

FLINTSHIRE COUNTY COUNCIL

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

DATE: **7TH NOVEMBER 2012**

REPORT BY: **HEAD OF PLANNING**

SUBJECT: **APPEAL BY MR & MRS D & M WARING AGAINST THE DECISION OF FLINTSHIRE COUNTY COUNCIL TO REFUSE OUTLINE PLANNING PERMISSION FOR THE ERECTION OF 4 DETACHED DWELLINGS, INCLUDING NEW ACCESS TO BRYN EITHIN AND AMENDED BOUNDARIES TO 19 BRYN EITHIN ON LAND TO THE REAR OF HALKYN HALL, BRYN EITHIN, PENTRE HALKYN, HOLYWELL, FLINTSHIRE.**

1.00 APPLICATION NUMBER

1.01 049056

2.00 APPLICANT

2.01 Mr & Mrs D & M Waring

3.00 SITE

3.01 Land to the rear of Halkyn Hall, Bryn Eithin, Pentre Halkyn, Holywell, Flintshire

4.00 APPLICATION VALID DATE

4.01 15.9.2011

5.00 PURPOSE OF REPORT

5.01 To inform Members of the appeal decision, following the refusal of outline planning permission under delegated powers on 27th January 2012 for erection of 4 detached dwellings, including new access to Bryn Eithin and amended boundaries for 19 Bryn Eithin on land to the rear of Halkyn Hall, Bryn Eithin, Pentre Halkyn, Holywell, Flintshire The appeal was considered by way of an exchange of written representations and was DISMISSED.

6.00 REPORT

- 6.01 The Inspector considered there to be 2 main issues for his consideration. These were;
1. the extent to which the proposed remediation works would adequately address the levels of ground contamination at the site, and
 2. the effects of the proposals upon the amenity of the occupiers of neighbouring properties.
- 6.02 The Inspector noted the location of the site within the defined settlement boundary of Pentre Halkyn and noted that the broad thrust of planning policy sought to direct development towards such locations. However, he noted that this broad support was tempered by the need to satisfy other site specific considerations. In this case he noted the historic lead mining activities both at the site and within the wider area and the accepted position between both parties that the site was contaminated by extremely elevated levels of lead.
- 6.03 He noted the aim of the planning system to lessen the risks attributable to contamination through development via the implementation of appropriate remedial measures and reiterated that the onus lay with the developer or applicant to demonstrate that the land is suitable, or can be rendered suitable, for the development proposed.
- 6.04 He noted the remedial measures proposed by the appellant but voiced concerns in relation to both the accuracy of the information provided, extent of investigation and proposed methods of remediation in themselves.
- 6.05 He dismissed the suggestion by the appellant that robust planning conditions could be applied which would control the future maintenance of the remedial barriers between the contamination and potential receptors, stating it would place an unacceptable burden upon the Local planning Authority in respect of monitoring and enforcing such a condition. He concluded that for this reason, such a condition would not comply with the requirements of Circular 35/95 which governs the use of planning conditions.
- 6.06 In arriving at his conclusion upon this matter, he considered that insufficient information had been provided by the appellants to adequately demonstrate that the proposed remediation would address the contamination issues at the site and therefore agreed with the Council that the measures were not sufficient to demonstrate that the risks attributable to land contamination would be reduced to an acceptable level.
- 6.07 In examining the assertion by the appellant that the surroundings must be the subject of similar levels of contamination but had nonetheless

been the subject of residential development, the Inspector noted he had no evidence to consider in that regard and furthermore, his determination was undertaken upon the basis of the policies currently in place and rejected the argument of a precedent having been established.

- 6.08 In considering the issue of impacts upon current amenity, the Inspector noted the elevated position of the site relative to the adjacent properties on Bryn Eithin. He noted that in the absence of definitive acceptable proposals in respect of remediation, it was not appropriate to leave the consideration of this issue to be satisfied either via condition or through the submission of Reserved Matters. He concluded that the matter could only be adequately addressed on the basis of the information to hand at therefore concluded there would be a likely adverse impact upon amenity arising from the proposals.

7.00 CONCLUSION

- 7.01 The Inspector concluded that, having regard to the applicable policies and all other material considerations, the proposal was unacceptable in the terms presented and therefore the appeal was DISMISSED.

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