



Penderfyniad ar yr Apêl

Ymchwiliad a agorwyd ar 17/03/15
Ymweliad â safle a wnaed ar 19/03/15

gan Clive Nield BSc(Hon), CEng,
MICE, MCIWEM, C.WEM

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 23 Ebrill 2015

Appeal Decision

Inquiry opened on 17/03/15
Site visit made on 19/03/15

by Clive Nield BSc(Hon), CEng, MICE,
MCIWEM, C.WEM

an Inspector appointed by the Welsh Ministers

Date: 23 April 2015

Appeal Ref: APP/A6835/A/14/2224724

Site address: Land at Llys Ben, Northop Hall

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 Morris Homes (North) Ltd against the decision of Flintshire County Council.
- The application Ref 050613, dated 15 March 2013, was refused by notice dated 14 March 2014.
- The development proposed is 36 affordable dwellings, with associated parking, access, habitat creation and public open space.
- The inquiry sat for 3 days on 17, 18 & 20 March 2015.

Decision

1. The appeal is dismissed.

Background Matters

2. The appeal site is situated in the open countryside adjacent to, but outside, the settlement boundary. It lies within the Connahs Quay-Northop Hall-Ewloe-Shotton Green Barrier, which serves the same purposes (described in national policy) as land designated as Green Belt or Green Wedge but is not afforded the same degree of permanence as Green Belt land.
3. The site comprises some 1.88 hectares of unmanaged scrubland which slopes gently from south to north and is crossed by 3 unmade public footpaths and several other informal paths. It is bounded by residential development on 2 sides (south and east), by the Northop Hall Community Pavilion, car park and playing pitches to the west, and by open agricultural fields to the north. A narrow belt of woodland and a ditch run along the northern boundary.
4. The Deeside and Buckley Newt Sites Special Area of Conservation (SAC) comprises a number of areas of land in this part of the County, and the nearest is situated alongside the disused railway line just over 500 metres to the north east of the appeal site. The SAC is designated for its great crested newts and oak woodland. A section of the disused railway line nearer to the site (150 metres) is also part of a Site of Special Scientific Interest.

5. The proposed scheme is for 36 affordable dwellings, comprising a mixture of intermediate rented and shared equity housing: 12 two bedroom, 6 three bedroom and 18 four bedroom homes. Some 60% of the site would be developed for housing, gardens and access, 13% for an open space in the middle of the site, and 27% would be retained for conservation and natural habitat purposes (including the corridor along the northern boundary of the site). The existing public footpaths would also be safeguarded and their surfaces improved.
6. The Appellant has submitted a Section 106 Unilateral Undertaking, which makes provision for controls over occupation of the affordable houses (to ensure they remain affordable houses in perpetuity), for a long-term Landscape and Habitat Protection, Enhancement and Management Plan, and for financial contributions towards the provision of public open space, secondary education facilities and improvements to the SAC.

Main Issues

7. The main issues in this case are: whether or not the proposal amounts to inappropriate development in the green barrier; its effects on the openness and purposes of the green barrier; its effects on the character and appearance of the area; its effects on local ecology, particularly on the key features (great crested newts) of the nearby Special Area of Conservation (SAC); and the benefits of the scheme in regard to the provision of affordable housing and other matters.

Reasons

Inappropriate Development or not?

8. The starting point for consideration of the proposal is its appropriateness for location within the green barrier, as Planning Policy Wales says that *"Inappropriate development should not be granted planning permission except in very exceptional circumstances where other considerations clearly outweigh the harm which such development would do to the Green Belt or green wedge"* (green barrier in this case). It then goes on to say that the construction of new buildings is inappropriate development unless it is for certain specific purposes, which include *"affordable housing for local needs under development plan policies"*. The adopted Unitary Development Plan policies are consistent with this.
9. UDP Policy GEN4, Green Barriers, says that development within green barriers will only be permitted where it comprises certain specified types of development, and one of these is *"limited housing infill development to meet proven local housing need or affordable housing exception schemes"*. Supporting paragraph 4.16 explains that the latter refers to affordable housing exception schemes on the edge of existing settlements (policy HSG11), provided the development would not unacceptably harm the openness of the green barrier. Policy HSG11, Affordable Housing in Rural Areas, sets a number of criteria to be met: there should be evidence of genuine local need for such provision; there are no suitable alternative sites within settlement boundaries to meet the need; schemes should abut settlement boundaries and form logical extensions to settlements; the scale, design and layout should be sympathetic to its location and the scale of need; and the houses should remain affordable in perpetuity.
10. The Council takes issue with several of these but, so far as appropriateness is concerned, the key issues are the local need for the types of houses proposed and the availability of alternative sites within settlement boundaries to meet the need for affordable housing. I will consider each of these in turn.

11. Technical Advice Note 2, Planning and Affordable Housing (TAN2), defines affordable housing as *"housing provided to those whose needs are not met by the open market"* and says affordable housing should *"meet the needs of eligible households, including availability at low enough cost for them to afford, determined with regard to local incomes and local house prices"*. The Council argues that the type of affordable housing proposed does not meet this requirement as most of it would not be affordable to the local people identified as being in need.
12. It is common ground that there is a need for affordable housing in the area. The Appellant has carried out an assessment based on a survey in 2011, and the Council accepts that demonstrates a need for 16 affordable homes per year in Northop Hall. However, it also shows that some 64% of identified need is for social rented housing and a further 10% is for intermediate rent at 60% of the market rate. Only 10% required some form of shared ownership housing. However, the proposed development would comprise 28 shared equity units (at up to 70% open market value) and 8 intermediate rented units (at up to 80% of open market rental), which would meet the needs of only a small proportion of those people in need of affordable housing in the area.
13. The Appellant argues that detailed analysis of the data collected in the survey shows the proposed houses would be sufficiently attractive and affordable for many of those in need. However, the Council disputes that conclusion, and I am persuaded by the Council's arguments. When account is taken of prevailing levels of income in the area compared with the expected prices of the shared equity dwellings, it is clear that very few of the people in need of affordable housing would be able to afford the houses in the proposed scheme, even the smallest 2-bedroom houses. Lower quartile income households would not be able to afford any of the shared equity properties (on the basis of standard income multipliers), and even average income households would only be able to afford the 2-bedroom units.
14. The Appellant's assessment is understood to have assumed that deposits of some 25% would be provided from savings or existing equity, thus making the mortgages smaller and more affordable. However, the survey also indicated that most of the households in question had no or very little by way of savings or equity, and I consider the Appellant's assessment to be quite misleading. Whilst some of the proposed properties would undoubtedly make a useful contribution towards meeting the need for affordable housing in the area, my conclusion is that most of them would not. In particular, I consider it likely it would be very difficult to find eligible people able to afford the larger 4-bedroom shared equity houses, which make up some 50% of the development.
15. My conclusion is that most of the proposed scheme would not deliver dwellings that would be affordable to more than just a few of the local people in need of affordable housing. Most of the local need is for social rented housing, and the proposed scheme would do nothing towards that need. Whilst funding for new social rented housing may not be readily available in the current economic climate, it does not justify the promotion of schemes for intermediate affordable housing in areas where they would not meet the local need. I conclude that there is insufficient demonstrated need for the types of houses proposed in the appeal scheme.
16. I now turn to the second matter at issue, whether or not there are alternative sites within settlement boundaries capable of meeting the need for affordable housing in the area. The Council draws my attention to 2 such sites: Cae Eithin in Northop Hall; and Ffordd Newydd in Connahs Quay. The former includes provision for 7 affordable

units which are to be gifted to the Council and are likely to be used for social rented housing, where most of the need for affordable housing exists. The Connahs Quay development is a much larger development and includes provision for 41 affordable units. Both developments are within the settlement boundaries and, although one is not in Northop Hall itself, it lies on the closest edge of Connahs Quay less than one kilometre from the current appeal site.

17. The Appellant has drawn attention to the principle that rural exception sites are aimed at meeting demand in the community where it exists so that it supports the rural community and is sustainable in that respect. Thus it argues that consideration should only be given to possible alternative sites in Northop Hall itself. Whilst that principle is undoubtedly correct, Northop Hall is not in an isolated location and is situated very close to Connahs Quay, the largest settlement in Flintshire. As such, I consider it eminently reasonable to take into account the affordable housing provisions on the Ffordd Newydd site. Thus, the Cae Eithin and Ffordd Newydd sites may reasonably be considered to be alternative sites capable of meeting the affordable housing need in Northop Hall.
18. The Appellant has also drawn my attention to the Council's current position in having provision for only some 4.1 years of housing land supply and to its inability to achieve its UDP aim of 30% affordable housing (which itself was short of its 38% identified need at the time). Thus the need for affordable housing is not being met over the County as a whole and the backlog is getting worse. However, even taking these factors into account, my conclusion is still that the proposed scheme would not match the identified need in Northop Hall and that alternative sites exist within settlement boundaries to meet local need. Thus the proposal conflicts with 2 of the criteria specified in Policy HSG11 and should not be permitted under that policy.
19. It also follows that it would not meet the requirements of Policy GEN4 and would amount to inappropriate development in the green barrier. Planning Policy Wales provides a presumption against inappropriate development in a green barrier and says that substantial weight should be attributed to any harmful impact on the green barrier and that planning permission should not be granted for inappropriate development except in very exceptional circumstances where other considerations clearly outweigh the harm to the green barrier. That is the balance to be considered in my overall conclusions below.

Effects on Openness and Purposes of Green Barrier

20. As to the attributes and purposes of the green barrier, the relevant factors in this case are its openness, the avoidance of coalescence between settlements and the safeguarding of the countryside from encroachment. Coalescence and encroachment are 2 additional criteria specified in UDP Policy GEN4, even for development not considered to be inappropriate.
21. It is vitally important to maintain the narrow green gap between Northop Hall and Connahs Quay in order to avoid coalescence of the 2 settlements. However, the appeal site is remote from that gap, and I do not consider the proposed development would significantly affect the gap or be detrimental to the aim of avoiding coalescence between the settlements. However, it would encroach into the countryside outside the settlement boundary and be detrimental to that green barrier purpose. It would also harm the openness of this part of the green barrier, which is its main attribute.

22. It is argued that it is only the openness of the appeal site itself that would be affected. However, the site is part of the green barrier and contributes towards the openness of the green barrier as a whole. Although its contribution may be quite small, a similar argument could be made for almost any small area of land on the edge of settlements, and the cumulative effect of numerous such sites eroding the openness of the green barrier would be substantial and unacceptably harmful. Thus, although the loss of openness and the encroachment into the countryside would only be quite small in this case, it warrants substantial weight (as directed by Planning Policy Wales in respect of any harmful impact on the green barrier).

Effects on Character and Appearance of Area

23. In addition to being part of the green barrier the site is also part of the open countryside, and its development would affect its character and appearance. At present the site is unmanaged scrubland crossed by several public footpaths and other informal paths. Its character is as part of the countryside even though it is only bounded by open countryside on one side, and that character is appreciated by many local residents who walk their dogs along the paths and by local children for whom the site provides an opportunity for informal play in the countryside. Although the proposed development would retain the hedgerow boundaries and trees and would be enhanced by additional planting, that unmanaged rural character would be largely lost.
24. The Appellant has carried out a landscape and visual impact assessment, and its general conclusions are not in dispute. The magnitude of landscape change would be large for the site itself and medium for the wider landscape. The visual impact would also be variable but most marked from the adjoining residential properties. The Council takes no issue with the design of the scheme or its visual scale, and all of the public footpaths would be maintained and their surfaces improved. These would provide an improved facility for people walking from one place to another but their more formal character would be less attractive for walking dogs or for general play and leisure purposes.
25. For these reasons I conclude that the proposed scheme would be detrimental to the rural character and appearance of the area, including the amenity of nearby residents, and thus conflicts with the aims of UDP Policies GEN1, GEN3 and L1. However, I attribute only modest weight to this conflict as the partially enclosed nature of the site reduces its connection to the wider open countryside and limits its impact on the wider character and appearance of the area.

Effects on Ecology, particularly Great Crested Newts

26. The other main issue in dispute is the effect on ecology and particularly the great crested newts for which the Deeside and Buckley Newt Sites SAC was designated. It is common ground that the appeal site is within range of ponds known to be frequented by newts and that it currently provides much suitable terrestrial habitat. Even though survey work has not actually confirmed their presence on the site, it is also common ground that great crested newts are likely to be present on the appeal site.
27. The proposed development would effectively use some 60% of the site area and, although 40% would be retained as natural habitat or open space, it would be likely to be subject to more disturbance than at present and so become a less attractive habitat for newts. It would be proposed to provide a pond near the northern boundary, which might attract newts, but it is not relied on by the Appellant as a

significant mitigation measure in respect of great crested newts. Notwithstanding the Appellant's commitment to a long-term landscape and habitats management plan, I conclude that the proposed development would degrade the terrestrial habitat for newts.

28. However, its possible effect on the nearby SAC is of far greater importance. The Council's first reason for refusal was that the scheme would have a detrimental effect on the key features of the SAC, and it argues that much of the recreational use of the appeal site (particularly the walkers) would be likely to be displaced to walk in the SAC instead and that this would lead to increased disturbance of that natural environment to the detriment of the protected newt species.
29. The Appellant disputes this assessment and argues that there are other, nearer alternative routes for people to walk their dogs (if they were displaced from the appeal site) and that there is no reason to believe they would be likely to choose to walk through the SAC in future as it is further away and with houses and a road in between. On the other hand, Natural Resources Wales (NRW) advises that it considers the proposed scheme (when considered in combination with other plans or projects) would be likely to have a significant effect on the SAC and that before deciding to approve the proposal, an appropriate assessment under Regulation 61(1) of the Conservation of Habitats and Species Regulations 2010 (as amended) would need to be carried out.
30. I have considered that advice, as well as the various legal precedents submitted by the main parties, and, as the possibility of detrimental effects on the conservation objectives of the SAC cannot be confidently ruled out, I too consider that appropriate assessment would be required before approval could be granted for the scheme. However, in view of my overall conclusions below, I shall address the implications in a less formally structured manner.
31. NRW also provides advice on other ecological matters and raises concerns about the long-term management of the natural habitat on the site, the lack of provision of compensation land for the lost natural habitat and the adequacy of overall mitigation measures. The former has been addressed by the inclusion of a landscape and habitats management plan in the Section 106 Unilateral Undertaking, and NRW has suggested that a commuted financial sum could be paid to fund habitat works as an alternative to the physical provision of compensation land (particularly in respect of the SAC). The Council has followed this advice, and the Appellant has submitted no convincing argument that would lead me not to do the same. In fact, the Appellant has also followed this approach by making provision in the Section 106 Undertaking for the payment of the commuted sum of £9,000.
32. Evidence has been submitted to show that NRW suggested a sum of £30,000 would be appropriate but the Appellant later responded by suggesting £9,000, including an explanation of why that should be an appropriate financial contribution. In the absence of any reply from NRW, the Appellant believes that to have been tacitly accepted as providing adequate mitigation for any harm to the SAC.
33. There was no opportunity to question an NRW representative at the inquiry but the most recent correspondence from NRW post-dates the Appellant's offer and indicates that it still has reservations about possible effects on the SAC. However, it would appear that there is little between the parties and that, whilst the present offer may be inadequate, the difference is not great and the likely net adverse effect on the SAC may similarly be considered to be quite limited. Thus, although this conclusion would

not be sufficient to represent a formal appropriate assessment under the requirements of the Conservation of Habitats and Species Regulations 2010 (as amended), my conclusion is that this matter warrants only quite limited weight in the balance of matters in this case.

Benefits of Providing Affordable Housing

34. Finally, I consider the benefits of the proposed scheme. The Appellant argues that there are social, environmental and economic benefits. The claimed social benefits comprise: the provision of 36 affordable homes; support for local facilities and services as a result of the increase in population; a contribution towards the overall supply of housing, which is relevant given the Council's failure to maintain a 5 year supply of available housing land; and financial contributions towards the provision of secondary education and public open space. However, I consider these to carry quite limited weight.
35. I have concluded above that the types of affordable homes provided would not match the needs of the local community and would not provide homes affordable to more than just a few of those in need of affordable housing in the area. As for the other matters, whilst the increased population and financial contributions would provide the claimed benefits, they would merely amount to compensation for the additional pressures placed on local infrastructure and facilities by those additional local residents.
36. The main environmental benefits claimed comprise: the provision of formal and informal open space on the site; the provision of additional landscape planting; the protection and enhancement of part of the site as natural habitat and its long-term management; and provision for a contribution of £9,000 towards improvements and management of the SAC. Although the site is at present unmanaged and parts of it are of poor habitat quality, I consider the measures listed to be compensation for the natural environment that would be lost or damaged if the proposed development were to go ahead, and I do not agree that they provide a significant net benefit.
37. Finally, the claimed economic benefits comprise: the capital investment and temporary jobs involved in constructing the development, including the knock-on effects on local businesses; and the spending power of future occupants of the proposed dwellings. I accept that these would be potential benefits. However, I consider them to warrant only limited weight.

Overall Conclusion

38. I have concluded above that the proposed development would amount to inappropriate development in the green barrier and so substantial weight should be attributed to any harm to the green barrier. The proposal would be detrimental to the openness of the green barrier, which is its most important attribute, and would encroach into the countryside outside the settlement boundary, contrary to one of the purposes of the green barrier. In accordance with national policy, I attribute substantial weight to these matters. I have also concluded that the proposed scheme would be harmful to the rural character and appearance of the area to the detriment of the amenity of local residents but I only attribute modest weight to this.
39. I have concluded that, once mitigation measures are taken into account, the net effect on the nearby Special Area of Conservation and other ecological matters would probably be quite limited and, for the purpose of balancing the merits of the proposal, I attribute little weight to these effects.

40. On the positive side, the scheme would provide some benefits, though for the reasons explained above I attribute little weight to these, except the economic benefits. However, even if I were to attribute greater weight to all of the benefits they would still fall far short of amounting to very exceptional circumstances sufficient to clearly outweigh the harm to the green barrier due to inappropriateness, loss of openness and encroachment into the countryside and the modest harm to the character and appearance of the area. I conclude that, on balance, the proposal would be contrary to development plan and national policies.
41. Furthermore, even if I had reached the conclusion that the proposal would not be inappropriate development, I consider the harm to the green barrier and to the character and appearance of the area to be sufficient to outweigh the limited benefits of the scheme. I have also taken into account the Section 106 Unilateral Undertaking and the possibility of applying conditions to alleviate the effects of the development. However, they would not overcome the considerations that have led me to my main conclusions. On balance, the proposal would conflict with the aims of development plan and national policy.
42. I have taken into account all other matters raised, including sustainability arguments, but these do not change my conclusions. For the reasons given above I conclude that the appeal should be dismissed.


Inspector

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr John Hunter of Counsel instructed by Mr Matthew Georgiou, Solicitor on behalf of Flintshire County Council.

He called:

Mrs Amanda Davies, Ecologist, Flintshire County Council.
BSc(Hon)

Dr Michael Bullock, Managing Director, arc4 Limited, Specialist
BSc(Hon), PhD, Housing & Planning Research Consultancy.
MCIH, MMRS

Mr Glyn Jones, BA(Hon), Planning Development Manager, Flintshire CC.
MRTPI

FOR THE APPELLANT:

Mr Andrew Piatt, Solicitor Gateley LLP.

He called:

Mr Carl Taylor, BA(Hon), Director, TPM Landscape, Chartered Landscape
Dip La, CMLI Architects.

Mrs Victoria Burrows, Consultant, ERAP Ltd, Consultant Ecologists.
BSc(Hon), MSc,
CEnv, MCIEEM

Mr Simon Drummond-Hay, MRICS, ACIH Director, HDH Planning and Development Ltd.

Mr Frazer Sandwith, Associate Director, JLL (formerly Jones Lang
BA(Hon), Adv Dip LaSalle)
EP, MRTPI

INTERESTED PERSONS:

Mr John Lamb Community Councillor, Northop Hall Community Council.

Mrs Debbie Bryce Local resident.

Cllr Tony Sharps Local ward member, Flintshire CC.

Cllr Carolyn Thomas Flintshire CC.

Mr Graham Cook	Community Councillor, Northop Hall Community Council.
Ms Kerry James, BSc, MTP, MRTPI	Kerry James Planning, acting on behalf of a number of local residents.

DOCUMENTS SUBMITTED AT INQUIRY

- 1 Letter of Notification and records of persons notified.
- 2 List of appearances on behalf of LPA.
- 3 Revised List of Core Documents (CD1-CD79).
- 4.1-4.2 Core Documents CD73 (Core Management Plan for Deeside and Buckley Newt Sites Special Area of Conservation (SAC)) and CD76 (Great Crested Newts Mitigation Guidelines, English Nature 2001).
- 5 Final Version of Statement of Common Ground, 16 March 2015.
- 6 Section 106 Planning Obligation, dated 27 February 2015 (since superseded).
- 7 Opening Statement on behalf of Morris Homes (North) Ltd.
- 8 Opening Statement on behalf of Flintshire County Council.
- 9 Summary of Mr Glyn Jones' Statement of Evidence.
- 10.1-10.3 Rebuttal Statement of Evidence by Dr Michael Bullock, with 2 appended documents.
- 11.1-11.4 Summary Statements of Evidence for Appellant's 4 No. witnesses.
- 12.1-12.2 Mrs Bryce's Statement, with copy of FCC letter to Cllr Sharps re UDP Inspector's findings.
- 13 Cllr Sharps' Statement.
- 14 Ms Kerry James' Statement.
- 15 Email from Ellis (NRW) to Burrows dated 18 August 2014 (welcoming proposal for commuted sum re impacts on SAC), submitted by Appellant.
- 16 Briefing Note by Mr Drummond-Hay addressing questions raised by Dr Bullock re Tables 12 and 14 of Mr Drummond-Hay's Statement of Evidence.
- 17 Set of Draft Conditions suggested by LPA.

- 18 Revised Draft Section 106 Planning Obligation, dated 19 March 2015.
- 19 Section 106 Agreement for a Housing Development at Mansfield, Lixwm, Flintshire – November 2008, submitted by Appellant.
- 20 Extract from Local Housing Market Assessment Guide, submitted by LPA.
- 21.1-21.5 Closing Submission on behalf of LPA, accompanied by 4 No. Court Judgements (Redhill Aerodrome HC, Redhill Aerodrome CoA, Heath & Hampstead Society, and An Taisce).
- 22.1-22.2 Closing Submission on behalf of Appellant, accompanied by a Court Judgement (Waddenzee).
- 23 Final signed Section 106 Undertaking, submitted to agreed timetable after close of Inquiry, dated 24 March 2015.

PLANS

The application plans are those listed as various Core Documents: CD2-CD28; CD38-CD46; CD51-CD64; CD67-CD69; and CD72.

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