

## APPENDIX B

### APPEAL DECISIONS SUMMARY May 2022 – April 2023

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#### 1. APPLICATION NO. 43/2018/0750/PF

**SITE ADDRESS:** Land at Mindale Farm, Meliden, Prestatyn

**PROPOSAL:** 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)

**BASIS OF DECISION:** That the development of 133 dwellings would have an unacceptable impact on the character of the village and its infrastructure, in particular in relation to the highway network and 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.

**TYPE OF APPEAL:** Public Inquiry

**APPEAL DECISION:** DISMISSED

**COSTS CLAIM:** Yes - Partial Costs Awarded against the Council

**MAIN APPEAL ISSUES:** Whether the development would be acceptable in respect of its impact upon the highway network, having 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.

Broadly put, the issues fell to be impact on highways, and impact on flooding as a result of surface water drainage.

**INSPECTORS CONCLUSIONS:** In relation to the 'highway' reason for refusal the inspector noted that the site was an allocated site and considered that the impact of such an allocation on the highway network would have been broadly considered during the allocation process. The Inspector considered representations made, and concluded that there was no material evidence to suggest that the highway network could not reasonably accommodate the level of development proposed. It was also noted that this was the same conclusion that the previous inspector had reached in an earlier appeal for a similar development on this site.

In relation to the flooding reason for refusal, the inspector first noted that due to the date of the original application the development would not be bound by the requirements of Schedule 3 of the Flood and Water Management Act which makes the provision of Sustainable Drainage Systems (SuDS) mandatory. Therefore unlike more recent applications, surface water drainage was still a planning consideration that needed to be assessed at the principle stage.

The Inspector concluded that the key test was that development should not result in flooding off site and that development should follow a precautionary approach. The inspector considered that means of dealing with surface water from within the site itself could be adequately controlled through planning condition as the necessary flood modelling had been done. However, the Inspector noted that surface water also came into the site from higher ground to the south of the site, and that this had not been properly taken into account. The

appellants argued that it did not need to be taken into account at the 'principle' stage of the decision but could be left to condition. However, the Inspector ruled that given the lack of clarity on the matter and the need for design solutions to be informed by further modelling, it was not possible to deal with the matter by way of condition. Further the Inspector noted that irrespective of these concerns, the outfall of such a drainage solution flowed onto land not in the ownership of the appellant. The Inspector therefore found that that it had not been satisfactorily demonstrated that the proposed drainage strategy could be implemented without increasing the risk of flooding off-site. The appeal was therefore dismissed on that basis.

#### **ISSUES OF NOTE:**

That in dealing with reasons for refusal relating to highway congestion, technical evidence is paramount. Members will note that partial costs were awarded against the Council on the grounds that its refusal on highway reasons was against the advice of its own professional highway officers, contradicted a previous appeal decision was confirmed the development would not harm the highway infrastructure, and failed to provide any cogent evidence to demonstrate that the increased use of the junction would represent a material risk to highway safety. The inspector found that the Council had clearly acted unreasonably and that its behaviour had led to the appellants incurring additional unnecessary costs. For that reason, partial costs were awarded against the Council.

The appellants also 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.

In relation to the flooding issue, the point of note is that if the application were to be made now, then surface water control would fall outside of planning remit and would be controlled through Schedule 3 of the Flood and Water Management Act.

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## **2. APPLICATION NO. 43/2018/0751/PF**

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

**PROPOSAL:** 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 (Appeal B)

**BASIS OF DECISION:** That a new road, outside of the development boundary was not justified as there was no permission for the residential development for which the proposed road was to serve.

**TYPE OF APPEAL:** Public Inquiry

**APPEAL DECISION:** DISMISSED

**COSTS CLAIM:** Yes - Refused

**MAIN APPEAL ISSUES:** Whether the development 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 (*see item 1 in this report*).

**INSPECTORS CONCLUSIONS:** The inspector concluded that in the absence of planning permission for the main development the road outside of the development boundary could not be justified, and was therefore unacceptable in principle.

**ISSUES OF NOTE:**

The issue of note is whether the Inspector considers that the road would be acceptable in principle *if* planning permission existed for the residential development which it is designed to serve. The Inspectors comment that: “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”, would suggest that if Appeal A (above) had been allowed, then the principle of allowing the road to be developed under this appeal may have been acceptable.

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**3. APPLICATION NO. 21/2021/1021/PF**

**SITE ADDRESS:** Erw Las, Pant Du Road, Eryrys

**PROPOSAL:** Erection of pitched-roof rear extension

**BASIS OF DECISION:** That the scale of the proposed extension, in combination with the previously approved extensions would not be subordinate to the original dwelling house. The proposal would therefore conflict with Policy RD3 and

**TYPE OF APPEAL:** Written representations

**APPEAL DECISION:** DISMISSED

**COSTS CLAIM:** No

**MAIN APPEAL ISSUES:** The main issue is the effect of the proposed development on the character and appearance of Erw Las and the surrounding area.

**INSPECTORS CONCLUSIONS:** The inspector noted the policy requirement for extensions to dwellings to respect, compliment and/or enhance the character of the original dwelling. In conclusion the Inspector took a different view to the council and considered that whilst significantly increasing the mass of the dwelling, the design of the extension would enhance the appearance of the dwelling, and the use of matching materials would compliment the existing dwelling. In the absence of any clear harm to the wider character of the area, the Inspector considered the proposal was acceptable.

**ISSUES OF NOTE:**

None

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**4. APPLICATION NO. 45/2021/0951/PF**

**SITE ADDRESS:** 9, Aspen Walk, Rhyl

**PROPOSAL:** Erection of 2 storey extension to side of dwelling and associated works

**BASIS OF DECISION:** That the increase in the number of bedrooms would require a greater amount of parking than was provided on site and the inadequate amount of parking spaces would cause inconvenience and lead to parking on the highway and at the turning point on the cul de sac which would be detrimental to the accessibility and the free flow of traffic in the area.

**TYPE OF APPEAL:** Written representations

**APPEAL DECISION:** DISMISSED

**COSTS CLAIM:** No

**MAIN APPEAL ISSUES:** The main issue is the effect of the proposed development on highway safety, with particular regard to car parking.

**INSPECTORS CONCLUSIONS:** The Inspector consider Denbighshire's adopted parking standards, noting that the starting point for a 4 bedroom dwelling was the provision of a maximum of 3 parking spaces. The Inspector then considered whether there were any local circumstances would justify a lower amount of car parking. The existing highway conditions of parked cars and congestion were noted. The location of a nearby bus stop was also noted, but little weight afforded to this as a reason to justify a lower number of parking spaces. The dimensions of the parking spaces were observed to be below that recommended in planning guidance and the impacts on the practicality of actually using the spaces was commented on.

The Inspector also considered the fall back permission of a permitted development single storey side extension which would have a similar result in reducing the amount of parking. However, it was concluded that this would not increase the number of bedrooms by the same amount as the proposal being considered. The fall back position was therefore less compelling.

In conclusion, the Inspector found that the provision of parking within the site would be substandard if the proposed two storey side extension were to be built and that would result in a harmful impact on highway safety interests, contrary to Policy ASA 3 and Policy RD 1 which among other things, requires proposals to provide safe and convenient access together with adequate parking, services and manoeuvring space.

**ISSUES OF NOTE:**

Car parking standards as contained in SPG 'Parking requirement in new developments' are a 'maximum' (not minimum) to reduce the overreliance on the car and that priority will be given to the need to avoid exacerbating parking and congestion problems. On that basis, whilst a lower provision of parking spaces could be permitted it should be evidenced that the lower number of spaces would not exacerbate existing problems.

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**5. APPLICATION NO. 45/2021/1055/PF**

**SITE ADDRESS:** 188 Coast Road, Rhyl

**PROPOSAL:** Erection of extension and formation of new roof to provide additional accommodation at first floor level

**BASIS OF DECISION:** The proposal would not be subordinate to the original dwelling and the cumulative impact of the alterations would change the character of the bungalow significantly, with a resulting development which would be visually intrusive and would cause unacceptable harm to the character and appearance of the original dwelling and streetscene.

**TYPE OF APPEAL:** Written representations

**APPEAL DECISION:** DISMISSED

**COSTS CLAIM:** No

**MAIN APPEAL ISSUES:** The effect of the proposal on the character and appearance of the area.

**INSPECTORS CONCLUSIONS:** The Inspector concluded that the proposal would not represent a subordinate alteration to the dwelling whilst its altered shape would sit uncomfortably with the prevailing roof forms. The proposal would therefore not complement the existing property or surrounding area. The increased height, bulk and altered roof form would harm the character and appearance of the area.

**ISSUES OF NOTE:**  
None

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**6. APPLICATION NO. 44/2021/0597/PF**

**SITE ADDRESS:** Land adjacent to Church Yard Entrance fronting Church Street, Rhuddlan

**PROPOSAL:** Erection of 1 no. detached dwelling and associated works

**BASIS OF DECISION:** The erection of a dwelling would lead to a loss of openness, and its siting, layout, scale, form and design would not preserve or enhance the character and appearance of the Rhuddlan Conservation Area, and would be detrimental to the setting of nearby Listed Buildings.

The proposed dwelling would also have an overbearing and unacceptable impact on the residential amenity of the neighbouring dwelling.

**TYPE OF APPEAL:** Written representations

**APPEAL DECISION:** DISMISSED

**COSTS CLAIM:** No

**MAIN APPEAL ISSUES:** The effects of the proposal on the character or appearance of the Rhuddlan Conservation Area and the setting of nearby Listed Buildings, and its effects on the living conditions of neighbouring properties.

**INSPECTORS CONCLUSIONS:** The Inspector concluded that the proposed dwelling would fail to preserve the character and appearance of the Conservation Area and the setting of the Listed Buildings creating an imposing and dominating presence, unacceptably compressing the currently open approach and detrimentally impinging on their setting. In relation to living conditions the Inspector concluded the proposal would appear oppressive and dominant to the nearby resident.

**ISSUES OF NOTE:**  
None

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## **7. APPLICATION NO. 47/2022/0428/PF**

**SITE ADDRESS:** The Barn, Plas Yn Cwm, Rhuallt

**PROPOSAL:** Erection of single storey extension to dwelling

**BASIS OF DECISION:** The proposed extension to the front elevation would not be sympathetic to the character and appearance of the existing building.

**TYPE OF APPEAL:** Written representations

**APPEAL DECISION:** ALLOWED

**COSTS CLAIM:** No

**MAIN APPEAL ISSUES:** The effect of the proposed development on the character and appearance of the appeal property.

**INSPECTORS CONCLUSIONS:** The Inspector considered that the property has already been altered as had other nearby converted buildings. Whilst the extension projects forward of the front elevation, the Inspector considered it to be simple with uncomplicated lines and form reflecting subordination with the property. The conclusion being that due to the subdued visual appearance the proposal would not materially harm the character and appearance of the existing dwelling.

**ISSUES OF NOTE:**  
None

## **8. APPLICATION NO. 01/2021/1290/LP**

**SITE ADDRESS:** The Glyn, Lleweni Parc, Mold Road, Denbigh

**PROPOSAL:** Lawful development certificate for the use of an existing lodge as a Forest School

**BASIS OF DECISION:** The proposed Forest School use would fall within a D1 use class, and therefore the proposed use of an existing lodge as a forest school would result in a material change of use of the land requiring planning permission. The proposed use cannot therefore be certified as lawful.

**TYPE OF APPEAL:** Written representations

**APPEAL DECISION:** DISMISSED

**COSTS CLAIM:** No

**MAIN APPEAL ISSUES:** Whether the Councils decision to refuse a Lawful Development Certificate was well founded,

**INSPECTORS CONCLUSIONS:** The Inspector considered that whether or not the use would result in a change of use of land is not the determining factor but is whether the existing structure that would accommodate the proposed use is lawful noting that Section 191 (2) (b) of the Act states that a use is lawful if it does not constitute a contravention of any of the requirements of any Enforcement Notice in force. The conclusion was there that the lodge cannot be lawful and the Councils decision was well founded.

**ISSUES OF NOTE:**

The status of an Enforcement Notice was considered to be the main matter.

**9. APPLICATION NO. 47/2022/0239/PF**

**SITE ADDRESS:** Bodlonfa Lodge, Rhualt

**PROPOSAL:** Erection of extension and alterations to dwelling

**BASIS OF DECISION:** The determination of the application was deferred by Planning Committee for a site panel meeting but an appeal against non determination was submitted before this took place. PEDW therefore determined the application.

**TYPE OF APPEAL:** Written representations

**APPEAL DECISION:** DISMISSED

**COSTS CLAIM:** No

**MAIN ISSUES:** The main issue was the effect of the proposal on the living conditions of the occupiers of the nearby property

**INSPECTORS CONCLUSIONS:** The Inspector concluded that the proposal was unacceptable due to a large new opening proposed on the rear elevation of the proposed extension. The opening would serve a bedroom and would include a Juliette balcony which would be elevation and prominent in views by the neighbouring garden and private patio area. The Inspector concluded that notwithstanding the angles and distances involved, relative to the existing standards of privacy, there would be a significant degree of perceived overlooking.

**ISSUES OF NOTE:**

Weight given to 'perception' of overlooking.