



Penderfyniad ar Apêl

Gwrandawriad a gynhaliwyd ar 04/03/14
Ymweliad safle a wnaed ar 04/03/14

gan Emyr Jones BSc(Hons) CEng
MICE MCI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 1 Mai 2014

Appeal Decision

Hearing held on 04/03/14
Site visit made on 04/03/14

by Emyr Jones BSc(Hons) CEng MICE
MCI

an Inspector appointed by the Welsh Ministers

Date: 1 May 2014

Appeal Ref: APP/A6835/A/13/2195313

**Site address: Land adjoining Siglen Ucha, Ruthin Road, Gwernymynydd, Mold
CH7 5LG**

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 Wainhomes (NW) Ltd. against the decision of Flintshire County Council.
- The application Ref 048850, dated 15 July 2011, was refused by notice dated 22 February 2013.
- The development proposed is the erection of 18 No dwellings with associated roads, sewers, open space etc.

Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Wainhomes (NW) Ltd. against Flintshire County Council. This application is the subject of a separate Decision.

Procedural matter

3. At the Hearing it became clear that not all of the representations sent to the Planning Inspectorate in response to the Council's notification of appeal were included in the 'Third Party Representations' bundle on the duplicate file in my possession. However, those from Mr Humphreys and Mr Williams are posted on the planning portal as are those from T & M Hughes, Mr & Mrs Transmundi and Mrs K Makay which are also missing from the duplicate file. Mr Humphreys also submitted a further copy of his letter. I do not consider that anyone has been unduly prejudiced as I have now had an opportunity to read these representations which do not raise additional issues to those discussed at the Hearing.

Main Issues

4. I consider the main issues in this case to be:
 - (a) The effect of the proposal on the character and appearance of the surrounding area; and,

- (b) The effect of the proposal on the living conditions of future neighbouring residential occupiers with particular regard to visual impact.

Reasons

Character and appearance

5. The site is located within the settlement boundary of Gwernymynydd and the principle of residential development on it is not in dispute. It lies adjacent to the A494, which falls from east to west, and incorporates a valley form running parallel to the main road. A particular characteristic of the village is that dwellings generally reflect local topography by stepping down the contours with the development at Hafod-y-Wern, further to the east, for example also managing to respect the original valley form.
6. Any form of residential development on the appeal site would inevitably alter its character. Given its sloping nature, which is quite steep in places, some infilling and re-profiling would be reasonably necessary to facilitate development, but that should be done in a manner which is sensitive to the topography of the site and surrounding area. The proposed land raising supported by a crib lock retaining wall of a maximum height of around 4 metres at the eastern end would, in my view, be excessive and result in a contrived appearance with some of the dwellings appearing unduly elevated and obtrusive when seen from Ruthin Road. This would result in significant harm to the character and appearance of the settlement.
7. *Flintshire Unitary Development Plan* (UDP) policy D1 amongst other matters requires all development to relate well to local topography. For the above reasons, the appeal proposal does not do so and it conflicts with this policy as well as policies GEN1 (not harmonising with the site and surroundings) and D2 (not protecting the character and amenity of the locality or adding to the quality and distinctiveness of the local area).
8. The appellants suggest that the existing boundary hedge and planting of the crib wall would soften the visual impact of the proposal. Whilst the hedge would provide some filtering of views, this would not be very effective during the winter months. Furthermore, no assessment of the long term impact of the development on the hedge has been carried out. Planting the crib wall would not disguise the substantial change in levels over such a short distance.
9. The appellants also draw comparisons between the appeal proposal and two other developments which include retaining structures. The first being at Minffordd Fields, Gwernymynydd on the opposite side of Ruthin Road. The Council considers that the high retaining wall at Minffordd Fields does not contribute positively to the overall character and appearance of the area and I agree. The second being a site at Greenfield granted planning permission at the same time as the appeal proposal was refused. Whilst consistency is an important factor in making planning decisions it is also an accepted planning principle that planning applications, and appeals, are considered on their individual merits which is what I have done in this case.

Residential living conditions

10. The site immediately to the east benefits from outline planning permission for the erection of three dwellings (Ref: 048496). All matters are reserved for subsequent approval and an appropriate orientation could ensure that the principal outlook would not be towards the appeal site. Nonetheless, the scale of the site and the need to maintain access to Fernleigh and Rockland constrain the layout and curtilages would probably need to be located adjacent to the boundary with the appeal site. A 4m or

so maximum height retaining wall immediately adjacent to the other side of the hedge with some form of barrier on top and the gable end of the dwelling on plot 18 protruding above would have a dominant and oppressive visual appearance when viewed from these curtilages.

11. This would be harmful to the living conditions of future occupiers and conflicts with UDP policy GEN1 which requires that development should not impair the development of adjoining land.
12. Fernleigh would be further away and Rockland would be sited at a higher level such that there would be no material harm to the living conditions of the occupiers of these dwellings.
13. The appellants suggest that the levels of the adjoining site may need to be raised to address possible contamination but that is only supposition and doing so would leave the boundary hedge in an unnatural depression. Building three storey townhouses on the adjoining site might not reflect the existing, albeit varied, character of dwellings in Gwernymynydd. The appellants' note that the dwellings proposed on the neighbouring site could be overlooked from Rockland, but the concern in this case relates predominantly to the visual impact of the appeal proposal, which incorporates a high retaining structure close to the boundary, not potential overlooking.

Other matters

14. Insofar as surface water drainage is concerned, the Environment Agency Wales (now Natural Resources Wales) require the discharge rate to be limited to the Greenfield run-off rate. This could be achieved through a Sustainable Drainage Scheme secured by an appropriate condition and would be sufficient to address any downstream flooding concerns. Turning to foul drainage, Dŵr Cymru/Welsh Water indicated that improvements to the existing Waste Water Treatment Works are planned for completion by 1 April 2014. Whilst, it would appear that these works will not be completed by that date, they have started and this matter could also be appropriately dealt with by condition. Subject to not connecting surface water, Dŵr Cymru/Welsh Water raises no concerns relating to the capacity of the public sewer.
15. Whilst I note the concern as to highway safety, the Welsh Government, as trunk road authority, is content with the proposals. I have no reason to believe that its conclusion would be any different had it been aware of the subsequent planning permission to infill a local quarry which will increase HGV movements along Ruthin Road.
16. Concerns relating to the structural integrity of the retaining wall are understandable, but it would appear that its design would be subject to The Building Regulations. The planning system should not normally be used to secure objectives achievable under other legislation. The design would also be subject to further scrutiny through the NHBC's certification scheme. The site contains a capped mine shaft and the appellants believe that the capping was done in an appropriate manner. Nevertheless, the Ground Investigation Report identifies a need for further investigations to determine the method of capping adopted and that would provide an additional safeguard. Any possible contamination resulting from the area's history of lead mining could be adequately addressed by the Council's suggested condition.
17. The appellants have submitted a Unilateral Undertaking providing for a financial contribution in lieu of public open space. I am satisfied that this is required to comply with UDP policy SR5 and the Council's Local Planning Guidance Note 13. It is

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. As a result, it satisfies the Community Infrastructure Regulations and can be given weight accordingly.

Overall conclusion

18. For the reasons given above in relation to both main issues I conclude that the appeal should be dismissed.

E Jones

Inspector

Richborough Estates

APPEARANCES

FOR THE APPELLANTS:

Mr M Gilbert BSc(Hons) MRTPI The Planning Consultancy

FOR THE LOCAL PLANNING AUTHORITY:

Mr D Fitzsimon Fitzsimon Planning & Development

INTERESTED PERSONS:

Cllr N M Mathews	Ward member
Cllr K Hughes	Gwernymynydd Community Council
Mr G L Humphreys	Local resident
Mr C & Mrs G Wilcock	Local residents
Mr P Roberts	Local resident
Mr P & Mrs S Smith	Local residents
Mr J Williams	Local resident
Mr T J Rosedale	Local resident
Mr E Cocker	Local resident
Mr V Sant	Local resident

DOCUMENTS

- 1 Council's notification of Hearing
- 2 Mr Gilbert's appendices (coloured version)
- 3 Unilateral Undertaking
- 4 Appellants' Costs Application
- 5 BBC News article re. lead poisoning of cattle submitted by Mr Williams
- 6 Mr Wilcock's annotated 'Proposed Floor Levels & Sections'
- 7 Mrs Wilcock's letter of 29 September 2013
- 8 Mr Humphreys' letter of 9 September 2013