

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **PLANNING & DEVELOPMENT CONTROL COMMITTEE**

DATE: **15TH MAY 2013**

REPORT BY: **HEAD OF PLANNING**

SUBJECT: **048855 - APPEAL BY T. ANWYL SONS LTD AGAINST THE NON-DETERMINATION OF AN APPLICATION FOR 51 DWELLINGS A NEW ROAD AND THE CREATION OF MITIGATION LAND IN RELATION TO ECOLOGY ON LAND BETWEEN AND BEHIND MAISON DE REVES AND CAE EITHIN, VILLAGE ROAD, NORTHOP HALL, MOLD BY FLINTSHIRE COUNTY COUNCIL**

1.00 APPLICATION NUMBER

1.01 048855

2.00 APPLICANT

2.01 Anwyl and Sons Ltd

3.00 SITE

3.01 Land between and behind Maison de Reves and Cae Eithin, Village Road, Northop Hall, Mold

4.00 APPLICATION VALID DATE

4.01 18/07/11

5.00 PURPOSE OF REPORT

5.01 To inform Members of the Inspectors appeal decision in respect of the above planning application for the erection of 51 dwellings on the northern part of the site. The site is allocated for housing under Policy HSG1 of the Flintshire Unitary Development Plan (UDP), adopted in 2011.

6.00 REPORT

6.01 This appeal against non-determination arose as the Council failed to determine the planning application within the prescribed period. Planning committee refused the proposal but a decision notice was not issued and advice was sought as to the robustness of the proposed reasons for refusal. The appeal was dealt with by written representations.

6.02 Issues

The Inspector considered that the main issues in this case are the effect of the proposal on;

- the ecology of the local area, particularly with regard to habitats and protected species; and
- highway safety in Northop Hall.

6.03 Ecology

The appeal site is approximately 700m from parts of the Deeside and Buckley Newt Sites Special Area of Conservation (SAC) and from Wepre Woods which is within a Site of Special Scientific Interest (SSSI). The main reason for these designations is the presence of great crested newts. Some of the habitats within and adjacent to the site are of a type which has the potential to support newts but a nearby pond, which has been surveyed regularly since 2004, is not considered by the main parties to provide suitable conditions for breeding.

6.04 In addition there is an active badger set on the site and grassland which includes some species of wildflower and fungi. There was no specific evidence before the Inspector to demonstrate that the site is of particular importance for other species.

6.05 In the light of these interests, and in response to the Countryside Council for Wales' (CCW) concern that the development proposed would result in increased use of the SAC for recreational purposes, the southern part of the site would be enhanced in order to mitigate the effects of the development. Paths around the area, but fenced off from critical parts of it, would extend the existing footpath network. Reasonable avoidance measures would be undertaken prior to work commencing to protect any newts that may be there, and two new ponds and terrestrial habitat would be created and managed in the long term. A replacement, artificial sett would also be provided which would be designed to include the characteristics most likely to result in a successful relocation of the badgers. Finally grassland in the wildlife area would be enhanced and managed to encourage the spread of waxcap fungi. Where necessary retained grassland on the appeal site would be protected during construction works.

6.06 As the proposed development might affect a European site the Inspector had a duty to make an appropriate assessment of the implications for it and its conservation objectives. This was informed by a number of ecological surveys that have been carried out at the

appeal site and the relevant proposed mitigation measures.

- 6.07 There were many objections to the proposed development from the general public some of which refer to the wildlife value of the site and surrounding area which were taken into consideration by the Inspector.
- 6.08 The consultant commissioned to review the Council's suggested reasons for refusal found that the appellant's survey methods did not conform to the standard Natural England guidance on demonstrating the presence or otherwise of great crested newts. Such guidance does not exist for Wales and it is reasonable, in my view, to be advised by that for England. The consultant also concluded that the mitigation plan did not contain sufficient detail, for example on how ground would be cleared, to be certain that any newts present there would not be harmed and their conservation status maintained. There were similar shortcomings in the information regarding badgers.
- 6.09 Technical Advice Note 5: *Nature Conservation and Planning* (TAN5) states that it is essential that the presence or otherwise of protected species, and the extent to which they may be affected by the proposed development, is established before the planning permission is granted. In this case the proposed development would be progressed on the basis that there are likely to be great crested newts on site, and definitely badgers, both of which would require to be relocated safely to a new habitat. The information on mitigation is sufficient to demonstrate that such measures would be possible and further, precise details would be provided to and approved by the Council prior to any development through the implementation of condition 11. Thus, although the appellant's ecological statements had weaknesses sufficient information has been provided to ensure not only that appropriate assessments can be made but also that the proposed development is not contrary to TAN5.
- 6.10 Licences must be obtained under regulation 44 of The Conservation (Natural Habitats etc) Regulations 1994 before any action regarding the protected species is carried out in order that the development may take place. These are issued by the Welsh Government which will ensure that firstly, there is no satisfactory alternative and, secondly, that it would not be detrimental to the maintenance of the population of the species at a favourable conservation status in their natural range. The information which has been provided convinces me that both tests would be met here. The purpose for which the licences would be issued is also scrutinised in this case the Inspector was satisfied that the housing development proposed, on an allocated site and contributing to an assessed need, would be a reason of overriding public interest.
- 6.11 In accordance with TAN5 all three tests for the eventual grant of regulation 44 licences are likely to be satisfied. All in all, subject to the

requirements set out in the conditions and unilateral undertaking, the proposed development would not adversely affect the integrity of the nearby European sites. As a result of the measures which would be taken to secure their long term protection and viability the development would not have a significant adverse effect on important species or their habitats and would therefore comply with UDP Policy WB1.

6.12 Highway Safety

The access road to the new development would join the main route through the village. The Inspector observed that this is narrow in places and carries buses, vans and lorries as well as cars; pavements are also narrow or, along some stretches, non-existent. Many of the dwellings fronting the road do not have parking spaces and the sub-standard width is further reduced by on-street parking, especially when there is a service or other occasion at the church. The Inspector was aware that a significant number of parents and their children walk along Village Road on their way to and from school and that it is not possible for those with pushchairs or in wheelchairs to pass one another whilst both remaining on the footpath. The Inspector was also provided with photographs showing the difficulty vehicles, particularly larger ones, can have in travelling along the road and note that they frequently mount the pavement.

6.13 The Inspector noted that local residents find these to be serious problems which cause inconvenience and there are significant numbers of objections to the scheme which describe many incidents. The Inspector appreciated that there is widespread concern that such conditions could result in a serious accident causing harm to a pedestrian or driver, particularly if the proposed development is permitted and introduces more traffic onto Village Road. It appears from information provided by the police, however, that only four slight injury collisions, one of which involved a pedestrian, have occurred since 2008. This accident record is not of such gravity for the Inspector to accord it significant weight.

6.14 The construction of the 51 dwellings proposed would increase the amount of day-today traffic on Village Road, especially since there is little employment locally and future occupiers would be likely to drive elsewhere to work. The development would, however, fund enhanced traffic calming measures, signage, and improvements across the frontage of the site including a 2m wide footway. In the Inspector's view these would counteract the increased level of traffic movements arising from the proposal, including by making the route less attractive as a rat run, addressing some of the pre-existing traffic problems and resulting in safer road conditions than currently exist.

6.15 Taking account of the new traffic calming measures proposed, the development would not have an unacceptable effect on the highway network as a result of problems arising from traffic generation and

would comply with UDP Policy GEN1.

6.16 Planning Obligation

A completed unilateral undertaking was submitted to the Inspector. This requires the payment of contributions for education, highways and public open space, the provision of some affordable housing and a footpath link, and the submission and execution of an ecological management plan.

6.17 Conditions

Conditions were imposed to;

- protect the appearance of the development and surrounding area
- in relation to highway safety
- in relation to sewage disposal and drainage to protect the integrity of the public sewerage system, the health and safety of existing residents, and protect the environment from pollution and flooding. To ensure the existing waste water treatment works are not overloaded the permitted dwellings would not be occupied until improvements to it, which are programmed, were completed.
- for further site investigation due to the history of coal mining activity on the site, and appropriate remediation,
- submission and approval of a compensation scheme and mitigation method statement to safeguard protected species and their habitat
- restriction of works during the bird breeding season.
- protection of retained trees and implementation of the approved landscaping scheme
- limitation of working hours and implementation of a construction traffic management plan to minimise noise and nuisance for local residents.

7.00 CONCLUSION

7.01 The appeal is allowed and planning permission is granted subject to the conditions set out above.

Contact Officer: Emma Hancock
Telephone: (01352) 703254
Email: emma.hancock@flintshire.gov.uk