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## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 24/05/19

gan **A L McCooey BA MSc MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 27.06.2019

## Appeal Decision

Site visit made on 24/05/19

by **A L McCooey BA MSc MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 27.06.2019

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**Appeal Ref: APP/A6835/A/19/3224584**

**Site address: Land adjacent to Withen Cottage and Cheshire Lane, Alltami Road, Buckley, 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 refusal to grant planning permission.
  - The appeal is made by Quatrefoil Homes Ltd against the decision of Flintshire County Council.
  - The application Ref 058229, dated 13 March 2018, was refused by notice dated 29 November 2018.
  - The development proposed is the erection of 14 dwellings and associated works.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of 14 dwellings and associated works at land adjacent to Withen Cottage and Cheshire Lane, Alltami Road, Buckley, Flintshire in accordance with the terms of the application, Ref 058229, dated 13 March 2018, and the plans submitted with it, subject to the conditions set out in the Annex below.

### Main Issue

2. The main issue is the impact of the proposal on highway safety and on the users of a public right of way (FP 22).

### Background and Procedural Matters

3. The address has been misspelt on the appeal form in that Withen was written as Within. I have used the address from the application form, which is correct. The application was refused by the Planning Committee after a site visit. This decision was contrary to the recommendation of professional officers. The Council's appeal statement was prepared by Councillors on behalf of the Committee. Local residents objected to the submission of two new plans by the appellant at appeal stage. These plans illustrate two potential options for a pedestrian crossing for FP 22 in response to the reason for refusal. The plans do not represent an amendment to the scheme but are illustrative details to demonstrate how an acceptable crossing could be provided. This matter is the subject of evidence and could be addressed in a planning condition. The plans were therefore accepted.
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## Reasons

4. The site is within the existing built-up area of Buckley. It is bounded by dwellings and a sports facility associated with the adjacent Elfed High school. Access is from Alltami Road via Cheshire Lane and then an existing residential development called Holmleigh Close. The proposed access road runs from a turning head within Holmleigh Close and crosses a public footpath (FP 22) leading to the school from Alltami Road.
5. The site is in a sustainable location within a Category A settlement as defined in the Flintshire Unitary Development Plan (the UDP). The general and strategic policies of the UDP favour such development as described in the Committee report. As such there was no objection to the principle of the development in the Local Planning Authority's evidence. The policies referred to in the reason for refusal are related to highway safety and comprise Policies AC2 – Pedestrian Provision and Public Rights of Way, AC13 (a) – Access and Traffic Impact and AC14 – Traffic Calming. The Council also referred to Supplementary Planning Guidance. The most relevant to this decision is Local Guidance Note 13 Public Open Space provision (LGN13).

### *Safety of the Footpath Crossing*

6. I note that the Council's Highway and public rights of way officers had no objection to the proposed development; subject to the submission of details of the crossing itself. The PROW Officer was content with the proposed temporary diversion route for FP 22. There will also be a benefit in that the proposal includes proper surfacing and lighting of the footpath from its junction with Alltami Road to the school pitch. Planning committee members visited the site prior to refusing planning permission. The concerns raised by the Council were that the proposed access road in crossing FP 22 would adversely affect the users of the footpath. Members were concerned about the volume of traffic crossing FP22, which is a safe route to school, and claimed that the consequent danger could not be mitigated. The proposal is for a modest number of dwellings and traffic volumes would be low. The potential for pedestrian and vehicle conflict would also be low even at the peak hour, given the traffic figures in the appellant's evidence.<sup>1</sup> I consider that a properly designed scheme such as those shown in the appellant's submitted options would provide a safe crossing of FP 22. These matters can all be secured by conditions.
7. Members were also concerned about the effect of the proposed crossing on the use of a private drive nearby. The swept path analysis demonstrates that it would be possible to enter and exit the nearby driveway safely. It is common for vehicles to have to reverse onto estate roads with traffic calming features. The highways officers did not raise any safety issues in this regard. Contrary to the concerns raised, there is no convincing evidence of any effect on highway safety or the safe use of FP22 as a result of these manoeuvres. There was no convincing evidence of how the proposed crossing could affect the privacy of existing dwellings. It is considered that there would be little effect on privacy because there would be few pedestrians waiting to use the crossing given the predicted traffic flows.

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<sup>1</sup> The figures show an additional two-way vehicle movement every 7 minutes in the AM peak hour and every 9 minutes in the PM peak hour

*Effect on Ecology and Open Space*

8. The site is close to the Buckley Newt Sites Special Area of Conservation (SAC) and is directly adjacent to the Buckley Claypits and Commons Site of Special Scientific Interest (SSSI). The SAC supports a nationally important population of great crested newts. The appeal site has the potential to provide foraging and shelter for amphibians. The application was accompanied by an Ecological Assessment report, which recommended mitigation and avoidance measures. The report also recommended that a protected species licence be obtained prior to any development. Natural Resources Wales (NRW) advise that the proposal would not affect maintenance of the favourable conservation status of the local population of GCN within the SAC and SSSI. Conditions requiring details and implementation of reasonable avoidance measures and mitigation would be necessary. The payment of a commuted sum for mitigating the indirect effects of the development on the SAC is also required. The potential presence of invasive species means that a condition to control such species is necessary. NRW require an Ecological Compliance Audit to demonstrate that the measures have been implemented properly. The ecological report advised of the potential presence of Badgers on the site and the Council requires a construction method statement to be submitted for approval as a result. I agree that this can be addressed by a suitable condition. The submitted tree report indicates that the majority of the trees around the site boundary are to be retained. This would also safeguard potential bat roosts. Conditions for the protection of the retained trees are also therefore necessary.

*Planning Obligations*

9. Policy SR5 of the UDP requires the provision of public open space (POS) as part of any development. LGN13<sup>2</sup> states that for developments of up to 24 dwellings, the developer will be expected to contribute towards the provision or enhancement of POS in the area in lieu of on-site POS. The Council has identified a commuted sum of £1,100 per dwelling and POS at the nearby skatepark as an appropriate location for enhancement. The appellant disputes the need for this payment arguing that the Council has not indicated how the money would actually be spent. The appellant also argues that residents of the proposed dwellings may not be interested in skateboarding. LGN13 provides some indications of to what purpose monies would be used. It also states that unused money would be returned to the developer within a specified period. I do not consider that the type of open space to be enhanced is a valid or relevant ground of challenge under the guidance. In any event, the skate park is within a larger area of POS.
10. It was intended that the appellant would enter into an agreement under section 111 of the Local Government Act 1972 not to undertake the development before entering into a s.106 obligation or Unilateral Undertaking (UU) to provide the necessary payments towards the provision/enhancement of open space and to mitigate indirect effects on the SAC and protected species. The Council has no authority to enter into a section 111 agreement and the appellant has no interest in the land and so cannot enter into a UU<sup>3</sup>. In these complex circumstances the Council suggested the use of a negatively worded condition to prevent development commencing until an appropriate s.106 agreement is in place requiring the payment of commuted sums. Reference was made to English Government advice in the Planning Practice Guidance (PPG). As there is no

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<sup>2</sup> Local Guidance Note 13 Open Space Requirements (adopted 2006)

<sup>3</sup> S106 (1) only allows for those with an interest in the land to enter into a planning obligation

equivalent guidance in Wales and the relevant legislation is common to both jurisdictions, I accept that this guidance is relevant. The PPG states that negatively worded conditions requiring a planning obligation should only be used in exceptional circumstances. It adds that such a condition may be appropriate in more complex cases. This is such a case and I conclude that there would be exceptional circumstances justifying the use of a negative condition. The Council suggested the use of such a condition and the appellant has agreed that this is the only way to overcome these difficulties and secure the required contributions.

11. The proposed UU is necessary, reasonable in scale and kind and directly related to the development. There was no evidence of any issues with the number of previous payments. On this basis I am satisfied that a UU would meet national policy as set out in Circular 13/97<sup>4</sup> and the 3 statutory tests set out in Regulation 122 of The Community Infrastructure Levy Regulations 2010. The appellant has submitted a draft UU, which sets out the method for payment of the required contributions. It is not appropriate for the UU to be made at this time for the reasons set out above. I am satisfied that a negative condition would address the submission of a UU, and I afford this matter significant weight in my decision.

#### *Other Matters*

12. The layout and design of the proposed development is acceptable. I have considered the Council's report on the effect on living conditions and I agree that there would be no significant adverse effects subject to a condition restricting the formation of windows in the elevation of a proposed dwelling close to the boundary with an existing property.
13. The Council refers to rigorous checks of the proposed highway layout and of the existing highway layout at Holmleigh Close by the highway authority. The Council after completing these checks was satisfied with the proposal and the use of Holmleigh Close to access the site. The Local Planning Authority confirm that it is of an appropriate standard to accommodate the proposal and is intended to be adopted. The claim that the proposed access would encroach on third party land was investigated and found not to be the case. This is a private matter in any event. Any future use of Holmleigh Close by school traffic would be a matter for the Council. There is no evidence that this would be a particular problem.
14. There is a history of mining in the area and the appellant's mining report recommended conditions requiring details of foundations of proposed dwellings that would be sited close to a treated mine shaft. The possibility of contamination associated with mining means that conditions requiring investigation and remediation (as necessary) should be attached. The report records a low risk, and this influences the choice of conditions to be used. NRW and the Council highlight potential issues with surface water drainage on the site and the consequent need for the approval of drainage details. Whilst the new mandatory requirement for sustainable drainage does not apply to this proposal<sup>5</sup>, the relevant guidance states that it would be advantageous for both developers and the Council (as a SuDS Approval Body) to consider voluntary agreements in all cases. As there is no statutory approval process for this development then a condition needs to be attached requiring the approval of drainage details.

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<sup>4</sup> Circular 13/97 Planning Obligations

<sup>5</sup> Because the application was submitted prior to 7 January 2019.

15. I am satisfied that local residents have had an opportunity to submit representations on the appeal. I have also taken account of the representations made at the application stage. Objections raised issues regarding archaeology, flooding, affordable housing, education and other services in the area, as well as the loss of the site to housing. I have considered the relevant sections of the Committee report and I agree that there was no convincing evidence to justify the refusal of planning permission on the basis of any of those matters.

#### Conditions

16. The reasoning behind many of the proposed conditions has been set out earlier in this decision. I have considered the conditions suggested by the Local Planning Authority and broadly adopted them. It was necessary to amend the wording to reflect advice in Circular WGC 016/2014 on the use of planning conditions. There were several objections to the standard and use of Holmleigh Close, which is the new estate road providing access to the site. Given the probable intended use of this road as the main access for the construction period, it is necessary for a construction method statement to be submitted for the approval of the Local Planning Authority. For similar reasons it is necessary for full details of the proposed estate road and safe parking to be provided.

#### Conclusion

17. The evidence in this case leads me to conclude that the proposed crossing of FP22 can be achieved in a safe manner. The proposal would not cause harm to users of the footpath, including school children, or users of the existing and proposed highways. The proposal would therefore comply Policies AC2, AC13 (a) and AC14 of the UDP. I note that the Council's professional highways officers concluded that there was no highway safety reason to refuse planning permission based on the evidence. I have considered the other matters raised and conclude that they do not represent sufficient reason to refuse planning permission. They can be addressed by suitable conditions in some cases. The proposed development would comply with the UDP. Having considered all the matters raised including the content of the Committee reports, I conclude that the appeal should be allowed.
18. 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 (the WBFG Act). 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. In line with the WBFG Act, the promotion of sustainable development is an important guiding principle of government policy. The proposals would be a sustainable form of development within the settlement limit of a category A settlement.

*A L McCooey*

**Inspector**

## Annex – Conditions and Reasons

- 1) The development shall begin not later than five years from the date of this decision.
- 2) The development shall be carried out in accordance with the following approved plans and documents:
  - 1411 Application Site Plan
  - A901 Site Layout Plan
  - A101 Beta Plus House Type – floor plans and elevations
  - A102 Beta House Type – floor plans and elevations
  - A104 Delta BG House Type – floor plans and elevations
  - A105 Beta Plus Brick House Type – floor plans and elevations
  - A106 Beta Brick House Type – floor plans and elevations.
- 3) Prior to the construction of the dwellings hereby approved details and/or samples of the materials to be used in the construction of the external surfaces of the dwellings 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) 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 development.
- 5) 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 include details of the contact names and numbers of personnel responsible for adherence and monitoring the plan and any site related enquiries (including out of hours times). The statement shall provide details of:
  - i) parking of vehicles of site operatives and visitors;
  - ii) access and egress route with appropriate traffic monitoring in order to control traffic movements;
  - iii) loading and unloading of plant and materials;
  - iv) storage of plant and materials used in constructing the development;
  - v) working hours and days of the week and the anticipated duration of the works;
  - vi) proposed signage types and locations (including site notices informing construction workers and other site operatives of agreed working hours);
  - vii) timing of deliveries and main construction traffic arrivals and departures to avoid periods such as school arrival/leaving times;
  - viii) the position of any temporary gates
  - ix) wheel washing facilities and other measures to avoid depositing mud, dust or other debris onto the highway by traffic movements;
  - x) measures to control the emission of dust and dirt during demolition and construction; and
  - xi) a scheme for recycling/disposing of waste resulting from demolition and construction works.

- 6) No development shall commence until details of existing ground levels and proposed finished ground and floor levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 7) 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 be implemented in accordance with the approved details prior to the occupation of any dwelling and retained in perpetuity.
- 8) No development shall take place until a site investigation of the nature and extent of contamination 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 to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins. If during the course of development any contamination is found that has not been identified in the site investigation, 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 before the development is occupied.
- 9) No development or site clearance shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees (including spread and species) and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 10) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; 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.
- 11) All the trees shown on the landscaping plan submitted (under condition 9 above) as "to be retained" and any trees whose canopies overhang the site, shall be protected by strong fencing, the location and type to be previously approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.

- 12) No development or site clearance shall take place until a planning obligation to secure appropriate contributions towards the enhancement of public open space in the area and a commuted sum for mitigating the indirect effects of the development on the Buckley Newt Sites Special Area of Conservation has been submitted to and approved in writing by the local planning authority, and subsequently properly completed.
- 13) Notwithstanding the details hereby approved, a Footpath 22 improvement scheme which shall include staggered barriers and a temporary footpath solution for the duration of the construction period, shall be submitted to the Local Planning Authority for approval prior to the commencement of development. Following written approval, the scheme shall be implemented prior to the first occupation of any dwelling.
- 14) Notwithstanding the details hereby approved, the fronts of garages shall be set back a minimum of 5.5m from the back edge of the Highway.
- 15) Notwithstanding the details hereby approved, prior to the commencement of development the foundation design of the properties near the treated mine shaft on the site (as identified on the mining report) shall be submitted and approved prior to their implementation, and thereafter the approved details shall be implemented in full.
- 16) No development or site clearance shall take place until full details of the proposed reasonable avoidance measures and ecological mitigation to safeguard the great crested newt population (and its terrestrial habitat) and timing of their implementation have been submitted and agreed in writing by the Local Planning Authority. These details shall accord with the recommendations of the submitted ecological report. The approved details shall be implemented in full.
- 17) No development shall commence until a biosecurity risk assessment and a scheme for the undertaking of an Ecological Compliance Audit has been submitted to and agreed in writing by the Local Planning Authority. Following this written approval, the development shall be carried out in accordance with the approved details
- 18) No development shall commence until a Construction method statement with regards to vegetation clearance and protected species ecological avoidance measures has been submitted to and approved in writing by the Local Planning Authority. Following this written approval, the development shall be carried out in accordance with the approved details.
- 19) Notwithstanding the details hereby approved and the provisions of schedule 2, part 1, class A of the Town and Country Planning (General Permitted Development) Order 1995 (as amended for Wales) (or any order revoking and re-enacting that order with or without modification), no new openings are to be created in the western elevation of the dwelling located on plot 6, as identified on the approved plans.



## Reasons

1. To comply with the requirements of Sections 91 to 93 of the Town and Country Planning Act 1990.
2. To ensure that the development is carried out in accordance with the approved details.
3. To ensure that the proposed materials are in keeping with the locality and ensure compliance with Policy GEN1 and D2 in the Adopted Flintshire Unitary Development Plan.
4. To ensure that the estate road system is constructed to a standard suitable for adoption, and in accordance with policy AC13 of the Flintshire Unitary Development Plan.
5. To ensure the formation of a safe and satisfactory means of access to the site in the interests of maintaining highway safety and the free and safe movement of pedestrians and traffic on the adjoining highway and to comply with Policy GEN1 of the Flintshire Unitary Development Plan.
6. To ensure that the development takes place in an acceptable manner and in accordance with policy GEN1 of the Flintshire Unitary Development Plan.
7. To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment.
8. In order to ensure that the development is safeguarded against the risks from possible contamination, in accordance with Policy EWP14 of the Flintshire Unitary Development Plan.
9. To ensure that adequate details are submitted, the site is properly landscaped with existing natural features retained and to comply with Policy GEN1 and D3 in the Adopted Flintshire Unitary Development Plan.
10. To ensure that the approved landscaping scheme is implemented and to comply with Policy GEN1 and D3 in the Adopted Flintshire Unitary Development Plan.
11. To safeguard existing natural landscape features and ensure compliance with Policy GEN1 and D3 in the Adopted Flintshire Unitary Development Plan.
12. To ensure a satisfactory level of public open space provision to serve the development in compliance with Policy GEN1 of the Flintshire Unitary Development Plan and to ensure a satisfactory level of mitigation is provided to offset any potential harm onto the Special Area of Conservation from the development in compliance with Policy GEN1 and WB2 of the Flintshire Unitary Development Plan.
13. To ensure that the proposed road provides for a safe crossing of Footpath 22, in accordance with policy AC13 of the Flintshire Unitary Development Plan.
14. To ensure sufficient manoeuvring and parking space and in accordance with policy AC13 of the Flintshire Unitary Development Plan.
15. In the interest of safe and stable development and in accordance with policy EWP15 of the Flintshire Unitary Development Plan.
16. To protect the Great Crested Newt and its habitat on site in accordance with policy WB1 of the Flintshire Unitary Development plan.
17. To control the spread of invasive non-native species and to evidence compliance with the implementation of all ecological avoidance measures, mitigation and compensation works in compliance with policies GEN1 and EWP14 of the Flintshire Unitary Development Plan.
18. In the interests of species protection and in accordance with policy WB1 of the Flintshire Unitary Development plan.
19. To protect the living conditions of neighbouring residents in accordance with policy GEN1 of the Flintshire Unitary Development Plan.