

INFORMATION REPORT BY THE HEAD OF PLANNING AND PUBLIC PROTECTION

PLANNING APPEAL DECISIONS September 2016 – February 2017

1. PURPOSE OF REPORT

- 1.1. The report provides an outline of recent decisions issued by the Planning Inspectorate on appeals lodged against determinations on planning applications by the County Council.
- 1.2. The report briefly sets out the details of each case, the issues considered to be relevant to the decisions and the Inspector's conclusions on the issues.
- 1.3. This is an information item. Members are welcome to contact Officers outside the Meeting to discuss detailed matters arising from the decisions.

2. BACKGROUND.

- 2.1. Members will be aware that appeals can arise from a number of situations, including:
 - The failure of the County Council to determine an application within the statutory period for that type of application
 - The imposition of conditions on a permission / approval / consent
 - The refusal of permission / approval / consent.
- 2.2. Appeals are made to the Planning Inspectorate, within statutory time periods from the making of a decision, or failure to make one. They are dealt with through the following main mechanisms:

Written Representation – Submission of written statements from the Council, appellants, and interested parties. This process is normally the simplest and speediest, with minimal cost involved for the parties.

Informal Hearing – Submission of written statements of case from the Council, appellants, and interested parties, followed by a Hearing chaired by an Inspector appointed by the Planning Inspectorate. Hearings normally last one day. The Council and appellants are entitled to make applications for costs at a Hearing.

Public Inquiry – Submissions of statements of case and Proofs of Evidence from the Council, appellants, and interested parties, followed by a formal Inquiry chaired by an Inspector appointed by the Planning Inspectorate. The length of Inquiries can vary, dependent on the type of proposal, the number of issues involved, and the number of interested parties. The main parties are legally represented, can use specialist witnesses to offer evidence, and cross-examination of evidence takes place.
- 2.3. Officers will be providing feedback on a 6 monthly basis on appeal decisions as these invariably raise matters of interpretation of policy and guidance, including from the decisions of Inspectors which need to be borne in mind in relation to consideration of undetermined applications. There are also simple 'lessons learned' / practice points which may be invaluable for Officers, Members and other key parties such as Town and Community

Councils arising from the appeal process.

- 2.4. Full copies of the Planning Inspectorate decisions on the appeals can be accessed on the Planning Application Search facility on the County Council's website, by inserting the relevant application number, e.g. 43/2014/1166.

3. APPEAL DECISIONS

In the period between 1st September 2016 and 1st February 2017, the Council received 9 appeal decisions from the Planning Inspectorate. 3 of the appeals were allowed and 6 were dismissed. A brief summary of each of the cases follows.

Application : 43/2014/1166	
Proposal : Development of 2.4ha of land for residential development (outline application - all matters reserved)	
Location: Land off Warren Drive, Prestatyn	
Application refused under delegated powers	Public Inquiry -APPEAL ALLOWED
Main issues: Whether the proposal satisfies the tests for highly vulnerable development in zone C1 set out in Technical Advice Note 15: Development and Flood Risk (TAN 15) and policy RD1 of the Denbighshire Local Development Plan, and if not, whether there are material considerations sufficient to outweigh any conflict with TAN 15 and policy RD1 The proposal's effect on the availability/supply of employment land in the area, having regard to local and national planning policies and advice, and if there is harm, whether there are other material considerations sufficient to outweigh the harm.	
Inspector's conclusions: Flooding In terms of the first test set out in TAN 15, and bearing in mind the specific circumstances related to housing land supply in Prestatyn, the Inspector was satisfied the proposal is justified development within zone C1 as it has been demonstrated that the development is necessary to assist with the development plan strategy of providing housing on 'previously developed land' within the settlement. In terms of the fourth test set out in TAN 15, the Inspector was satisfied the consequences of flooding are found to be acceptable. In reaching that conclusion, he refers to the guidance in TAN 15 which states that the thresholds in A1.15 provide indicative guidance on what is considered to be tolerable conditions which given the presence of adequate warnings and preparation, appropriately equipped personnel could undertake emergency activities. In this case occupants of the proposed development, with or without assistance from the emergency services, would have four times longer to evacuate the area than that stated in the TAN. The Inspector considered the Council provided no substantive evidence why this wouldn't be the case or that the capacity of the emergency services would be exceeded as result of the proposal. Therefore contrary to the Council's stance, the Inspector considered the residents would be left with more than adequate time to evacuate the area if required. He also stated it was worth noting that the site would benefit from a free flood warning service (Floodline Warning Direct) run by NRW which prospective residents could sign up to. When the flood lead in time is then considered against the marginal exceedance of the thresholds for depth and velocity of flood waters, he considered the consequences of a flooding event could be acceptably managed. Employment land The Inspector appreciated that the redevelopment of the site for housing would reduce the stock of employment sites in the area, but noted the site is currently rundown and vacant, and saw little prospect for more effective use as employment land if the appeal is dismissed. Also based on the evidence submitted in regards to supply and demand in the area which includes reference to Prestatyn, he saw no harm in the loss of the appeal site for employment purposes or that its loss would have any significant effect on the employment needs of the area. He concluded that on balance whilst the proposed development would reduce the stock of employment land, this would not be unduly harmful to employment interests in the area, nor would it unduly prejudice the ability of the area to meet a range of local employment needs, satisfying the requirements of criteria (iii) of policy PSE3.	

Application : 46/2014/1061	
Proposal : Details pursuant to condition 1 of outline planning permission 46/2013/0802 (Development of 1.1 hectares of land for residential purposes)	
Location: Land north side of Bryn Gobaith, St Asaph	
Application refused under delegated powers	Hearing -APPEAL ALLOWED
<p>Main issues: Whether it is reasonable that the issues of density and mix of housing type be required for agreement at the reserved matters stage; and, if so, Whether the scheme provides an appropriate density of development, and mix and balance of house sizes, having regard to the principles of sustainable development, and national and local plan policies.</p> <p>Inspector's conclusions: The Inspector agreed with the views of an appeal Inspector on a case dealing with the issues of 'scale' and 'layout', that 'their focus can be regarded as being the interrelationship between, and the juxtaposition of, the different elements of a development and its surroundings. Although the constituent parts of a development, i.e. the 'mix', may have a bearing upon such interrelationships it is, <i>at best</i>, an implicit consideration'. Contrary to the views of the Council, the Inspector considered the appeal referred to is directly relevant to the issue at hand in the current appeal, as irrespective of the different emphasis such as its reference to the number of bedrooms, it dealt with the principal of whether or not the Council could require the agreement of an appropriate mix of housing at the reserved matters stage, i.e. as is the case in the appeal as related to the Council's second reason for refusal. Had the Council wished to control density or for that matter housing mix, then further details should have been sought at the time of granting outline planning permission or appropriately worded conditions applied; there is no scope to reconsider these matters which should have been dealt with at the outline stage. There is no need to consider whether the scheme provides an appropriate density of development, or mix and balance of house sizes, because such specific matters lie outside the terms of the outline planning permission.</p> <p>Officer note The Council has challenged the Inspector's conclusions / interpretation of the matters for consideration in respect of scale and layout. Members will be advised of the outcome.</p>	

Application : 41/2015/0682	
Proposal : Change of use of land to station a mobile caravan to provide residential accommodation for a temporary period in connection with an existing rural enterprise	
Location: Land at The Croft, Rhuallt, St Asaph	
Application refused under delegated powers	Informal hearing -APPEAL ALLOWED
<p>Main issue: Whether the proposed development is essential for the maintenance of a viable rural enterprise</p> <p>Inspector's conclusions: The data and business plan submitted in support of the application are not robust and the financial test is not met. Nonetheless, it is considered that the performance of the business so far is sufficiently promising that temporary accommodation is justified and that the enterprise could be sustainable. The remainder of the TAN6 criteria are met and it is concluded therefore that the proposed development is essential for the maintenance of a viable rural enterprise.</p> <p>The Inspector granted a temporary permission for 3 years for the mobile caravan, to allow opportunity to develop the business and to demonstrate whether there is a case for permanent accommodation in connection with the enterprise.</p>	

Application : 43/2016/0879	
Proposal : Display of 3 advertisements	
Location: Celyn Vets 2 Aberconway Road, Prestatyn	
Application refused under delegated powers	Written representations - APPEAL DISMISSED
<p>Main issue: The impact of the advertisements on the character and appearance of the area.</p>	

Inspector's conclusions:

The proposed sign would be detrimental to the character and appearance of the residential area. As such it would be contrary to the Council's Supplementary Planning Guidance 17: Advertisements.

Application : 43/2016/0032

Proposal : Erection of domestic garage

Location: The Willows, St Asaph Road, Dyserth

Application refused under delegated powers

Written representations - APPEAL
DISMISSED

Main issues:

The visual impact of the proposed garage both in regard to its association with the existing house and the neighbouring properties.

Inspector's conclusions:

Due to its excessive height, the proposed garage building would be out of scale with its surroundings, harmful to the character of the area, and would have an unacceptably overbearing visual impact on the occupiers of adjoining and nearby properties.

Application : 16/2015/1047

Proposal : Replacement of Llanbedr Hall by erection of 13 3-storey dwellings.

Location: Llanbedr Hall, Llanbedr DC, Ruthin

Application refused under delegated powers

Written representations - APPEAL
DISMISSED

Main issues:

Whether the proposal would be an acceptable form of development having regard to national and local policies relating to the countryside.

Inspector's conclusions:

The proposal would result in a development in the open countryside in an unsustainable location, with a heavy reliance on the private car, for which there are no exceptional circumstances. Therefore the proposal would be in conflict with PPW, TAN6 and LDP Policy RD4. Furthermore, the argument about whether the Hall building was actually used (or permitted) at some point for 12 (or even 13) flats, such use would clearly have been on the basis of policies for re-use of the existing building, and would not in itself make it right to approve new dwellinghouses in place of apartment units in this location.

Application : 01/2015/1244

Proposal : Erection of a log cabin to be used occasionally by gliding instructor

Location: The Airfield, Lleweni Park, Denbigh

Application refused under delegated powers

Written representations - APPEAL
DISMISSED

Main issues:

Whether the proposed development complies with national policy designed to protect the countryside.

Inspector's conclusions:

The need for the accommodation as part of the established use has not been explained. The proposal would result in a new dwelling in the countryside without the need for that dwelling being properly justified.

The proposed log cabin would be sited near the existing mobile home considered in the previous appeals, and would not have a significant impact on the character and appearance of the area because of its design and location. However, without sufficient policy justification it would undermine the policies of restraint that apply to development in the open countryside and it might lead to other unjustified residential uses. The proposal would therefore cause harm to interests of acknowledged importance. The temporary and occasional nature of the occupation would be difficult to control and the net result would be a new dwelling in the countryside, even with this control in place. No other options to meet the perceived need, apart from the existing mobile home on the site, have been considered. The Inspector had regard to the benefits claimed by the appellant in terms of the visitors generated by the gliding activities on the site, but was not convinced that these benefits are incumbent on the instructors living on the site.

The proposed development conflicts with national policy designed to protect the countryside.

Application : 14/2015/0854	
Proposal : Installation of 2no. small scale wind turbines and associated equipment housing and access tracks	
Location: Foel Uchaf, Cyffylliog, Ruthin	
Application refused under delegated powers	Written representations - APPEAL DISMISSED
<p>Main issues: The effect of the development on the character and visual amenity of the surrounding landscape and whether any harm in such terms is outweighed by other material considerations.</p> <p>Inspector's conclusions: The visual impact of the turbines would be particularly harmful in views from the minor roads near Porth Farm and at Pant Pastynog (viewpoints 1 and 3). There would also be some harm to the views from the Hiraethog Trail (viewpoint 4). However, most harm would be in the views from the vantage points to the west of the site where the turbines would be seen in the middle distance with the Clwydian Range in the background. From these locations, the turbines would appear as isolated, incongruous and distracting features interposed in an elevated position in front of the vista of the Clwydian Range beyond. The turbines would also appear as unduly prominent skyline features on top of Foel Uchaf in views from other nearby vantage points including Denbigh Castle (viewpoint 5). The development would therefore conflict with the guidance for Strategy Area 10 to avoid siting wind energy development along open natural skylines, open hill slopes and within sight lines of key views.</p> <p>Wind turbines are by their nature large structures, and a degree of visual prominence and landscape change is inevitable, particularly given their need to exploit a wind resource. However the overall assessment of the visual effects of the proposal in this case is that, taking account of the prominent nature of the site and its place in the landscape, the intrinsic qualities of the locality and the significance of the views affected, the development would cause serious harm to the character of the landscape and its visual amenity. As such the development would conflict with the provisions of Policy VOE 9 of the LDP.</p> <p>The Inspector considered the relationship of the proposal to the nearby SSA together with existing and consented wind farm developments in the area. Although relatively close to the SSA the site lies within an area of a very different landscape character, which sets a different context for the consideration of wind turbine proposals. Whilst the proposed turbines would be some distance from the turbines in the SSA, the Inspector agreed with the Council that there is the potential for the development to contribute to the spread of a windfarm landscape beyond the confines of the SSA where the implicit objective of TAN 8 is to maintain the landscape character.</p>	

Application : 05/2015/1066	
Proposal : Erection of 2 storey rear extension	
Location: Ty'n y Ceubren, Glyndyfrdwy, Corwen	
Application refused under delegated powers	Written representations - APPEAL DISMISSED
<p>Main issues: The effect of the proposed development on the character and appearance of the host property, the local area and the surrounding Clwydian Range and Dee Valley Area of Outstanding Natural Beauty (AONB).</p> <p>Inspector's conclusions: The proposed extension would result in a development that would not only be detrimental to the character and appearance of the host property, but also to the wider area which is a designated AONB. In this respect the proposal conflicts with policies RD3 and VOE2 of the Denbighshire County Council Local Development Plan (2013) which collectively, and amongst other things, requires proposals to be sympathetic in design, scale, massing and materials to the character and appearance of the existing building and to prevent harm to the character and appearance of the AONB Landscape.</p>	

4. RECOMMENDATION

4.1. The report is for information only.

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HEAD OF PLANNING AND PUBLIC PROTECTION