



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 26/10/2020

gan K Sheffield, BA (Hons) DipTP
MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 8th December 2020

Appeal Decision

Site visit made on 26/10/2020

by K Sheffield, BA (Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 8th December 2020

Appeal Ref: APP/H6955/A/20/3249747

Site address: Land to rear of Brookfield Close, Ellesmere Lane, Penley, Wrexham, LL13 0SJ

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 Primesave Properties Limited against the decision of Wrexham County Borough Council.
 - The application Ref: P/2019/0312 dated 02/11/2018, was refused by notice dated 06/01/2020.
 - The development proposed is the erection of 15 dwellings, landscaping and associated car parking.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 15 dwellings, landscaping and associated car parking on land to the rear of Brookfield Close, Ellesmere Lane, Penley, Wrexham, LL13 0SJ in accordance with the terms of the application, Ref: P/2019/0312 dated 02/11/2018 subject to the Schedule of Conditions set out in the Annex to the decision.

Application for costs

2. An application for costs was made by the Appellant against the Council. This application is the subject of a separate Decision.

Procedural matters

3. The description of development given in the application differs slightly from that used by the Council in its Decision Notice. I find the latter to be more succinct and I have adopted it in my decision. I have also taken account of the Unilateral Undertaking which accompanied the appeal.
4. Following the changes to Planning Policy Wales (PPW), edition 10, and the revocation of Technical Advice Note (TAN) 1: Joint Housing Land Availability Studies on 26 March 2020, I afforded the parties the opportunity to review their submissions. I have had regard to the comments made in reaching a decision on the appeal.

Main Issues

5. The main issues are whether the principle of the development is compliant with the planning policy framework, its effect on the Special Landscape Area, biodiversity and flooding and whether the site is in a sustainable location.
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Reasons

6. The appeal site lies to the rear of a recent linear development which fronts onto Ellesmere Lane and is accessed from Brookfield Close. The site is roughly rectangular in shape and adjoins residential properties to the north, Grange Road to the east and an open field to the south. The site is grassland bordered by hedges to the north and east and fencing on the remaining boundaries.

Principle of the development

7. There is no dispute that the Wrexham Unitary Development Plan 1996-2011 (UDP), adopted 2005, is time expired. Nevertheless, it remains the development plan for the area. However, given its age, the UDP attracts less than full weight in the determination of the appeal.
8. The appeal site adjoins but lies outside the settlement limit of Penley as identified in the UDP. Therefore, for the purposes of the adopted development plan, the proposal would represent development within the countryside.
9. Policy PS1 of the UDP directs development for housing to areas within defined settlement limits. Policy H5 of the UDP expands on Policy PS1 by allowing new dwellings outside defined settlement limits subject to compliance with certain listed criteria. I find that the proposal would not satisfy any of the circumstances set out in Policy H5. The development would therefore be contrary to Policies PS1 and H5 of the UDP. This carries significant weight against the appeal.

Special Landscape Area

10. The site lies within a Special Landscape Area (SLA), where according to Policy EC5 of the UDP priority will be given to the conservation and enhancement of the landscape. The policy requires development to conform to a high standard of design and landscaping and its visual impact from both nearby and distant viewpoints should be minimised. Although the Council has expressed concerns regarding the effect of the development on the SLA there is no substantive evidence of the harm it considers would be caused.
11. I accept that the development of the appeal site would comprise a significant physical incursion into the countryside and the SLA and would alter the character of the area. However, views of the development would be restricted by existing properties on its northern and western boundaries. Although it would be possible to see the dwellings from Ellesmere Lane via Brookfield Close, the proposed layout would create a relatively open appearance. From Grange Road, views of the dwellings would be broken by the boundary hedge and they would be seen against the backdrop of the existing dwellings.
12. I acknowledge that wherever possible Policy PS3 of the UDP requires the use of previously developed land in preference to greenfield sites. However, given its location I consider that the development as proposed would represent a minor and logical extension to the existing settlement. It would create a satisfactory pattern of development and would not detract from the existing character of Grange Road. In addition, the retention of the hedges together with additional planting would help soften views of the development and aid its assimilation into its surroundings.
13. In this respect, I consider the proposed scale, design and layout of the proposed development would accord with the character of the local area and make a positive contribution to its appearance, in accordance with Policies PS2, PS3, PS4, EC4, EC5

and GDP1 of the UDP which seek to strictly control development and minimise its visual impact.

Effect on biodiversity

14. The Council claims that the development of this greenfield site would more than likely lead to the loss of locally valuable habitats with inadequate space within the proposed layout to provide adequate compensation to mitigate the loss. No definitive evidence to substantiate this claim has been submitted.
15. The application was supported by a Phase 1 Habitat Survey and Protected Species Assessment Report, July 2014 and an Outline Ecological Impact Assessment, June 2019. Given the age of the Phase 1 Report, I have placed more reliance on the later Assessment. The site is identified as poor semi-improved grassland and the boundary hedges are stated to be species rich and important for the conservation of biological diversity and the support they give to birds and bats. Whilst there is evidence of Great Crested Newts in the local area, none were found within the site and no significant indirect impact on adjacent Statutory and Non-Statutory sites was predicted. Furthermore, the Assessment found that the retention and enhancement of the hedges together with the introduction of bird and bat boxes would likely result in a modest positive impact on the overall conservation value of the area.
16. Whilst I consider the benefits to biodiversity from a small number of bird and bat boxes are limited, I accept the importance of the hedgerows in providing cover for nesting birds and as foraging and commuting corridors for bats. I am also satisfied that the additional planting to the hedge boundary along Grange Road, the new native hedgerow to the southern boundary and tree and shrub planting elsewhere on the site would provide a positive benefit. There is also the potential that over time the positive improvements to biodiversity as a result of the development would provide suitable habitat for species currently not present on the site.
17. The evidence therefore leads me to conclude that the proposed development includes measures which would provide a net benefit for biodiversity, in accordance with Policies PS11 and EC6 of the UDP.

Effect on surface water flooding

18. The Council is concerned that an existing problem regarding surface water drainage in the local area may be exacerbated by the development. In their representations, local residents have documented the extent of the problem which has included the ingress of water into properties. Whilst I fully understand the concerns raised in respect of surface water drainage, the responsibility for solving the existing problem does not lie with the development.
19. Notwithstanding this it is important that the site can be satisfactorily drained in respect of surface water and land drainage. I have noted that Natural Resources Wales, Welsh Water and the officer of the Council with responsibility for flood management have not objected to the proposed drainage details submitted as part of the application. Although further details would be required to ensure a comprehensive drainage scheme was in place, this is a matter which could be satisfactorily addressed by condition.
20. Whilst I appreciate the concerns regarding surface water, I am not persuaded by the evidence that the surface water drainage in respect of the development could not be properly managed in accordance with Policies GDP1 and EC13 of the UDP.

Location of the site and whether it is sustainable

21. According to paragraph 3.35 PPW in rural areas “*most new developments should be located in settlements which have relatively good accessibility by non-car modes when compared to the rural area as a whole*”. Having regard to this guidance the Council contends that the site is in an unsustainable location as the bus service is not regular and there is access to only a small number of services and employment opportunities. Although the Council accepts that the site is only a relatively short distance from the village centre, it states that there are no formal crossing points along Ellesmere Lane, which is poorly lit. This gives rise to concerns that the location of the site would not give residents the opportunity to walk safely to local facilities and public transport stops.
22. The bus timetable submitted by the Appellant shows a service between Whitchurch and Wrexham. Although there are only a few buses a day, the service would allow people to attend work in Wrexham and return home during the normal working day. The same is not possible for Whitchurch. Given the limited bus service I consider there would be a high reliance on the private car for journeys outside the settlement.
23. However, Penley benefits from primary and secondary schools within easy walking distance of the site together with a local shop, other community facilities and employment opportunities. Ellesmere Lane is subject to a 30mph speed limit and has adequate footway links with street lighting from the site to the village centre. Whilst there may not be any demarcated crossing points on Ellesmere Lane, I do not consider that this would render the route from the site to the village centre unattractive or unsafe. On this basis I conclude that the development would offer good connections to the village centre which would in turn reduce the need to travel by car for local journeys, in accord with Policies PS4 and T9 of the UDP.
24. The Council has also cited Policy T8 of the UDP in its reason for refusal. Whilst this policy refers to the availability of public transport and the proximity to local services and facilities it is with regard to the scale of parking required to serve the proposal. I have not been advised that the development would fail to provide adequate parking and I therefore do not consider Policy T8 to be relevant to the appeal.

Other material considerations

Housing Land Supply

25. In addition to the revocation of TAN 1, section 4.2 of PPW has been amended to remove the requirement for Councils to maintain a five-year supply of housing land. Although national policy still requires the Council to secure a healthy supply of housing, at appeal the matter which has to be considered is that of past housing delivery measured against the planned trajectory in the development plan rather than future housing supply measured against the five-year supply figure.
26. As the Wrexham Local Development Plan 2013-2028 (LDP) is currently undergoing examination Welsh Government advocates the use of the Average Annual Requirement (AAR) methodology for monitoring purposes. The LDP identifies a requirement for 7750 homes over the plan period which would translate into an AAR of 517 dwellings. The Council’s latest Housing Land Monitoring Statement, 2019 indicates that such figures have not been achieved since 2008. The Council has not disputed the Appellant’s assertion that the shortfall is in excess of 1500 dwellings which equates to nearly 50% of the annual housing requirement having not been delivered since the start date of the LDP.

27. Furthermore, the Appellant has indicated that the land is available, the scheme is viable, and an early start could be made on site with completion of the scheme within approximately two years. On this basis I am satisfied that the scheme is deliverable.
28. Although the development would only provide a limited number of dwellings, these would help to address the significant shortfall in the supply of housing land currently being experienced by the Council. This carries significant weight in favour of the appeal.

Emerging Local Development Plan

29. The appeal site comprises part of a housing allocation in the submitted LDP and is outside of the revised SLA. The only other allocations within the settlement relate to employment. If the plan is found sound, development proposals at the appeal site would be unconstrained by policies designed to protect the countryside and the SLA.
30. The Welsh Government's Development Management Manual¹ (DMM) is clear that in making development management decisions, the weight to be attached to an emerging LDP will in general depend on the stage it has reached. The weight does not simply increase as the plan progresses towards adoption. In considering what weight to give to the specific policies in an emerging LDP that apply to a particular proposal, it is necessary to carefully consider the underlying evidence and background to the policies. National planning policy and the evidence used to support policies in an emerging LDP can be a material consideration in the decision-making process.
31. Several representations have been submitted which contend that residential growth should be focussed on the larger centres of population rather than on smaller settlements that do not have the facilities to support increased populations. However, the Council's housing strategy is a matter which is examined as part of the LDP process and does not form part of my remit in respect of the appeal. Although, no certainty exists in respect of the LDP until it has been adopted, I find that the allocation of the appeal site for residential development in the emerging LDP carries weight in favour of the appeal.

Other matters

32. The Appellant contends that in considering the application the Council gave weight to the presence of other suitable sites in the local area. Whilst the Council acknowledges that the potential availability of brownfield sites was discussed, it states that the application was not refused on that basis. Alternative sites do not form any part of the reason for refusal or of the Council's statement of case. Furthermore, the success or otherwise of the appeal proposal is restricted to an assessment of its planning merits, with no requirement for prospective developers to demonstrate that a site is more suitable than other potential sites.
33. Concerns have been expressed by interested parties regarding the impact of the development on the local schools and doctors as well as the lack of facilities, there being only one shop and no public house or post office. Whilst I saw the local shop and the former public house during my site visit, no substantive evidence has been submitted by the Council in support of its claims regarding the effect of the development on other services. I am therefore unable to draw any reasoned conclusions in this respect. However, I am aware that the Unilateral Undertaking makes financial provision for additional spaces at the local schools.

¹ Revision 2, May 2017

34. The effect of the development on the living conditions of neighbouring residents with regard to privacy, outlook, sunlight and noise has also been raised. It is accepted that the erection of dwellings on a greenfield site would make a significant difference to the outlook of neighbouring residents. However, I understand that the layout has been designed to meet the Council's current separation distances which seek to protect the privacy of residents as well as ensure an acceptable level of natural light. There is also no suggestion that noise levels as a result of increased activity on the site would exceed acceptable levels. I therefore conclude that the proposal would not cause an unacceptable degree of harm to the living conditions of local residents by reason of outlook, privacy, sunlight or noise.
35. The Appellant has drawn my attention to an appeal decision in respect of a residential development in Rossett.² I accept that there are similarities between the cases as currently both sites are in open countryside and in the SLA whereas in the emerging LDP both are allocated for housing. However, the Rossett appeal was determined prior to the revocation of TAN 1 and the changes to PPW. I consider that this is sufficient to render any direct comparison unreliable.

Conditions and Unilateral Undertaking

36. I have had regard to the guidance in Circular 016/2014 on The Use of Planning Conditions for Development Management in assessing the list of suggested conditions submitted by the Council. I find most of them to be reasonable and necessary for the reasons provided, subject to minor amendments to align them with the Circular and amalgamation of some covering the same topic area. I have omitted the condition requiring the submission of details of front door colour and render as these are specified on the approved drawings. The Council has offered no explanation of its concerns regarding the colour and it has not expressed a need for any approved colour to be maintained. I therefore find the condition to be unreasonable and unnecessary. I have amended the wording of the conditions regarding the completion of the parking provision and the boundary treatments to relate to each plot rather than the overall development.
37. In addition to the financial contributions towards additional educational facilities at the local primary and secondary schools the Unilateral Undertaking also makes financial provision for the upgrading and improvement of a local play area; and the formation of a management company for the future maintenance of common parts of the development. The Council has stated that the document is fit for purpose and meets the requirements of Policy GDP2 of the UDP. I find the Unilateral Undertaking to be fairly and reasonably related in scale and kind to the proposed development and I have no reason to reach a different conclusion to the Council.

Planning balance and conclusions

38. I have concluded that the proposal would not satisfy UDP policy with regard to the location of residential development, which carries significant weight against the appeal. However, I find that this is outweighed by the positive benefits the development would have in respect of housing land supply and biodiversity. Whereas I find that the matters of flooding and the location of the site with regard to sustainability are neutral in the balance, the allocation of the site in the emerging LDP adds to the weight in favour of the appeal. There are no other considerations which are sufficient to outweigh these conclusions.

² Appeal Ref: APP/H6955/A/19/3231048

39. In reaching my decision I have considered the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. 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 to build better environments.
40. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal be allowed.

K. Sheffield

INSPECTOR

Richborough Estates

Annex: Schedule of Conditions

- 1) The development shall begin not later than five years from the date of this decision.

Reason: To comply with Section 91(3) of the Town and Country Planning Act, 1990.

- 2) The development shall be carried out in accordance with the following approved plans and documents: PL10 Rev H, PL15, PL20, PL30, PL40, PL50, PL60, PL70 and as contained within the application documentation.

Reason: To comply with section 71ZA (2) of the Town and Country Planning Act 1990.

- 3) Construction works, including deliveries to or from the site, shall not take place outside the hours of 07.30 to 18.00 Monday to Friday and 08.00 to 14.00 on Saturdays and at no time on Sundays or Public Holidays.

Reason: To protect the amenities of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

- 4) No development shall commence until a Dust Management Scheme has been submitted to, and approved in writing by, the local planning authority. The approved scheme shall be adhered to throughout the construction period.

Reason: To protect the amenities of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

- 5) No land drainage run-off or surface water shall be permitted to discharge or connect to the public sewerage system, either directly or indirectly, and foul and surface water shall be drained separately from the site.

Reason: To protect the integrity of the public sewerage system and prevent hydraulic overloading of the public sewerage system; to protect the health and safety of existing residents and to ensure no detriment to the environment in accordance with Policies GDP1 and EC13 of the Wrexham Unitary Development Plan.

- 6) No building shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. Before these details are submitted, an assessment shall be carried out of the potential of the site for disposing of surface water by means of a sustainable drainage system, and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii) include a period for its implementation; and
- iii) provide a management and maintenance plan of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

Reason: To ensure satisfactory drainage of the site and to avoid flooding in accordance with Policies GDP1 and EC13 of the Wrexham Unitary Development Plan.

- 7) No development shall commence until a scheme detailing both hard and soft landscape works has been submitted to the local planning authority for its written approval. The scheme shall include details of:

- i) new native hedgerow planting to the western and southern boundaries of the site and enhancement of the existing hedgerows to the northern and eastern boundaries including measures for the protection of the existing hedgerows throughout the course of development;
- ii) ecological improvement and habitat creation through soft landscape works specifically tailored to the landscape features; and
- iii) an implementation and management programme, including long term design objectives, management responsibilities and maintenance schedules for all landscaped areas

The landscaping shall be carried out, managed and maintained in accordance with the approved scheme.

Reason: To protect landscape features which are of significant amenity value in the area and which would ensure a satisfactory standard of appearance of the development in accordance with Policies GDP1, PS2 and EC4 of the Wrexham Unitary Development Plan.

- 8) 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 to those originally required to be planted.

Reason: To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area in accordance with Policies GDP1 and PS2 of the Wrexham Unitary Development Plan.

- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting that Order with or without modification), no further development shall take place under Classes A, B, C, D, E, F and G of Schedule 2 Part 1, other than the development hereby granted permission.

Reason: Due to its relationship with adjoining properties it is considered important to ensure that no additional development as described in the condition is carried out without further permission of the local planning authority, in accordance with Policies GDP1 and PS2 of the Wrexham Unitary Development Plan.

- 10) No development shall commence until an external lighting scheme has been submitted to the local planning authority for its written approval. The scheme shall include measures to reduce light spillage onto foraging habitats for bats. The development shall be carried out in accordance with the approved scheme prior to first occupation of the development.

Reason: To protect named species in accordance with Policies GDP1 and EC6 of the Wrexham Unitary Development Plan.

- 11) No development shall commence until details of Reasonable Avoidance Measures (RAMs) have been submitted to and approved in writing by the local planning authority. The RAMs shall include:

- i) Details of a toolbox talk on the identification and ecology of great crested newts to be made available to all construction staff employed on the project;

- ii) Details of an artificial amphibian hibernacula to be constructed adjacent to the site;
- iii) Details of a walk over survey of the site prior to commencement of development, and a destructive search (under the supervision of a licensed great crested newt handler) of any potential great crested newt habitat (such as rubble piles or sheet materials) on the site. Any amphibians found shall be relocated to the artificial hibernacula;
- iv) Details of storage of material on pallets off the ground, and bulk materials which are to be delivered on site and used within the day of delivery; and
- v) Confirmation that excavated trenches will be covered over at the end of each working day with plywood and the edges sealed with sand or soil. Trenches are to be checked each morning for any amphibians. Any amphibians located are to be moved to the artificial hibernacula.

The development shall be carried out in accordance with the RAMs as approved.

Reason: To protect named species and habitats which would otherwise be damaged or lost in accordance with Policies GDP1 and EC6 of the Wrexham Unitary Development Plan.

- 12) No dwelling shall be occupied until the vehicular parking areas serving the dwelling and as shown on approved plan PL10 Rev H have been fully laid out, surfaced and drained. Thereafter these areas shall be permanently retained, kept free of any obstruction and made available solely for the parking of motor vehicles at all times.

Reason: To comply with section 71ZA (2) of the Town and Country Planning Act 1990.

- 13) No dwelling shall be occupied until the boundary treatments relating to the plot have been completed on site in accordance with approved plan PL10 Rev H. The boundary treatment shall thereafter be permanently retained, and no other fences, walls or other means of enclosure shall be erected on any part of the site.

Reason: To ensure a satisfactory standard of appearance of the development and protect the living conditions of residents in accordance with Policies GDP1 and PS2 of the Wrexham Unitary Development Plan.