

**FLINTSHIRE COUNTY COUNCIL**

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

**DATE:** **17<sup>th</sup> April 2013**

**REPORT BY:** **HEAD OF PLANNING**

**SUBJECT:** **APPEAL BY ANWYL HOMES LTD AGAINST REFUSAL TO GRANT A RESERVED MATTERS PERMISSION FOR DEVELOPMENT OF LAND WITHOUT COMPLYING WITH A CONDITION SUBJECT TO WHICH A PREVIOUS RESERVED MATTERS PERMISSION WAS GRANTED.**

**1.00 APPLICATION NUMBER**

1.01 049425

**2.00 APPLICANT**

2.01 ANWYL HOMES LTD

**3.00 SITE**

3.01 CROES ATTI, CHESTER ROAD, OAKENHOLT

**4.00 APPLICATION VALID DATE**

4.01 2/4/2012

**5.00 PURPOSE OF REPORT**

5.01 To inform members of the decision in regards to an appeal against a condition subject to which a previous reserved matters permission was granted. The condition in dispute was condition 15 of ref. 046595, imposed by the Planning Committee, which stated, "Prior to commencement of development, a scheme shall be submitted to the Local Planning Authority for approval for the provision of a barrier to vehicles (except for emergency access) at a point where the main "Boulevard" serving the site meets Prince of Wales Avenue. Any subsequently approved details shall be implemented in full prior to any occupation of dwellings on the site and thereafter retained".

The reason given for the condition was, "The highway impacts of the proposed development would be detrimental to the amenity of existing residents in compliance with Policy GEN1 of the adopted Flintshire Unitary Development Plan".

- 5.02 The Inspector allowed the appeal, which was considered by way of a public inquiry, allowing the development to proceed without compliance with Condition 15.

## **6.00 REPORT**

- 6.01 The Inspector considered the main issue to be whether the condition in dispute was reasonable and necessary, and if so, the implication of removing it would have on the living conditions of nearby residents.

- 6.02 The Inspector was of the opinion that the removal of the condition was justified on the grounds that it was unreasonably imposed in the first instance, having regard to the established planning history and that the condition derogated from the 2006 outline planning permission. The Inspector was of the opinion that the condition attached to the outline planning permission which required an extension of the existing highway to the Prince of Wales Avenue had no expressed limitation in the condition to the type of vehicles which could pass through from the site onto Prince of Wales Avenue and there was no stipulation directing that the access must be regulated by barrier or bollards. The Inspector was of the view that this condition alone was clear and unambiguous and that the stated intention was to link the appeal development without limitation to Prince of Wales Avenue.

- 6.03 The Inspector also stated the matter was conclusively presumed by the grant of a certificate of lawful use of development in 2011, which stated the proposed operation of construction of vehicular access from Prince of Wales Avenue to serve the residential development at Croes Atti permitted by the outline planning permission would be lawful.

- 6.04 The Inspector also noted that the appealed condition was also unreasonable when viewed against a new planning permission granted on appeal in 2012 which re-imposed an extension of the existing highway at Prince of Wales Avenue into the appeal site and which was further reinforced by a master plan showing an access point to the development through Prince of Wales Avenue.

- 6.05 The Inspector referred to the revised development brief for the site which indicated a point of vehicular access from Prince of Wales and an obligation requiring the development to conform to the revised development brief and to condition 1 of the outline planning permission.

- 6.06 The Inspector concluded for the reasoning given above that condition 15 was unreasonable and unnecessary and should be deleted and

that it was unreasonable and failed the “Circular Tests” on conditions and there was no need to go onto consider the impact of the link on living conditions.

### **Costs Claim**

- 6.07 In deciding to award full costs in favour of the Appellant, the Inspector considered that the Council’s conduct amounted to unreasonable behaviour and that the Appellant had incurred wasted expense, since it should not have been necessary for the matter to go to appeal.
- 6.08 By way of background information to the cost decision, Counsel had been instructed to appear at the inquiry on behalf of the Council. As part of the appeal process, he had been asked to advise on the conduct of the case, in particular, upon the evidence proposed to be submitted to the inquiry. At the December 2012 Planning Committee Members were informed of the Counsel’s advice. Counsel concluded that the Council should reconsider its position and not seek to defend the imposition of condition 15 in an attempt to limit the extent of costs being awarded against the Authority. Counsel advised that not only was the decision to impose condition 15 contrary to government policy and guidance, but it was also inconsistent with case law. Members subsequently resolved to inform the Planning Inspectorate that the Council did not intend to defend the imposition of condition 15. The Planning Inspectorate was so informed the next day.
- 6.09 The Inspector concluded that the Appellant was entitled to pursue the appeal to Inquiry, given the late retraction of the Council’s case and the preparation time needed to consider the interested parties viewpoint, which could have been re-considered in light of the council’s withdrawal in the proceedings. The Inspector was of the opinion that the interested parties’ stance would have only been established on the day of the Inquiry, so the Appellant’s claim for costs for appearing and giving evidence was legitimate and unavoidable.

### **7.00 CONCLUSION**

- 7.01 The Inspector considered all other matters raised but none outweighed his conclusion on the main issue that the appeal should be allowed. As regards the costs claim he found that unreasonable behaviour resulting in unnecessary expense had been demonstrated and that a full award of costs was justified.

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