

# RESIDENTIAL DEVELOPMENT AT MINDALE FARM, MELIDEN

Planning application 43/2016/0600

## **1 Background to the decision.**

- 1.1. Planning permission was sought for the development of some 4.8 hectares of land by way of 133 dwellings. The site at Mindale Farm was allocated for residential development in the adopted Denbighshire Local Development Plan (2013), albeit as a late addition in the process.
- 1.2. The application was submitted for full planning permission, and was accompanied by a range of technical reports – a Transport Assessment, an Ecological Assessment, an Arboricultural Impact Assessment/ Method System, a Flood Consequence Assessment, an Archaeological Assessment, an outline drainage strategy, a Community Linguistic Statement Report and Impact Assessment, a Geophysical Survey Report, and a Water Conservation Strategy.
- 1.3. A wide range of Consultations was undertaken including with internal sections of the Council – Highways, Drainage, Conservation Architect, Ecologist, Housing, Archaeologist; and external bodies including Prestatyn Town Council, and agencies such as Natural Resources Wales, Dwr Cymru Welsh Water, the Clwyd Powys Archaeological Trust, and the North Wales Wildlife Trust.
- 1.4. In addition, neighbour letters were distributed to some 220 addresses in the vicinity of the site, site notices were posted around the site and the application was advertised in the press. Responses were received from over 40 different addresses.
- 1.5. The Town Council's responses contained detailed commentary on the adequacy of information in the transport assessment, and in relation to foul and surface water details, questioning issues of ownership and whether it was appropriate to determine the application on the basis of the submission.
- 1.6. The individual objections received in the main focussed on the following issues:
  - The principle of the development and the need for housing
  - Highway concerns
  - Flooding and drainage
  - Ecological impacts
  - Impacts on local schools and hospitals
  - Land ownership issues

- 1.7. Prior to presenting the application to committee, Officers met with the Local member to discuss the application and the issues arising. The site was visited by a Site Inspection panel before consideration at Planning Committee.
- 1.8. The application was presented to Planning Committee for consideration in April 2017. The Officers' report detailed the proposals, responses to consultation and publicity, the material considerations, and matters which had arisen in the course of progressing the application. The report advised on the Council's adopted planning policies and the Site Development Brief relating to the development of the site and an adjoining allocated site.
- 1.9. The report concluded on the basis of the responses from the key 'technical' consultees, that there were limited land use planning grounds to oppose the grant of permission, and that there were reasonable controls which could be exercised through planning conditions and a legal agreement to mitigate impacts, sufficient to merit a positive recommendation. The matters it was suggested could be dealt with through a legal agreement included off site highway improvements, and contributions to affordable housing, education provision, and mitigation of impact on the Welsh language.
- 1.10. The application was discussed at length at Committee. There were public speakers in favour and against the application. The local member provided some background history to the site, which had been included in the LDP following allocation by the Planning Inspector, who he understood had indicated that if the infrastructure was not in place, then planning permission could be refused. It was argued that the existing local infrastructure was not adequate to cope with the scale of the development, particularly in terms of highways and drainage/flooding. Prestatyn Members concurred with the comments made by the Local Member, elaborating further on those issues and their concerns regarding the impact of the development on the village and its infrastructure. The committee generally shared those concerns, which had also been raised by members who had attended the Site Inspection Panel meeting.
- 1.11. Planning Committee ultimately voted to refuse to grant permission, on grounds of the scale of the proposed development and impact on the local community, over intensification of the site in the context of the village setting and on rural green space; and on acceptable negative impact of the development on the existing highway infrastructure, including road safety concerns.
- 1.12. The reasons for refusal on the Certificate of Decision, dated 14<sup>th</sup> April, 2017 were

Reason 1

*It is the opinion of the Local Planning Authority that the scale of the development would have an unacceptable impact on the character of the village and its infrastructure, and in combination with the detailing of the proposed access road, the development would give rise to unacceptable levels of peak time congestion and dangers to all road users and in particular younger pedestrians accessing the local school and nearby play facilities. This would have a negative impact on the well-being and quality of life for existing and proposed residents using the highway infrastructure. The development is considered to be contrary to the adopted Site*

*Development Brief 'Residential Development – 'Residential Development at Ffordd Hendre and Maes Meurig, Meliden , Local development Plan policy RD 1 'Sustainable development and good standard design' criteria vii),viii) and ix), Technical Advice Note 18 'Transport' and Planning Policy Wales 9*

#### Reason 2

*It is the opinion of the Local Planning Authority that the proposals do not adequately demonstrate that surface water run-off from the site and higher land above it can be managed without increasing the risk of additional discharge to watercourses leading to the Prestatyn Gutter, and hence increasing the potential for flooding downstream. Accordingly it is considered that the proposal fails to comply with the adopted Site Development Brief 'Residential Development at Ffordd Hendre and Maes Meurig, Meliden', LDP policy RD1 'Sustainable development and good standard design' criteria xi), Policy VOE 6 'Water Management', Technical Advice Note 15 'Development and Flood Risk' and Planning Policy Wales 9.*

## 2. **The appeal process**

- 2.1. The applicants subsequently lodged an appeal against the refusal decision. The Planning Inspectorate informed Denbighshire County Council in May 2017 that the appeal was to be dealt with via the Informal hearing process. This is a method of appeal which enables both parties to debate their evidence around a table with an inspector and does not involve cross-examination with legal representation.
- 2.2. An external planning consultant was engaged to co-ordinate the appeal process. Highway and Drainage Consultants were subsequently engaged for specialist input to assist preparation of the case to defend the two reasons for refusal, and to appear at the Hearing.
- 2.3. Meetings were held with the Local member and consultants during the preparation of the Statements of Case.
- 2.4. The hearing was held in Meliden on October 4<sup>th</sup>, 2017.
- 2.5. The Inspector led the Hearing and set out what she considered to be the main issues. She invited contributions from the main parties, the Local member, and a number of private individuals in relation to the proposals. There was the routine discussion on a 'without prejudice' basis on possible conditions to be attached in the event of a permission being granted, and to matters which could be dealt with in a Section 106 Obligation (financial contributions, off - site highway improvements, etc.)
- 2.6. There was no application for costs from the appellants at the Hearing.

## 3. **The Appeal Decision**

- 3.1. The Planning Inspector's Appeal Decision was issued on October 13<sup>th</sup>, 2017.
- 3.2. The Inspector dismissed the appeal.
- 3.3. The Inspector's decision is summarised below:

## The Main Issues

The Inspector considered the main issues were the effect of the development on the character of the village and the well-being of local residents with particular regard to the highway infrastructure; and whether surface water run-off from the development would give rise to flooding.

### In relation to the effect on the character of the village and well-being of local residents with particular regard to the highway infrastructure

- The Inspector reviewed a wide range of issues in addressing the effect on the village and the highway implications of the development. She had regard to the proposals for the new access off Ffordd Gwilym, the nature of the approach highway network, speed limits, footway gradients, the proposed emergency access, the Transport Assessment, junction capacities, the distance from local facilities, and impacts on those facilities.
- The Inspector's conclusions were that:

The site was allocated for residential purposes in the Local Development Plan. There was no substantive evidence that local services and facilities could not accommodate future residents of the proposal, and the matter of primary school places is one which could be addressed by way of a financial contribution via a legal agreement. The development would not harm the character of the area. The local highway infrastructure could accommodate the increased traffic generated by the development without harm to highway safety.

- Whilst accepting that further detailed consideration could be given to the matters of highway visibility and the emergency access, the Inspector considered the proposal would be unacceptable in its submitted format, so concluded that on what was before the Hearing, these aspects of the development would have an unacceptable effect on the highway infrastructure, contrary to policy Planning policy wales, and TAN 18.

### In relation to whether surface water run-off from the development would give rise to flooding

- The Inspector reviewed the information submitted with the planning application, including proposals for attenuation ponds, the Flood Consequences Assessment, the responses of Natural Resources Wales and other consultees and evidence submitted by the Council's consultants.
- The Inspector's conclusions on the basis of the evidence before her were that a more thorough understanding of the groundwater regime and any associated risk together with further consideration of the surface water drainage and the design of the attenuation ponds was required. She took the view that in these circumstances, and the precautionary approach outlined in TAN 15: Development and Flood Risk, that insufficient information had been submitted in order to demonstrate that the scheme would not give rise to flooding, contrary to relevant policies, TAN 15 and Planning Policy Wales.

In relation to other matters:

- In respect of land ownership issues, the inspector was satisfied that although the appellant did not own the appeal site, this did not prohibit an application being made and she was satisfied that the correct procedures in respect of the notification of persons with an interest in the land subject of the proposal were followed at application stage.
- In respect of suggestions from interested parties that there was insufficient land within the appeal site to construct the road as proposed and whether potential changes to the scheme would necessitate encroachment onto adjoining land, there was no substantive evidence that the works could not be contained within the land identified as the appeal site. Whether the Appellant has the right to develop the land in terms of its ownership is a separate legal matter.
- The development would not have an unacceptable impact on the Pwll y Bont wildlife site and ecological interests could be suitably protected.
- Although dismissing the appeal would delay the bringing forward of the site for development, the considerable weight given by TAN 1 to the need to increase housing land supply is subject to the proviso that the development would otherwise comply with national planning policies. The scheme as submitted does not meet this provision.
- A draft Unilateral Undertaking was submitted to the Inspector subsequent to the Hearing, relating to financial contributions towards off-site highway works, affordable housing, education and the Welsh language. The Inspector agreed with the Council that the obligations contained in the UU were necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accord with The Community Infrastructure Levy Regulations 2010, as amended, and Circular 13/97 Planning Obligations and as required by Policy BSC 3 of the LDP. However, as there was a fundamental flaw in that the UU was not signed by all those party to it, the need for the obligations to make the development acceptable had therefore not been secured by the UU as submitted.

Inspector's conclusions:

The concluding paragraphs are quoted below:

*“39. I have concluded that the development would be unacceptable in terms of highway visibility, emergency access, and insufficient evidence has been submitted to demonstrate the scheme would not give rise to flooding. For the reasons I have already given I do not consider that all these matters can be satisfactorily addressed by condition. Furthermore, the legal agreement deemed necessary to make the development acceptable is incomplete and the obligations it would provide have not been secured in full.*

*40. It is accepted that the need to increase housing land supply carries considerable weight in determining proposals for residential development. However, in this instance the principle of the development is already established and it is the detail of the scheme which has been found to be inadequate. On balance I consider these factors do not outweigh the concerns I have identified. For these reasons, and having had regard to all other matters raised, the appeal is dismissed.”*