

FLINTSHIRE COUNTY COUNCIL

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

DATE: **18TH NOVEMBER 2015**

REPORT BY: **CHIEF OFFICER (PLANNING AND ENVIRONMENT)**

SUBJECT: **APPEAL BY MULLHILL ESTATES LLP AGAINST THE DECISION OF FLINTSHIRE COUNTY COUNCIL TO REFUSE PLANNING PERMISSION FOR OUTLINE – DEMOLITION OF ‘SUNNYSIDE’ & 66A MOLD ROAD AND THE ERECTION OF 58 NO. HOUSES INCLUDING DETAILS OF ACCESS, APPEARANCE, LAYOUT AND SCALE AT 66A MOLD ROAD, MYNYDD ISA – ALLOWED.**

1.00 APPLICATION NUMBER

1.01 048042

2.00 APPLICANT

2.01 Mullhill Estates LLP

3.00 SITE

3.01 Land to rear of 66A Mold Road.
Mynydd Isa.

4.00 APPLICATION VALID DATE

4.01 18TH November 2010

5.00 PURPOSE OF REPORT

5.01 To inform Members of the Inspector's decision in relation to an appeal into the refusal to grant outline planning permission for the erection of 58 houses at land to the rear of 66A Mold Road, Mynydd Isa, Mold, Flintshire. The application was refused by committee contrary to officer recommendation to approve and the appeal being dealt with by an Informal Hearing, was ALLOWED.

6.00 REPORT

Background

- 6.01 Members may recall that this application was reported to the Planning & Development Control Committee on 24th July 2013 whereby it was refused contrary to officer advice and subsequently reported back to Committee on 4th September 2013 on the grounds that the proposals did not provide 30% affordable housing within the scheme, highway safety, the proposals did not make provision for adequate public open space and inadequate parking provision. Both highway safety and inadequate parking provision were later dropped as reasons for refusal.

Issues

- 6.02 The Inspector considered that the main issues were whether or not the scheme made adequate provision for affordable housing, the effects on local ecology (great crested newts - GCN) and the effects on highway safety.

Affordable Housing

- 6.03 At the hearing the pressing need for affordable housing, and the planning system's role in its delivery, was accepted by all parties. Policy HSG10 of the UDP seeks a 30% provision of affordable housing. When it considered the proposal the Council's planning committee resolved that this level of provision should not be reduced. This stance was contrary to the advice of its officers that, as the applicant had shown that the economic viability of the scheme could not bear this level of provision, the contribution sought should be considerably lower. At the hearing the Council accepted that the policy provided some flexibility in relation to this target where justified by economic viability considerations. This position accords with LPG22 which explains that the Council will be realistic about the economics of development when negotiating the level of contributions.
- 6.04 The appellant provided updated evidence on viability issues prepared by specialist consultants, which was reviewed by the Valuation Office Agency (VAO) on behalf of the Council. Compiling viability assessments inevitably involve making informed judgements on a range of matters over which professional practitioners may disagree. Relatively small changes in inputs can significantly affect overall figures.
- 6.05 The main parties agreed that the main difference between them on viability turned on the benchmark land value. There are several significant abnormal costs associated with the development of the site. The degree to which this should be reflected in land costs is influenced by the need to provide a 'competitive return to a willing landowner'. The parties agreed at the hearing that there is difference

of some £50,000 between the parties' values on land benchmark costs. This is a relatively modest figure against the total costs of the project at over £8.6 million.

- 6.06 The financial contributions contained in the UU exceed that which the appellant considers economically viable using accepted measures. It stated that it is willing to accept a reduced developer return in this case to adhere to the total sum of all financial contributions that was originally offered even though the viability positioned has worsened in the meantime. Thus, even if the VAO figures are to be preferred, this would only serve to provide the return to the developer at a rate which is closer to the 28% figure which the parties agree is reasonable.
- 6.07 The Inspector acknowledged the potential for future changes in circumstances that could markedly alter viability but he must base his decision on the present situation. These circumstances lead him to find that the appellant's approach to land values was reasonable, and that the available evidence on viability justified reducing the level of contribution to affordable housing to that proposed in the Undertaking. Whilst both local and national policy favours on-site provision of affordable housing, the Inspector agreed that the level of contribution that is to be provided by the unilateral undertaking means that a commuted sum is the only practical means of such provision in this case. Thus, in the circumstances, the Inspector found that the appeal scheme would make adequate provision towards affordable housing.

Ecology

- 6.08 The evidence, including the ES, established that the scheme would not be likely to cause harm alone or in combination with other projects on any site designated for its nature conservation interests, including the Buckley Clay Pits and Commons Site of Special Scientific Interest and the Deeside and Buckley Newt Sites Special Area of Conservation. On the basis of the up-to-date and detailed ecological surveys which are contained in the ES, the Inspector was satisfied that the only significant ecological resource within the zone of influence of the proposed development which was likely to be affected is the GCN, which is protected under the Conservation of Habitats & Species (CH&S) Regulations 2010.
- 6.9 In a survey of the area conducted in 2010, GCN were identified as present in one nearby pond ('Pond 2' in the ES). The pond is some 350 m from the site. The terrestrial range of a GCN is known to occasionally extend to between 250 m and 500 m. Thus, given the shelter and foraging opportunities provided by the site the ES concluded that it was probable that GCN were present. Although the appellant's ecologist could not obtain access to Pond 2 when carrying out a more recent survey, in the absence of any known change in circumstances, the ES has assumed continued GCN presence on the site.

- 6.10 The scheme proposed to mitigate the potential impact on the local population of GCN in 2 ways. Firstly, it proposes to adopt measures to avoid direct harm during and after the construction phase by measures to include physical barriers and buffer landscaping works, which would be matters to be secured by planning condition. Secondly, the S106 undertaking would provide a financial contribution towards the provision of alternative migration land or improvements to existing GCN habitats locally.
- 6.11 Any works that would potentially affect a European Protected Species would require a licence. It was agreed that it was necessary to consider the prospects of such a derogation licence being granted by Natural Resources Wales (NRW). The 3 relevant tests in relation to derogation are set out in regulation 53 of the CH&S Regulations, which require that: there is an imperative reason of overriding public interest; that there is no satisfactory alternative; and, that the licence would not be detrimental to maintaining the population of the species at a favourable conservation status in its natural range. The appellant accepted that NRW would require significant further information before granting any licence. At this stage, and bearing in mind the favourable response of NRW to the scheme, considered that there is a reasonable prospect that a licence would be granted.
- 6.12 Whilst the Inspector noted the detailed matters raised by an objector, he was satisfied on the evidence before him and the absence of objections from either NRW or the Council's Ecologist, that the scheme is not likely to unacceptably affect the favourable conservation status of the local GCN population. The requirement for a licence will ensure that a more detailed assessment will be undertaken before any works can take place.
- 6.13 The revised ES established that the scheme could be undertaken without unacceptable impacts on other ecological interests, provided conditions were imposed to control the timing of works and to require further details of mitigating measures to be agreed and implemented.

Highway Safety

- 6.14 In deciding to refuse the application against the advice of its officers the Council's Planning Committee cited harm to highway safety and insufficient parking provision among its reasons for refusal. However, at a subsequent meeting the Committee resolved that, in the absence of technical evidence, it would not pursue these objections.
- 6.15 In line with national policy, the Council's parking standards are expressed as maxima which, in this case, would mean a provision of up to 150 spaces. The scheme provides this level of provision is appropriate in a location which has good access by means other than a car to local services and facilities, and a bus route to the nearby

larger settlement of Mold. The proposed Travel Plan, which can be secured by condition, will further encourage reduced car dependency.

- 6.16 Access from the site onto the A549 would be facilitated by the demolition of No. 66A and would involve the widening and realignment of the present junction of a short service road that runs parallel with the main road. There have been only 2 recorded personal injury accidents nearby in the last 5 years, both of which were recorded as 'slight'. Local residents are concerned that the present incidents of minor collisions that they have witnessed on this section of highway would be exacerbated.
- 6.17 The highway safety and capacity implications of the proposed access have been assessed by specialists on behalf of the appellant, and found to be acceptable, by the Council's Highways Officers, by specialist consultants employed by the Council, and by an independent road safety unit. Updated traffic surveys have been undertaken following the opening of the local Sainsbury's store which residents explained has increased traffic volumes. The evidence indicates that the staggered junction arrangements that would be created by the construction of the proposed access onto the main road would provide sufficient capacity to accommodate the predicted traffic flows.
- 6.18 It was evident to the Inspector that there were aspects of the arrangements that are not ideal, in particular some vehicles exiting the site may need to cross the centre line, and there will be occasions when the visibility splay eastwards will be reduced whilst a bus stop is in active use. However, the scheme would provide for the realignment and widening of the existing service road junction which would improve visibility and the angle at which vehicles presently enter the main road. It would also widen a presently sub-standard section of footway along Mold Road that extends towards Rose Lane.
- 6.19 Whilst local residents were concerned about traffic speeds the appellant's evidence shows that visibility splays would meet the appropriate standards. In an urban location such as this it is reasonable to assume that those travelling along the main road, as well as those entering it, will do so with caution. This is especially the case given the presence of several junctions and numerous private driveways along this section of the main road. If the incidents of dangerous parking on the opposite side of the road continue, as the appellant's highway consultant points out, this can be addressed by the police and/or highway authority. On this main issue, the Inspector considered that the effect of the proposed development on highway safety would be acceptable below that expected in UDP Policy SR5 and LPG, the significance of the shortfall is limited given the local circumstances and that the UU would provide a financial contribution to equip the facility and to address its future management.

- 6.20 Local residents, some of whom have experience at first-hand flooding of their properties, were concerned that the scheme would exacerbate such problems. Areas of the lower-lying parts of the site are marshy and, on occasions, saturated. The appellant's investigations revealed that a drainage pipe traversing the site is fractured which is likely to exacerbate these local drainage problems. Mindful of the specialist advice of NRW, the Inspector considered that the provision of suitable surface water drainage to serve the development and to replace the existing drainage infrastructure is a matter that could be adequately addressed by a planning condition. Whilst the Inspector noted the concerns expressed by local residents that drainage works on some other modern housing estates in the County have proved ineffective, he was not aware of the details of those cases, satisfied that there were controls available to ensure that properly designed and constructed drainage works are provided, which will avoid flooding.
- 6.21 Bearing in mind the relevant local guidance, the separation distances between existing and proposed houses, and the potential to secure additional screening through new boundary enclosures mean that the scheme would not give rise to unacceptable impacts in terms of overlooking, visual intrusion or loss of light. The access to the site will pass in proximity to two dwellings, the closest of which is a bungalow, No. 64, which was visited during his inspection of the site. The proposed estate road would be separated from this neighbouring property by a footpath and the modest gap between its side elevation and its boundary. The Inspector observed that along this elevation there is a secondary window serving a living room, a dining room window which presently faces the side elevation of No. 66A and a rear conservatory. He considered that the physical presence of the proposed 2 m acoustic fence along the side of the neighbouring bungalow would be no more intrusive than the presence of the existing dormer building and the boundary fence that presently forms a mutual boundary at the rear of the buildings. The separation distance and the acoustic barrier, the details of which would need to be approved, would protect the neighbour from intrusive noise effects of passing vehicles.
- 6.22 The south eastern part of the site has been subject to landfill activities in the past. As a consequence the appellant has commissioned several reports to assess the implications of land contamination and associated landfill gas emissions. Means of providing protective measures against gas and other potential pollution have been identified, and the appellant confirmed that this would require the raising of land on parts of the affected area which has been factored into the details that have been provided on proposed finished floor levels. The Council's Contaminated Land Officer has confirmed that there is no objection to the scheme. He was satisfied that the scheme

was acceptable in this respect, subject to suggested conditions. These would require further details on mitigation measures and would control further development within the affected area by removing certain permitted development rights.

6.23 Additional landscaping works to supplement the existing boundary hedgerows could be secured at reserved matters stage to soften the impact from the surrounding countryside. The scheme would involve the extensive loss of hedgerows within the site, contrary to the aim of Policy TWH2, which in this case is justified by the need to facilitate the scale of development envisaged in the UDP allocation. The scheme has been designed to retain all but two of the trees protected by a preservation order. The Council's Forestry Officer has confirmed that one of these is in poor health and the other has limited amenity value. The scheme makes provision for planting replacements for those lost and a condition is required to safeguard the remaining trees during construction. The degree to which the new development would be visually self-contained and the wide variety of architectural styles and sizes of nearby properties means that the scheme would not harm the character or appearance of the area.

6.24 The site has been identified through the UDP process as suitable for housing and is in a sustainable location close to a range of local services and facilities. Realising the site's envisaged contribution to meeting an identified need for housing is a factor that weighs in favour of the scheme. Given that the latest published Joint Housing Land Availability Study (JHLAS) for the County shows a shortfall in the 5 year supply of housing required by national policy, the Inspector attached considerable weight to this consideration. It was also recognised that the development of the site would benefit the local economy during the construction period.

7.00 CONCLUSION

7.01 Subject to the imposition of suggested conditions, the Inspector concluded that the scheme is acceptable in all respects and would make a valuable contribution to the local supply of housing. For these reasons the Inspector **ALLOWED** the appeal.

LIST OF BACKGROUND DOCUMENTS

Planning Application & Supporting Documents
National & Local Planning Policy
Responses to Consultation
Responses to Publicity

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