



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 29/11/18

gan Siân Worden BA MCD DipLH
MRTPI

Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 21/12/2018

Appeal Decision

Site visit made on 29/11/18

by Siân Worden BA MCD DipLH MRTPI

an Inspector appointed by the Welsh Ministers
Date: 21/12/2018

Appeal Ref: APP/A6835/A/18/3209704

Site address: Land adj Woodside Cottages, Bank Lane, Drury CH7 3EQ

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 outline planning permission.
 - The appeal is made by Lingfield Homes and Property Development Ltd against Flintshire County Council.
 - The application Ref 058212, is dated 9 March 2018.
 - The development proposed is residential development, including access, open space and all associated works.
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Decision

1. The appeal is allowed and planning permission is granted for residential development, including access, open space and all associated works at land adj Woodside Cottages, Bank Lane, Drury CH7 3EQ in accordance with the terms of the application, Ref 058212, dated 9 March 2018, and the plans submitted with it, subject to the conditions listed in the schedule at the end of this document.

Application for costs

2. An application for costs was made by Lingfield Homes and Property Development Ltd against Flintshire County Council. This application is the subject of a separate Decision.

Procedural matters

3. The application was in outline with access only to be determined in this decision. The matters of appearance, landscaping, layout and scale are reserved for later determination.
4. Edition 10 of Planning Policy Wales was published after the appeal had been made; the parties were asked whether they had any additional comments in that light.

Background and Main Issues

5. The Council provided a statement of case outlining its reasons for not supporting the proposal. I consider, therefore, that the main issues in this case are:
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- the effect of the proposed development on highway safety; and
- whether the most efficient use of the appeal site would be made with regard to the proposed density of development.

Reasons

Highway safety

6. The appeal site, which is close to the edge of Burntwood and in a mainly residential area, consists of two parcels of land. The south western part is an almost rectangular field adjoined on its north western boundary by two cottages and their extensive grounds. The proposal is for a residential development of no more than twenty three dwellings. The cottages would be demolished.
7. Vehicular access to the site would be taken from an existing spur of Pen-y-Coed Road. All traffic in and out of the proposed development would therefore have to travel along part of Pen-y-Coed Road, a residential street with two access points onto Burntwood Road. Several of the dwellings in Pen-y-Coed Road do not have off-street parking provision. Whilst there were not many cars parked on the street at the time of my visit, I understand that there are times when the street is lined with parked vehicles.
8. The appellant's submitted highway, traffic and transport technical note estimates¹ that 23 dwellings would generate twelve traffic movements in total during the morning peak hour and eleven at evening peak time. Vehicles driving from the site would choose a route along Pen-y-Coed Road depending on their eventual destination; the note thus advises that trips would be split more or less evenly between the two arms of the road. The likely maximum level of additional traffic on any part of Pen-y-Coed Road would therefore be six vehicles; two inbound and four outbound during the morning peak hour, and vice-versa at the evening peak. During the rest of the day traffic flows would be lighter still.
9. The appellant's response on highway matters² notes that the carriageway is about 4.8m wide and thus sufficient to allow a service vehicle and a car, either parked or moving, to pass one another freely. There are wide footways on both sides of the street. Pen-y-Coed Road can, therefore, accommodate residential traffic and pedestrian flows such that there is no justification for restricting the use of the road.
10. The proposed development would also be in an accessible location with a few shops, pub and primary school within approximately 750m of the site. In addition, half hourly bus services are available close at hand traveling to a variety of destinations including nearby town centres, an out-of-town shopping centre and a major employer's complex. These facilities would enable future occupiers to rely less on the private car than in a more remote location and to make more trips on foot, cycle and public transport.
11. The appellant concludes that the forecast level of traffic arising from the proposed development would have a negligible impact on highway capacity and highway safety. No highway mitigation measures would be required and there would be no need for new infrastructure. I have no reason to disagree with that conclusion which was supported by my observations on site.

¹ From figures in the TRICS database

² 11 October 2018

12. I have noted that concerns originally expressed by the Council's highways department were answered satisfactorily by the appellant's submissions on traffic³. The provision of a one-way system along Pen-y-Coed Road, which could be implemented through a Traffic Regulation Order (TRO), was also mooted. Despite the on-street parking in the road, the overall negligible effect of the proposed development on highway safety means that such a provision is not necessary. To my mind the ability to allow children to play outside in their neighbourhood, including at the kerb, is an advantage. As road safety in Pen-y-Coed Road and the wider area would not be considerably worsened, neither would this facility be greatly reduced.
13. I saw for myself that visibility when leaving Pen-y-Coed Road is not ideal. Traffic successfully negotiates these junctions at the moment, however, and, as the increased number of movements arising from the proposal would be modest, I do not consider that there would be a significant increase in hazard at these locations.
14. There is no evidence that the proposed development would fail to create a safe, healthy and secure environment or that it would not make the best use of existing roads. It has been found that no mitigation measures are required and thus traffic management and calming are not necessary. In so far as it is necessary at this outline stage, the scheme has taken account of personal and community safety. It would not have a significant adverse impact on the safety and amenity of nearby residents, other land users or the community in general, and it would not have an unacceptable effect on the highway network as a result of traffic generation.
15. The approach roads to the site are of an adequate standard to accommodate the traffic likely to be generated by the development without compromising public safety, health and amenity, and safe vehicular access can be provided by the developer both to and from the main highway network. In all these respects the proposed development would comply with Policies STR1, STR2, GEN1 and AC13 of the Flintshire Unitary Development Plan which was adopted in 2011.

Density

16. The appeal site has several constraints including drainage easements; protection zones around the trees⁴ and hedgerows to be retained; a buffer around the existing dwelling, Burntwood House; public open space (POS) and nature reserve; and a suspected mine shaft. To my mind these are all necessary and of an appropriate extent. The indicative layout also shows that the proposed dwellings would not be widely spaced or have particularly large gardens, and there would be a reasonable mix of house sizes. In locating the access road in the drainage easement and the POS in the area sterilised by the existing house buffer, the hedgerows and trees, and the mine shaft, the suggested layout makes good use of the available space.
17. The proposed development would not have a significant and uncertain environmental, social, economic or cultural impact and it is not necessary to adopt Policy STR1's precautionary approach. In making the most efficient use of available land the proposed development would comply with UDP Policy HSG8.

Other matters

18. The site is within 150m of an area designated as a Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI) for, amongst other things, its great

³ Response from Highway Development Control Manager, 25 April 2018

⁴ Some of these are now covered by a Tree Preservation Order (TPO)

crested newts and habitat. The proposed development would not have a direct effect on the newts but, as there might be indirect impacts, mitigation measures would be required. The ecologist's response to consultation on the planning application states that mitigation could be either through the provision of land for conservation and recreation or through financing enhancement projects within the Buckley area. That response also notes that the proposed layout of the scheme was accepted by Natural Resources Wales (NRW) subject to the management and long-term safeguarding of the area.

19. An ecological survey has been carried out. The site itself is not of sufficient ecological interest itself to prevent it from being developed. The on-site nature reserve would provide a sanctuary for protected species such as great crested newts. Several trees and hedgerows would also be retained and would provide habitat particularly for birds.
20. As the UDP is well past its end date its housing strategy and numbers, which are implemented through policies in the housing chapter including Policy HSG3, have very limited currency. This is a significant change in circumstances from when an earlier outline application⁵ for residential development was refused and then dismissed on appeal in 2011. The Council points out that paragraph 6.2 of Technical Advice Note 1 (TAN 1) *Joint Housing Land Availability Studies*, which required considerable weight to be given to the need to increase supply where councils had no five year supply of housing land, has recently been dis-applied⁶. Nonetheless, the provision of over twenty dwellings in an area without a five year supply would be a considerable benefit, given that there are no compelling policy or other considerations weighing against the scheme.
21. The site is below the minimum size threshold of 1.0 hectare or 25 dwellings for which UDP Policy HSG10 requires the provision of some affordable housing.
22. A number of representations have been submitted in respect of a footpath shown on the drawings as linking the proposed development to Bank Lane. This decision is in respect of an outline application which determines the principle of residential development on the site, access being the only detailed matter included. The layout of the proposed development including footpaths would be considered by the Council at a later stage. It would be at that reserved matters stage that the benefits of greater accessibility provided by footpaths would be weighed against the potential of harm to the amenity of existing residents.
23. There would be no other vehicular access to the site other than as permitted through this decision.
24. The provision of an adequate foul and surface water drainage system, as required by condition, will ensure that any pre-existing problems with localised flooding are not exacerbated by the proposed development. The structural condition of the existing properties in the area, the retaining wall or the drains is not a persuasive reason to dismiss the proposal.

Conditions

25. In the light of Circular 16/2014 *The Use of Planning Conditions for Development Management* I have imposed conditions as suggested by the Council. The condition regarding plans is necessary for clarity, as is the reference to levels. The scheme that

⁵ Reference 045405

⁶ From 18 July 2018

is the subject of this appeal is in outline but including the detailed matter of access. Much of the masterplan drawing is indicative only. The approximate positions of the first stage of the access road, the retained trees, and the nature reserve, however, have been material to my decision on the matter of density and must therefore be largely adhered to in the final layout. With the exception of those three features only, this decision does not permit, or imply permission, of any of the other elements within the layout drawing. These will be the subject of detailed reserved matters applications prior to the commencement of construction. As concern has been expressed about the footpath links it is necessary for clarity to specify that details of these must be provided. They would then be the subject of consultation with neighbouring occupiers.

26. Those conditions concerning the disposal of foul and surface water are necessary to protect the amenity of existing and future occupiers, the wider environment and, in respect of avoiding run-off on the highway, road safety. The access, layout, parking and turning facilities, set-back of garages, and construction method statement are also in the interests of highway safety. The later also contains measures to protect the amenity of existing occupiers, such as the control of dust; to that end and to address objections I have added working times and the control of vibration and noise to the list.
27. The condition relating to great crested newt avoidance and mitigation is necessary to preserve a protected species which is present in the surrounding area. An ecological compliance audit is needed to monitor the effectiveness of the ecological works. The analysis of the nineteenth century cottages prior to their demolition will preserve a historical record of the area. As the site is in an area of former coal working the conditions in respect of an investigation for contamination and the treatment of coal mine workings are necessary in the interests of public and environmental safety.
28. As explained earlier a TRO is not needed. In addition I am not convinced that the proposed development necessitates the provision of a footway on Pen y Coed Road. No such condition has therefore been imposed. It is always desirable to encourage the use of more sustainable forms of travel. Nevertheless, as the proposed development would generate a comparatively small number of traffic movements which would have a negligible impact on highway safety I do not consider a full Travel Plan and Transport Implementation Strategy necessary in this case.

Unilateral undertaking

29. I have been provided with a finalised copy of a unilateral undertaking through which the owner and developer covenant to pay contributions towards education and open space provision and to provide an on-site nature reserve. The education contribution, which would be spent entirely on primary school provision, is necessary because there is currently no capacity at the local primary school. The open space contribution would be used to upgrade an existing facility whilst the on-site area is necessary in the interests of great crested newts. The unilateral undertaking would be consistent with the tests set out in Regulation 122, and the limitation imposed by Regulation 123, of The Community Infrastructure Levy Regulations 2010 (CIL). It therefore carries substantial weight as a reason to grant planning permission.
30. The Council has requested that a payment of £2,500 per dwelling be made towards mitigating the indirect impacts on the SAC. As explained above, mitigation could be provided either by an on-site area of open space or by a financial contribution towards off-site enhancement. The proposed development would provide the first and thus this payment is not necessary and does not meet the CIL tests.

Conclusion

31. I have found that the proposed development would not have a detrimental effect on highway safety and would make efficient use of the land within the appeal site. The provision of market housing would also support the site's residential development. I am aware that there has been considerable objection to the scheme. I have taken all the matters raised into consideration but not found any to justify refusing a proposal which would generally be in compliance with national and local planning policy.
32. 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 the Welsh Ministers' well-being objective of supporting safe, cohesive and resilient communities.
33. I have also had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. I do not consider that in exercising a public function and making my decision I have compromised any of the requirements set out in Section 149(3).
34. For the reasons given above I conclude that the appeal should be allowed.

Síân Worden

Inspector

Richborough Estates

Schedule of Conditions

- 1) The development shall begin either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
- 2) Any application for approval of the details of appearance, landscaping, layout, and scale (the reserved matters) shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The submission of reserved matters shall include details of existing and proposed site levels and, where appropriate, proposed finished floor levels of the buildings. They shall also include details of proposed pedestrian links and footpaths.
- 4) The development shall be carried out in accordance with the following approved plans: Location Plan [defined by a red line on an aerial photograph]; the site sketch masterplan in respect of the first stage of the access road, the retained trees, and the location of the nature reserve only.
- 5) No development shall commence until details of a scheme for the disposal of foul and surface water has been submitted to and agreed in writing by the local planning authority. The scheme shall include positive means to prevent the run off of surface water from any part of the site onto the highway. The scheme shall be implemented in accordance with the approved details prior to the residential use of the development and retained in perpetuity.
- 6) Surface water flows from the development shall only discharge at a rate not exceeding 5 litres per second.
- 7) Before the commencement of the development the access shall be completed in accordance with a detailed design submitted to and approved in writing by the local planning authority. The access shall be retained as such for as long as the development remains in existence.
- 8) No development shall commence, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for:
 - i) the hours of working on the site including times at which deliveries may take place;
 - ii) the parking of vehicles of site operatives and visitors;
 - iii) loading and unloading of plant and materials;
 - iv) storage of plant and materials used in constructing the development;
 - v) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - vi) wheel washing facilities;
 - vii) measures to control vibration, noise and the emission of dust and dirt during demolition and construction; and
 - viii) a scheme for recycling/disposing of waste resulting from demolition and construction works.
- 9) The detailed layout, design, means of traffic calming and signing, surface water drainage, street lighting and construction of internal estate roads shall be submitted to and approved by the local planning authority prior to the

commencement of any site works. The development shall be completed in accordance with the approved details and retained thereafter.

- 10) Facilities shall be provided and retained within the site for the parking and turning of vehicles in accordance with a scheme to be submitted to and approved in writing by the local planning authority. The parking and turning facilities shall be completed prior to the first occupation of any of the dwellings hereby permitted and retained as such thereafter.
- 11) The front of any garage shall be set back a minimum distance of 5.5m behind the back of the footway line or 7.3m from the edge of the carriageway where a grass service margin verge is crossed.
- 12) No development shall commence until a site investigation of the nature and extent of contamination affecting the application site area has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. If any contamination is found during the site investigation a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted, including measures to verify the approved works, shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures prior to the occupation of any dwelling.

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

- 13) No works to which this consent relates shall commence until an appropriate scheme setting out great crested newt avoidance and mitigation measures has been submitted to and approved in writing by the local planning authority. The scheme shall include for the cessation of work if great crested newt are found. The scheme shall also set out details of an ecological compliance audit to monitor the approved measures. The development shall be carried out in full accordance with the approved scheme.
- 14) No development shall take place until a programme of building recording and analysis, equivalent to a Historic England Level 3 building survey, for those existing buildings on the site which would be demolished has been submitted to and approved in writing by the local planning authority. The development shall be carried out in full accordance with the approved programme.
- 15) No works to which this consent relates shall commence until an appropriate scheme for remedial works to treat the identified areas of shallow coal mine workings has been submitted to and approved in writing by the local planning authority. The development shall be carried out in full accordance with the approved scheme.