

**FLINTSHIRE COUNTY COUNCIL**

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

**DATE:** **12<sup>TH</sup> NOVEMBER 2014**

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

**SUBJECT:** **APPEAL BY ANWYL CONSTRUCTION CO LTD AGAINST THE DECISION OF FLINTSHIRE COUNTY COUNCIL TO REFUSE PLANNING PERMISSION FOR THE REMOVAL OF CONDITION NO. 14 OF PREVIOUSLY APPROVED PLANNING PERMISSION REF: 047624 TO ALLOW FOR THE DEVELOPMENT OF THE WHOLE SITE AT DOVEDALE, ALLTAMI ROAD, BUCKLEY – ALLOWED.**

**1.00 APPLICATION NUMBER**

1.01 051481

**2.00 APPLICANT**

2.01 ANWYL CONSTRUCTION CO LTD

**3.00 SITE**

3.01 LAND ADJ TO DOVEDALE,  
ALLTAMI ROAD, BUCKLEY

**4.00 APPLICATION VALID DATE**

4.01 14.11.13

**5.00 PURPOSE OF REPORT**

5.01 To inform Members of a decision in respect of an appeal following the refusal of planning permission by Planning and Development Control Committee for the removal of condition 14 of previously approved planning permission 047624 to allow for the development of the whole site at land adjacent to Dovedale, off Alltami Road. The appeal was dealt with by written representations and was ALLOWED.

**6.00 REPORT**

- 6.01 The Inspector acknowledges that there is a detailed planning history associated with this site, namely an outline planning permission for residential development which was dismissed on appeal in June 2009 owing to matters of land contamination and ground stability. A further planning application was submitted in June 2010, and was supported by investigations and technical reports in relation to ground stability and land contamination together with an illustrative site layout plan. Planning permission was subsequently granted in November 2013, with Condition 14 requiring no development to take place north of the hammerhead as illustrated on the submitted layout drawing. The Inspector notes that the reason stated for its imposition is in the interest of land instability.
- 6.02 The Inspector notes that an application seeking the removal of Condition 14 was submitted in November 2013, supported by a further assessment of the ground investigations. Contrary to officer recommendation, the Planning Committee refused the application to remove the condition in April 2014 citing concerns relating to land instability and the potential contamination of third party land.
- 6.03 Against this background, she considered the main issue to be whether the condition is both reasonable and necessary having regard to matters of ground stability and land contamination.
- 6.04 The Inspector accepts that, at the time of the previous appeal, there was insufficient evidence to demonstrate that there would be no unacceptable harm from the construction activities on the site and the impact of any remediation measures. As a consequence, the appeal was dismissed. However, in order to address the uncertainties identified by the Inspector, the technical information that accompanied the subsequent application included additional site investigations in respect of the nature of the land contamination, ground conditions and groundwater movement. In addition, further investigations were carried out regarding ground stability to the north of the site, the impact of piling and other foundation works on the contaminated materials and groundwater, and the effect of remediation works.
- 6.05 In respect of land stability, the appellant's evidence includes a letter from REFA Consulting Engineers which concludes that the off-site slope to the north of the site, which represents a historic, mature excavated slope created as a result of clay extraction and quarrying, remains stable. It has not been compromised by the subsequent infilling works in the development area. Nevertheless, as all dwellings would be constructed using pile foundations, the proposed development would not generate any significant surface loading which could influence the stability of the site or any adjoining third party land.
- 6.06 The Inspector was provided with a copy of the Council's committee report which confirms that *inter alia* adequate testing has been

undertaken to identify the nature of the contamination, borehole monitoring shows no significant ground water contamination, and that the foundations would not have a significant impact on the site or surrounding land. To this end, the Council's Head of Public Protection, together with The Coal Authority, raised no objection to the revised proposal on the grounds that sufficient information had been submitted to overcome the previous concerns.

6.07 Nevertheless, the Council imposed Condition 14 on planning permission Ref. 047624 preventing development on the northernmost part of the site. Although the reason for the imposition of Condition 14 refers only to ground instability, the Council also takes issue with matters of land contamination in its consideration of the subsequent application to remove Condition 14.

6.08 Whilst the Inspector noted the Council's concerns, there is no substantive or expert evidence before her to the effect that development would have an effect on ground and ground water contamination or land stability within the site, or pose a risk to third party land. She is therefore satisfied that appropriate measures have been undertaken, or will be undertaken as part of the remediation works, to ensure no unacceptable risk in respect of these matters. The site investigations were carried out across the appeal site and the Inspector can see no reason why the northernmost part of the site should therefore be excluded from development. Consequently, she does not find conflict with Policy GEN1, EWP11, EWP14, EWP15 or EWP16 of the adopted Flintshire Unitary Development Plan.

6.09 The Inspector considers that control by condition preventing development on the northernmost part of the site is both unreasonable and unnecessary and would therefore fail the tests outlined in Circular 016/2014 *'The Use of Conditions in Development Management'*.

## **7.00 CONCLUSION**

7.01 She concludes that the appeal should be allowed and the disputed condition removed.

7.02 A signed Unilateral Undertaking (UU) was submitted to the Inspector dated 18 August 2014 to deal with financial contributions for education and play together with a management agreement in respect of land for ecological mitigation and to take account of the increased education contribution since application 047624. The Council has not taken issue with this, and the Inspector had no reason to disagree.

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