

RESIDENTIAL DEVELOPMENT AT MINDALE FARM, MELIDEN

Planning applications 43/2018/0750 & 43/2018/0751/PF

1. Background to the decisions

- 1.1 Two planning applications were submitted to Denbighshire LPA in relation to residential development at Mindale Farm, Meliden.
- 1.2 The main application (43/2018/0750/PF) sought full planning permission for the demolition of existing dwelling and outbuildings at Mindale Farm and the erection of 133No.dwellings, construction of internal estate roads, sewers, SUDS drainage and open spaces, strategic and hard/ soft landscaping and ancillary works. This is referred to as 'Application A' and 'Appeal A'.
- 1.3 The second application (43/2018/0751/PF) sought full planning permission for the construction of a new road from Ffordd Talargoch to land at Mindale Farm. This is referred to as 'Application B' and 'Appeal B'.
- 1.4 Members will be aware that prior to the above planning applications, there was a previous application for residential development at the same site, which was refused by Planning Committee, and subsequently dismissed at appeal. This is referred to as 'the 2017 appeal decision'.
- 1.5 The two applications subject of this report were accompanied by a raft of technical documents including 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.
- 1.6 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 50 different addresses.
- 1.7 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
- 1.8 The applications were presented to Planning Committee for consideration in September 2019. 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 reports 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 applications were discussed at length at Committee. 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 for the two proposals, on grounds of highway safety, drainage issues, and visual harm.
- 1.12 The reasons for refusal on the Certificate of Decision for Application A, dated November 2019 were:
 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 in conflict with considerations to be applied to the development in the adopted Site Development Brief 'Residential Development at Ffordd Hendre and Maes Meurig, Meliden, Denbighshire 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 Edition 10.*
 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 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 considerations to be applied to the development in the adopted Site Development Brief 'Residential Development at Ffordd Hendre and Maes Meurig, Meliden', Denbighshire 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 Edition 10.*
- 1.13 The reason for refusal on the Certificate of Decision for Application B, dated November 2019 was:
 1. *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 be an unacceptable form of development having an adverse visual impact, and cannot be justified in the absence of a permission for any associated residential development. The proposal is considered to be contrary to tests i) and ii) of Denbighshire Local Development Plan Policy ASA 1 'New Transport Infrastructure', considerations to be applied to the impact of new development in the Development Management Manual paragraph 9.4.3, and Planning Policy Wales Edition 10.*

2. The appeal process

- 2.1. The applicants subsequently lodged an appeal against the refusal decisions. The Planning Inspectorate informed Denbighshire County Council in February 2020 that the appeals were to be dealt with via the Public Inquiry process.
- 2.2. The Council appointed a barrister and an external planning consultant was engaged to coordinate the appeal process. Highway, Landscape 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 Public Inquiry.
- 2.3. Meetings were held with the Local member and consultants during the preparation of the Statements of Case.
- 2.4. The Inquiry was held 'virtually' over four days at the start of March 2022. Both the LPA and the Council were represented by barristers and called their own witnesses in relation to Landscaping, Highways, and Drainage issues. The LPA also employed a Planning Consultant to coordinate the process in conjunction with the barrister.
- 2.5. At the Inquiry the appellants applied for 'costs' against the council.

3. The Appeal Decision

- 3.1 The Planning Inspectors decision on both appeals, and the costs claim was issued on 18th May 2022.
- 3.2 The Inspector dismissed both appeals, but found that the council had acted unreasonably in refusing Application A for highway grounds.
- 3.3 The decisions are summarised below:

Appeal A:

The main issues:

- Whether the development would be acceptable in respect of its impact upon the highway network, having particular regard to the scale of development and the in-combination effects with other committed and proposed developments; and
- Whether it has been satisfactorily demonstrated that the site could be drained without increasing the risk of flooding off-site.

In relation to the proposals impact on the highway network:

The Inspector noted that the site was allocated for residential development in the adopted Local Development Plan and that no objections had been raised by the Councils Highway Officers in dealing with the application. It was noted that the Councils case for refusing on highway grounds did not become clear until the written statement of evidence stage; commenting that the reason for refusal was non-specific.

The Inspector noted that a previous Inspector had found that in general the local highway infrastructure could generally accommodate the increased traffic generated by the proposed development without harm to highway safety. There were no persuasive arguments against such a view.

The inspector therefore focussed on the technical objections relating to the Ffordd Penrhwylla/ A547 priority junction. He visited the site and observed the junction at a number of times. During the inquiry the appellants Transport Assessment was examined in detail as were the in-combination effects of the proposed development alongside other developments in the area.

On the Highway reason for refusal the inspector concluded:

"I have not seen any cogent evidence to lead me to conclude that the development would lead to an unacceptable form of congestion and neither have I seen anything to suggest that the delays associated with the appeal scheme would be materially worse than what would have been anticipated when the site was allocated for residential development."

And went on to state:

"I accept that the delays referred above may represent an inconvenience to some road users. However, the evidence suggests that such impacts would be modest and limited to relatively short periods of time. As such, I remain unconvinced by the Council's suggestion that such highway impacts would represent a material threat to highway safety. I also remain unconvinced that such impacts would have an unacceptable negative impact on the well-being and quality of life of existing and proposed residents."

In relation to surface water drainage issues:

The Inspector noted that due to the date the application was submitted it was not subject to the requirements of Schedule 3 of the Flood and Water Management Act which makes the provision of Sustainable Drainage Systems (SuDS) mandatory and would not be the subject of the legislative requirement to obtain SuDS approval from the local authority in its SuDS Approval Body (SAB) role. The issue of site drainage was therefore a planning matter that needs to be addressed in principle at the planning stage.

The Inspector noted the site itself was not in an area of high flood risk, but examined the evidence in relation to the vulnerability of the surrounding area in this regard. He considered the appellants drainage strategy which aimed to demonstrate that the site could be drained of surface water without increasing the risk of flooding off-site subject to suitable planning conditions being imposed to control the design of the drainage system. The Inspector also noted that the Councils Drainage Engineer and NRW had not objected to the proposal.

During the course of the Appeal process the Council raised further concerns regarding overland water flows and, in particular, flows received from higher land surrounding the appeal site. The inspector noted that although the appellants had had opportunity to address this issues, there was a lack of agreement over a solution.

After examination of both sides arguments, and the technical data the Inspector concluded that whilst it was feasible that an acceptable engineering solution could be found to deal with surface water drainage, that design solution would have to be influenced by further modelling. The Inspector felt that there were too many unknowns regarding how surface water would be dealt with, and that the matter would go beyond what a planning condition could reasonably control.

The Inspector concluded:

"As such, I consider that the precautionary principle advocated by national policy should be applied in this instance. It is not, therefore, sufficient in my view to attribute substantial weight to the Council's concession that it is 'likely' that a surface water drainage scheme could be provided for the development site without increasing the risk of flooding off-site. The fact that NRW did not object to the planning application is also not a weighty consideration, not least because its representation clarifies that surface water drainage does not fall within its remit."

And went on to state:

"I find that a reliance on planning conditions to resolve the outstanding drainage matters would run counter to the thrust of the advice contained within WG's Circular 016/2014: The Use of Planning Conditions for Development Management (October 2014). Indeed, I find that it has not been satisfactorily demonstrated that the proposed drainage strategy could be implemented without increasing the risk of flooding off-site."

The Inspectors overall conclusion on Appeal A was:

"Whilst I have found that the development would not have any unacceptable impacts on peak time congestion or highway safety within the area, I have found that it has not been

satisfactorily demonstrated that the proposed drainage strategy could be implemented without increasing the risk of flooding off-site. For the reasons set out above, such matters could not be reasonably dealt with through the use of planning conditions and neither are they outweighed by the matters in favour of the development, including the status of the site as a residential allocation and the positive contribution that it would make to the local housing supply. Indeed, the potential for increasing flood risk conflicts with a fundamental principle of national planning policy and therefore represents a compelling reason why planning permission should be withheld in this instance.”

Appeal A was dismissed.

Appeal B:

The main issues:

- Whether the development of a road would be acceptable in principle, having particular regard to its location outside of defined settlement boundaries, its visual impact and the findings in respect of Appeal A.

In relation to the principle and visual impact of the proposed road:

The Inspector considered the evidence presented, and viewed the site from a range of vantage points.

Whilst noting that the proposed road would be visible from a range of view points, and would represent an urbanising feature, it was considered that it would nevertheless be seen against an existing back drop of development, and its impacts could be softened through landscaping.

However, the Inspector could not ignore the proposed roads location outside of the development boundary and that it would be clearly visible from Graig Fawr.

The Inspector concluded:

“The development would clearly represent an incursion into what is an agricultural field and would represent a prominent urbanising feature when viewed from the visually sensitive summit at Graig Fawr. The impacts from this vantage point could not be mitigated through a scheme of landscaping. As such, without the necessary planning permission associated with Appeal A, I concur with the Council’s assessment that the development would represent an unjustified form of development. It would therefore be unacceptable in principle and in conflict with the aims of both Policy ASA1 of the adopted LDP and the thrust of national policy.”

Therefore, as a result of Appeal A being dismissed there was no justification to allow Appeal B.

4. The Cost Claim Decision

- 4.1 The Inspectors decision on the cost claim sets out the legislative background to costs claims at planning appeals:

“The Section 12 Annex ‘Award of Costs’ (‘the Annex’) of the Welsh Government’s (WG) Development Management Manual (DMM) advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. I shall consider the applications on this basis.”

- 4.2 The applicants sought a full award of costs for alleged unreasonable behaviour on the part of the LPA which led to unnecessary expense through the appeals process. In the alternative, the applicant sought a partial award of costs should either the highways or drainage reasons for refusal be found to be unjustified through the associated planning appeal. In addition, an award of costs was sought in respect of the need to prepare Noise and Air Quality Reports appended

to the appellant's Planning Written Statement of Evidence which were prepared in response to the LPA's concerns raised through a letter dated 2 October 2020.

- 4.2 In reference to the costs claim on Appeal A, the Inspector considered the two reasons for refusal separately.

Reason 1: Highways:

The inspector considered that whilst the LPA is not bound to adopt, or include as part of their case, the professional or technical advice given by their own officers or received from statutory consultees, the LPA is expected to show that they had reasonable planning grounds for taking a decision contrary to such advice and that they are able to produce relevant evidence to support their decision. If they fail to do so, costs may be awarded against the authority.

The salient points in regard to the highway reason for refusal were:

- The highway refusal reason was contrary to the advice of the LPA's professional officers. The reason was non-specific, and the Council did not explain its concerns fully until late in the appeal process. The inspector felt the applicant had been put in the unfortunate position of having to appeal the scheme to fully understand the detail of the Council's case.
- The inspector considered that the LPA did not put forward any cogent evidence to demonstrate that the increased use of the Ffordd Penrhwlfa/ A547 priority junction would represent a material risk to highway safety.
- The LPA did not provide any indication why it considers that the traffic generated by the appeal scheme would be materially worse than what would have been anticipated when it resolved to allocate the land for residential development in its adopted Local Development Plan (LDP).

Based on the above point, the Inspector concluded that the LPA made its decision contrary to the advice of its professional officers without there being any reasonable grounds for doing so. Moreover, such unreasonable behaviour resulted in unnecessary and wasted expense through the appeals process. An award of costs was made against the LPA in regard of the highway reason for refusal.

Reason 2: Drainage:

The Inspector considered that whilst the reason for refusal was against the advice of professional officers, in this instance the he had found in favour of the council in refusing the proposal on drainage grounds. The inspector considered that the work undertaken by the appellants to address the drainage issues would have had to have been undertaken in any event. Therefore he concluded that the appellants had not experience unnecessary costs in preparing the appeal.

Noise and Air Quality:

The appellants sought costs in respect of having to prepare noise and air quality reports as a result of a letter from the LPA, dated 2 October 2020 (nearly a year after the decision had been made). The Inspector noted that the concerns raised were not supported by any technical evidence, and considered that it was understandable that the appellants felt they needed to prepare noise and air quality reports to counter the claims.

The Inspector concluded that it was unreasonable for the LPA to raise such concerns so late in the process and, as the preparation of these documents clearly led to unnecessary expense, an award of costs is justified in this respect.

- 4.3 In reference to the cost claim Appeal B, the Inspector considered that as he had found in favour of the LPA and was broadly in agreement with the LPAs reason for refusal, an award of full costs was not justified. The LPA had justified its position and had not acted unreasonably. The application for an award of costs in respect of Appeal B was therefore refused.
- 4.4 In summary, the LPA was found to have acted unreasonably in refusing Application A on highway grounds as it could not produce evidence to substantiate that reason for refusal. Similarly the LPA acted unreasonably in raising concerns relating to noise and air quality which it then didn't pursue in detail at the appeal. This resulted in the appellants incurring

unnecessary expense. The LPA must now pay the appellants costs incurred in the appeal of the highway reason for refusal and the Noise and Air Quality reports associated with Appeal A.