

FLINTSHIRE COUNTY COUNCIL

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

DATE: **22ND APRIL 2015**

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 ERECTION OF 41 NO DWELLINGS, OPEN SPACE AND ACCESS WORKS AT OLD HALL ROAD/GREENHILL AVENUE, HAWARDEN - ALLOWED**

1.00 APPLICATION NUMBER

1.01 051613

2.00 APPLICANT

2.01 ANWYL CONSTRUCTION CO LTD

3.00 SITE

3.01 OLD HALL ROAD/GREENHILL AVENUE,
HAWARDEN

4.00 APPLICATION VALID DATE

4.01 23.12.14

5.00 PURPOSE OF REPORT

5.01 To inform Members of the Inspectors decision in relation to an appeal following the refusal of planning permission by Planning and Development Control Committee for the proposed erection of 41No. Dwellings, open space and access works at land off Old Hall Road/Greenhill Avenue, Ewloe, contrary to officer recommendation in May 2014. The appeal was considered through a Public Inquiry held

for 3 days in February 2015. The appeal was ALLOWED. No application for costs was made by either party.

6.00 REPORT

6.01 Issues

The Inspector considered the main issues to be;

(a) Whether the proposal accords with planning policies that seek to strictly control new development outside settlement boundaries;

(b) Whether the proposal would result in the unacceptable loss of best and most versatile agricultural land;

(c) Whether the proposal would result in Ewloe having an unacceptable housing growth rate; and,

(d) Whether any harm and/or conflict with policy in respect of one or more of the above is outweighed by the lack of a 5-year housing land supply.

6.02 Settlement boundaries

The Inspector noted the site is in agricultural use and is located immediately adjacent to the settlement boundary for Ewloe, with existing housing on its northern, eastern and western sides and the land to the south being within a green barrier. The appellants acknowledged that the proposal conflicts with *Flintshire Unitary Development Plan* (UDP) policy GEN3, which states that development proposals outside settlement boundaries will not be permitted unless they fall into one of the exceptions listed, and policy HSG4, which does not permit new dwellings outside settlement boundaries unless essential to house a farm or forestry worker. The Inspector also considered that the proposal conflicts with policy STR1, which only permits development outside settlement boundaries where it is essential to have an open countryside location.

6.03 One of the objectives of these policies is to protect the character and appearance of the countryside, however, the UDP Inspector considered that development of the site would be a logical rounding off of the settlement and would harm neither the character of the locality nor the integrity of the green barrier. There is nothing in the evidence before this Inspector that would lead him to a different conclusion.

6.04 The Statement of Common Ground (SoCG) records that the majority of properties to the west of the site are two-storey semi-detached dwellings with two large two-storey detached properties to the south west. Whilst there are bungalows elsewhere, the SoCG notes that some of these have been altered and extended significantly in some cases to dormer/two-storey properties. In such circumstances, the Inspector was satisfied that the proposed 2 and 2.5 storey dwellings

would not adversely affect the architectural quality of the area and the proposed brick and render finishes would reflect the local vernacular.

6.05 Agricultural land

The Inspector noted that the Agricultural Land Classification Map indicates a substantial portion of the site as Grade 2 with the remainder being Grade 3. He referred to the fact that in considering the appeal site, the UDP Inspector noted that such grading is only intended as a broad guide but did not consider that it should be dismissed lightly. Whilst it had been suggested that the land is of much poorer agricultural quality and should not be considered as being within the 'best and most versatile' category, there was some doubt as to whether the report was prepared in accordance with the relevant guidelines. The UDP Inspector accepted the merits of many of the points made in favour of retaining the housing allocation on the site but they did not outweigh the need to resolve the agricultural land classification issue and recommended the allocation be deleted on that basis.

6.06 A subsequent assessment in 2009 by Reading Agricultural Consultants Ltd carried out in accordance with MAFF's revised guidelines and criteria, classified approximately 0.4 ha (24%) as Grade 3a with around 1.3 ha (76%) as Grade 3b. Grade 3b is capable of producing high yields of grass or moderate yields of cereals whilst Grade 3a is capable of producing moderate to high yields of cereals. The assessment notes that there is no facility to grow arable crops at Kearsley Farm, the field shape is awkward for turning machinery and access from other farms is problematic such that the agricultural utility of the land is restricted. The assessment required interpolation of auger and soil pit tests and an interested person suggested at the Inquiry that an alternative interpolation could result in a higher proportion of Grade 3a land. Whilst that may be so, the Inspector in determining this appeal had no reason to believe that the figures provided are not the best estimate. Furthermore, the Welsh Government's Department for Natural Resources and Food concluded that the survey appears sound and that a mixture of subgrade 3a and 3b would probably have been predicted.

6.07 UDP policy RE1 only permits development which would result in the loss of agricultural land of Grades 1, 2 or 3a where there is an overriding need for the development. It could be argued that the lack of a 5-year housing land supply and failure to meet the UDP's housing target represent an overriding need, but the policy also requires that the development cannot be accommodated on derelict, non-agricultural or lower grade agricultural land or available lower grade land has an environmental value or designation which outweighs the agricultural considerations. Addressing the shortfall in UDP housing

provision and achieving a 5-year housing land supply is likely to require the release of some greenfield sites adjacent to existing settlements, but there is no evidence before him to show that this could not be done utilising lower grade agricultural land and the Inspector concluded that the proposal conflicts with UDP policy RE1 as well as policy GEN1. For the same reason, it also conflicts with *Planning Policy Wales* (PPW). This states that the best and most versatile agricultural land should be conserved as a finite resource for the future and considerable weight should be given in development management decisions to protecting such land from development, because it is of special importance.

6.08 Housing growth rate

The Inspector notes that the UDP designates Ewloe as a Category B settlement, where additional development which would cumulatively result in more than 15% growth over the plan period will need to be justified on the grounds of housing need. Such justification could include local housing need and/or an explanation of why the development needs to take place in a category B rather than a category A settlement. The UDP is intended to cover a 15 year period between 2000 and 2015.

6.09 As of April 2014 there had been 357 completions in Ewloe since 2000 representing a 15.7% growth rate. At that time there was a commitment of a further 46 units from unimplemented planning permissions and if they were all completed by the UDP end date that would see Ewloe experiencing 17.7% growth over the Plan period. Both planning witnesses accepted that the actual figure would be likely to be between 15.7% and 17.7%. The UDP Inspector was of the view that additional growth of some 2% in Ewloe would not be excessive, although this was in the context of an anticipated 13% growth following adjustments to allocations, sites with planning permission and planning applications since 2005 would have increased that slightly, and the overall increase would still have been just outside the 15% indicative limit.

6.10 The Inspector who determined Appeal Ref: APP/A6835/A/14/2217325 for a single dwelling at Wood Lane within Ewloe's settlement limits noted that the proposal before her would result in unplanned growth prejudicial to the Council's settlement hierarchy and spatial strategy. If permission had been granted, there would have been a reasonable prospect of the development being completed by sometime in 2015 and there is no suggestion that delaying commencement was considered. As a result, the development would have contributed to Ewloe's growth over the plan period which has already exceeded 15%. In this case, start on site is not envisaged until Spring 2016 with completion in Spring/Summer 2018. There is, therefore, no realistic

prospect of any dwellings being occupied before the end of the current year such that the proposal would not contribute to Ewloe's growth during the UDP period or conflict with the UDP's spatial strategy.

- 6.11 The Inspector considers that the UDP spatial strategy has not been particularly successful in the way growth has been distributed across the various settlements. The growth of category A settlements varies between 1.8% and 27.2% against an indicative range of 10%-20%, category B settlements have grown between 2.2% and 27% against an indicative range of 8%-15%, and category C settlements have seen growth of between nil and 27.5% against an indicative range of up to 10%.
- 6.12 Interested parties raised concerns as to the impact on local services. The Council agreed that any impact on school numbers was capable of being addressed through a financial contribution provided through a planning obligation. Insofar as impact on health services are concerned, there are no objections from the relevant practices or the health authority, and Cllr Mackie acknowledged that getting GP appointments may be an issue elsewhere as well as in Ewloe. For the above reasons, the Inspector concluded that the proposal would not result in Ewloe having an unacceptable housing growth rate and there is no conflict with UDP policy STR4.
- 6.13 5-year housing land supply
PPW requires local planning authorities to ensure that sufficient land is genuinely available or will become available to provide a 5-year supply of land for housing judged against the general objectives and the scale and location of development provided for in the development plan. For land to be regarded as genuinely available it must be a site included in a Joint Housing Land Availability Study (JHLAS).
- 6.14 The 2012 JHLAS with a base date of 1st April 2012 showed a 4.5 years supply based on the residual method. Whilst the Council had argued in favour of using the past completions method, the Inspector who reported to the Welsh Government on the JHLAS did not consider that a departure from the residual method was justified. Although objectors suggested that more recent figures would show an improvement, the latest 2013 JHLAS with a base date of 1st April 2013 actually shows a worsening position with only 4.1 years supply on the residual method.
- 6.15 The Welsh Government's letter to Chief Planning Officers of 19 January 2015 states that the residual methodology based on the housing requirements in an adopted LDP (or adopted UDP) will be the only methodology allowed for calculating housing land supply and the use of the past build rates methodology, which was based on the past

performance of the building industry, will not be accepted. As a result, the Inspector in this appeal gave no weight to the Council's initial arguments in respect of past completions.

- 6.16 The Council states that there are sites which are predominantly strategic development sites and not constrained in any way but are shown within the 3i category of the JHLAS through a combination of economic circumstances and developer conservatism. The Council argued that these represent a latent supply which could be accelerated in response to any improvement in market conditions and demand. Nonetheless, the inclusion of those sites within the 3i category has been agreed and for sites to be genuinely available they must be within Category 1 or 2. The Council also refers to examples of sites coming forward which are not currently falling within the 5 year figure and indicate that the draft 2014 study shows a much higher level of completions. That is not consistent with the statement in the 2013 JHLAS that low developer build rates are being put forward for the 2014 study, and the Inspector had no substantive evidence to indicate that the next JHLAS will show a 5-year housing land supply.
- 6.17 *Technical Advice Note 1: Joint Housing Land Availability Studies (TAN 1)* states that where the current study shows a land supply below the 5-year requirement, the need to increase supply should be given considerable weight when dealing with planning applications provided that the development would otherwise comply with development plan and national planning policies.
- 6.18 Highways
The Inspector noted interested persons were concerned as to the impact of the additional traffic generated, although there are no objections from the highway authority and the UDP Inspector was of the view that the highway network was suitable and would not be overloaded or unacceptably congested by development of the appeal site.
- 6.19 It has been suggested that the network peak hours considered in the Transport Statement do not reflect what occurs locally. Raw traffic data from the Transport Statement was submitted at the Inquiry at the Inspectors request. Following consideration of this data the Inspector was satisfied that the traffic likely to be generated by the proposal has not been underestimated and it would not, in his view, be so significant as to materially impact on pedestrian safety. Furthermore, junction capacity assessments have confirmed that this level of additional traffic would not result in any notable effects on highway capacity.

- 6.20 Although interested parties suggested to the Inspector that the carriageway width on Old Hall Road is as narrow as 4.61m in places, measurements taken on Greenhill Avenue, Old Hall Road and Kearsley Avenue during the accompanied site visit confirmed that no widths are less than 4.8m which, according to *Manual for Streets*, is sufficient for a car and a commercial vehicle to pass each other. The appellants' highways evidence showed that the junctions of Kearsley Avenue and Wood Lane as well as Kearsley Avenue and Greenhill Avenue are capable of accommodating two-way traffic. The same evidence demonstrates that visibility at the junction of Wood Lane with the B5125 is adequate. The impacts of construction traffic could be adequately controlled through a Construction Traffic Management Plan.
- 6.21 Residential amenity
The Inspector noted that neighbouring occupiers who currently look out over an agricultural field would obviously experience a totally different outlook but, given the compliance with *Local Planning Guidance Note 2: Space around Dwellings* (LPGN 2) as referred to in the Statement of Common Ground. The changed circumstances would not be so severe as to have a significant adverse impact on their living conditions.
- 6.22 Unilateral Undertaking
The Unilateral Undertaking provides for three things. These are transferring four affordable housing units to the Council for a nominal consideration, laying out Open Space Land and a Management Agreement to secure future maintenance, as well as an Education Contribution. The affordable housing and open space aspects were agreed between the Council and the appellants.
- 6.23 Interested parties queried the transfer of four units as opposed to a 30% provision of affordable units within the development as required by UDP policy HSG10. Nonetheless, the Inspector noted the Council's experience with the provision of affordable housing through discounted market value housing which has resulted in a slow take up due to difficulties in obtaining mortgages. The Council therefore requested the 4 units to ensure delivery of affordable housing and to meet the area's need. Such an approach was considered appropriate by the Inspector who determined the Appeal Ref: APP/A6835/A/11/2166719 for land at Overlea Drive. He concluded that the aims of the policy would still be supported and this Inspector had no reason to reach a different conclusion in this case. The Inspector was therefore, satisfied that the affordable housing and open space land provisions are necessary, directly related to the development and fairly and reasonably related in scale and kind to the development.

- 6.24 The Education Contribution was not agreed between parties. The Contribution is divided into a primary element and a secondary element. The extent of the disagreement in respect of the Primary element is limited to whether attendance at Welsh Medium schools should be considered and whether the number of pupils likely to be generated by the development should be rounded to the nearest whole figure.
- 6.25 The appellants note that across the County some 6.3% of primary pupils attend Welsh Medium Schools, but that is likely to fluctuate across different areas and currently only one pupil from the whole of Ewloe attends such schools. On this basis, the Inspector considered that it is unlikely that any pupils of primary school age generated by the development would attend a Welsh Medium primary school.
- 6.26 Given that the Council allows rounding up and down to the nearest whole figure, there will be an element of 'swings and roundabouts' and the Inspector considered that the appellants' position seems overly pedantic. Furthermore, it is clear from the examples given in *Local Planning Guidance Note No. 23: Developer Contribution to Education* (LPGN 23) that figures would be rounded. This LPGN was subject to consultation prior to formal adoption and should be afforded significant weight in line with my colleague's decision in Appeal Ref: APP/A6835/A/14/2217030 for land at Rock Bank, Main Road, New Brighton, which found its methodology to be sensible and generally fair. The Inspector was therefore, satisfied that a primary element of £122,570 to the Education Contribution is necessary, directly related to the development and fairly and reasonably related in scale and kind to the development. As a result, it is justified and complies with the CIL Regulations.
- 6.27 The disagreement over the secondary element is somewhat more fundamental with the appellants arguing that there is capacity available at other schools within a reasonable distance despite the nearest being over capacity. Nonetheless, LPGN 23 clearly states that contributions will be required for the nearest suitable school, which in this case is Hawarden High. The appellants draw attention to two Appeal Decisions from England. Whilst some comparisons can be made with the cases before him, there was no evidence that either of the local planning authorities in those cases had any relevant and adopted Supplementary Planning Guidance. Up to date quantified evidence of the extent to which Hawarden High is unable to meet those demands has been provided. The LPGN provides the methodology for calculating any financial contribution which is shown to be necessary. Only one pupil from Ewloe attends a Welsh medium secondary school and it is unlikely that the proposal would result in this figure increasing. The Inspector was therefore, satisfied that a

secondary element of £129,283 to the Education Contribution is necessary, directly related to the development and fairly and reasonably related in scale and kind to the development. As a result, it is justified and complies with the CIL Regulations.

6.28 Conditions

Conditions to be imposed in the event of the appeal being allowed were discussed at the Inquiry. The only difference between the Council and the appellants related to the need for a phasing condition. In the Inspectors view, this is justified on the basis of providing some certainty as to how the development would be implemented. Given the pressing need to address the lack of a 5-year housing supply, the Inspector agreed that it would be appropriate to require commencement within 2 years rather than the default 5 years.

7.00 **CONCLUSION**

7.01 The Inspector identified conflict with the statutory development plan in respect of the site being located outside settlement boundaries and the loss of some Grade 3a agricultural land. Notwithstanding that the plan has not delivered the anticipated housing numbers by some margin, he considered that the proposal also conflicts with the plan read as a whole. However, that conflict is tempered by the site having residential properties on three sides such that its development would represent a logical rounding off that would not harm the area's character. Although PPW requires considerable weight to be given to protecting Grade 3a land, the relatively small amount of such land that would be lost and its restricted agricultural utility should also be taken into consideration in the overall balance.

7.02 The site is located adjacent to a sustainable settlement which has a range of services and facilities and is accessible by transport modes other than the private car. It has previously been selected for housing as part of the UDP process adopting a sequential approach, although it was subsequently dropped because it was deemed that there was no longer a need for it within the Plan period. In its evidence to the UDP Inquiry, the Council fully acknowledged that the site is a suitable candidate for development in the next plan period and the UDP Inspector noted that if the agricultural land classification issue could be resolved, the site could be considered again as part of the Local Development Plan (LDP).

7.03 However, it was expected at the time of the UDP Inquiry that a new plan would be in place by 2015 to provide continuity to the Plan led system. The reality of the situation, despite the Minister for Housing and Regeneration stating that the need to have an up-to-date adopted LDP in place is non-negotiable, is that adoption is not envisaged until

2018 at the earliest. The UDP seeks to deliver 7,400 units in the Plan period (i.e. up to 2015) (equivalent to 493 per annum), and only 37% of the requirement could be delivered on previously developed sites with the majority of new sites allocated being sustainable extensions to existing settlements. Nonetheless, in its first 10 years or so only 3,288 units had been provided, leaving 4,112 to be shared out over the remaining 5 years (equivalent to 822 per annum). Clearly a step change was required over the last 5 years, but a central premise of the Plan was that this could be achieved. Any failure was to be identified in annual monitoring reports and addressed in reviews to the Plan or interim policies to release more land. The actual completions to April 2013 were only 4,213 units such that 3,187 needed to be provided during the last 2 years or so of the Plan period. However, the 2013 JHLAS predicts that only 1480 units will be delivered over the 3 years to 31 March 2016, leaving a substantial shortfall of at least 1707 at the end of the Plan period with the UDP clearly failing to deliver the necessary level of housing. No reviews or interim measures have been implemented and the Council has indicated that it does not intend to implement any formal steps to increase housing land. Had it done so, the Inspector considers that any additional release would in all probability also have been largely reliant on greenfield sustainable urban extensions. This substantial shortfall will need to be addressed in the early phases of the LDP, but that will not be in place for some time and there is a clear need to deliver additional housing now.

- 7.04 Looking forward, the 5-year requirement amounts to 4667 units. This is equivalent to 933 per annum and almost double the 493 per annum that would have resulted from the UDP delivering its requirement evenly across the Plan period. However, the 2013 JHLAS has identified a deficit of 871 units against this requirement, which further reinforces the need to increase supply. Although the proposal does not comply with development plan and one aspect of national planning policy, the Inspector is of the view that the need to increase supply should still be given significant weight in the overall balance. The Council suggest that sequentially preferable sites should have been considered first, but housing provision in Flintshire is largely dependent on greenfield sustainable urban extensions and the Inspector saw no evidence that this will change beyond 2015. Even if additional sites could be made available adjacent to Category A settlements or on poorer quality land adjacent to category B settlements, the reality of the situation is that they would be unlikely to come forward for some time or be included in the next JHLAS. Furthermore, the extent of the deficit is so great that even if 3i sites in Category A settlements, such as the appellants' development at Croes Atti, could be accelerated, by themselves they would not be sufficient to address the problem.

7.05 The Inspector also notes that the Minister for Housing and Regeneration views building more homes as his priority, noting that this will not only meet growing housing need, but also generate growth and jobs, provide work to help people out of poverty and ameliorate the effects of the bedroom tax. There is a danger that the need to increase supply and lack of a 5-year housing land supply could be used to justify development in inappropriate locations. However, in the particular circumstances of this case the benefits of the scheme outweigh the conflict with the development plan and one aspect of national planning policy and the balance clearly falls in favour of allowing the appeal such that the limited loss of Grade 3a land is not unacceptable.

7.06 For the reasons given above the appeal should be ALLOWED.

LIST OF BACKGROUND DOCUMENTS

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

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