

## APPEALS SUMMARY

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### APPEALS ALLOWED

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1. APPLICATION NO.14/2016/0723 -

SITE ADDRESS: **Land adjacent to Gelli Farm, Bontuchel, Ruthin**

PROPOSAL: Certificate of lawful use or development for the stationing of a caravan for use ancillary to agriculture or forestry

BASIS OF REFUSAL: The basis of the refusal to issue a Certificate of Lawfulness was that on the evidence submitted, the continued stationing of a caravan at the site was not ancillary to an agricultural/forestry use of the land, and therefore it constituted development requiring planning permission.

TYPE OF APPEAL: **Hearing**

COSTS AWARDED AGAINST COUNCIL: **No**

ISSUES OF NOTE

**The Inspector considered the main issue** was whether or not the stationing of a caravan on the land comprises a material change of use of the land.

**Inspector's conclusions:**

A caravan stationed on agricultural land and used for ancillary purposes to the agricultural / forestry use of the land does not involve development or a material change of use of land, and does not therefore require planning permission. Use as a residential caravan involves a material change of use.

**Postscript / practice points**

Officers had considered on the original application that, based on investigations of the use of the said caravan, it was being used for residential and not agricultural purposes.

The appellant was able to provide amended information at the appeal which convinced the Inspector the caravan was now being used for ancillary agricultural purposes. i.e. by removing residential paraphernalia from the site and emphasising agricultural machinery and equipment storage.

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## 2. APPLICATION NO. 43/2014/1166

**SITE ADDRESS: Land off Warren Drive, Prestatyn**

**PROPOSAL:** Development of 2.4 hectares of land for residential development (outline application – all matters reserved)

**BASIS FOR REFUSAL:** Unjustified loss of designated employment land in favour of residential development, and unacceptable risks from flooding.

**TYPE OF APPEAL: Public Inquiry**

**COSTS AWARDED AGAINST COUNCIL: Yes (Partial award).** Estimated to be around £5K. Failure to provide substantive written evidence to support contentions that the proposals were contrary to advice on economic development in TAN 23.

### **ISSUES OF NOTE**

**The Inspector considered the main issues** were:

- 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:**

- Development would assist the development plan strategy of providing housing in Prestatyn, and would be on previously developed land; and would be necessary to deliver dwellings over the plan period
- Thresholds in TAN 15 relating to depth of inundation and velocity of floodwater are only indicative and should not be taken as prescriptive or definitive. Judgement has to be made on the circumstances at each site. Thresholds in TAN 15 are only marginally exceeded. Flooding event could be acceptably managed, and meets the tests in TAN 15.
- Loss of employment land not considered unduly harmful to employment interests in the area and would not prejudice the ability of the area to meet a range of employment needs. Lack of 5 year housing land supply weighs heavily in favour of the proposal.

### **Postscript / practice points**

The Inspector gave significant weight to the lack of a 5 year housing supply, which is an argument being used increasingly against the Council to support residential development proposals

Flood risk issues are being judged on a case by case basis. The decision emphasised that the thresholds in TAN 15 relating to depth of flooding and the velocity of floodwater have to be treated as indicative, and assessed alongside the acceptability of mitigation proposals.

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3. APPLICATION NO. 43/2016/0512

SITE ADDRESS: **74 Gronant Road, Prestatyn**

PROPOSAL: Residential development comprising 5 no.apartments and 6 no.detached dwellings together with associated roads and sewers

BASIS OF REFUSAL: Unacceptable scale and size of the apartment block and the impact on the character of the area.

TYPE OF APPEAL : **Hearing**

COSTS AWARDED AGAINST COUNCIL: **No**

ISSUES OF NOTE

**The Inspector considered the main issue** was the effect of the apartment block on the character and appearance of the area.

**Inspector's conclusions:**

- The apartment block would be large in comparison with the dwellings on the northern side of the road and from directly across the road, but in the context of the properties on the southern side of the road, the size and scale would not be detrimental to the character and appearance of the area.
  - Design of fenestration can be addressed by condition
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4. APPLICATION NO. 43/2014/1061

SITE ADDRESS: **Land at north side of Bryn Gobaith, St Asaph**

PROPOSAL: Details of layout, scale and appearance of 14 no. dwellings and site landscaping submitted in accordance with condition number 1 of outline planning permission 46/2013/0802/PO

BASIS OF REFUSAL: Unacceptable density of development / inefficient use of land and inappropriate mix of house sizes to reflect local need.

TYPE OF APPEAL: **Hearing**

COSTS AWARDED AGAINST COUNCIL: **Yes.** Council did not pay due regard to the legal opinion and cases drawn to its attention prior to the Hearing, or to the definition of the scope of the 'reserved matters' in the relevant Order, resulting in the appellants having to pursue an unnecessary appeal.

ISSUES OF NOTE

**The Inspector considered the main issues** were

- 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.

**Inspector's conclusions:**

- Case law indicates that density and housing mix cannot be determined as part of reserved matters relating to scale and layout, i.e. they have to be controlled at outline stage through seeking further details or by way of applying suitable planning conditions
- Given the above conclusion, there was no need to consider the acceptability of density or housing mix at the appeal as these are outside the terms of the outline planning permission.

**Postscript / practice points**

The decision sets out significant conclusions on the scope of control over density and housing mix on residential development proposals, in that these have to be addressed at outline application stage. If such details are not requested at outline stage or are not conditioned for further approval at that point, they cannot be dealt with at reserved matters stage.

5. APPLICATION NO. 47/2015/1152/PF

**SITE ADDRESS: Land at The Croft, Rhualt, St Asaph**

**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.

**BASIS FOR REFUSAL:** The information submitted did not meet the TAN6 tests requiring a functional and financial need to be proven to justify the case for a temporary caravan.

**TYPE OF APPEAL: Hearing**

**COSTS:** Applied for by the Council but not granted. Appellant's submission of late financial information and confusion over documents relating to the appeal did not amount to unreasonable behaviour or mean the Council incurred unnecessary costs.

**ISSUES OF NOTE**

**The Inspector considered the main issue** was whether the proposed development is essential for the maintenance of a viable rural enterprise.

**Inspector's conclusions:**

- The submitted business plan and financial information are not sufficient to prove that the enterprise is financially sound, with good prospects of remaining economically sustainable for a reasonable period of time.

- Where a case is not completely proven, TAN 6 allows opportunity for temporary accommodation to establish the case for a permanent residential unit, and at the end of 3 years, all the tests of TAN 6 would have to be met.

### **Postscript / practice points**

The Inspector gave the appellant considerable 'benefit of the doubt' in allowing a 3 year permission for a caravan since the submitted information at application and appeal stage did not demonstrate a clear prospect of the business being financially sound

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## **APPEALS DISMISSED**

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### 6. APPLICATION NO. 01/2015/1244/PF

SITE ADDRESS: **The Airfield, Lleweni Parc, Denbigh**

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

BASIS FOR REFUSAL: The relevant tests of TAN 6 relating to establishing a functional need, time and financial tests and alternative dwelling considerations were not met.

TYPE OF APPEAL: **Written representations**

COSTS : N/A

### ISSUES OF NOTE

**The Inspector considered the main issue** was 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.

### **Postscript / practice points**

The decision reaffirmed the need to apply the TAN6 tests to establish the need for a residential presence in relation to a rural enterprise and that these were clearly not met in this instance

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7. APPLICATION NO. 01/2016/1002/PS

SITE ADDRESS: **Bryn Hyfryd, A525 roundabout, Denbigh**

PROPOSAL: Removal of condition number 4 of planning permission 01/2014/1283 relating to arrangements securing the dwelling as an affordable dwelling for local needs.

BASIS OF REFUSAL: The removal of the condition would involve the loss of an affordable dwelling

TYPE OF APPEAL: **Written representations**

COSTS: N/A

ISSUES OF NOTE

**The Inspector considered the main issue** was whether it is reasonable and necessary to secure the development as an affordable dwelling for local needs

**Inspector's conclusions:**

- Development should be in accord with policy BSC9 of the Local Development Plan, hence its occupation as affordable housing for local need is required.
- Development of a market dwelling would be contrary to BSC9 and removal of the condition is not justified

**Postscript / practice points**

An important reaffirmation of the need for dwellings outside settlements to be restricted to affordable housing, in line with Local Development Plan policy BSC9

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8. APPLICATION NO. 05/2015/1066

SITE ADDRESS: **Tyn y Ceubren, Glyndyfrdwy, Corwen**

PROPOSAL: Erection of two storey rear extension

BASIS FOR REFUSAL: Adverse impact on the character and appearance of the existing dwelling, the surroundings and Clwydian Range and Dee Valley Area of Outstanding Natural Beauty

TYPE OF APPEAL: **Written representations**

COSTS: N/A

ISSUES OF NOTE

**The Inspector considered the main issues were** 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.

**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, contrary to Local Development Plan policies.
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9. APPLICATION NO. 05/2016/0675

**SITE ADDRESS: Colomendy Lodge, London Road, Corwen**

**PROPOSAL:** Demolition of existing building (stable) and replacement with a single storey house detached from the neighbouring dwelling.

**BASIS FOR REFUSAL:** The site is not defined as a hamlet in the Local Development Plan, the proposal does not provide affordable housing and its development does not constitute infill, adverse impact on the outlook of the adjacent occupiers, and unacceptable harm to the character and appearance of the landscape.

**TYPE OF APPEAL: Written representations**

**COSTS :** N/A

**ISSUES OF NOTE**

**The Inspector considered the main issues** were whether the development would satisfy national and local policy in respect of the location of new dwellings; the effect of the development on the living conditions of the occupants of the neighbouring dwelling, with regard to outlook; and the effect on the character of the landscape.

**Inspector's conclusions:**

- Proposal would not meet the requirements in respect of new dwellings in the open countryside, contrary to planning policy
  - the degree of change to the outlook from nearby property would be sufficient to harm the living conditions of the occupants
  - proposal would lead to significant visual harm which would be detrimental to the character of the landscape
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10. APPLICATION NO. 14/2015/0854

**SITE ADDRESS: Land at Foel Uchaf, Cyffylliog**

**PROPOSAL:** Installation of 2no.small scale wind turbines and associated equipment housing and access tracks.

**BASIS FOR REFUSAL:** Visual / landscape impact in prominent hilltop location, spread of turbines outside Strategic Search Area.

TYPE OF APPEAL: **Written representations**

COSTS : N/A

ISSUES OF NOTE

**The Inspector considered the main issues** were 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.

**Inspector's conclusions:**

- 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.
- Although relatively close to the Strategic Search Area, the site lies within an area of a very different landscape character, which sets a different context for the consideration of wind turbine proposals.
- Additional income stream for the farm enterprise, diversification benefits for the business and contribution to renewable energy targets do not outweigh particularly adverse visual and landscape impacts

**Postscript / practice points**

The decision recognised that the development would have an unacceptable impact on a high quality landscape on the fringe of the Strategic Search Area, and would be unacceptably harmful.

Benefits of renewable energy production and farm diversification were not considered sufficient to outweigh the harm identified

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11. APPLICATION NO. 16/2014/1047/PF

SITE ADDRESS: **Llanbedr Hall, Llanbedr, Ruthin**

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

BASIS FOR REFUSAL: The number of dwellings proposed exceeds the existing number, hence no exceptional circumstances to justify development outside village boundary, contrary to rural restraint policies.

TYPE OF APPEAL: **Hearing**

COSTS: N/A

ISSUES OF NOTE

**The Inspector considered the main issue** was 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.
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12. APPLICATION NO. 24/2016/0615/PF

SITE ADDRESS: **Plas Isa, Rhewl**

PROPOSAL: Change of use of agricultural land to domestic curtilage area, erection of a detached garage/storage building and associated works.

BASIS OF REFUSAL: The land was of high agricultural quality and there was no overriding need for the garden extension.

TYPE OF APPEAL: **Written representations**

COSTS : N/A

ISSUES OF NOTE

**The Inspector considered the main issue** was whether there is an overriding need for the development which is sufficient to justify the use of high quality agricultural land.

**Inspector's conclusions:**

- overriding need for the development has not been satisfactorily demonstrated to justify the permanent loss of this area of best and most versatile agricultural land
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13. APPLICATION NO. 30/2016/0386/PF

SITE ADDRESS: **Tweedmill, St. Asaph**

PROPOSAL: Construction of car wash with office cabin, wash and valeting bays.

BASIS FOR REFUSAL: Unrelated piecemeal development on an established retail site, and visually obtrusive.

TYPE OF APPEAL: **Written representations**

COSTS : N/A

ISSUES OF NOTE

**The Inspector considered the main issue** was the effect of the development on the character and appearance of the existing retail complex and its surroundings.

**Inspector's conclusions:**

- proposed design and materials of the car wash would be visually inappropriate and detract from the overall appearance of the complex.

- inappropriate development unrelated to the main retail activity on the site.
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#### 14. APPLICATION NO. 40/2016/1116/PF

SITE ADDRESS: **Land adjacent to Woodland View, Terfyn, Bodelwyddan.**

PROPOSAL: Construction of new dwelling

BASIS FOR REFUSAL: The basis of the refusal was that the site is outside any development boundary, would not constitute infill, extending development out in an unsatisfactory ribbon fashion, and would not meet the affordability criteria in development plan policies.

TYPE OF APPEAL: **Written representations**

COSTS: N/A

#### ISSUES OF NOTE

**The Inspector considered the main issue(s)** were whether the proposal accords with planning policies that seek to strictly control residential development in the open countryside, and the effect on the character and appearance of the area.

#### **Inspector's conclusions:**

- No legal agreement has been put forward by the Appellant to confirm that the dwelling would be an 'affordable dwelling' in perpetuity. In these circumstances the construction of a dwelling at this location would represent an intrusion of built form into the countryside.
- The proposed dwelling would be sited in a prominent position and it would result in harm to the character and appearance of the area.

#### **Postscript / practice points**

- The Inspector confirmed the basic test to be applied in relation to arguments that the absence of a 5 year housing supply should weigh in favour of granting permission, i.e. that it can be given weight where a development complies with policy, but this should be limited where there are clear conflicts with policy.  
In this case, the development did not comply and therefore less weight was attributed to the contribution this development would make to housing land supply. It was not considered that in this case such a contribution, or the potential need to increase the supply of land for housing, would justify a development that would be contrary to the policies identified.
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15. APPLICATION NO. 42/2016/0032/PF

SITE ADDRESS: **The Willows, St. Asaph Road, Dyserth**

PROPOSAL: Erection of replacement garage

BASIS FOR REFUSAL: The garage would be an overbearing form of development which would appear out of scale to the original dwelling and development within the locality.

TYPE OF APPEAL: **Written representations**

COSTS : N/A

ISSUES OF NOTE

**The Inspector considered the main issues** were the visual impact of the proposed garage both in regard to its association with the existing house and the neighbouring properties.

**Inspector's conclusions:**

- 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.
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16. APPLICATION NO. 43/2015/0879/PF

SITE ADDRESS: **2 Aberconwy Road, Prestatyn**

PROPOSAL: Unilluminated sign

BASIS OF REFUSAL: Unacceptable impact on the visual amenity of the locality

TYPE OF APPEAL: **Written representation**

COSTS: N/A

ISSUES OF NOTE

**The Inspector considered the main issue** was the impact of the advertisement on the character and appearance of the area.

**Inspector's conclusions:**

- The proposed sign would be detrimental to the character and appearance of this residential area.

**Postscript / practice points**

The Inspector interestingly commented that there are adequate other signs advertising the presence of the business without the proposed sign.

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17. APPLICATION NO. 43/2016/1154

SITE ADDRESS: **49 Green Lanes, Prestatyn**

PROPOSAL: Demolition of 2 conservatories and single storey extension, erection of extension, new roof with first floor accommodation and new porch

BASIS FOR REFUSAL: Cumulative adverse impact on the character and appearance of the existing dwelling and the immediate area, and on the amenity of adjacent occupiers by virtue of overbearing impact.

TYPE OF APPEAL: **Written representations**

COSTS : N/A

ISSUES OF NOTE

**The Inspector considered the main issue(s)** were the effect of the proposed development on the character and appearance of the host dwelling and its surroundings, and on the living conditions of occupiers of adjacent dwellings.

**Inspector's conclusions:**

- development would harm the character and appearance of the appeal property and the surrounding area.
  - the increase in roof height and installation of a dormer would not have an overbearing impact on the nearest property.
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18. ENFORCEMENT REFERENCE NO. ENF/C/17/3166767

SITE ADDRESS: **Ynys Wen, Mold Road, Bodfari**

UNAUTHORISED DEVELOPMENT / USE: Retention of annexe and erection of an associated garage and access ramp.

ORIGINAL DECISION: Planning permission refused for retention of annexe.

TYPE OF APPEAL: **Written representations**

INSPECTORATE DECISION: Appeal dismissed and enforcement notice upheld. Planning permission refused on deemed application

COSTS: N/A

ISSUES OF NOTE

The Inspector concluded that:

- the works specified in the Notice are adequately identified and the steps required to be taken to comply are concisely and unambiguously described
- there is no dispute that the annex, garage and ramp have been constructed and are unauthorised

- planning permission should not be granted as the scale of development involved is a discordant feature within the curtilage and immediate rural landscape
  - the steps required to comply with the notice do not exceed what is necessary to remedy the breach
  - a period of 4 months is sufficient to undertake the demolition works required to comply with the notice
-