



Penderfyniad ar yr Apêl

Ymchwiliad a gynhaliwyd ar 18/10/16
Ymweliad â safle a wnaed ar 18/10/16

gan Nicola Gulley MA MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 24.11.16

Appeal Decision

Inquiry held on 18/10/16
Site visit made on 18/10/16

by Nicola Gulley MA MRTPI

an Inspector appointed by the Welsh Ministers

Date: 24.11.16

Appeal Ref: APP/A6835/A/16/3143624

Site address: Land at Chester Road, Broughton, Flintshire

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 U&I Group PLC and Bloor Homes against Flintshire County Council.
- The application Ref 054660 is dated 27 November 2015.
- The development proposed is described as "the extension to an existing permitted residential development comprising the construction of 36 No. residential dwellings".

Decision

1. The appeal is allowed and planning permission is granted for the construction of 36 No. residential dwellings at Land at Chester Road, Broughton in accordance with the terms of the application, Ref 054660, dated 27 November 2015, and the conditions set out in the schedule below.

Preliminary Matters

2. On 13 January 2016 the Welsh Government's Highways Division wrote to Flintshire County Council directing that planning permission for the proposed development be withheld until: a feasibility study to evaluate the need for the upgrading of the A55 (T) Junction 36A Broughton Interchange is prepared; confirmation that the proposed development would not have an adverse effect on the existing A55 (T) carriageway or Trunk Road surface water drainage system is provided; and a satisfactory environmental noise assessment is undertaken.
3. Discussions between all parties have been ongoing and, on the basis of the evidence presented, I understand that the Welsh Government's current position is that: timescales for the feasibility study have slipped and, as a consequence, its findings will not be available for consideration as part of this appeal¹; matters in relation to the effect of the proposed development on the existing A55 (T) carriageway and the Trunk Road surface water drainage system have been satisfactorily addressed²; and concerns remain that the appellant's Environmental Noise Study R0889-REP01G-JW

¹ Email correspondence between Walsingham Planning and the Welsh Government, dated 11 October 2016

² Letter from the Welsh Government, dated 5 September 2016

(27 July 2016) is deficient and matters in relation to the policy context, data sources, calculations and mitigation measures need to be addressed³.

4. I note that whilst the Council initially opposed the proposal, it wrote to the Planning Inspectorate on 22 July 2016 withdrawing its objection to the development. As a consequence, the Council took no formal part in the presentation of evidence to Inquiry other than to discuss the requirements for conditions and planning obligations.

Procedural Matters

5. Whilst I note that the description of development on the application form is the same as that on the appeal form, in the interests of brevity I have revised the description to 'the construction of 36 No. residential dwellings'.
6. Statements of Common Ground (SoCG) between the Council and the appellant in respect of highway and planning were submitted to the Inquiry. These documents detailed the matters on which the parties agreed including those in respect of: the effects of traffic associated with the development on the local and strategic highway network; housing land supply; and planning obligations.
7. A signed unilateral undertaking (UU), dated 18 October 2016, was submitted to the Inquiry. The UU makes provision for affordable housing and a financial contribution towards the enhancement of the existing country park.

Main Issues

8. The main issues are:
 - whether the proposed development conflicts with national and local policies designed to protect the countryside;
 - the effect of the proposed development on highway capacity;
 - whether future occupiers of the development would enjoy acceptable living conditions in terms of noise; and
 - whether any harm in these respects is outweighed by other material considerations in particular the contribution to local housing supply.

Reasons

Site and Surroundings

9. The appeal site comprises 1.78 hectares of undeveloped land located in the countryside on the eastern edge of the settlement of Broughton. The site is bordered to the north and west by the residential estate of Parc Jasmine and Bluestone Meadow, which is currently under construction, and to the south and east by the A55 (T) and Junction 36A (J 36A) Broughton Interchange 'off' slip Road. The appeal site is located within close proximity to a range of public transport, community, recreational, retail and leisure facilities including Broughton Shopping Park.

³ Email correspondence between Walsingham Planning and the Welsh Government, dated 17 October 2016 and A55 J36A Broughton: Review Of Revised Noise Assessment For The Bloor Homes Development, AECOM / Welsh Government (16 September 2016)

Background

10. The appeal site, along with the land on which the estate of Parc Jasmine and Bluestone Meadow is currently being constructed, was originally allocated in the deposit draft UDP (2003) for residential development. An outline application for the development of the allocated site for residential purposes was submitted in 2004 but held in abeyance by the Council until such time as the UDP had been subject to inquiry. In 2004 and 2005 applications were submitted for a major extension to the existing Broughton Shopping Park and, in order to manage the additional vehicular movement associated with the extension, for improvements to the J 36A Broughton Interchange to allow for the creation of an all movements junction with the A55 (T). The proposed works to upgrade the interchange included land within the boundaries of the draft UDP housing allocation and the 2004 outline planning application. As a consequence of planning permission being granted for the extension to Broughton Shopping Park and for the upgrading of J 36A, the boundaries of the draft allocation and outline application were amended to exclude the appeal site. The boundaries of the housing site as they appear in the adopted UDP (2011) therefore exclude the appeal site.
11. Neither the planning permission for the extension to Broughton Shopping Park nor that for the upgrade to the Broughton Interchange have been implemented and, as a consequence, both have now lapsed.

Conflicts with national and local policies designed to protect the countryside

12. Policies GEN 3, HSG4 and HSG5 of the adopted Flintshire Unitary Development Plan (UDP) (2011) seek to restrict new residential development in areas outside the defined settlement boundaries to those which are small scale, allow for the reuse or replacement of existing buildings, support rural enterprise and allows for the provision of affordable housing to meet locally defined needs. This approach is supported by Planning Policy Wales (PPW) Edition 9 (2016).
13. In this instance the development proposes the construction of 36 new dwellings on a site located outside the defined settlement boundary. As the proposal does not fall within any of the purposes stated in UDP Policies GEN3, HSG4 or HSG5 it does not accord with the restrictive approach of these policies and PPW to development in the countryside.

Highway Capacity

14. Vehicular access to the proposed development would be via the existing highway network that serves the residential estate of Parc Jasmine and Bluestone Meadow and the wider Broughton area. In support of the proposal the appellant has submitted a transportation assessment (TA)⁴ which considers the impact of the proposal on the existing highway network over the period up to 2025. The TA concludes that: the effect of the proposed development on network capacity would be negligible; that predicted 'with development' future traffic conditions could be successfully accommodated by the local highway network; and that the proposal would not generate a requirement for local development funded highway improvements or improvements at J 36A Broughton Interchange. The Council accepts the findings of the TA and, based on the submitted evidence and my observation at the site visit, I

⁴ Land to the rear of Parc Jasmine and Bluestone Meadow – Transportation Assessment (Rev E) (September 2015)

agree that the proposal would not compromise public safety, health or amenity and as such accords with the requirements of UDP Policies GEN1 and AC13.

15. With regard to the strategic highway network, it is my understanding that the Welsh Government considers it desirable for planning permission not to be granted for the residential development at the appeal site until such time as the need for future improvements at the A55 (T) J 36A Broughton Interchange have been fully assessed. Whilst I note these concerns, I am mindful that proposals for the junction improvements are not at an advanced stage, there can be no certainty about their future delivery and that neither the UDP nor the Wales Transport Strategy (2015) seek to safeguard the appeal site or contain a policy requirement, for the upgrading of the junction. As such I do not consider that there is sufficient justification to warrant withholding planning permission.

Noise

16. The proximity of the appeal site to the A55 (T) and J 36A Broughton Interchange gives rise to concerns that future occupiers of the proposed dwellings would be exposed to high levels of environmental noise. PPW paragraph 13.15.1 requires that, in determining planning applications, local planning authorities make a careful assessment of likely noise levels and, where appropriate, require a technical noise assessment to be provided by the developer. Further guidance in relation to noise is contained in Technical Advice Note 11 (TAN 11) – Noise (1997), which provides specific guidance in relation to the consideration of proposals for residential development located close to transport related noise sources, and BS8233:2014 – Control of Noise around Buildings.
17. In response to Welsh Government concerns the appellant submitted a revised Environmental Noise Study (ENS) RO889 REP01H-PB (6 October 2016), for the site. The conclusions of the revised ENS indicate that: the proposed dwellings fall within Noise Exposure Categories (NEC) A and NEC B as defined in TAN 11⁵; that day and night time noise levels in dwellings located in parts of the site within NEC B can be mitigated by the provision of a barrier; that acceptable levels of day and night time noise ingress within habitable rooms through-out the development can met subject to the implementation of appropriate mitigation measures; and that although the garden noise levels within the development would exceed the recommended figure of 55 dB LAeq T contained in BS8233:2014, the levels would be lower than the garden noise levels that exist within the Parc Jasmine and Bluestone estate.
18. On the basis of the evidence presented I am content that the matters raised by the Welsh Government⁶ have been adequately addressed in the ENS and that, subject to the provision of detailed specifications, the mitigation measures recommended in the study would satisfactorily address the impact of traffic noise on the future occupiers of the proposed dwellings. With regard to garden noise levels, I am mindful that although TAN 11 provides no specific guidance on the matter, BS8233:2014 recognises that the guideline value of 55 dB LAeq, T may not be achievable in higher noise areas such as those adjoining the strategic transportation network and, whilst

⁵ TAN 11, Annex A defines NEC A as an area in which 'Noise need not be considered as a determining factor in granting planning permission, although the noise level at the high end of the category should not be regarded as desirable' and NEC B as an area where 'Noise should be taken into account when determining planning applications and, where appropriate, conditions imposed to ensure an adequate level of protection.'

⁶ A55 J36A Broughton: Review Of Revised Noise Assessment For The Bloor Homes Development, AECOM / Welsh Government (16 September 2016)

measures to control noise should be provided as far as is practical, this shouldn't be a reason to prohibit development⁷.

19. Taking into account national policy and other standards, I am satisfied that a scheme for mitigation would provide acceptable living conditions for future occupiers of the proposed development.

Local Housing Supply

20. PPW, paragraph 9.2.3 requires that local planning authorities ensure that sufficient land is genuinely available or will become available to provide a 5 year supply of land for housing. This requirement is supported by guidance contained in Technical Advice Note 1- Joint Housing Land Availability Studies (TAN 1) (2015).
21. The Council accepts that its latest Joint Housing Land Availability Study (JHLAS) (2015), which has a base date of April 2014, shows that it has a 3.7 year supply of housing land and that, because the UDP has passed its plan period, it will not be able to demonstrate that it has a 5 year supply of housing land until it has an adopted local development plan (LDP) in place. I note that the anticipated date of adoption of the LDP is October 2019, and that, in order to address the deficiency in the short term, section 3 of the JHLAS (2015) makes clear that the Council will, amongst other things, take a flexible approach towards development opportunities outside settlement boundaries where they represent logical and sustainable development and are capable of increasing the supply of housing in the short term. This approach is consistent with paragraph 6.2 of TAN 1 which advises that where a local planning authority is unable to demonstrate a 5 year housing land supply the need to increase the supply of land will be given considerable weight.
22. In this instance, I consider that the position of the appeal site, contained on all sides by built development, together with its close proximity to public transport, community and commercial facilities, would mean that the proposal would be a logical and sustainable extension to the settlement which would not be harmful to the character and appearance of the countryside. Furthermore, I am mindful that the location of the appeal site, adjacent to a residential estate that is currently being developed by the appellants, coupled with their willingness to accept the imposition of a condition requiring development to take place within 3 years of the date of the planning permission, would ensure that the proposed development would be capable of increasing the supply of housing in the County in the short term.
23. Moreover, I note that in addition to providing much needed new market housing, the proposal would also assist in meeting the high level of need at both locally and nationally for affordable homes, fund off-site public open space improvements, create jobs in the construction and service sectors and support local community and commercial services.
24. In light of the above, I consider that the benefits associated with the proposed development would significantly and demonstrably outweigh the modest harm that would arise, in this instance, from the incursion into the countryside.

Other Matters

25. During the course of the Inquiry I heard from a third party, Mr Brierly, who expressed concern that the site boundary shown on plan reference C081_ILa_01_F had been

⁷ BS8233:2014 – Control of Noise around Buildings, paragraph 7.7.3.2

incorrectly delineated and wrongly included land within the curtilage of No. 1 Long Road. The appellant accepted that the boundary of the appeal site had been incorrectly delineated and, in order to ameliorate this situation, suggested the imposition of a condition requiring the provision of a plan showing the required amendment to the boundary. The approach was agreed by Mr Brierly and I am content that the imposition of a condition would satisfactorily resolve the matter.

Conditions and Planning Obligations

26. Insofar as conditions are concerned, I have had regard to the guidance contained in Welsh Government Circular 16/2014 – The Use of Planning Conditions for Development Management. A condition reducing the period for which planning permission is granted from that contained in the Circular to 3 years is necessary in order to assist in meeting the shortfall in housing provision in the County in a timely manner. For reasons already mentioned, a condition requiring the submission of a plan showing a minor amendment to the site boundary as it affects No. 1 Long Road, Broughton is also necessary. In order to ensure the satisfactory disposal of foul and surface water a condition requiring the provision of a drainage strategy is required. In the interests of highway safety conditions are necessary which require the approval and implementation of a scheme for the detailed layout, design, means of traffic calming and signage, street lighting and the construction of estate roads. In order to protect visual amenity conditions are necessary which require the approval of the materials to be used in the construction of the dwellings and a detailed scheme for hard and soft landscaping. Lastly, in order to protect the amenity of the future occupiers of the dwellings conditions are necessary requiring the approval and implementation of a scheme for acoustic mitigation measures.
27. As I indicated earlier, the appellant submitted a signed UU, which makes provision for 30% affordable housing on the site and a financial contribution of £35,563.00, towards the enhancement of Broughton Country Park which lies adjacent to the appeal site. On the basis of the evidence presented, I am content that the provisions accord with the requirements of UDP Policy HSG10 and Local Planning Guidance Note (LPGN) No.9 – Affordable Housing, which seeks to secure the provision of affordable housing, the requirements of UDP Policy SR5 and LPGN 13 - Public Open Space Requirements (POS), which allows for financial contributions to be secured for the enhancement of existing public open space, and meets the tests set out in the Community Infrastructure Levy Regulations 2010. Furthermore, I am advised that the POS provision would not result in five or more obligations for the enhancement of the country park and as such would comply with regulation 123 (3).

Overall Conclusions

28. In reaching my decision I have had regard to all matters raised. I have found that the proposed development would not have a harmful impact on either the capacity of the local or strategic highway network or on the living conditions of future occupiers of the dwellings and, that the benefits of the scheme, which include the provision of new market and affordable housing, clearly justify permitting development outside the defined settlement boundary. For the reasons outlined above, I conclude that the appeal should be allowed and planning permission granted subject to conditions.

Nicola Gulley

INSPECTOR

SCHEDULE OF CONDITIONS

- 1 The development hereby approved shall be commenced before the expiration of three years from the date of this permission.
- 2 Subject to the provisions of condition No. 3 below, the development hereby permitted shall be carried out in accordance with the following approved plans reference: CRB_REP_02 B; CO81_ILa_01_F; 01-08 Rev A; NW078-LS-003; Housetype 203; Housetype 301; Housetype 303; Housetype 305; Housetype 313; Housetype 9303 - Elevations; Housetype 9303 – Floorplans; and Single/Double/Paired Garages – Floor Plans and Elevations.
- 3 Notwithstanding the submitted layout plan reference: CO81_ILa_01_F, prior to commencement of development a revised site layout plan which excludes the whole of No. 1 Long Road and its car parking, shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4 No development shall commence until details of a scheme for the disposal of foul and surface water has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in accordance with the approved details prior to the development being brought into use and retained in perpetuity.
- 5 No development shall take place until a scheme showing the detailed layout, design, means of traffic calming and signage, street lighting and construction of any estate roads has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 7 No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 8 No development shall take place until details of a scheme for hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include:
 - i) All existing trees, hedgerows and other vegetation on the land, details of any to be retained and measures for their protection during the course of development;
 - ii) Proposed new trees, hedgerows, shrubs or vegetation, including confirmation of species, numbers and location;
 - iii) Proposed materials to be used on the driveway(s), paths and other hard surfaced areas;
 - iv) Proposed earthworks, grading and the mounding of soil and changes in levels, final contours and the relationship of proposed mounding to existing vegetation and the surrounding landform;
 - v) The timing of the implementation of all the hard and soft landscaping works.

- 9 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 approval to any variation.
- 10 No development shall take place until a detailed scheme to provide sound insulation within those dwellings immediately adjacent to the A55 (T) and the slip road to the east of the site, to protect those dwellings from the traffic noise generated on those roads, has been submitted to and approved in writing by the Local Planning Authority. Prior to the first occupation of each of these identified dwellings, it shall be fitted with the approved sound insulation measures.
- 11 No development shall take place until a plan identifying the dwellings the subject of condition 10 has been submitted to and approved in writing by the Local Planning Authority.
- 12 No development shall take place until a detailed scheme to provide noise mitigation measures (e.g bund or fencing) along the A55 (T) corridor, which shall include details of the timing of its implementation, has been submitted to and approved in writing by the Local Planning Authority. Once implemented the approved scheme shall be retained in perpetuity.

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

John Hunter, of Counsel

Instructed by Flintshire County Council

FOR THE APPELLANT:

Mark Carter, of Counsel

Instructed by Mark Krassowski on behalf of U&I Group and Bloor Homes

He called:

Andrew Bell BA, MSc MCILT, MIHT

Axis

Paul Bentley BSc (Hons), MSc, Pg Dip IOA, MIOA

Red Acoustics Limited

Mark Krassowski BA (Hons), BSc, MRTPI

Walsingham Planning

THIRD PARTY:

Dean Brierly

Local Resident

DOCUMENTS

- 1 A Unilateral Undertaking, signed and dated 18 October 2016
- 2 Statement of Common Ground – Highways, dated 14 October 2016
- 3 Statement of Common Ground – Planning Issues, dated 17 October 2016
- 4 List of suggested conditions presented by the Council
- 5 Email correspondence between Walsingham Planning and the Welsh Government, dated 11 October 2016 and the 17 October 2016
- 6 Appellant's Opening Statement
- 7 Site Layout Plan showing the curtilage of 1, Long Drive, Broughton
- 8 A55 J36A Broughton: Review Of Revised Noise Assessment For The Bloor Homes Development, AECOM / Welsh Government (16 September 2016)
- 9 Environmental Noise Study reference RO889 REP01H-PB (6 October 2016), Red Acoustics Ltd and Appendix C: Noise Model Predictions and Appendix D Bloor Break-in Sheets