

**ITEM NO. 9**

**SUPPLEMENTARY REPORT BY THE HEAD OF PLANNING AND  
PUBLIC PROTECTION**

**RECONSIDERATION OF PLANNING APPLICATION 43/2018/0751**

**Construction of new road (approximately 400m in length) from Ffordd Talargoch (A547) to land at Mindale Farm, in association with application 43/2018/0750 for residential development on housing land allocation**

**Land south west of Ffordd Ty Newydd off Ffordd Talargoch (A547), Meliden, Prestatyn**

**1. BACKGROUND**

- 1.1. The planning application for the link road to service the proposed 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 expressing comments in objection to, and in support of the application.
  - \* Councillor Peter Evans (local member) spoke against the application. Residents were opposed to the development of the road. Clarification was sought as to whether any drilling had been carried out on the site, and whether the applicants owned the land. It was questioned whether there was any point in dealing with the application as the housing site application had been refused, meaning this would effectively be a 'road to nowhere'.

\*In debate, other Members raised questions on:

- whether the land was within the Local Development Plan boundary.
- ownership of the land and the implications if the land owner refused to sell the land
- the submission of two applications as it was considered the proposals should be in a single application.

\*Officers responded to questions raised, confirming that –

- the land was not within the Development Boundary for Prestatyn and Meliden, but this did not mean the development was necessarily unacceptable as a consequence.
- the applicant did not own the land, but this was not a matter which should influence any decision on the proposals.
- in relation to comments on the refusal of the permission for the housing site, this decision could be subject to appeal and that the road application should be dealt with on its planning merits. Concerns over the road being developed as a standalone scheme were addressed through the suggested condition and legal agreement which would prevent any work being carried out until there is a planning permission in place for the housing development.
- Ground investigation to determine the presence of contaminated land and the need to address any land instability would be required prior to any works of construction.
- The applicants were acting within their rights by submitting two applications, and it was a matter for the Authority to deal with them on their respective planning merits.

\* At the end of the debate, Councillor Merfyn Parry proposed the application be refused on the grounds the road was being developed outside the Local Development Plan and in the open countryside, and the road would not lead to any development. This was seconded by Councillor Peter Evans.

The vote was 1 to grant permission, and 11 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 a possible reason for refusal based on the resolution of Members at the Committee. The first draft is set out below:

*"It is the opinion of the Local Planning Authority that the construction of a new road in open countryside outside the development boundary of Meliden would represent an unacceptable form of development and cannot be justified in the absence of a permission for any associated residential development."*

- 2.2 As with the report on the preceding item, in respecting the resolution of Committee, Officers have considerable reservations over the chances of successfully defending the reason put forward for refusal, should a subsequent appeal be lodged. Consequently, 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 the reason put forward for refusal. These concerns arise from a review of the basis of the refusal as this does not identify a specific harm which may arise from the development in terms of material planning considerations and / or relate the harm to policies of the Development Plan, Planning Policy Wales, etc..
- 2.3 We repeat that as Officers we are fully 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 remains 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 link road proposal. The report requests Members to reassess the application, and if members remain opposed to the grant of permission, that due consideration be given to the precise wording of the reason, given the scrutiny to which it would be subjected at any appeal.

### **3. KEY ISSUES ON THE APPLICATION**

3.1 As noted above, the grounds on which members resolved to refuse permission were that the proposals involve an unacceptable form of development outside the development boundary, in open countryside, and that the road would not lead to any 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, and are ones which could be dealt with satisfactorily by the imposition of conditions in the event of a permission being granted.

3.2 To assist deliberations, the Officer report to the September Committee is attached in Appendix 1, 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 453-459)
- A summary of events leading to the refusal of the 2016 Mindale Farm application, Code no. 43/2016/0600 (Section 1.3.7 – 1.3.8, pages 471 and 472)
- The highway reason for refusal of application 43/2016/0600 (Section 1.3.8, pages 471 and 472)
- A summary of the subsequent planning appeal and the conclusions of the Appeal Inspector in her Decision letter in relation to the highway issues (Section 1.3.8, page 472)

With regard to the Committee resolution to refuse the current application, 43/2018/0751, the Officer report contains the:

- Officer assessment of the principle of the development (Section 4.2.1, page 475)
- Officer assessment of the highway issues (Section 4.2.3, pages 476-480)
- Officer commentary on the submission of two applications (Other matters, page 494)
- Officer assessment of the visual amenity, AONB and landscape impacts (Section 4.2.4, pages 480-482)
- Officer assessment of the use of agricultural land (Section 4.2.9, pages 489-490)
- Officer assessment of the issues of contaminated land and land stability (Section 4.2.1, pages 491-492)

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

**In relation to the application involving development outside the development boundary, in open countryside**

Officers interpretation of the resolution at Committee is that the primary ground for refusal is that the construction of the road is unacceptable as it is development outside a development boundary, and in open countryside. The drafted reason for refusal in paragraph 2.1 attempts to encompass these concerns.

- 3.4 In noting members' reservations, the basis of Officers' unease over the resolution to refuse permission on grounds outlined are :

**- The link road is proposed to service a major housing site allocated in the Local Development Plan**

Whilst the allocation of the Mindale Housing site land in the Development Plan cannot automatically guarantee the grant of planning permission for its development or associated works in the form of a link road to access it, this would be a significant matter at appeal should the link road application be refused. An Inspector is likely to attach weight to the need to develop an allocated site, and would need to be convinced that the particular detailing of a link road to serve it is unacceptable on clear land use planning grounds.

Also relevant to this point is the fact that there appears to be no realistic or feasible alternative route to connect the Mindale site to the public road network. The 2017 refusal confirmed the extent of local opposition to the use of the existing road network along Ffordd Gwilym / The Grove, and the Inspector's reservations over the detailing of the link from the end of Ffordd Gwilym into the site and the emergency access proposals. This is a matter which may also carry weight at appeal.

**- There is no clear harm identified from the construction of the link road**

In respecting the point that the link road would be constructed on land immediately to the west of, but outside the Development Plan boundary for Meliden, Officers would caution against a refusal simply on the grounds that it involves development outside a development boundary, in open countryside. If this is considered unacceptable, then clear material planning reasons need to be identified to qualify / quantify the harm which the particular development would give rise to, as there is no obvious Local Development Plan policy basis for such a refusal.

If the concern is over the link road extending the settlement further into open countryside, with unacceptable landscape / visual impact, Officers would draw attention to comments of NRW and the AONB Committee in the Committee report in Appendix 1. Whilst there is acceptance that there would inevitably be some visual amenity impacts, neither have raised objections to the application.

In relation to impact on the AONB landscape, NRW considered the information provided as part of the application gives some confidence that the proposed access road could be accommodated below Graig Fawr, and within the AONB, with slight/moderate adverse effect on the setting and views from the AONB, which would be acceptable.

The AONB Committee note that the new road will extend the built envelope of the existing settlement into surrounding farmland and will change the open character of this area, but consider the comprehensive LVIA submitted with the application acknowledges this and considers the significance of prominent views from the

AONB, which has influenced the scheme design and landscaping to help integrate the new road into its landscape setting. The AONB Committee agree with the LVIA's conclusions that the overall effect on landscape character and visual impact will be 'minor adverse', and, subject to implementation of a comprehensive landscaping scheme comprising native local species, including arrangements for long term management of the area, the Committee does not consider the development will cause unacceptable harm to the setting of the AONB.

The comments of NRW and the AONB Committee offer little to support a landscape / visual impact refusal on the link road application.

Should it be considered that use of agricultural land is a basis for refusal, Officers would refer to the assessment in section 4.2.9 of the report to Committee in Appendix 1. Contaminated land and land stability issues are covered in Section 4.2.11 of the report.

**- In relation to the road 'leading to nowhere'**

Members resolution to refuse permission followed refusal of the housing land application and consequently raised questions over the link road effectively running through a field to nowhere.

Officers responded to this at Committee by advising that the applicants were acting within their rights to submit separate applications for the housing land and for the link road, and whilst this was an unusual approach, the Council was nonetheless obliged to determine both applications on their respective planning merits. It is to be noted that the description of the application specifically refers to the construction of the new road 'in association with application 43/2018/0750 for residential development on housing land allocation', hence is submitted as a 'linked' development to the housing site proposal. Officers suggest concerns over the road being constructed as a standalone scheme can be adequately addressed through the recommended condition (No.1) and if necessary through the terms of a legal agreement which would prevent any development on the road being carried out until there is a planning permission in place for the housing development.

- 3.5 Taking the above into account, Officers recognise that there will be impacts arising from the construction of a link road in this location, but given the need to service an allocated site and in the absence of objections from key technical consultees – highways, drainage, landscape (NRW and AONB), and the Public Protection officers, it is questioned 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 refusal based simply on the 'principle' of development outside a development boundary.

It is not therefore recommended that the Committee pursue a refusal of permission based on the grounds outlined at the September Committee.

- 3.6 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 IN DEFENDING A PLANNING APPEAL**

- 4.1 The report on the previous item explained that in the event of an appeal being lodged against a refusal, there will be unavoidable, and potential cost implications on the Council arising from the process of defending its decisions. It is not proposed to repeat the same explanation in this report, but a refusal of permission of the link road application on the grounds of refusal outlined carries the same risk of an award of costs against the Council, in terms of defending the ground(s) of refusal and meeting any successful costs claim from the appellants.

#### **5. RECOMMENDATION**

(A) Having regard to the contents of the report, and in acknowledging Members' concerns over development outside a development boundary, 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 11 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.
- 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.

**EMLYN GWYNEDD JONES**

**HEAD OF PLANNING & PUBLIC PROTECTION**