

ITEM NO. 8

SUPPLEMENTARY REPORT BY THE HEAD OF PLANNING AND PUBLIC PROTECTION

RECONSIDERATION OF PLANNING APPLICATION 43/2018/0750

Demolition of existing dwelling and outbuildings, erection of 133 dwellings, construction of internal estate roads, sewers, SUDS drainage and open spaces, strategic and hard/soft landscaping and ancillary works, in association with application 43/2018/0751 for new link road to Ffordd Talargoch (A547)

Land to the north, west and east of Mindale Farm, Ffordd Hendre, Meliden, Prestatyn

1. BACKGROUND

- 1.1. The planning application for the housing development at Mindale Farm was recommended for grant of permission by Officers, having regard to current planning policies, consultation responses and representations, and the background history including a refusal of permission for a 133 dwelling scheme and the conclusions in a Planning Inspectorate appeal decision in 2017.
- 1.2. A copy of the Officer report to the September 2019 Committee is attached as Appendix 1 to this item. Appendix 2 is the relevant extract from the late representations sheets on the item for that meeting, which contained material received between the drafting of the original report and the date of the Committee meeting itself. Appendix 3 is the Planning Inspector's Decision letter on the 2017 appeal.
- 1.3. Members may recall there was debate on a number of issues at the Committee in September. The minutes of the debate are included in Item 4 of the agenda for this October meeting. In brief:
 - * There were public speakers in objection to, and in support of the application.
 - * The Planning Case Officer offered a short introduction referring to the context set by the 2017 application, Committee refusal and subsequent Planning Appeal decision.
 - * Councillor Peter Evans (local member) spoke against the application and expressed concerns over its impacts having regard to the inadequacies of local infrastructure – in particular the highway network - and over the drainage implications, as there were concerns over flooding issues in this area. Questions were raised over Welsh Government's position on the calculation of housing land availability figures and the approach to determining the education contribution, including the mechanism of securing extensions / alterations to Ysgol Melyd.
 - *In debate, other Members referred to:
 - concerns over highway impacts, including on the B5119

- questions over the need for new housing in this location
- confusion with the submission of separate applications for the housing development and the link road to the A547
- the potential presence of contaminated land, in connection with which it was suggested that condition(s) would be necessary to oblige pre-commencement investigation and mitigation
- management arrangements / the adoption of drainage systems, and the relevance of the SuDS and SAB processes
- the need for 2 bedroom accommodation and affordable housing in the area
- the Section 106 agreement mechanism and whether the terms of any agreement could be varied at a later date
- the need for contributions to improve other local services

*Officers responded to questions raised, drawing attention to specialist consultee responses and offering interpretation / comment on points of detail. It was indicated that the need to increase housing supply remains a Government and Council policy. The Highway Officer outlined considerations given to impacts on the road network, including capacity issues; confirming the submitted Transport Assessment had been thoroughly reviewed by highway officers, and there was sufficient information to allow full assessment of the application. It was recognised that the same basic proposals had previously been before planning committee and that permission had been refused, including on highway grounds, and that a subsequent appeal was dismissed on grounds relating to visibility and emergency access arrangements, but these had now been addressed. The Appeal Inspector had considered the highway infrastructure to be capable of safely accommodating the development. It was considered the highway network could accommodate the additional traffic generated, subject to conditions. Assessment of accident data did not show the highways were inherently dangerous for road users, including pedestrians. It was considered with the likely proportional split of vehicle journeys, any increase in traffic on the B5119 would be negligible.

* At the end of the debate, Councillor Peter Evans proposed refusal of permission. This was seconded by Councillor Merfyn Parry. Councillor Evans put forward the following grounds for refusal:

- Inadequate infrastructure, in particular on the A547 (Councillor Brian Jones asked to add reference to the B5119)
- Flooding implications
- Impact on local amenities and the character of the village

Councillor Merfyn Parry proposed that contamination be added to the grounds of refusal.

It was proposed that the wording of the reasons be agreed in consultation with the Local Member.

*In summing up, the Development Manager drew members' attention to the need to consider the risks to the Authority in refusing permission without clear evidence to support the grounds of refusal, and commented on the reasons as outlined.

Members subsequently accepted that the refusal should not include reference to contaminated land and impact on amenity.

It was proposed and accepted that a Recorded Vote be taken on this item.

The vote was 3 to grant permission, and 10 to refuse permission.

2. REASONS FOR REFERRAL BACK TO COMMITTEE

- 2.1. Subsequent to the September Committee, Officers have attempted to draft the wording of possible reasons for refusal based on highway and drainage grounds which capture the basis of Members' comments at the Committee. The first drafts of the reasons closely mirror the two grounds of refusal on the 2017 Mindale Farm application, and are set out below:

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, in particular in relation to the highway network, as in combination with other committed and proposed developments on allocated sites, it would add to unacceptable levels of peak time congestion and dangers to all road users. This would have a negative impact on the wellbeing 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 10.

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', Local Development Plan 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 10.

- 2.2. In respecting the resolution of Committee, on scrutiny, Officers have considerable reservations over the chances of successfully defending a refusal on the basis of the grounds outlined, should a subsequent appeal be lodged. Following consultation with the Monitoring Officer, it is considered that this is a case where there is a clear prospect of a cost award at appeal against the Council for acting unreasonably and essentially wasting any party's time and costs of having to respond to reasons put forward for refusal. These concerns arise from a review of the grounds for refusal as outlined, in the context of the detailed responses received from the Council's Highway officers and drainage consultants, and the conclusions of the Planning Inspector in her decision letter on the 2017 appeal.
- 2.3. As Officers we are always respectful of the views of Members and we acknowledge the conclusive vote of the Committee to refuse planning permission in this case. Notwithstanding this, it is our duty to ensure key issues of interpretation in relation to the determination of applications are thoroughly examined before a final decision is made, and to provide you with our professional advice, even though it may be at odds with the resolution of Planning Committee.
- 2.4. The following sections of the report therefore contain commentary on the issues arising in relation to the housing site proposal. The report requests Members to

reassess the application, and if members remain opposed to the grant of permission for one or two reasons, that due consideration be given to the precise wording of the reason(s), given the scrutiny to which they would be subjected at any appeal.

3. KEY ISSUES ON THE APPLICATION

- 3.1. As noted above, the issues which gave rise to the proposition to refuse permission were the highway and drainage impacts of the proposed housing development. Officers respectfully suggest that other matters raised at Committee and in consultation responses are not of such significance as to justify a refusal of permission. Points of detail can be dealt with satisfactorily by the imposition of conditions in the event of a permission being granted. This includes additional / revised conditions requiring the investigation of the potential for the presence of contaminated land prior to the commencement of development, which was raised in debate on the item.
- 3.2. The Officer report to the September Committee is attached in Appendix 1, as a basic reference, along with the relevant extract from the Late Information Sheets in Appendix 2. Of relevance to what Officers believe to be the main issues, Members are advised that the Officer report contains the following:
- A summary of the consultation responses received on the application (Pages 349-358)
 - A summary of events leading to the refusal of the 2016 Mindale Farm application, Code no. 43/2016/0600 (Section 1.5.3 – 1.5.5, pages 378 and 379)
 - The 2 reasons for refusal of application 43/2016/0600 (Section 1.5.6, pages 379 and 380)
 - A summary of the subsequent planning appeal process and the conclusions of the Appeal Inspector in her Decision letter (Section 1.5.7, pages 380 and 381)

With regard to the highway and drainage reasons for refusal of the current application, 43/2018/0750, the Officer report contains the:

- Officer assessment of the highway issues (Section 4.2.8, pages 402-409)
- Officer assessment of the drainage issues (Section 4.2.7, pages 397-402)

- 3.3. It is suggested that the key issues are dealt with in the sequence which follows in the report.

In relation to the highway / infrastructure reason for refusal -

- 3.4. Officers reading of the concerns expressed in debate at Committee are that the additional traffic movements from the development would increase pressure on the local road network, and in combination with additional traffic movements from housing sites under construction and from developments on allocated sites in the Local Development Plan, would give rise to unacceptable levels of congestion and dangers to all road users; all impacting adversely on the health and well-being of residents. The drafted reason for refusal No.1 in paragraph 2.1 attempts to encompass these concerns and cites the planning policy and guidance which may be relevant to highway considerations.
- 3.5. There is no dispute here that highway impacts are a legitimate land use planning consideration, and that these justify serious assessment in relation to housing proposals of the scale involved in the Mindale applications.
- 3.6. In recognising members' concerns over the local highway infrastructure, the basis of Officers' unease over the resolution to refuse permission on highway related

grounds are :

- *The site is allocated in the Local Development Plan*

Whilst allocation of land in a Development Plan does not guarantee the grant of planning permission, since local impacts of a development have to be addressed in every instance, it inevitably accords some status to the land as it means the principle of development has been recognised as acceptable by the Council when adopting the Plan. Implicit in this process is that the general impacts of the scale and nature of development have been taken into account and are deemed acceptable.

Should the application be refused and taken to appeal, the fact the site is allocated for housing in the Development Plan is a matter which is likely to be accorded weight by a Planning Inspector. The 2017 appeal Inspector commented that as the site lies within the development boundary as defined in the adopted Plan and is allocated for residential development, the principle of the proposed development is therefore established. She was aware of concerns over the late inclusion of the site in the LDP and that local population growth had been lower than predicted, but made it clear that it was not within her remit to review the allocation.

- *The significance of the 2017 Appeal Inspector's detailed conclusions*

Officers believe the Planning Inspector's Decision letter on the 2017 appeal is a significant material consideration, and in particular in respect of the impacts of the Mindale development on the highway network, since the proposals now in front of the Council are effectively for the same nature and scale of development, involving a total of 133 dwellings. The main difference is that the main vehicular access to the site is now proposed from a separate link road off the A547, and not via the existing road network and Ffordd Gwilym.

The appeal Inspector had regard to the proposals for the 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. Significantly, she concluded the local highway infrastructure could accommodate the increased traffic generated by the development without harm to highway safety. The Inspector's concerns over the highway implications of the 2016 application were confined to the detailing of the section of road as it entered the site off Ffordd Gwilym, and the proposals for an emergency access; matters which are now not relevant given the proposals for an entirely separate main access road, and an emergency access in a different location.

In respect of the more general impacts on infrastructure, the Planning Inspector concluded 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 was one which could be addressed by way of a financial contribution via a legal agreement. She did not consider the development would harm the character of the area.

Should the housing site application be refused and be subject to an appeal, the appointed Inspector would have full regard to the considerations and conclusions of the 2017 Inspector on these matters. In the absence of any material changes in the nature and scale of the development now in front of the Council, or new evidence to point to the harm it would bring about, it is difficult to see how a new Inspector could come to a completely different conclusion.

- *The basis of the Highway Officer's assessment*

The Highway Officer's detailed assessment of the application dealt with the capacity

of the existing road network, accessibility, site access, layout and parking issues, and had regard to the Transport Assessment and the conclusions of the 2017 Planning Inspector's appeal decision. His considered opinion is that there are no highway reasons which could be substantiated to justify refusal of permission, and matters of detail are capable of being covered through the imposition of suitable conditions on a permission.

In response to Members' questions at the September Committee, the Highway Officer reaffirmed that there was sufficient information to allow full assessment of the proposals, and that the conclusion that the highway network was capable of accommodating the additional traffic generated was consistent with the conclusion of the 2017 Appeal Inspector on the highway infrastructure. In respect of accident information, it was considered this did not show the highways were inherently dangerous for all road users, and in relation to the impacts on the B5119, it was considered the potential increase in traffic would be negligible.

The Highway Officer has offered detailed advice in the formal response to consultation on the application and to questions at Committee. This is based on reference to objective parameters, consideration of the issues and from observation of local conditions. As the Council's main technical consultee on highway matters, Members are requested to give due credence to the professional advice offered, which respectfully provides limited support for a highway based reason for refusal.

- 3.7. Taking the above into account, Officers recognise that there will be additional impacts arising from the vehicle movements associated with a 133 dwelling development, but question whether the extent of those impacts would be such that a refusal could now be justified and subsequently defended. The background offers no professional / technical basis of support for a highway reason for refusal of permission based on impacts on the local road network. It is also likely at appeal that an Inspector would have regard solely to the impacts of the Mindale development on the road network (not potential future developments, as these are not in front of the Council or Inspector), Consequently, it is not recommended that the Committee pursue a refusal of permission on the highway grounds outlined at the September Committee.

In relation to the drainage reason for refusal –

- 3.8. Officers interpretation of the concerns expressed in debate at Committee are that there remain reservations over the drainage of the site, run off from higher land, and the potential for run-off from the site increasing the risk of additional discharge to watercourses leading to the Prestatyn Gutter, hence increasing the potential for flooding downstream. The drafted reason for refusal No.2 in paragraph 2.1 encompasses these concerns and cites the planning policy and guidance which are relevant to drainage considerations.
- 3.9. Drainage implications are a legitimate land use planning consideration, and it is recognised that there are local factors which require serious assessment in relation to the development of the Mindale land for a housing scheme of the scale involved.
- 3.10. In noting the Committee's deliberations, the basis of Officers' concerns over the resolution to refuse permission on drainage / flooding grounds are:
- *The conclusions of the 2017 Appeal Inspector*
The Inspector reviewed the information submitted with the 2016 planning application, including proposals for attenuation ponds, a Flood Consequences Assessment, the responses of Natural Resources Wales and other consultees, and evidence submitted by the Council's consultants (Waterco). She concluded on

the basis of the evidence before her 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 basic terms, the Planning Inspector's conclusions on the issue were that the information in front of her was insufficient to give an adequate understanding of the groundwater / drainage situation and potential risk of flooding. She did not conclude the site was undevelopable or that it was not possible to provide further details to allow for a proper understanding of the drainage situation and whether a scheme could be designed to address any risk of flooding. This left it open for the applicants to reconsider the level of technical information necessary to support any subsequent application to develop the site.

- The assessment and conclusions of the Council's Drainage

Consultants Members will be aware that Waterco were commissioned by the Council as Drainage Consultants to assess the current submission. Waterco were asked to advise on the land drainage implications of developing the housing site, particularly with regard to the 2017 appeal, in which they successfully assisted the presentation of the Council's case at the Hearing, and persuaded the Planning Inspector to take a precautionary approach in respect of the adequacy of details submitted to assess the drainage implications.

Waterco requested additional details from the applicants in order to assess the acceptability of the drainage proposals, and reviewed this information provided in order to make their recommendations on application 43/2018/0750.

Officers believe the final response from Waterco is critical to deliberations on the current application. In respecting Member concerns over the drainage / flooding implications, Waterco have stated that their assessment has found no substantive reasons to refuse the application on flood risk or drainage grounds. Whilst they advise further work is required to finalise the surface water drainage proposals for the development, they consider there is suitable evidence provided to confirm that a viable surface water drainage scheme for the main site, which does not increase flood risk elsewhere, is achievable. They consider further works can therefore reasonably be conditioned, if planning permission is granted, amongst which is the use of up to date methodology for calculating run-off rates, further flow and drainage detailing to deal with run off from land to the south east, further permeability testing, resizing of detention basins, revised flow control rates to ensure greenfield run-off rates are not exceeded, revisions to flow controls from 3 plots to avoid issues close to dwellings.

Waterco also advised, as requested, in relation to the 5 concerns of the Planning Inspector as outlined in the decision letter on the 2017 appeal, concluding 3 are addressed in the submissions, one can be addressed through revisions to layout and calculations, and the other requires additional detail at detailed design stage. The conclusion is that all these are matters which can reasonably be dealt with through imposition of planning conditions.

Officers believe these are significant conclusions by a key technical consultee and that they provide very limited support for a refusal of permission on drainage grounds in this instance.

- The assessment and conclusions of the Council's Lead Flood Officer

The Council's Lead Flood Officer is satisfied that the developer has carried out due diligence in appointing a suitably qualified and experienced consultant to carry out the surface water drainage design for the development. He notes that whilst it is not a mandatory requirement for this particular development, the design of the system follows sustainable drainage principles, which are applauded. As discharge rates from the site are designed to be lower than greenfield runoff rates, this should result in less water entering Prestatyn Gutter than at present. Information provided by the applicant suggests that in the scenario of a rainfall event of 1 in 100, there will be no flooding of property within the development and no additional flooding of property beyond the site boundary.

- 3.11. Officers are fully appreciative of Members' reservations over the drainage / flooding implications of developing the Mindale site. However, having regard to the conclusions of the 2017 Planning Inspector, and the information now submitted in support of the current application, it is clear from the responses of the 'technical' consultees (Waterco and the Council's Lead Flood Officer) that the applicants have provided suitable evidence to confirm that a viable surface water drainage scheme for the main site, which does not increase flood risk elsewhere, is achievable; and that outstanding matters of detail can be dealt with through the imposition of planning conditions, including securing arrangements for the adoption and future management / maintenance of the drainage systems, and arrangements to cover the failure of a Management Company. Welsh Government guidance remains clear that Local Planning Authorities should consider the possibility of imposing planning conditions in order to enable development to proceed.
- 3.12. On the basis of the consultee responses, Officers would therefore recommend strongly at this point against a refusal based on drainage / flooding potential, as it is considered the reservations which led the 2017 Planning Inspector to take a precautionary approach in respect of the drainage information have been fully addressed, and remaining matters of detail are capable of being covered by imposition of planning conditions.
- 3.13. Should Members ultimately resolve to refuse permission, Officers would request that the Committee give due consideration to the precise wording of the reason(s), so there is clarity on the harm it is concluded would arise along with the conflicts with planning policy and guidance, as these would frame the Council's case at any subsequent appeal.

4. POTENTIAL COSTS TO THE COUNCIL OF DEFENDING A PLANNING APPEAL

- 4.1. Members will appreciate that applicants have a right of appeal against any refusal, and that there are unavoidable, and potential cost implications on the Council arising from the process of defending its decisions. The costs are:
- the Council's own costs in preparing / drafting Statements and presenting its case at an Inquiry / Hearing, in defence of its decisions.
- Depending on the actual grounds of refusal and the type of appeal process, this could involve employing specialist consultants to provide technical evidence to back the refusal and to appear as witnesses; a Planning Consultant to co-ordinate the case and a Barrister to oversee its presentation and to front the case at an Inquiry.
- a potential award of costs against the Council at appeal stage.
- The process allows costs claims to be made to an Appeal Inspector against any

party which has behaved 'unreasonably' and where 'unreasonable' behaviour has caused an applicant to incur or waste expense unnecessarily. The circumstances in which unreasonable behaviour may be found includes where a Local Planning Authority is unable to produce evidence to support each of the reasons for refusing planning permission. Factually, where unreasonable behaviour is found, cost claims can be based on expenses incurred in preparing for an appeal (e.g. drafting of statements, assembling technical evidence to rebut reasons for refusal); expenses for attending a hearing or inquiry (e.g. barristers conducting a case), the use of consultants to provide detailed technical advice, and for witnesses if they are paid.

5. RECOMMENDATION

(A) Having regard to the contents of the report, and in acknowledging Members' concerns over the impacts of the development on the highway network and on drainage / flooding potential, it is recommended that Planning Committee adopt the original recommendation of the Planning Officer and **GRANT** planning permission for the development, subject to the conditions set out in the September 2019 report, with appropriate revisions to condition 24 to require the carrying out of appropriate contaminated land assessment prior to the commencement of development.

(B) In the event that the Committee resolves to refuse permission, Members are requested:

- i. To confirm the detailed wording of the reason(s) for refusal to be included on the Certificate of Decision.
- ii. To nominate 2 Members to represent the Committee at any subsequent appeal, to assist in defending the reason(s) for refusal (normally the proposer and seconder of the motion to refuse).
- iii. To agree to employing relevant consultants and a barrister to assist in the preparation of the Council's case and to appear at any Inquiry / Hearing to defend the reason(s) for refusal.