



Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 27/10/15
Ymweliad â safle a wnaed ar 27/10/15

gan Kay Sheffield BA(Hons) DipTP
MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 25/11/15

Appeal Decision

Hearing held on 27/10/15
Site visit made on 27/10/15

by Kay Sheffield BA(Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 25/11/15

Appeal Ref: APP/H6955/A/15/3095184

**Site address: Land adjoining Trewythen Hall Care Home, Vicarage Lane,
Gresford, Wrexham, LL12 8US**

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 planning permission.
- The appeal is made by Trewythen Hall Limited against Wrexham County Borough Council.
- The application Ref P/2014/0815, is dated 31 October 2014.
- The development proposed is the siting of extra care facility, creation of internal access road and associated works.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are: whether the proposal would comply with local and national policies designed to protect the green barrier from harm and if not; whether there are very exceptional circumstances sufficient to outweigh the harm; the effect of the development on highway safety; and also on protected species.

Reasons

3. The Council confirmed that had it been able to determine the application it would have refused permission. The areas of concern it identified are reflected in the main issues. The Council also identified the policies of Wrexham Unitary Development Plan, 2005 (UDP) which it considered relevant to the appeal. However, in discussion at the hearing, it was agreed that Policy EC1 had been omitted and Policy EC3 was not relevant. The Appellant asked for regard to be given to Policy H11 which addresses elderly persons' residential care homes, nursing homes and development for specialist health care facilities.
4. The proposed extra care facility would consist of twenty self-contained bungalows designed for independent living with the Appellant providing a rapid response service in times of emergency. The scheme would be similar to the existing self-contained units to the east of the Hall. It was evident that the Appellant monitors existing residents in these units and alerts relatives of any concerns. Although reference was

made to the possibility of facilities at the existing Care Home being made available to future residents of the proposed units, no firm plans were put forward in evidence. Whilst I accept that the rapid response service and close presence of the staff at the Care Home may give residents the confidence and support necessary to live independently for longer, I am not convinced that the level of support proposed amounts to the residential, nursing or specialist health care services stated in the policy. I am therefore in agreement with the Council that Policy H11 of the UDP is not relevant in this instance.

Green barrier

5. The site lies between Vicarage Lane and Trewythen Hall. It is an area of open land outside but adjoining the settlement boundary of Gresford which also form part of the green barrier as identified in the UDP. Policy EC1 of the UDP only permits development within green barriers if it is for "*agriculture, forestry, essential facilities for outdoor sport and recreation, cemeteries and other uses of land which maintain the openness of the Green Barrier and do not conflict with the purpose of including land within it*".
6. For the purposes of national policy the designation of green barrier is synonymous with the term green wedge. Planning Policy Wales (PPW) makes a presumption against inappropriate development in green wedges. The circumstances under which buildings in a green wedge may not be inappropriate are identified in paragraph 4.8.17 and include those set out in Policy EC1 of the UDP. The proposal does not fall within any of the specific uses listed in Policy EC1 or PPW.
7. Other uses are allowed in the green barrier where openness is maintained. Openness and permanence are recognised in paragraph 4.8.5 of PPW as the most important attributes of Green Belts and although local designations such as green barriers do not convey the permanence of a Green Belt, openness is still considered an important attribute. Although PPW does not specifically define openness, it is generally accepted to be the absence of urban sprawl and encroachment into the countryside.
8. Openness is not primarily about visual impacts but about the absence of development that would cause urban sprawl. The Appellant considered that the openness of the site would not be compromised by the development as the site is enclosed by its landscaped boundaries. Despite the low density of the proposal, the erection of twenty bungalows would result in a significant amount of built development. Although the access roads and car parking may have a limited effect, overall the proposal would fail to maintain the openness of the site.
9. The purposes of the green barrier set out in paragraph 5.2 of the UDP reflect those in PPW and include: to prevent the coalescence of urban areas and villages with other settlements; assist in safeguarding the countryside from encroachment; and to protect the setting of an urban area. The location of the site on the edge of the settlement is significant in safeguarding the countryside from encroachment and although the size of the development may limit its effect, I am nevertheless of the opinion that to allow the development would conflict with the purposes of including the land within the green barrier as well as failing to maintain openness.
10. The evidence therefore leads me to conclude that the proposal would constitute inappropriate development within the green barrier which would also fail to maintain openness and conflict with the purposes of including land within it, contrary to Policy EC1 of the UDP and PPW. This carries substantial weight against the appeal.

Very exceptional circumstances

11. PPW states in paragraph 4.8.15 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*". The very exceptional circumstances advanced by the Appellant include the current supply of housing land and the identified need and suitability of the site for the type of accommodation proposed.
12. The most recent published figures indicate the Council has a 3.1 year housing land supply. The proposal in providing suitable accommodation into which older people could move would help satisfy a recognised need for housing for the elderly and the release of larger properties as a consequence of the development would help increase housing supply. In circumstances where a Council is unable to demonstrate a five year housing land supply paragraph 6.2 of Technical Advice Note 1: Joint Housing Land Availability Studies states the need to increase supply "*should be given considerable weight when dealing with planning applications, provided that the development would otherwise comply with national planning policies*".
13. The provision of housing solely for occupation by the elderly would complement the existing accommodation provided at the Care Home and the existing bungalows associated with it. The design of the units would also allow future occupants to live independently. However, with no firm proposals for increased levels of care other than the possibility of transfer to the Care Home, the level of support proposed is limited to the close presence of the staff of and an emergency rapid response service operated by the Care Home. The Council expressed concern about the availability of such services if the Care Home ceased to operate. Whilst the speed of response may be faster than other telephone systems available to the elderly, I consider that the level of support proposed does not essentially require a location adjacent to the existing Care Home.
14. The Council expressed concern that to allow development of this site could set a precedent for the release of similar sites in the green barrier which lie on the edge of a settlement. It is the particular circumstances of housing schemes for the elderly which sets them apart from other residential developments. I am not convinced that the proposed development with the only confirmed planned support being an emergency rapid response service would be sufficiently different for it to be reasonable to anticipate that other schemes of a similar nature may not come forward.
15. Although the site adjoins the settlement boundary to the north and east and is bounded to the west by Vicarage Lane, it is nevertheless within the countryside with no physical boundary with the adjoining open land to the south. There is also open land to the west of the road. The development would infill the area between the Hall and Vicarage Lane which would have the effect of extending the built development further along the road frontage. It would also reduce the gap between the settlement and the cluster of properties to the south. I accept that views into the site from Vicarage Lane and other local vantage points are restricted by the mature tree planting along the road frontage and within the area generally. In addition the bungalows would be set back from the road in landscaped grounds and being single storey would be relatively low lying. Although there may only be glimpsed views of the proposal through the trees, it would still represent an extension of the settlement into the countryside.

16. The Council stated that the site is within an area classed as Grade 2 agricultural land whereas the Appellant described the site as parkland in association with the Hall. The mature trees within the site include not only native species, but also species including the Monkey Puzzle which are associated with planned landscapes such as parklands. Whilst the land may not be used productively at present, I have no substantive evidence that the land is not Grade 2 agricultural land or that it could not revert to such use.
17. I am aware that the Council has been asked to consider the appeal site as a candidate site in both the emerging Local Development Plan (LDP2) and the earlier version of the plan (LDP1), withdrawn in 2012. In its consideration of the site as part of LDP1 the Council concluded that the site displayed significant constraints which could not be overcome to allow development in this location. With the exception of insufficient school capacity, the constraints identified by the Council relevant to this development include the presence of protected trees, the ecology of the site and highway safety issues. These are addressed in other sections of the decision.
18. The LDP2 is at an early stage and the current timetable indicates the plan will not be ready for adoption until 2018. The status of the site should be a matter addressed as part of LDP2 and the Council is of the opinion that the importance of the site's current purpose and function as a green barrier is still regarded as relevant and material. It is clear from paragraph 4.8.11 of PPW that green wedges should be established through development plans. I accept that in paragraph 4.8.13 there is a need for local planning authorities to ensure that "a sufficient range of development land is available which is suitably located in relation to the existing urban edge and the proposed green wedge". However, there are several impediments to the site's development.
19. The lack of a five year housing land supply carries considerable weight. Moreover the site is located in a sustainable location on the edge of the settlement and the proposed dwellings would contribute towards the supply of housing. Whilst the dwellings would provide accommodation which would allow the elderly occupants to live independently, the type of support proposed does not necessarily require a site adjacent to the existing Care Home. Furthermore the development would represent an encroachment into the countryside with the potential to set a precedent for the release of other sites in similar locations. Therefore I conclude that in this case the considerations do not clearly outweigh the harm to the green barrier. Looking at the case as a whole, I consider that very exceptional circumstances to justify the development have not been demonstrated.

Highway safety

20. The Council initially indicated that visibility splays of 2.4m by 56m were required at the access onto Vicarage Lane. However, based on the results of a traffic survey undertaken by the Appellant, the Council revised its requirements and confirmed to the hearing that visibility of 2.4m by 40m measured to the nearside kerb in both directions would be acceptable. Assessment of the situation during the site visit confirmed that a short section of the stone boundary wall impinged on the required visibility to the south east. However, I am satisfied that the required visibility could be provided and it is a matter which could satisfactorily be addressed by condition.
21. The Appellant opined that due to the nature of the road and the recorded speed and volume of traffic the visibility splay could be measured to the centre line. Although in some instances it may be appropriate for visibility splays to be measured other than along the nearside edge, it is more usual for the nearside wheel track to be used as an

alternative. Whilst the volume of traffic using Vicarage Lane may not be high, it includes tankers from the nearby milk depot as well as cyclists and pedestrians and, as evidenced at the hearing, people using mobility scooters. I accept that there is no evidence of any recorded accidents on this stretch of road, nevertheless given those using the road, I do not consider it would be acceptable to reduce the visibility requirements below those requested by the Council which accord with Technical Advice Note 18: Transport.

22. There are no footpaths along Vicarage Lane and there is a high level of on-street parking between the site and the junction with Chester Road to the north. The Council is concerned that this does not provide a safe route for pedestrians from the site to the local shops and bus stops on Chester Road. It is clear from the discussion at the hearing that existing residents on the site walk or use mobility scooters between the site and Chester Road and I observed staff from the Hall and local residents walking along Vicarage Lane as I also did. Whilst it would be preferable to segregate pedestrians from the main highway the Council confirmed this was not possible.
23. Notwithstanding this, the route is within a 30mph area and the nature of the road together with the parked cars actively slow vehicles. Pedestrians do have to be more aware of the traffic when using a shared surface rather than when there is a dedicated footway and I accept that some residents may choose not to walk to local services. However, I do not consider the situation to be significantly different from numerous roads in rural settlements. Furthermore, I do not consider that the increase in the use of Vicarage Lane by pedestrians as a result of the proposed development would be so significant as to be detrimental to highway safety.
24. I therefore conclude that, subject to the provision of the stated visibility splays, the proposal would not harm highway safety, in accord with Policy GPD1(d) of the UDP.

Effect on protected species

25. The ecological appraisal submitted as part of the application included an Extended Phase 1 Habitats Survey which dated from 2013. The proposed layout of the development shown within the report differs slightly from the scheme before me. The appraisal concluded that the site has the potential to support roosting, foraging and commuting bats as well as badger, reptiles and various species of nesting birds. Habitats with the potential to support these protected species were reported to have been found within the development footprint and to have the potential to be impacted on by the scheme. The appraisal concluded that, without mitigation, the scheme would have the potential to result in a number of adverse impacts on the biodiversity value of the site, in particular potential impacts to the use of the site by bats. It was recommended that bat surveys be undertaken to establish the use of those trees lost to the scheme by roosting bats and to assess the overall value of the site to foraging and commuting bats.
26. It was also recommended that reasonable avoidance measures be undertaken to avoid harm to reptiles, badgers and nesting birds during construction works. Enhancement measures and the creation of a habitat management plan were also proposed to ensure that no long term adverse impacts on the biodiversity value and interest of the site would result from the scheme. The parties were agreed that reasonable avoidance measures with regard to badgers, reptiles and nesting birds could be satisfactorily addressed by condition and I have no reason to disagree.

27. A further report was submitted as part of the Appellant's final comments on the appeal. A daytime survey of the trees identified within the initial survey as having low to high potential to support a bat roost found no evidence of a bat roost located within the trees. Based on this lack of evidence the report concluded that bat activity surveys were not considered necessary. Whilst the likelihood of bats foraging across the site and their use of boundary tree belts as foraging and commuting habitat was recognised, the report considered that the trees to be felled would not result in the loss of important habitat for bats, the connectivity would not be broken and the foraging and commuting habitat would be maintained by the retention of the majority of trees on the site and the boundary tree belts. In addition new garden facilities would provide more suitable bat foraging habitat compared to the species poor grassland which is currently present.
28. Whilst this report was submitted at a late stage in the process the Council was able to consider its contents and presented written comments to the hearing. The Council remained concerned that there was insufficient evidence to confirm that the proposal would not have an adverse effect on bats. Whilst the roost assessment gave an indication of the potential value of the trees, the Council was concerned that fissures within the canopy might remain unseen. Indeed the report stated that bat absence is very difficult to prove definitively due to their mobility and size and that bats can rest in tiny spaces such as behind bark or within dense ivy. The Council was also concerned that the assessment failed to demonstrate how the site as a whole would be used for foraging, swarming, mating, feeding or commuting bats at various times of the year. It was anxious that the effect of the development on all these activities should be established as they would all have the potential to impact on the conservation of the species at a local level.
29. I accept that the later report did not identify any bat activity and the author was of the opinion that tree felling and tree treatment could proceed without the need for further bat survey work or bat mitigation. However, I am not convinced that the survey work undertaken is sufficient to ensure there would be no adverse impact on the conservation of the species. I am aware that the protection afforded by the legislation relates to any structure or place which any wild animal of a listed species uses for shelter or protection at any time even when the animal is not there. However paragraph 6.2.1 of Technical Advice Note 5: Nature Conservation and Planning (TAN 5) states that the presence of a protected species is a material consideration when considering a development that, if carried out, would be likely to result in disturbance or harm to the species or its habitat. It is essential that the presence or otherwise of protected species, and the extent to which they may be affected by the proposed development, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
30. Paragraph 6.2.1 of TAN 5 also states that consultation should take place with the Countryside Council for Wales, now Natural Resources Wales (NRW), before granting planning permission. NRW objected to the planning application unless it could be satisfied by the submission of additional information to show that the development would not have adverse effects on the favourable conservation status of bats. It was confirmed to the hearing that NRW had not been made aware of the later report. I am concerned that NRW would be prejudiced by the lack of opportunity to consider whether the contents of the report overcame the concerns it had raised.

31. I therefore conclude that insufficient evidence has been submitted to ensure that the development would not result in an adverse impact on the conservation of protected species, contrary to Policy EC6 of the UDP.

Other material considerations

32. The development would necessitate the removal of several trees some of which are protected by a Tree Preservation Order. The submitted evidence confirms that the protected trees to be removed have a limited life span. Moreover, it is proposed that suitable replacements would form part of a comprehensive scheme for the landscaping of the site. Given the condition of the existing mature protected trees and subject to the planting of suitable replacements as part of the landscaping of the site, which can be addressed by condition, I consider the loss of the trees to be insufficient reason to dismiss the appeal.
33. An intermediate pressure gas pipeline runs from Vicarage Lane along the roadside boundary of the site before turning towards the north east. The submitted drawings indicate that the pipeline would skirt the bungalows and in crossing the gardens to three of them would be within approximately 5m of those properties. The parties confirmed to the hearing that the pipeline operator, Wales and West, raised no objection to the development. However it did indicate that its apparatus may be at risk during construction works. In its response the Health and Safety Executive (HSE) stated that the risk of harm to future occupants of the development was sufficient to refuse permission on safety grounds.
34. I accept that the assessment undertaken by the HSE only took account of the basic details of the scheme and its response indicated that additional information might overcome its concerns. However, the parties confirmed to the hearing that no further details had been provided. Moreover, HSE also indicated that it was prepared to provide the necessary support in the event of an appeal. I have been advised that the HSE were not notified of the appeal.
35. The parties were of the opinion that the presence of a gas pipeline in close proximity to residential properties did not prevent the development from taking place. They agreed that precautionary measures would be needed during the construction phase and future occupants would need to be made aware of its presence in the use of their gardens. The parties were also in agreement that these issues could be satisfactorily addressed by way of a condition requiring a Construction Method Statement.
36. Whilst such a condition may be appropriate in some circumstances I consider that to impose such a condition would require a greater degree of certainty that the safety of residents would not be affected. Given that no further details were submitted to the HSE in response to its recommendation that the application be refused I am not convinced by the evidence that the safety of residents would not be compromised. Moreover, to reach a positive decision on the proposal without the HSE being aware of the appeal would, in my opinion, constitute prejudice.
37. In addition to the issues already covered, local residents expressed concern about loss of outlook. However, I am satisfied that the separation distance between the proposed bungalows and nearby residential properties, together with the orientation of the bungalows would ensure that there would be no unacceptable level of harm to the living conditions of the occupiers of nearby dwellings with regard to outlook or privacy.

Conclusions

38. The proposal would be inappropriate development in the green barrier which would also fail to maintain openness and there are no very exceptional circumstances sufficient to outweigh this harm. In addition I have identified potential harm to protected species and issues of safety regarding the proximity to the gas pipeline. Whilst I am satisfied that issues relating to highway safety and the loss of TPO trees are matters which can be satisfactorily addressed, these do not overcome the concerns I have raised. For these reasons, and having had regard to all other matters raised, the appeal is dismissed and planning permission is refused.

Kay Sheffield

Inspector

APPEARANCES

FOR THE APPELLANT:

Jamie Bradshaw BA(Hons) MSc MRTPI	Planning Consultant, Owen Devenport Ltd
Berwyn Owen DipTP MRTPI MRICS	Director, Owen Devenport Ltd
Julie Barr BA DipLA CMLI	Principal, Tirlun Barr Associates
Jon Addy BSc MSC MCILT	Principal Transport Planner, SCP
Peter Haycox	Of Trewythen Hall Limited, the Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Janet Sutherberry	Senior Planning Officer
Emma Broad	Ecology Officer

DOCUMENTS

1. Council's letter of 23 September 2015 regarding the arrangements for the hearing.
2. List of suggested conditions submitted by the Council.
3. Copy of Policy EC1 of the Wrexham Unitary Development Plan.
4. Additional comments from the Ecology Officer on behalf of the Council.
5. Additional highway comments on behalf of the Council.
6. Plan showing the route of the gas pipeline.
7. Historical map of the site submitted by the Appellant.
8. Colour copy of the plan forming part of the Tree Preservation Order provided by the Council.