



Appeal Decision

by N Jones BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 29/11/2023

Appeal reference: CAS-02639-F8F7J9

Site address: Land East of Cadney Lane, Bettisfield, Wrexham, SY13 2LW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Richard Hall against the decision of Wrexham County Borough Council.
 - The application Ref MAE P /2022/0869 dated 29 September 2022, was refused by notice dated 9 December 2022.
 - The development proposed is outline planning for the erection of 9 detached private dwellings and all associated works.
 - A site visit was made on 4 October 2023.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is made in outline with all matters reserved for future consideration. However, an indicative layout plan shows a linear arrangement of 9 dwellings off a central access point with an estate road running parallel with the rear eastern boundary of the site. The dwellings would be between 10 – 16m in length, 8- 12m in width and 6.5- 9m in height. I have considered the appeal on this basis.
3. There is no dispute between the parties that the Wrexham Unitary Development Plan 1996-2011 (UDP), adopted in 2005, is time expired. Nevertheless, it remains the development plan for the area. Although not adopted by the Council, the Wrexham Local Development Plan 2 (LDP) and its evidence base have been found sound. The parties agree that the unadopted LDP carries material weight in relation to the appeal proposal. References to the LDP in this decision are to the unadopted document.

Main Issues

4. The main issues are (i) whether the proposed development would be acceptably located having regard to local and national planning policy; (ii) the effect of the proposed development upon the character and appearance of the area, having particular regard to its siting within the Maelor Special Landscape Area (SLA); (iii) the effect of the proposal on the water environment with particular regard to protected nature conservation sites; and (iv) the effect of the proposal on any archaeological remains; and (v) whether any

identified harm would be outweighed by other material considerations.

Reasons

The location of development

5. The appeal site occupies a central position in the village and is comprised of a trapezium of land on the roadside frontage of a larger agricultural field, separated from the road by a high hedge. Housing of a similar scale and depth of plot to that proposed in the appeal scheme adjoin the appeal site at each end, and there is similar housing opposite. The Council confirms that the appeal site is outside the settlement limits of Bettisfield as set out in the UDP.
6. Policy PS1 of the UDP directs new housing development to within settlement limits. UDP Policy H5, expanding on the principles of Policy PS1, allows new dwellings outside settlement limits only where it complies with one of its listed criteria. It is designed to prevent, amongst other things, the consolidation of sporadic groups of housing but allows infilling, subject to compliance with UDP Policy GDP1. Paragraph 6.13 of the UDP defines infilling as the development of no more than two dwellings in a small gap within a well-developed built frontage but excludes sites which extend into the countryside beyond the limits of neighbouring curtilages. The appellant acknowledges that the proposal would not be a limited form of infilling as defined in Policy H5.
7. The Council acknowledges that infilling in the context of Policy H5 is out of date in light of Planning Policy Wales (Edition 11) (PPW) advice. PPW only supports infilling and minor extensions to existing settlements, particularly for affordable housing or economic activity, but requires that new building in the open countryside away from existing settlements or areas allocated for development in development plans must continue to be strictly controlled (paragraph 3.60). The Council confirms that the appeal site would continue to be located outside the settlement limits for Bettisfield in the LDP. Policy H7 of the LDP sets out a limited set of circumstances where new housing in countryside locations may be acceptable. However, there is no indication that the appeal scheme is for affordable housing, and it would meet none of the other exceptions listed in UDP Policy H5 or LDP Policy H7.
8. Moreover, UDP Policy PS4 states that development should, amongst other things, be integrated with the existing transport network to help reduce the overall need to travel and encourage the use of alternatives to the car. This reflects advice within PPW (paragraph 3.39) which states that in rural areas most new development should be located in settlements which have relatively good accessibility by non-car modes when compared to the rural area as a whole. The Council has drawn my attention to its Settlement Hierarchy and Development Potential (2018) document forming part of the evidence base for the LDP which identifies Bettisfield as a Tier 5 hamlet where the lack of services and ability to access sustainable modes of transport in such settlements make them inappropriate locations for development in sustainability terms. To access most facilities, occupiers of the proposed dwellings would be likely to be heavily reliant on the private car in a location that is some distance from major employment, retail, health, education and other facilities. The development of housing in an unsustainable location in order to generate demand for sustainable transport modes to serve it would be contrary to PPW's sustainability objectives.
9. The appellant does not dispute the Council's assertion that the appeal proposal would lead to the loss of best and most versatile agricultural land (BMV). UDP Policy PS3 seeks the use of previously developed land in preference to greenfield land wherever possible,

particularly where greenfield land is, amongst other things, agricultural land of grades 1, 2 or 3a quality. PPW (paragraph 3.59) states that considerable weight should be given to protecting such land from development, because of its special importance. However, where overriding need for the proposed development exists, PPW advises that land in grades 1, 2 and 3a should only be developed in such circumstances where either previously developed land or land in lower agricultural grades is unavailable, or available lower grade land has an environmental value recognised by a landscape, wildlife, historic or archaeological designation which outweighs the agricultural considerations. The appellant asserts that land located within the settlement limits of Bettisfield is unavailable for development due to the effects of flooding. However, no substantive evidence is provided of its unavailability or any evidence that an assessment has been made of the availability of other lower grade agricultural land.

10. I conclude that the proposal would not be acceptably located, and would conflict with UDP Policies PS1, PS4, H5 and PPW advice. It would also conflict with LDP Policy H7 and LDP Policy SP18 which states that development proposals will need to demonstrate that they have taken into account, amongst other things, reducing carbon emissions.

Effect upon the character and appearance of the area, with particular regard to its siting within the SLA

11. UDP Policy EC5 states, amongst other things, that within the SLA, priority will be given to the conservation and enhancement of the landscape. Nevertheless, although the Council refused planning permission on the basis of the proposal's effects on the designated SLA, it confirms that the area's designation as an SLA is not proposed to be taken forward in its LDP and given the soundness of the LDP's evidence base, I concur that the UDP SLA designation carries little weight. Nevertheless, UDP Policy PS2 requires that development must not materially detrimentally affect countryside, landscape/townscape character, open space, or the quality of the natural environment. UDP Policy GDP 1 states that all new development should, amongst other matters, ensure that built development in its scale, design and layout, and in its use of materials and landscaping, accords with the character of the site and makes a positive contribution to the appearance of the nearby locality.
12. I saw that the proposal would replicate a predominantly linear road frontage pattern of housing in the village, including directly opposite the appeal site. The proposed scheme would also be physically contained by the existing dwellings at both ends of the site and would provide buildings of similar scale to those locally, the design of which could be controlled at the reserved matters stage. However, I also saw that groups of dwellings in the village are interspersed with large undeveloped gaps which significantly contribute to its rural character as a small village in a pleasant pastoral landscape. The appeal scheme would fill one of these characteristic gaps leading to an undesirable urbanising intrusion, unacceptably extending and consolidating the built form of this part of the village.
13. Given the scale of the proposal and likely associated traffic generation, I concur with the Council that road-widening would be unnecessary and inappropriate in this rural context. Nevertheless, appropriate visibility at the proposed access would be necessary. Although the appellant suggests that the existing mature hedge could be transplanted to the rear of the required visibility splays to ameliorate the visual effects of the access, the hedge would not entirely screen the development behind it or reduce the urbanising effects of the proposed housing.
14. I conclude that the proposal would harm the character and appearance of the area. The proposal would therefore fail to accord with UDP Policies PS2 and GDP1 and the advice within paragraph 3.60 of PPW which states amongst other things that all new

development should be of a scale and design that respects the character of the surrounding area.

Effect on the water environment and protected nature conservation sites

15. Natural Resource Wales (NRW) states that the appeal site is within 690m of the Fenn's, Whixall, Bettisfield, Wem & Cadney Mosses Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI). It is also close to the Midland Meres & Mosses Phase 2 (Wales) Ramsar site (Ramsar). Together they form part of the higher tier national sites network. NRW states that foul drainage discharges from the appeal proposal would be a potential impact pathway to the features of the SAC and Ramsar sites, and the SSSI.
16. Whilst UDP Policy EC6 states that developments close to sites of biodiversity interest will only be permitted where it can be clearly demonstrated that the need for the development outweighs the need to safeguard the intrinsic nature conservation value of the site, PPW contains more up to date policy advice and states at para. 6.4.11 that planning authorities must have regard to the relative significance of international, national, and local designations in considering the weight to be attached to nature conservation interests. It states that development should be refused where there are adverse impacts on the features for which a site has been designated (para. 6.4.14). LDP policy SP14 is in alignment with PPW advice in only permitting development which seeks to protect, conserve and enhance the natural environment, including its listed protected sites.
17. The submitted Foul Drainage Strategy (Revision 2, September 2022, 'the Strategy') proposes a private sewage treatment plant to deal with foul drainage discharges from the proposal but recommends that further tests should be undertaken to ensure the location of the proposed drainage field has satisfactory percolation. However, Welsh Government Circular 008/2018 'Planning requirement in respect of the use of private sewerage in new development, incorporating septic tanks and small sewage treatment plants' (Circular 008/2018) advises that the decision on whether to grant planning permission should be based on a thorough assessment of the likely impact of the foul drainage proposal, including percolation tests.
18. I note that the appellant states that a specialist report has been obtained and forwarded to the Council in March 2023 to address drainage matters. However, no copy has been provided with the appeal. From the evidence before me, it has not been demonstrated that the proposal would not harm the water environment or protected nature conservation sites. The proposal would therefore fail to comply with UDP Policy GDP1 which states that all new development should, amongst other things, safeguard the environment from the adverse effects of pollution of water. It would also conflict with PPW and Circular 008/2018 advice, as well as LDP Policy SP14.

Effect on any archaeological remains

19. UDP Policy EC11 states amongst other things that development that directly affects non-scheduled sites of archaeological importance will only be permitted if an archaeological investigation has been carried out to determine the nature, extent and significance of the remains, and this investigation indicates that in-situ preservation is not justified, and a programme of excavation and recording has been agreed. This reflects PPW (paragraph 6.1.26) and Technical Advice Note 24 'The Historic Environment' (TAN 24) (paragraph 4.7) advice. The Clwyd-Powys Archaeological Trust indicates that the appeal site is within an area of known and potential medieval remains. Although I saw that the appeal site field enclosure was in active arable use at the time of my site visit, and I acknowledge that the results of ploughing and soil compaction caused by heavy agricultural machinery could

affect any remains, the appellant has not addressed the Council's reason for refusal or provided any evidence, such as a desk-based assessment, to establish the appeal site's archaeological potential. It has not therefore been demonstrated that the proposal would not harm archaeological remains. The proposal therefore fails to comply with UDP Policy EC11 and PPW and TAN 24 advice. It would also fail to accord with LDP Policy SP15 which only supports development where it conserves, protects or preserves or enhances listed cultural and historic assets, including archaeological remains.

Other material considerations and planning balance

20. I have had regard to the appellant's contention that local planning authorities should adopt a constructive approach towards agricultural development proposals, especially those which are designed to meet the needs of changing farming practices. However, whilst I saw that the land is in agricultural use, no evidence has been provided of any changing farming practices at the appeal site which would lend support to the proposed housing development. I therefore afford this matter limited weight.
21. Although the proposed dwellings would be sustainably built, PPW makes clear that the planning system must, amongst other things, enable the provision of a range of well-designed, energy efficient, good quality market and affordable housing that will contribute to the creation of sustainable places. Similar build standards would therefore be expected of any scheme and so I afford this matter neutral weight.
22. Whilst the issue of a shortfall in housing supply is a consistent feature of the appeal examples provided by the appellant, some of the proposals are located outside Wrexham and subject to different policies whilst others relate to differently scaled settlements with differing sustainability credentials than the appeal site. I have therefore considered this appeal on its own merits. PPW states that Councils must secure a healthy supply of housing to meet the differing needs of communities. The parties agree that there has been a significant undersupply of housing in Wrexham since 2013. Aligning with the general approach within appeal decisions cited by the appellant, I concur that this undersupply of housing is a material consideration which carries significant weight in favour of the appeal proposal.
23. Nevertheless, I have found that Bettisfield would not be a sustainable location for new housing development. This weighs significantly against the appeal scheme. The Council confirms its housing requirement cannot be met without the use of some BMV land, however, I have found that the release of additional BMV on the appeal site has not been fully justified and therefore weighs against the scheme. I give the discontinuance of the SLA designation in the LDP limited weight as PPW recognises that all the landscapes of Wales are valued for their intrinsic contribution to a sense of place, and local authorities should protect and enhance their special characteristics. The harm I have identified in relation to the effect of the proposal on the character and appearance of the area, and its potential effects on the water environment and protected nature conservation sites and on any archaeological remains weigh appreciably against the scheme.
24. I conclude that the balance is against approving the proposal.

Other Matter

25. On 17 September 2023 the Welsh Government announced changes to Planning Policy Wales (PPW) with immediate effect in relation to the incorporation of green infrastructure into development proposals, following a step-wise approach to demonstrate the steps which have been taken towards securing a net benefit for biodiversity and ecosystem reliance. NRW and the Council raise no objection to the proposal subject to the

implementation of Reasonable Avoidance Measures for Great Crested Newts.

Nevertheless, and notwithstanding my conclusion in relation to the proposal's effect on the water environment and protected nature conservation sites, I have sought the views of the parties or made a finding on the implications of the new policy change for the proposal as it would not alter the outcome of the appeal, given that I find it unacceptable in relation to the main issues.

Conclusion

26. For the reasons given above, and taking all other matters into account, I conclude that the appeal should be dismissed.
27. In reaching my decision I have taken into account the requirements of sections 3 and 5 of the Well-being of Future Generations (Wales) Act 2015. I consider this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Minister's wellbeing objectives as required by section 8 of the Act.

N Jones

Inspector