

## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 18/05/15

**gan Richard Duggan BSc (Hons)  
DipTP MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru**

**Dyddiad: 16/06/15**

## Appeal Decision

Site visit made on 18/05/15

**by Richard Duggan BSc (Hons) DipTP  
MRTPI**

**an Inspector appointed by the Welsh Ministers**

**Date: 16/06/15**

**Appeal Ref: APP/A6835/A/14/2226412**

**Site address: Cymau Lane, Abermorddu, Nr Wrexham LL12 9DH**

**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 Anwyl Construction Ltd against the decision of Flintshire County Council.
- The application Ref 051482, dated 11 November 2013, was refused by notice dated 5 September 2014.
- The development proposed is the erection of 35 No. class C3 dwellings including associated landscaping and formation of new access from Cymau Lane.

### Decision

1. The appeal is allowed and planning permission is granted for the erection of 35 No. class C3 dwellings including associated landscaping and formation of new access from Cymau Lane at Cymau Lane, Abermorddu, Nr Wrexham LL12 9DH in accordance with the terms of the application, Ref 051482, dated 11 November 2013 subject to the conditions set out in the schedule below.

### Main Issue

2. I consider the main issue in this case to be whether suitable financial provision has been made to offset the impacts of the proposed development on local education infrastructure.

### Reasons

3. The appeal relates to a development of 35 No. dwellings, on site play and open space to include play equipment, landscaping and associated works. The site would be accessed via a new single access point from Cymau Lane at a point in the easternmost corner of the southern boundary. The scheme would also provide 8 No. car parking spaces for the use of the school. The appeal site measures approximately 1.4 hectares in area and is currently in agricultural use. The land is relatively flat but rises up gently towards the western boundary which is lined by a mature hedgerow and tall trees. Abermorddu Primary School lies immediately to the east, whilst it is bounded to the north by agricultural land and to the south by Cymau Lane and the existing residential development beyond.

4. The site is allocated for residential development within the Adopted Flintshire Unitary Development Plan (UDP) 2011, and full planning permission was granted on 16 April 2012 for the erection of 35 dwellings (Reference 04871) which is currently extant and is capable of implementation until 16 April 2017.
5. The planning application subject to this appeal was first reported to the Council's Planning and Development Control Committee on 12 March 2014 where Members resolved to grant planning permission subject to the applicants entering into a Section 106 Agreement to cover financial contributions towards highway improvements, the maintenance of open space and the improvement of local education facilities.
6. Following the resolution of the committee the applicant challenged the level of education contributions being sought by the Council and this resulted in the Section 106 Agreement not being progressed. As such, the planning application was reported back to the Council's Planning and Development Control Committee on 3 September 2014 where it was refused. The sole reason for refusing the planning application related to the failure to make provision for commuted financial contributions towards the provision and improvement of local education facilities, contrary to Policy IMP1 of the UDP. This was the only issue in dispute between the appellant and the Council.
7. However, on 6 April 2015 the Community Infrastructure Levy (CIL) Regulation 123(3) (as amended) took effect. As a consequence of Regulation 123(3) a planning obligation may not constitute a reason for granting planning permissions where five or more planning obligations have been entered into within the area of a charging authority (which in this case is Flintshire County Council) on or after 6 April 2010 for funding or provision of the same type of infrastructure or the same infrastructure project.
8. From the evidence before me, it is clear that there are already 6No. Section 106 Obligations entered into with the Council since April 2010 with financial contributions towards Castell Alun High School. Therefore, the Council is prohibited by Regulation 123 of the CIL Regulations from seeking any further Section 106 contributions towards the school as part of the appeal proposals, and this has been accepted by the Council.
9. Notwithstanding the above, it is common ground between the parties that the level of financial contributions sought should include £36,771 towards primary education provision; £3,500 towards highway works; and the gifting (for the sum of £1,00 each) 3No. affordable dwellings to the Council. The Appellant has submitted a Unilateral Undertaking to secure these contributions and I consider the measures in the Undertaking are necessary, related directly to the development and fairly relate in scale and kind. As such, they would accord with the provisions of Regulation 122 of the CIL Regulations and the tests for planning obligations set out in Welsh Office Circular 13/97 'Planning Obligations'. The Council has set out in detail the conformity of all contributions sought in connection with the development within a Community Infrastructure Levy Regulations Compliance Statement (April 2015). This statement sets out how the Council has calculated the contributions in line with the Council's Adopted Local Planning Guidance Notes No.9 'Affordable Housing' (2007); No 13 'Open Space Requirements' (2006); No 22 'Planning Obligations' (2007); and No 23 'Developer Contributions to Education' (2012).
10. Having taken into account all other matters raised, I conclude that the proposed development would provide suitable financial provision to offset the impacts of the proposed development on local education infrastructure. To this end, the development would not conflict with Policy IMP1 of the UDP.

11. Although it is agreed between the parties that the proposals are acceptable in all other respects, at the time of the planning application a number of other concerns were raised by local residents that were not relied on by the Council as objections to the proposals. Concerns were raised regarding the impact of the development on traffic speed along Cymau Lane, the volumes of vehicular traffic generated by the development and the resulting harmful impact this would have on highway safety within surrounding roads. The Highway Authority has raised no concerns on this issue, provided that its suggested conditions are imposed on any planning permission and financial contributions are secured towards speed activated neon signs on the approach to the site on Cymau Lane. The Appellant has also put forward the provision of 8 car parking spaces within the site to assist parents waiting for children at the school. I have seen nothing to persuade me that the capacity of Cymau Lane and surrounding roads could not accommodate the increase in traffic that the scheme would generate, and I find no reason to disagree with the recommendation of the Highway Authority in this regard.
12. I have also taken into account the concerns raised regarding the environmental impact of the development in terms of additional traffic movements generated and the loss of a green space. I consider that the site is located within a sustainable location close to local facilities, including the adjacent primary school, and a bus stop is located on Cymau Lane. Due to its accessibility residents of this development could walk their children to the school and utilise public transport to access other facilities found within Mold and Wrexham.

#### Conditions

13. I have considered the suggested conditions put forward by the Council and, having had regard to the advice in Welsh Government Circular 016/2014: *The Use of Planning Conditions for Development Management* (October 2014), I have adjusted their wording by altering some conditions and combining others in the interest of clarity and precision.
14. The site access and internal estate road, vehicle parking and turning areas, the dimensions of private drives and the location of garages, should be completed in accordance with previously approved details in the interests of providing a safe and satisfactory means of access and circulation within the development. Drainage systems should be subject to prior approval to prevent flooding, hydraulic overloading of the public sewerage system, nuisance, pollution and accumulation of water on the highway.
15. Landscaping of the development, including boundary treatment, as well as external finishes of the proposed dwellings should be subject to prior approval in order to ensure an acceptable visual appearance, to ensure that the scheme is well integrated into its surroundings and to protect neighbours' living conditions. The play area and area of open space should also be completed in accordance with previously approved details in the interest of securing an adequate standard of provision for residents. A condition requiring reasonable avoidance measures in relation to amphibians is needed to safeguard protected species, and a condition relating to the provision of a footway connecting to the existing public right of way to the west of the site is required to ensure future access to local residents.
16. The Council has put forward a condition requiring an archaeological watching brief to be undertaken. I find this to be unnecessary due to the previous conclusions of the Archaeological Evaluation undertaken by Earthworks Archaeological Services dated

July 2011. The Archaeological Evaluation concluded that no features of archaeological significance were found and no further evidence has been put forward to contradict these findings. The conditions relating to the Code for Sustainable Homes are also unnecessary as this is now dealt with under Building Regulations legislation.

**Conclusion**

17. For the reasons given above I conclude that the appeal should be allowed.

*Richard Duggan*

INSPECTOR

Richborough Estates

## Schedule of Conditions

- 1) The development hereby permitted 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:
  - Site Location Plan AH049/PL/02
  - Planning Layout AH049/PL/01 Rev L
  - Betws House Type Planning Layout
  - Betws House Type Planning Layout - Render
  - Corwen House Type Planning Layout
  - Corwen House Type Planning Layout - Render
  - The Elwy House Type Planning Layout – Two Bed Unit
  - The Elwy House Type Planning Layout - Render
  - The Hope House Type Planning Layout
  - The Hope House Type Planning Layout - Render
  - Alwyn House Type Planning Layout – Two Bed Unit
  - Alwyn House Type Planning Layout - Render
  - Clwyd House Type Planning Layout – Three Bed Unit
  - Clwyd House Type Planning Layout – Render
  - Pembroke House Type Planning Layout - Detached
  - Pembroke House Type Planning Layout - Render
  - Meliden – Render
  - Meliden - Brick
  - Dolwen – Render
  - Dolwen – Brick
  - Tenby – Detached
- 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 have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Notwithstanding the submitted details, prior to the commencement of development the detailed layout, design, means of traffic calming and signing, surface water drainage, street lighting and construction of the internal estate

- road, including a timeframe for implementation/completion of the works shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 5) Notwithstanding the submitted details, prior to the commencement of development the detailed siting and design of the access into the site to include visibility splays of 2.4m x 43m measured to the nearside kerb line, and the siting and design of the provision of a 1.8m wide footway to the site frontage which connects to the existing public footpath to the west of the site, including a timeframe for implementation/completion of the works shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
  - 6) Notwithstanding the submitted details, all private drives shall have an internal visibility splay in both directions of 2.4m x 3.3m and within which there shall be no obstruction to visibility in excess of 1.0m above the nearside channel level of the adjoining highway and which shall be provided prior to the dwelling(s) which it serves being occupied, and thereafter retained for their intended use in perpetuity.
  - 7) Notwithstanding the submitted details, all garages on the site shall be set back a minimum of 5.5m behind the back of any footway or 7.3m from the edge of the carriageway.
  - 8) Notwithstanding the submitted details, prior to the commencement of development a scheme showing the parking and turning, loading/unloading clear of the highway of all vehicles associated with the use of the site and the associated operations, including bin storage and collection, shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and thereafter retained for their intended use in perpetuity.
  - 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
    - a) 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.
    - b) soft landscape works shall include schedules of plants noting species, plant supply sizes and proposed numbers/densities where appropriate; an implementation programme (including phasing of work where relevant).
    - c) hard surfacing materials.
    - d) earthworks showing existing and proposed finished levels or contours;
    - e) means of enclosure and boundary treatment.
  - 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) Prior to the commencement of development details of the play area and public open space, shall be submitted to and approved in writing by the Local Planning

Authority. This land shall not be used as a compound for construction works or general site storage during the construction works. The scheme shall thereafter be implemented and brought into use prior to the 18<sup>th</sup> dwelling of the development hereby approved being occupied. The scheme shall include:

- a) The existing and proposed finished levels.
  - b) Details of surface treatment.
  - c) Details of the type, colour, number, location and layout of play equipment together with any ancillary equipment such as bins and benches etc.
  - d) Details of the means of enclosure and boundary treatment associated with both the play area and area of open space.
  - e) Details for the maintenance and management of all elements of the play area and open space, to include details on the resolution of complaints and disputes relating to the use and operation of the space.
- 12) Prior to the commencement of development a scheme for reasonable avoidance measures in relation to amphibians shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be fully implemented prior to the commencement of development.
  - 13) Any changes to the layout and design of the "gifted" residential units as a result of building to Design Quality Requirements (DQR) shall be submitted to and approved in writing by the local planning authority prior to the commencement of construction of those units.
  - 14) No development shall commence until details of a scheme for the disposal of foul 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 use of the development and retained in perpetuity.
  - 15) Prior to the commencement of development a scheme for the disposal of surface water from the site, including the provision and implementation of a surface water regulation system and measures to prevent overland flow from surcharging the site's surface water drainage system, and an assessment of the potential for disposing surface water by means of Sustainable Drainage Systems (SuDS) shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details prior to the use of the development and retained in perpetuity.
  - 16) Prior to the commencement of development a scheme for the identification, protection and surfacing of the legally defined public rights of way which affect the site shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be fully implemented prior to the commencement of development.