoSCLG* [2013] EWHC (Admin).

<sup>3</sup> *Telford and Wrekin v SoSCLG* [2013] EWHC (Admin).

<sup>4</sup> Appeal ref. APP/T2405/A/14/2227076

8. I would tend to agree with views of the Inspector in the appeal decision quoted by the Appellants<sup>5</sup>, who stated in regards to 'scale' and 'layout', that 'their focus can be regarded as being the interrelationship between, and the juxtaposition of, the different elements of a development and its surroundings. Although the constituent parts of a development, i.e. the 'mix', may have a bearing upon such interrelationships it is, *at best* (my emphasis), an implicit consideration'. Contrary to the views of the Council, I consider the appeal referred to is directly relevant to the issue at hand in the current appeal, as to my mind, irrespective of the difference emphasis such as its reference to the number of bedrooms, it dealt with the principal of whether or not the Council could require the agreement of an appropriate mix of housing at the reserved matters stage, i.e. as is the case in the current appeal as related to the Council's second reason for refusal.
9. The Council argue that the outline application only indicated an indicative number of dwellings on the site, and that it didn't want to be overly prescriptive in this regard at the outline stage by specifying a number. The outline planning permission granted was described as the 'development of 1.1 hectares of land for residential purposes', no reference was made to number of dwellings. Bearing in mind the case law cited, had the Council wished to control density or for that matter housing mix, then further details should have been sought at the time of granting outline planning permission or appropriately worded conditions applied; there is no scope for me to reconsider these matters which should have been dealt with at the outline stage.
10. That being the case, there is no need for me to consider whether the scheme provides an appropriate density of development, or mix and balance of house sizes, because such specific matters lie outside the terms of the outline planning permission.
11. At the Hearing the Council confirmed, notwithstanding their view that density and housing mix should be considered as reserved matters related to 'layout' and 'scale', that nonetheless, the scheme when considered against such matters as defined in the Order, did not give rise to objections or concerns, i.e. the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development, or to the height, width and length of each building proposed in relation to its surroundings; I have no reason to take a contrary view.

### **Other Matters**

12. Objections to the scheme have been raised in regards to its impact on adjacent residential amenities, general visual amenities, on hedges and trees bordering the site, the extent of private amenity space for the proposed dwellings, and on highway safety.
13. As regards impacts on adjacent residential amenities, concerns include the separation distances between existing and proposed properties, height of the proposed properties relative to those existing, and the difference in levels between the existing and proposed properties.
14. I note the Council's planning report related to the application stated the proposal would not have an impact on adjacent residential amenities. Notwithstanding the views of local residents, the proposed properties are primarily set at oblique angles or

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<sup>5</sup> Appeal ref. APP/T2405/A/14/2227076

present a single storey elevation to the existing properties along Rhodfa Glenys, or are a significant distance from the primary elevation of the affected properties, and would benefit from screening of either new fencing proposed by the Appellants' or existing boundary hedging. Based on my site visit and in the absence of any specific minimum standards set by the Council for new build properties, I consider the separation distances between existing and proposed properties to be adequate.

15. Concerns have been raised in regards to the difference in levels between the existing and proposed dwellings, however based on my observations on site, irrespective of the fact that some of the proposed dwellings having a third storey, any difference in levels is not as pronounced as that indicated by third party objectors and therefore highly unlikely to be detrimental to adjacent amenities. In addition, in regards to the amount of private amenity space provided, the Council have raised no concerns; based on the proposed site layout and extent of space around the dwellings, I have no reason to take a different view.
16. As regards concerns about the loss of trees and hedging on the site boundaries, whilst a number of existing trees and sections of hedging would be removed, the majority are to be retained and complemented with new planting. In regards to the scheme's impact on visual amenity, I note the Council's planning report stated the proposal would have an acceptable impact on the character and appearance of the site and surroundings, and therefore complied with the requirements of Policy RD1 of the adopted Denbighshire Local Development Plan; I have no substantive reason to take a contrary view.
17. Highway safety concerns relate primarily to an increase in traffic along Bryn Gobaith and especially near to an adjacent children's play area, and the fact that the proposed access would cross a public footpath to the detriment of general highway safety, and that the scheme would exacerbate congestion along Bryn Gobaith which suffers from existing on-street parking. Notwithstanding these concerns, bearing in mind the relatively modest scale of the development, and the fact that the Council's Highways Officer raised no objections to the scheme based on highway safety, and without substantive evidence to the contrary, I do not consider the proposal would be unduly detrimental to highway safety.
18. At the Hearing reference was made to the 'Human Rights' of adjacent occupants being affected with particular regard to detriment to their amenity being affected as referred to above; the specific human right as enshrined in the European Convention on Human Rights (ECHR) was not cited. Nonetheless as discussed above, I am satisfied, based on the submitted evidence, that if this development goes ahead the degree of interference that would be caused would be insufficient to give rise to a violation of rights, with any effect of approving the reserved matters application on adjacent properties not being disproportionate.

### **Conditions**

19. The Council have not proposed any conditions as part of the appeal process, however during the course of the Hearing I discussed the possibility of imposing a condition to define the plans with which the scheme should accord in the interests of certainty; as neither party objected, I consider it prudent to impose such a condition as detailed in the Schedule at the end of this decision. In addition I discussed the possibility of imposing a condition that would seek to ensure that a 1.8 metre high fence adjacent to the site boundary with existing properties at Rhodfa Glenys, was erected prior to occupation of any new dwelling it would serve and thereafter be retained; neither

party raised any objection to the imposition of such a condition which I consider is necessary to safeguard existing adjacent residential amenity.

## Conclusions

20. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed subject to the conditions referred to in the Schedule below.

*Declan Beggan*

INSPECTOR

## Schedule of Conditions

1. The development shall be carried out in accordance with the approved plans listed as follows:
  - i. Proposed elevations - House type A (Drawing No. PL03) received 16/09/2014
  - ii. Proposed section and elevations - House type A (Drawing No. PL04) received 16/09/2014
  - iii. Proposed floor plans - House type A (Drawing No. PL02) received 16/09/2014
  - iv. Proposed elevations - House type B (Drawing No. PL30) received 04/11/2015
  - v. Proposed floor plans and section - House type B (Drawing No. PL06) 04/11/2015
  - vi. Proposed elevations and section - House type C (Drawing No. PL09) received 16/09/2014
  - vii. Proposed elevations - House type C (Drawing No. PL07) received 16/09/2014
  - viii. Proposed floor plans - House type C (Drawing No. PL07) received 16/09/2014
  - ix. Proposed elevations - House type D (Drawing No. PL12) received 16/09/2014
  - x. Proposed sections and elevations - House type D (Drawing No. PL11) received 16/09/2014
  - xi. Proposed floor plans - House type D (Drawing No. PL10) received 16/09/2014
  - xii. Proposed elevations - House type E (Drawing No. PL15) received 16/09/2014
  - xiii. Proposed elevations and section - House type F (Drawing No. PL14) received 16/09/2014
  - xiv. Proposed floor plans - House type E (Drawing No. PL13) received 16/09/2014
  - xv. Proposed elevations - House type F (Drawing No. PL17) received 16/09/2014
  - xvi. Proposed floor plans & section - House type F (Drawing No. PL16) received 16/09/2014
  - xvii. Proposed elevations - House type G (Drawing No. PL19A) received 04/11/2015
  - xviii. Proposed floor plan and section - House type G (Drawing No. PL18A) received 04/11/2015
  - xix. Proposed elevations - House type H (Drawing No. PL21A) received 04/11/2015
  - xx. Proposed floor plan and section - House type H (Drawing No. PL20A) received 04/11/2015
  - xxi. Proposed landscaping plan (Drawing No. LANDS-01D) received 04/11/2015
  - xxii. Proposed site plan (Drawing No. PL01) received 04/11/2015
  - xxiii. Location plan received 16/09/2014
2. Prior to the occupation of any new dwelling that borders existing properties along Rhodfa Glenys, a 1.8 m high close bordered fence shall be erected adjacent to the joint boundary, and shall thereafter be retained.

Richborough Estates

**APPEARANCES**

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**FOR THE APPELLANT**

Mr M Gilbert BSc (Hons) MRTPI	Director – The Planning Consultancy
Mr C White	Appellant
Mr G Owen	Pure Residential & Commercial Ltd - Developer

**FOR THE LOCAL PLANNING AUTHORITY**

Mr D Roberts	Development Management Officer
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**THIRD PARTIES**

Mr W L Cowie	Denbighshire County Councillor
Mr D Grube	Architect working on behalf of local residents
Mr E Grube	Local Resident
Mr G Hardy	Local Resident
Ms A William	Local Resident
Mrs M Hardy	Local Resident
Ms H Matthew	Local Resident
Mr A Savage	Local Resident

**DOCUMENTS SUBMITTED AT THE HEARING**

1. Council's notification letter and list of those notified
2. Copy of appeal decision Ref. APP/T2405/A/14/2227076
3. Appellant's written cost application