

# RESIDENTIAL DEVELOPMENT AT CAE TOPYN, DENBIGH

## Planning applicataion 01/2016/0374

### 1. Background to the decision

- 1.1. Planning permission was sought for the development of land by way of 75 dwellings. The site was allocated for housing in the adopted Denbighshire Local Development Plan (2013).
- 1.2. The application was made in full, and was accompanied by a range of technical reports – a Transport Assessment, Drainage Report, and Community Linguistic Impact Assessment.
- 1.3. Consultations were undertaken with the Highway Officer, Drainage Engineer, Conservation Architect, Ecologist, Housing, Archaeologist etc.. None of the 'technical' consultees raised objection to the proposal.
- 1.4. As part of the process, over 120 addresses were also consulted, site notices were posted around the site and the application was advertised in the press. Responses were received from approximately 50 different addresses. The Town Council also raised an objection to the application.
- 1.5. The objections received in the main focussed on the following issues:
  - No need for the development;
  - Too dense a development;
  - Detrimental impact upon important views of adjacent church/visual amenity;
  - Lack of education contributions;
  - Insufficient highway infrastructure to accommodate the development;
  - Detrimental impact upon amenity of adjacent chapel/parking;
  - Insufficient open space on site; and,
  - That the proposals did not fully comply with the adopted Site Development Brief.
- 1.6. Prior to presenting the application to committee, Officers held a number of meetings with local members to discuss the issues.
- 1.7. The application was presented to Planning Committee for consideration in March 2017. The Officer report outlined the material considerations to Members along with an assessment of technical documents. The report advised on the weighting that should be afforded to adopted planning policies and the adopted Site Development Brief.
- 1.8. The report concluded that there was limited evidence to indicate that the proposal was unacceptable and recommended that permission should be granted, subject to the imposition of conditions and the signing of a legal agreement to secure affordable housing, open space, and highway

improvements.

- 1.9. The application was discussed at considerable length at Committee, with many members raising concerns. Officers responded to questions and referred members to the material considerations. The resolution of the committee, as proposed by Councillor Mark Young and seconded by Councillor Merfyn Parry, was to refuse the application, against officer recommendation. The vote was 24 to refuse, 1 to grant.
- 1.10. Members put forward 8 grounds for refusal. These were recorded in the relevant minutes as:
- Drainage/flood risk
  - Lack of Education contributions
  - Highway safety including safe routes to school/pedestrian links
  - Lack of on-site open space
  - Removal of hedgerow and ecological impact
  - Impact on welsh language
  - Density, character and scale including housing need in the locality
  - Impact of pumping station on Brookhouse Chapel.
- 1.11. At the Committee the Head of Planning and Public Protection advised that a further report would be presented to the planning committee to offer guidance on the strength of those reasons for refusal and to suggest the detailed wording of the refusal reasons.
- 1.12. The April Planning Committee considered a report with the 8 reasons for refusal as drafted by Officers, and resolved to reduce the reasons for refusal to two. These were:
- 1. It is the opinion of the Local Planning Authority that the proposal would result in an unacceptable impact upon highway safety as a result of: - introducing a significant number of additional vehicular movements to the locality which would exceed the capacity of the existing local transport infrastructure; - not providing adequate parking facilities for St Marcellas Church and Brookhouse Chapel; - failing to improve pedestrian linkages with Denbigh Town which would result in not creating safe routes to school; and, The proposal is therefore contrary to the adopted Site Development Brief 'Residential Development - Brookhouse Sites, Denbigh', Local Development Plan Policy RD 1 'Sustainable development and good standard design' criteria viii), Supplementary Planning Guidance 'Residential Development', Technical Advice Note 18 'Transport', and Planning Policy Wales 9.*
- 2. It is the opinion of the Local Planning Authority that the proposal would have an unacceptable impact upon the character and amenity of the area by virtue of its density, design, and scale. The proposal is therefore contrary to the adopted Site Development Brief 'Residential Development - Brookhouse Sites, Denbigh', Local Development Plan Policy RD1 'Sustainable development and good standard design' criterion i), iii), iv), v), xiii) , Supplementary Planning Guidance 'Residential Development', the Local Market Housing Assessment and Planning*

*Policy Wales 9.*

1.13. The decision notice was issued on 21<sup>st</sup> April 2017.

2. The Public Inquiry.

- 2.1. The applicants subsequently lodged an appeal against the refusal decision. In early May 2017 the Planning Inspectorate informed Denbighshire County Council that the appeal would be dealt with by way of a Public Inquiry. This type of planning appeal enables parties to cross-examine evidence presented and requires parties to appoint legal representation. An initial meeting was arranged between Officers and relevant Members (proposer, seconder and local Members) to agree a strategy for defending the Committee's decision.
- 2.2. Officers began arranging the defence of the refusal by appointing a Barrister to act as the Council's advocate, securing the services of an external planning consultant to represent the planning case, and engaging an external Landscape Consultant to defend the second reason for refusal which related to the impact upon visual amenity by way of design, density and scale.
- 2.3. With regard to the first reason for refusal which related to the impact upon highway safety, having failed to find a Transport consultant prepared to represent the Council and discussions with Senior Barristers at Kings Chambers, it was decided, in consultation with Councillors, to not pursue that reason. The Appellants were advised of this in May 2017. The required production of the Council's Statement of Case and expert witness evidence was done in liaison with the appointed barrister and Members. Further meetings took place, including a site meeting with the relevant Officers and expert witnesses, in order to prepare fully for the Inquiry.
- 2.4. The Public Inquiry was held in September 2017, and lasted for 2 days.
- 2.5. The Inspector heard the case from both sides, with both parties presenting expert evidence from landscape architects to argue their cases.
- 2.6. Members of the public also appeared at the Inquiry and submitted a significant amount of information including their own Transport Assessment critique. In essence, the third parties pursued the Highway reason for refusal that the Council had dropped. The inspector gave full consideration to the third party evidence.
- 2.7. As the Appellants were aware that third parties would be raising the impact on highway safety as an issue at the appeal, they decided to employ a Highway Consultant to counter third party objections and argue the case in favour of development.
- 2.8. The Inspector also considered the concerns of third parties relating to education contributions, open space provision, and drainage concerns,
- 2.9. As part of the Inquiry, a Unilateral Undertaking (a type of legal agreement) was signed by both parties that in the event of the Inspectorate allowing the appeal

would secure the agreed provision of Affordable Housing, Open Space, and Highway Improvement monies. This is a standard procedure which ensures that relevant obligations (as required by Planning Policy) on the part of the appellant would be met.

- 2.10. The Inquiry concluded with the appellant's Barrister making an application for costs against the Council, citing unreasonable behaviour on the Council's part by failing to provide evidence to justify the reason for refusal. The Council's Barrister offered a defence to this claim, citing that the Council had made the decision based on material considerations, and had not undertaken the appeal lightly.

### 3. The Appeal Decision

- 3.1. On 28<sup>th</sup> November 2017, the Planning Inspectorate issued a decision letter allowing the appeal, granting permission for the development of the site for 75 dwellings, together with associated roads, open space and related works.
- 3.2. The decision letter focusses on the impact the development would have on the character and amenity of the area by virtue of its scale, density and design, as that was the basis of the Council's reason for refusing the application. However, the decision letter also addresses the material planning considerations considered relevant to the application and therefore provides a full assessment of the merits of the proposal.
- 3.3. The Inspector's decision is summarised below:

#### Effect on character and amenity of area

- The appeal decision begins by establishing that the principle of residential development is acceptable on this allocated site. It also seeks to clarify the Council's opinion that the development is unacceptable on visual grounds and as such is, in the Council's opinion, contrary to Policy RD 1 of the LDP, and the adopted Site Development Brief.
- It identifies common ground between both parties, specifically that the landscape and visual impacts of the development would be 'localised'.
- The Inspector is clear that in allocating the site for housing, the Council will have assessed the site's suitability for housing and the spatial relationship of the site to surrounding development and the likely impact developing the site with housing would have on the surrounding landscape.
- The Inspector assesses the site from a range of different perspectives, including the main approaches to the site, with the conclusion that from distant higher ground the development would barely be noticeable, and from Whitchurch Road the site would have little prominence except from when seen from the site frontage.
- It identifies the main view of the site to be from the south, and considers that the site would be seen in the context of the existing substantial detached

properties.

- In assessing the appellant's Landscape Architect's evidence, the Inspector agrees that the effects of the development on the local landscape would at worst be 'minor adverse' and that these would improve over time with additional landscaping. The Inspector considers such effects to be entirely normal for a development site of this size, and must be judged with the site's established allocation for housing development in the LDP in mind.
- Specifically referring to the proposed density, the Inspector notes the site is allocated in the adopted Development Plan for 101 dwellings, as per the density requirement of Policy RD 1 of the LDP (35 dwellings per hectare). The inspector acknowledges that the Site Development Brief advises a lower density because of local circumstances, but comments the Site Development Brief (SDB) fails to elaborate or suggest a lower density figure. Nevertheless, he considers that the proposed 75 dwellings is substantially lower than Policy RD 1's requirements and that the proposed density does not conflict with either Policy RD 1 or Site Development Brief. Whilst noting the lower density surrounding the site, the Inspector's opinion is that this alone does not justify a low density on the appeal site, especially when the current need to make the most efficient use of land is taken into account.
- Regarding 'scale' the Inspector notes that the Council did not specifically refer to the size of any particular building, and concludes that the concern raised reflects the Council's desire to see fewer houses on the site. He considers there is no rationale for this given that the site is allocated, and that the Council only has 1.79 years of housing land supply.
- The siting of two storey dwellings on the higher part of the site would not appear out of scale with the existing 'substantial' houses on the crest of the hill.
- In considering the proposal's impact on the church and views thereof, the Inspector comments that the alternative layout suggested by the Council would result in little difference and in itself is not realistic as it fails to take into account practical planning considerations (gardens/parking for houses etc). In acknowledging that the view of the church from old Ruthin Road would be lost, he finds nothing to suggest that this view is an important or significant view in the landscape.
- Although not specifically part of the Council's case, the Inspector does consider the setting of the Listed Church, concluding that the proposal is sufficiently designed along Whitchurch Road to not have a detrimental impact upon the church, especially when considered in the light of the site being allocated for housing.
- The Council's landscape architect raised concern about the location of the open space and the wildlife corridor in relation to the scheme's layout and design. The inspector considers that the wildlife corridor is in the location suggested by the Site Development Brief, and that the open space is logically

located given its secondary purpose to provide surface water drainage.

- In concluding the section on 'Impact on Character and Amenity of the area' the Inspector states:  
*"Bearing in mind the established context of land allocated for housing in the LDP, I conclude that the proposal's consequences for the character and amenity of the area would be wholly acceptable. I conclude that the proposed development satisfies the requirements of LDP policy RD1 in terms of its design details; effect on the local natural and historic environment; effect on public views; response to existing landscape and other features; and landscaping measures, and therefore complies with the policy criteria relied on by the Council in support of its decision. I also find that the proposal complies with relevant SPG, and with the guidance in the SDB so far as can realistically be expected within the constraints of the site."*

#### Highway Safety:

- Although not a matter the Council ultimately pursued, local residents did give evidence on the highway issues and so a substantial part of the appeal was taken up with considering whether the proposal was acceptable in terms of its impact upon highway safety.
- The Inspector noted that the application was submitted along with a detailed Transport Assessment, and that the Local Highway Authority raised no objections to the proposal.
- The Inspector considers that Old Ruthin Road is wide enough to accommodate the proposed traffic, and that parking on the highway that may result in restricted visibility are issues to be addressed by the Highway Authority, and are not caused by the development proposed.
- The inspector did not consider the Objectors' critique of the Transport Assessment sufficient to override the appellant's evidence. The Inspector's decision analyses traffic movements and other data submitted in detail. He was satisfied that the capacity of the roads and junctions in the surrounding area were sufficient to accommodate the additional traffic.
- Regarding the pedestrian connectivity improvements, the Inspector found that they were proportionate to the scale of development being proposed.

#### Drainage and flooding:

- The inspector considered concerns relating to drainage and flooding. He found no evidence to suggest that the site could not be drained using soak away techniques, and that the site was not located within a flood risk area. He also considered that the use of a condition to secure the final details of the drainage system acceptable.

#### Impact on Brookhouse Chapel:

- In response to concerns raised about the location of the Public Open Space and the pumping station, the Inspector found no evidence to suggest that there would be a negative impact on the Chapel.

Education Contributions:

- The inspector considered the capacity data of local schools as provided by the LEA. Contrary to the suggestions of local residents and the LEA, the Inspector concurred with Officers that need for education contributions should be based on total capacity and not on any split into English and Welsh medium provision.
- He further notes that utilising a Welsh/English split methodology is not mentioned in either the SDB or the Council's Planning Obligations SPG. Preference for Welsh or English medium education will vary on an individual basis, and that there was in any event insufficient justification to require an education contribution in this instance.

Inspector's conclusion:

- *"A number of considerations weigh positively in favour of the proposed development. The appeal site is allocated in the LDP for housing development. The plan is recently adopted and up to date. In the light of my conclusions that the scheme design is acceptable and satisfies the LDP's detailed policy requirements concerning the same, this is a powerful consideration in the planning balance given the statutory requirement that proposals be determined in accordance with the development plan, unless material considerations indicate otherwise. The proposed development will secure the provision of 75 dwellings towards the Council's identified housing needs, in circumstances where it currently has a housing land supply of just 1.79 years. In addition, 10% of the overall housing provision proposed represents affordable housing provision."*
- *"Drawing all of the foregoing together, and having taken all matters raised into account, I conclude that the proposed development, viewed in the context of the existing allocation of the site for housing, would not harm the character and amenity of the area. The proposal satisfies the requirements of LDP policy RD1 and overall is in accord with the development plan. The development adequately meets the expectations of SPG and the Site Development Brief, so far as is realistically possible within the practical development constraints of the site. There are no material considerations which indicate a determination otherwise than in accordance with the development plan."*

4. Costs Decision

4.1. At the Inquiry, the Appellants applied for costs against the Council.

4.2. The case advanced by the appellants was that:

*"...the Council acted unreasonably in refusing permission for development which*

*ought to be permitted, in the light of the development plan and all other material considerations. The site is allocated for housing in the development plan, but the proposal was refused permission for two reasons, contrary to officer advice. Of the two stated reasons for refusal only one was pursued at the inquiry, relating to harm to the landscape; and in respect of that single remaining reason, the Council failed to produce any respectable evidence to substantiate its case.*

*The appellant additionally orally made the point that whilst the Council had withdrawn its earlier highways-based reason for refusal, other parties objecting to the proposal had continued to pursue these matters, amongst others. It had therefore remained necessary for the appellant to adduce professional highway and traffic evidence at the inquiry, notwithstanding the Council's change of position."*

4.3. The Council's defence was that:

- It was the appellants own choice to call a Highway Witness in response to third party comments, therefore those costs weren't as a result of the Councils actions.
- The single reason for refusal pursued by the Council was a legitimate reason for refusal.
- In refusing the application the Council had regard to the relevant policies and guidance
- In defending the appeal the Council used an independent landscape witness and planning consultant
- The landscape witness maintained throughout that the scheme would result in harm to local landscape character; the Council's planning witness considered that the resultant harm would be such as to outweigh the consideration of housing supply shortfall, despite the considerable weight that should be attached to that consideration. In the light of this it is clear that the Council has not failed to substantiate its reason for refusal.

4.4. The inspector acknowledged that LPA's were not bound to adopt, or include as part of their case, the professional or technical advice given by their own officers. However, they are 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.

4.5. The Inspector considered that:

- The Council's case focussed heavily on the relationship to St Marcellas Church and the impact of the layout on views of that church.
- Whilst accepting the significant localised impact of the development, the inspector was not convinced that a different layout would have any less impact and that when considered in the round and context of site allocation that the proposal would result in such harm to the character and amenity of the area as to cause a conflict with policy RD1.

- The landscape evidence put forward on behalf of the Council was highly selective and did not attempt a comprehensive appraisal of landscape and visual effects in accordance with best practice guidance.
- Therefore the council did not produce evidence to substantiate its refusal.
- With reference to the Highway reason, the Inspector considered that although the Council had dropped that reason for refusal, it was still that initial unreasonable refusal of permission that triggered the need for the matter to be resolved at appeal and gave rise to the opportunity for other parties to make their own submissions on highway grounds.
- The Inspector did not find the appellants decision to call a highway witness to be excessive or disproportionate.
- The Inspector concluded that the council had failed to substantiate its reason for refusal which is viewed as unreasonable behaviour, and resulted in the appellant incurring unnecessary and wasted expense.

## 5. Challenging the decisions

### The Appeal Decision:

- 5.1. The process for challenging the appeal decision would be through a Judicial Review at the High Court. To make a case, the Council would have to prove that the Inspector had erred in his application of planning law.
- 5.2. Having reviewed the Appeal Decision, Officers are of the opinion that the Inspector has not erred in law.

### The Costs Decision:

- 5.3. Upon receipt of the detailed costs claim from Pure Residential and Commercial Ltd, Officers will scrutinise the breakdown. If it is felt that the costs are not sufficiently related to the appeal or are unreasonable, Officers will submit a revised claim to the Senior Courts Costs Office to act as arbitrators.