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## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 03/02/17

gan Clive Sproule BSc MSc MSc  
MRTPI MIEnvSci CEnv

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 22/05/17

## Appeal Decision

Site visit made on 03/02/17

by Clive Sproule BSc MSc MSc MRTPI  
MIEnvSci CEnv

an Inspector appointed by the Welsh Ministers

Date: 22/05/17

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**Appeal Ref: APP/A6835/A/16/3161711**

**Site address: Argoed Service Station, A5119 Dual Section to New Brighton Lights, New Brighton, Flintshire CH7 6QQ**

**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 Mr McCarthy, Elan Homes Ltd against the decision of Flintshire County Council.
  - The application Ref 055310, dated 18/04/16, was refused by notice dated 19/10/16.
  - The development proposed is erection of 24no. dwellings with associated garages, parking, garden areas and public open space with demolition of existing service station and outbuildings.
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### Decision

1. The appeal is allowed and planning permission is granted for erection of 24no. dwellings with associated garages, parking, garden areas and public open space with demolition of existing service station and outbuildings at Argoed Service Station, A5119 Dual Section to New Brighton Lights, New Brighton, Flintshire CH7 6QQ in accordance with the terms of the application, Ref 055310, dated 18/04/16, and subject to the conditions in the attached schedule.

### Procedural Matter and Main Issues

2. A unilateral undertaking, dated 29 December 2016, relating to the appeal proposal was provided in January 2017. It became apparent during preparations for the site visit that the signatures of one of the three parties to the deed had not been witnessed. An opportunity was given for this to be corrected and a fully witnessed unilateral undertaking was subsequently received. The Council requested clarification of matters in relation to the unilateral undertaking and this decision was issued once these had been resolved.
  3. Following consideration of the Council's reasons for refusal and the evidence in this case, the main issues are considered to be whether the proposal would: a) make sufficient provision for affordable housing; b) provide a form of development that would be the most efficient use of development land; and, c) provide an appropriate mix of dwelling size and type in order to create a mixed and socially inclusive community.
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## Reasons

### Affordable Housing

4. Policy HSG10 of the Flintshire Unitary Development Plan 2000-2015 ('UDP'), adopted 28 September 2011, states that: where there is a demonstrable need for affordable housing to meet local needs, the Council will take account of this when assessing housing proposals; and, negotiate with developers to provide 30% affordable housing in suitable appropriate schemes within settlement boundaries<sup>1</sup>.
5. The appeal site is part of an area allocated as a site for new housing under UDP policy HSG1. The whole 1.1ha UDP allocation includes the former petrol station/garage and adjoining field that comprise the appeal site, along with the bungalow and gardens that form the associated family home.
6. Council Members considered the allocated site to have been subdivided to avoid triggering any requirement for affordable housing<sup>2</sup>. However, the Council Officer's report on the application is clear that the proposal to develop part of the allocation results from a bereavement that occurred after the allocation of the site. Retention of the bungalow and its gardens would maintain the character of the residential road frontage, but it results in the area of the appeal site being under 1.0ha.
7. Reference has been made to the *Development Brief - Housing at land Off Ffordd Eldon, Sychdyn*, which the Council adopted as Supplementary Planning Guidance ('SPG') in July 2012. The SPG aims to provide clear advice on the Council's requirements and expectations in relation to the site at Ffordd Eldon, Sychdyn.
8. While the SPG requires a 'pro-rata' approach to be used for affordable housing provision on any subdivided part of the allocation that is the subject of the SPG, such an approach is not set out in development plan policy. In addition, no similar document has been referred to for the appeal site allocation, and the SPG does not indicate that it sets out to be such a document. For the reasons above, the pro-rata approach within the SPG attracts very limited weight in this case, and the Council has not referred to any other policy support for it taking 'into account' a pro-rata approach.
9. During 2010/2011 the Council resolved to grant planning permission for housing on the land at Argoed Service Station. That scheme was for 23 dwellings on 0.95ha of the 1.1ha development plan allocation and it would have provided affordable housing through a commuted sum. In addition, my attention has been drawn to appeal ref: APP/A6835/A/16/3143624<sup>3</sup>, which noted a high level of local and national need for affordable homes, but that appeal concerned a site in a different part of the County.
10. Each application and appeal is considered on its own merits, and the evidence in this case includes the Council Officer's report on the current proposal. The report notes the consultation response of the County's Housing Strategy Manager to be that: the Flintshire Local Housing Market Assessment identifies an annual shortfall of 246 affordable units; and, this identified need to be 14%, 31.6% and 28.5% for 1, 2 and 3

<sup>1</sup> UDP Policy HSG9 seeks all new housing developments to provide an appropriate mix of dwelling size and type to create mixed and socially inclusive communities. Supporting text to the policy states that the thresholds of 1.0ha or 25 dwellings are consistent with those used for policy HSG10.

<sup>2</sup> Section 4.1 of the Council's Statement of Case

<sup>3</sup> Appendix 7 to the Council's Statement of Case

bedroom dwellings respectively, with a split of 56.2% socially rented to 43.8% intermediate tenures. However, the response also noted there to be minimal interest for affordable ownership and rent in New Brighton and therefore, affordable housing provision should not be sought through the appeal scheme.

11. Appendix 3 to the Council's Statement of case contains an e-mail from the Council's Housing Strategy Officer that proposes any agreed commuted sum in relation to the appeal scheme to be used for off-site affordable housing provision. However within the context of adopted development plan policy<sup>4</sup>, it has not been shown that a planning obligation for affordable housing would be necessary. As such, the appeal proposal complies with UDP policy HSG10 and the relevant parts of *Planning Policy Wales - 9<sup>th</sup> Edition* ('PPW').

#### *Efficient Use of Development Land*

12. UDP policy HSG8 is permissive of new housing where the development would: make the most efficient use of available land; reflect the characteristics of the site and surrounding area; help to meet the needs of Flintshire residents for a range of house types; use high quality design principles to maximise density of development without compromising the quality of the living environment; and, makes adequate provision for privacy and space about dwellings.
13. Supporting text to the policy indicates that on allocated sites a general minimum net housing density of 30 dwellings per hectare ('dph') is sought, but that individual circumstances will vary according to the site location and the character of the locality.
14. While the UDP allocation is larger than the proposed development site and background documents to the appeal scheme refer to development of the whole allocation, the matters that led to the subdivision of the allocation are clear and set out above. There is no evidence to indicate that, in the absence of the appeal proposal, the whole allocation would be likely to come forward for development. The proposed development would enable the remediation of the former garage site, and the part of the UDP allocation that is outside the appeal site includes an existing residence that contributes to local character.
15. The Council Officer's initial report on the application concluded that a lower housing density would be appropriate on this site due to local character, and the site being on the edge of a settlement and Green Barrier. Following a deferment of the application's determination, the Council Officer's amended report accepted the appellant's assessment of the developable area of the site which excludes tree protection areas, public open space and a sewer easement. This developable area indicates the scheme would deliver 30.53 dph. If the excluded areas were considered to be integral parts of the development, and therefore should be included within the calculation, the scheme would deliver 25.30 dph.
16. The principal context for the development would be provided by Argoed Avenue to the east and the undeveloped Green Barrier land to the west. Argoed Avenue is noted to be 17.5 dph, while Clos Lindum to the south is 33.0 dph and a new development to the north of the site entrance is 28.0 dph.
17. Given the densities of development in the vicinity of the appeal site, the presence of Green Barrier next to it, the circumstances on the appeal site and the factors that

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<sup>4</sup> And Regulation 122 of the Community Infrastructure Levy Regulations 2010

have influenced the layout of the proposal, it is apparent that the proposed density of development (regardless of whether the 'excluded areas' are removed from the calculation) would be appropriate in this location. It would be an efficient use of development land that would reflect the characteristics of the site and the surrounding area. In this respect it complies with UDP policy HSG8 and the objectives of PPW.

#### *Mixed and Socially Inclusive*

18. The Council's third reason for refusal considers the proposal to be contrary to the requirements of UDP policy HSG9. This policy seeks all new housing developments to provide an appropriate mix of dwelling size and type in order to create mixed and socially inclusive communities, which reflects PPW objectives.
19. The proposal is for 3 and 4 bedroom houses, with the larger dwellings accounting for 16 of the 24 units. It does not include smaller 1 or 2 bedroom dwellings. Irrespective of the current lack of need for affordable housing in New Brighton, omitting 1 or 2 bedroom homes from the scheme restricts the offer that would be made to those who would wish to have a smaller market dwelling.
20. However, the number and range of dwellings that are apparent in the locality confirm the lack of smaller homes within the proposed development would not result in a large area of housing with similar characteristics. Given the relative scales of the proposal and New Brighton, the appeal scheme would be expected to result in a community that is mixed, balanced and socially inclusive. As such it complies with UDP policy HSG9 and the objectives of PPW.

#### *Other Matters*

##### Land contamination

21. The proposal would provide a means of addressing the presence of redundant storage tanks and land contamination associated with, and in the vicinity of, the filling station and garage use in the northern part of the appeal site. If this appeal were to be allowed, a planning condition would enable the remediation of the site, and the removal of risk associated with the presence of contaminants weighs heavily in favour of the appeal proposal.

##### Local living conditions

22. The proposed layout would provide separation distances between the windows of proposed dwellings and existing neighbouring development to ensure that appropriate levels of privacy would be maintained.
23. A suggested condition would remove permitted development rights in Classes A, B, C and D of part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order 1995 ('the GPDO'). These would restrict permitted development rights for matters such as the construction of extensions to a dwelling house including to its roof and porches, and alterations to roofs. Paragraph 3.2.2 of PPW is clear that the general permission granted by the GPDO for certain development may only be withdrawn in exceptional circumstances. In this case, exceptional circumstances have not been demonstrated to justify the removal of permitted development rights. Therefore, the suggested condition would fail to meet the tests of a condition by being

unnecessary and unreasonable and, if this appeal were to be allowed, it would not be applied<sup>5</sup>.

#### Link to the Footpath

24. UDP policy D1 seeks, amongst other things, for development to minimise the need for travel. Public Footpath 45 abuts the southern edge of the appeal site. If a pedestrian link were to be provided from the southern end of the development onto the Footpath, it would provide a more direct route to the local school, play facilities and countryside than accessing them via the footway along the main road and Argoed Avenue. In this regard, the proposal would not minimise the need for travel. However, these facilities would still be accessible from the proposal and therefore, the absence of the Footpath link (and in this regard limited conflict with UDP policy D1) only adds limited weight against the proposal. The proposed homes would be in close proximity to public transport, jobs and services, which weighs heavily in their favour.

#### Planning obligations

25. The tests of a planning obligation are contained within Regulation 122 of the Community Infrastructure Levy ('CIL') Regulations 2010. These tests are that planning obligations should only be sought where they would be: necessary to make the development acceptable in planning terms; directly related to the development; and, fairly and reasonably related in scale and kind to the development.
26. The executed unilateral undertaking would provide contributions toward education and open space. The Council Officer's report on the proposal notes: there to be insufficient capacity within the local primary school to accommodate children from the appeal scheme; and, the local secondary school to be already over capacity. Rather than public open space provision within the development, a commuted sum per dwelling would contribute to the provision of recreational facilities at the nearby Clwyd Crescent play area. The education and open space contributions would address the scale of the increased demand on these facilities that would be expected from the appeal proposal.
27. Given the nature of these contributions, there is no reason to consider there to be a breach of CIL Regulation 123. Planning obligations within the unilateral undertaking would contribute to the future well-being of people in the locality. They meet the tests set out within CIL Regulation 122 and attract substantial weight in favour of the proposal.

#### Well-Being of Future Generations

28. I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 ('the WBFG Act'). In reaching this decision, I have taken into account the ways of working set out at section 5 of the WBFG Act and I consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives set out as required by section 8 of the WBFG Act.

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<sup>5</sup> The tests are set out in Section 3.0 of Welsh Government Circular – WGC 016/2014 – *The Use of Planning Conditions for Development Management*, and the presumption against restricting permitted development rights is set out in paragraph 5.105

## Conclusion

29. Redeveloping the entire area of the UDP allocation would be an efficient use of land, but the entire allocation is not available for development. While the Planning Committee's concern regarding the subdivision of the allocation and the resulting loss of a contribution toward affordable housing is understandable, the background to the application area is known. The appeal scheme would provide new homes in a layout that would be sympathetic to its context, while also addressing the need to remediate part of the site.
30. In that context and for the reasons set out above, the appeal scheme would make efficient use of the available area of the allocation, and while it would not provide smaller dwellings, the circumstances of the site result in it being a sustainable form of development that meets relevant local and national planning policy objectives.
31. All representations in this case have been taken into account. The proposal complies with UDP policies HSG10, HSG8 and HSG9 and the relevant parts of PPW. No other considerations have been found to outweigh the identified policy compliance and the matters that weigh in favour of the scheme. Accordingly, the appeal should be allowed.

## Conditions

32. Possible conditions contained within section 6.0 of the Council's statement of case have been considered within the context of the evidence in this case.
33. For the avoidance of doubt and to ensure an appropriate form of development, a condition shall be imposed regarding the approved drawings.
34. In the interests of protecting the character and appearance of the locality conditions shall be imposed to address external facing and roofing materials, landscaping and boundary treatment and a tree protection scheme.
35. Suggested condition 8 in the Council's Statement of Case is not necessary as the relevant matters to the protection of existing trees and hedgerows can be addressed by a modified Arboricultural Method Statement/tree protection scheme.
36. In the interests of protecting the character and appearance of the locality, and the living conditions of its residents, a condition shall be imposed to address finished site and building floor levels.
37. In the interests of protecting local living conditions and highway safety a condition shall be imposed in relation to drainage. In the interests of protecting local living conditions and the natural environment, a condition shall be imposed in relation to land contamination.
38. In the interests of highway safety conditions shall be imposed in regard to the provision of the site access and its visibility splays, vehicle parking and turning areas, the estate road and its gradient, and a Construction Traffic Management Plan.

*Clive Sproule*

INSPECTOR

## SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than five years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing No.: AR-LP-001 Rev: C – Location Plan  
 Drawing No.: AR-PL-001 Rev: G – Planning Layout  
 Drawing No.: AR-PL-002 Rev: G – Planning Layout – B&W  
 Drawing No.: AR-LL-001 Rev: D – Landscaping Layout  
 Drawing No.: AR-SS-001 Rev: A – Street Scene  
 Drawing No.: AR-EF-001 Rev: C – External Finishes Layout  
 Drawing No.: AR-G-P/HOW-01 Rev: A – Planning Drawing - Howden Types 1 & 2  
 Drawing No.: AR-G-P/MAR-01 Rev: A – Planning Drawing - Marford  
 Drawing No.: AR-G-P/BEL-01 Rev: A – Planning Drawing - Belvoir  
 Drawing No.: AR-G-P/SOU-01 Rev: A – Planning Drawing - Plans - Southwold Type 1  
 Drawing No.: AR-G-P/SOU-02 Rev: A – Planning Drawing - Plans - Southwold Type 2  
 Drawing No.: AR-G-P/BRP-01 Rev: A – Planning Drawing - The Brampton  
 Drawing No.: AR-G-P/BUN-01 Rev: A – Planning Drawing - Bunbury  
 Drawing No.: AR-G-P/HEA-01 Rev: A – Planning Drawing - The Healey Type 1  
 Drawing No.: AR-G-P/HEA-02 Rev: A – Planning Drawing - The Healey Type 2  
 Drawing No.: AR-G-P/WOO-01 Rev: A – Planning Drawing - Woodhall  
 Drawing No.: AR-G-P/OAK-1 Rev: A – Planning Drawing - Plan - Oakham  
 Drawing No.: AR-G-P/OAK-2 Rev: A – Planning Drawing - Elevations - Oakham  
 Drawing No.: AR-G-P/GAR-01 Rev: A – Planning Drawing - Garages

- 3) No development shall take place until samples and/or precise details of all proposed external finish materials, including for hard surfaced areas within the development, have been 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 take place until details of the finished ground levels on the site, and internal finished floor levels 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.
- 5) No development shall take place, nor any demolition works or site clearance, until there has been submitted to and approved in writing by the local planning authority details of a scheme for the protection of trees. The scheme shall be based on the Arbtech Consulting Limited *Arboricultural Method Statement Rev A*, dated 14 March 2016 and drawing no. Arbtech TPP 01 Rev A, entitled *Tree Protection Plan*. The scheme shall include any modifications necessary to address amendments that were made to the proposed development after 14 March 2016, and the scheme shall confirm all works for felling, lopping or topping of trees or hedgerows. The approved scheme for the protection of trees shall be carried out during the demolition of the buildings and throughout the course of the development.
- 6) No development shall take place until a scheme for the disposal of foul and surface water, that shall include an implementation programme, has been

submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details and retained thereafter.

- 7) No development shall take place until a site investigation has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site, including the timing, phasing and verification of the remediation, to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority before any development begins. The site shall be remediated in accordance with the approved details, including any measures that would form part of the development, such as the provision of gas vents or membranes within buildings and other structures.

If, during the course of development, any contamination is found which has not been identified in the site investigation, then additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

- 8) No development shall take place until a scheme, which shall include detailed design, a timetable and phasing of works, for the provision of the vehicular access to the site, its visibility splays, the estate road and vehicle turning area, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved and the visibility splays shall be retained thereafter.
- 9) No development shall take place, nor any demolition or site clearance works, until a Construction Traffic Management Plan has been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved Construction Traffic Management Plan.
- 10) The gradient of the access from the edge of the existing carriageway shall be 1 in 24 for a minimum distance of 10m and a maximum of 1 in 15 thereafter.
- 11) The vehicle parking and turning areas hereby permitted shall be provided prior to the occupation of any dwelling to which they relate, and they shall be retained and kept available for their purpose at all times.
- 12) An implementation programme for the landscaping works described by Drawing No.: AR-LL-001 Rev: D shall be submitted to and approved in writing by the local planning authority prior to the first occupation of any dwelling hereby permitted. The landscaping works shall be carried out in accordance with the approved details and the approved implementation programme, 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.
- 13) No dwelling hereby permitted shall be occupied until a scheme indicating the positions, height, design, materials and type of boundary treatment to be erected has been submitted to and approved in writing by the local planning



authority. The boundary treatment shall be completed as approved before the dwelling to which it relates is occupied.

Richborough Estates