

FLINTSHIRE COUNTY COUNCIL

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

DATE: **20th JULY 2016**

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

SUBJECT: **APPEAL BY BLOOR HOMES (NORTHERN) LIMITED AGAINST THE DECISION OF FLINTSHIRE COUNTY COUNCIL TO REFUSE PLANNING PERMISSION FOR ERECTION OF 59 DWELLINGS, OPEN SPACE, ACCESS AND ASSOCIATED INFRASTRUCTURE AT ISSA FARM, MYNYDD ISA – ALLOWED COSTS DECISION - REFUSED**

1.00 APPLICATION NUMBER

1.01 053208

2.00 APPLICANT

2.01 BLOOR HOMES

3.00 SITE

3.01 ISSA FARM, MYNYDD ISA

4.00 APPLICATION VALID DATE

4.01 03.02.15

5.00 PURPOSE OF REPORT

5.01 To inform Members of the decision in respect of an appeal against refusal of planning permission for the erection of 59 dwellings, open space, access and associated infrastructure at Issa Farm, Mynydd Isa. The application was refused by Planning and Development Control Committee on 9th September 2015 contrary to officer recommendation. The reason for refusal was;

“The proposal constitutes development in the open countryside outside a settlement boundary and would have unacceptable impact on the character of the countryside contrary to Policy GEN3 of the Flintshire Unitary Development Plan.”

The appeal was dealt with by Public Inquiry which ran for 3 days 26th - 28th April. An application for costs was also made.

6.00 REPORT

- 6.01 The Inspector considered that the main issues in this case were:
- the effect of the proposed development on the character of the open countryside; and
 - whether there is a 5 year supply of housing land and;
 - if not, whether any detriment to the open countryside would be outweighed by the need to increase housing supply.

6.02 Impact on the character of the countryside

The Inspector noted that the appeal site was allocated for residential development in the deposit version of the UDP. The UDP Inspector found, however, that because of its location, shape, landscape and surrounding topography, it would be poorly related to the existing pattern of development and a significant incursion into the rural area. The Inspector noted that the UDP Inspector thus deleted the allocation and redrew the settlement boundary to exclude the site, considering that the UDP's countryside, wildlife and landscape policies would be robust enough to offer sufficient protection from development.

- 6.03 The UDP inquiry took place in 2007 with the Inspector's report being issued to the Council in May 2009. The UDP Inspector's opinions are concisely expressed as is appropriate and realistic in the context of a development plan examination. It is not clear, however, on what evidence she was basing these. Whilst the assessment of landscape impact involves an element of judgement, the appellant's LVIA submitted with the planning appeal is detailed and methodical and the responses to it are similarly robust. A further consideration is the increased national policy emphasis in recent years on the provision of new housing which is explored in more depth elsewhere in this decision. In these circumstances the Inspector in this appeal considered that the UDP inspector's assessment carries limited weight.

- 6.04 The Inspector's assessment of the impact of this proposed application on the countryside, was informed by those of all other parties at this Inquiry. Her conclusions are;
- the appeal site is wrapped around by existing development on two sides;
 - when seen in plan view a majority of the site, perhaps two thirds, appears to be projecting into the open countryside in the

form of a large triangle of land;

- the existing development at Parc Issa lies further out along Bryn Road and also extends northwards for some distance into the countryside.

- 6.05 On the ground, therefore, the effect of this relationship would be that from several public viewpoints the proposed development would be framed by and set against existing residential development. When walking northwards along the public footpath to the west of Bryn-y-baal, for example, the proposed dwellings would be seen running down the slope and extending the settlement well beyond the apartments which mark its existing outermost point. From midway across the first field existing dwellings start to appear behind the appeal site and, by the first hedgerow, it is wholly set against existing development. The new dwellings proposed would be at a similar level to many of the existing houses and would thus obscure them from view.
- 6.06 Whilst the proposed development would bring the settlement edge closer to the public footpath, the general outlook from much of it would not be greatly altered. To the Inspectors mind the increased extent of the settlement would not be clearly apparent or seen to intrude significantly into the surrounding countryside from most viewpoints.
- 6.07 In addition, the countryside here is typified by hedgerows, many including mature trees, which filter views. The landscaping scheme proposed would supplement the existing site boundaries with additional planting and would reduce the effect of the proposed development, including at those times of year when trees and shrubs are not in full leaf.
- 6.08 Another public viewpoint would be from Bryn-y-baal Road close to where it crosses the A494. Although the proposed development would be visible and would jut out into the countryside, at this distance the Inspector did not consider that it would be seen as a considerable extension of the settlement or a significant change to the view.
- 6.09 The Inspector concluded that the proposed development would fundamentally change the character of the appeal site itself from greenfield, agricultural land to a residential development. However as a result of its proximity and relationship to existing, modern housing; its limited visibility in the wider area; and its modest extent she does not consider, that it would represent a significant encroachment into the surrounding countryside. The character of that countryside would not, therefore, be considerably altered and the proposed development would not be inconsistent with paragraph 4.6.4 of PPW which states that, in line with sustainability principles, the conservation of the countryside should be balanced against the economic, social and recreational needs of local communities.

- 6.10 Five year housing land supply
The plan period of the Flintshire Unitary Development Plan ended in 2015. Whilst it remains the development plan until superseded by an adopted local development plan, parts of it may be out of date. Planning Policy Wales (PPW) states that it is for the decision maker to determine whether policies are outdated for the purposes of determining a planning application. Where relevant development plan policies are considered outdated there is a presumption in favour of proposals in accordance with the key principles and key policy objectives of sustainable development.
- 6.11 Technical Advice Note 1 – *Joint Housing Land Availability Studies* (TAN1) is also relevant to this case. The latest Joint Housing Land Availability Study (JHLAS) for Flintshire, which has a base date of April 2014, demonstrated 3.7 years of housing land supply. In addition, as the UDP is beyond its end date the Council will be unable to produce a JHLAS to evidence any land supply until a replacement adopted LDP is in place. In circumstances where there is not a five year supply TAN1 instructs that the need to increase the housing 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.
- 6.12 Mynydd Isa, of which Bryn-y-baal is a part, is identified in the UDP as a Category B settlement where growth between 8% and 15% is proposed. The Settlement Growth Schedule shows that, taking account of completions, commitments and allocations, Mynydd Isa has grown by only 7.2% during the plan period. The settlement boundary, which is drawn tightly round the developed area, is thus inconsistent with the level of growth identified for Mynydd Isa. The Inspector noted that construction will have been severely constrained by the recession, have noted the additional housing data submitted by third parties and she was aware that the UDP inspector did not consider that the growth levels should be regarded as prescriptive. Nevertheless, in her judgement in this case, she considered that Policy GEN3 is now outweighed by the need to increase housing supply, including affordable housing, the lack of harm to the character and appearance of the surrounding area and the presumption in favour of sustainable development.
- 6.13 The appellant drew the Inspectors attention to an appeal case in Ewloe. The development proposed was 41 dwellings on a site in agricultural use located immediately adjacent to, and outside of, the settlement boundary. The Inspector noted that while there are clear similarities with the case before her although the Ewloe site appears to have been more enclosed by existing housing than the one here; the effect of the proposed scheme on the open countryside was not identified as a main issue. That difference, however, has little bearing on the conclusions of the Ewloe inspector. On noting the significant shortfall in housing delivery during the UDP period he considered that,

had the Council released additional sites in order to increase housing land, these would in all probability have been greenfield sustainable urban extensions. The Inspector agreed that this does not mean that any or all greenfield sites should be developed but, generally, the finding supports her conclusion that the Mynydd Isa settlement boundary, which Policy GEN3 enforces, no longer has currency.

6.14 Other matters

The proposed development would be most clearly visible from the dwellings and gardens surrounding the appeal site. The Inspector appreciated that nearby occupiers, several of whom purchased their properties because of the open views from them, would prefer to see the existing field rather than the housing development proposed. The proposed scheme has, however, been thoughtfully laid out with, in the main, gardens adjacent to existing gardens. The sloping land and orientation of the dwellings would ensure that the distant vista was not completely obscured whilst the landscaping scheme would augment the existing perimeter trees and hedgerows with additional planting. Whilst the newly-planted trees would take many years to reach maturity, the use of extra heavy standards would ensure that there was some immediate filtering and structural effect.

6.15 Highways

Following comments from the Council, the appellant submitted a revised Transport Assessment (TA) during the course of the planning application. The Inspector was content that appropriate data was used and a suitable methodology followed. The assessment concluded, amongst other matters, that the proposed development would not have a material impact and would be able to be accommodated on the local highway network. Furthermore, there was no evidence to suggest that the proposals would have an adverse effect on road safety or the number of accidents in the vicinity. The Inspector noted that the highways authority was satisfied by the revised TA and its conclusions and have no reason to disagree with that position.

6.16 In order to encourage pedestrian traffic through the proposed development and easy access to the new play area, the appellant has indicated a footpath from the site into Llys-y-Graig. As this would traverse privately-owned land outside the appeal site it could not, however, be provided without the full agreement of those landowners. The Inspector therefore gave no weight to the provision of the path in reaching her decision.

6.17 Conditions

In the light of Circular 16/2014 *The Use of Planning Conditions for Development Management* (the Circular) the Inspector imposed conditions as discussed at the inquiry and as largely agreed by the parties. The two year commencement condition will ensure that the construction of the site gets underway promptly. Whilst conditions requiring the completion of the whole of a development should not

normally be imposed as they are difficult to enforce the Circular advises that conditions should encourage developers to commence development as soon as possible through phasing. Since the proposed development has been justified on the contribution it will make to the housing supply it is necessary for there to be some assurance dwellings will be delivered, not only that development will commence. The Inspector agreed that a phasing plan will enable this but the Inspector amended the condition suggested by the Council to omit the reference to the completion of dwellings. Other conditions relating to drainage, highways and landscaping were also included.

6.18 The appellant has submitted a signed planning obligation through which it undertakes to provide affordable housing and an equipped play area on the site and to make contributions towards the provision of primary and secondary education at local schools. These provisions meet the tests set out in regulation 122(2) of The Community Infrastructure Levy Regulations 2010 in that they are necessary to make the development acceptable, directly related to it, and fairly and reasonably related in scale and kind. The Inspector had no evidence that the school contributions would result in five or more obligations having been entered into for the same provision; the planning obligation would thus also comply with regulation 123(3).

6.19 Planning balance and conclusions

By reason of the shortfall in housing provision and limited growth of the settlement during the UDP period, which is now ended, Policy GEN3 and the defined settlement boundaries have limited weight. In these circumstances PPW provides a presumption in favour of proposals which would be in accordance with the principles and objectives of sustainable development.

6.20 The purpose of the presumption in favour of sustainable development is to ensure that social, economic and environmental issues are balanced and integrated in taking decisions on individual planning applications. The proposed development would have a social benefit in providing new housing, particularly affordable dwellings. It would also have economic advantages through creating jobs during the construction period and providing some additional on-going custom for local businesses. The site would have good access to Bryn-y-baal and Mynydd Isa where there is a range of everyday services including public transport. Some facilities, such as the doctors' surgery and a pub, have been lost in recent years and the Inspector heard that local schools are almost full. Nonetheless, whilst not sufficient to provide for all day-to-day needs the local services are of a level commonly found in villages of this size which are fairly close to larger settlements.

6.21 Taking into account her conclusion that it would not cause harm to the landscape, the proposed development would not result in significant detriment to environmental interests. All things considered, it would be sustainable development and could thus be located outside of the

outdated settlement boundary.

- 6.22 In addition there is not a five year supply of housing land in the County. TAN1 thus requires that the need to increase the housing supply should be given considerable weight in dealing with schemes such as the one before her now. She found that the proposed development would not harm the surrounding countryside to any significant extent. In any event, the substantial weight which can be given to the addition of 59 dwellings to the County's housing supply would outweigh any harm.

7.00 CONCLUSION

- 7.01 For the reasons given above the Inspector concluded that the appeal should be ALLOWED.

7.02 COSTS DECISION

An application for costs was made at the Inquiry. The application was REFUSED.

- 7.03 The Inspector noted that the reason for refusal was succinct but had two interwoven strands; the Council considered that the proposed development would not comply with Policy GEN3, by reason of being outside of a defined settlement boundary, and that it would also have an unacceptable impact on the character of the countryside.

- 7.04 In respect of the character of the countryside, as a chartered town planner the Council's witness was entitled to make his own judgement on the effect of the proposed development on the landscape. In his statement he responded to the appellant's LVIA in robust terms with analysis and illustrative photographs. In addition the Council's witness and members were not alone in their conclusions on the proposed development's effect on the countryside. These were in accord with those of the UDP Inspector who had dismissed the site as an allocation on landscape grounds some years previously.

- 7.05 Planning Policy Wales (PPW) states that it is for the decision maker to determine whether policies in an adopted local development plan are outdated for the purpose of determining a planning application; being beyond its end date does not automatically signal that a plan or any of its policies are out of date. In any event, the continuing objection to the effect of the proposed development on the character of the landscape, which was a matter of appearance separate from the GEN3 principle, ensured that it was necessary to hold the inquiry.

- 7.06 As explained in my decision Flintshire did not have a five year housing supply at the time of the last Joint Housing Land Availability Study (JHLAS) and now, as the UDP is beyond its end date, the Council will be unable to produce a JHLAS until a replacement adopted LDP is in place. In such circumstances TAN1 states that the need to increase

housing 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. The Council considered that the proposed development did not comply with UDP Policy GEN3 or, in respect of the effect on the landscape, with PPW. In that light it was entitled to choose not to give greater weight to the land supply position.

- 7.07 There are similarities between paragraph 49 of the National Planning Policy Framework (the Framework) and paragraph 6.2 of TAN1 in that they both address the issue of the weight to be given to housing supply matters in the absence of a five year supply of land. Paragraph 6.2 of TAN 1, however, does not refer to relevant policies for the supply of housing. Thus it was not necessary for the Council to consider what types of policy those relevant to this case were.
- 7.08 The planning officer's report sets out the UDP policies with which the proposed development complies – there are over twenty of them. In the Council's view, the fact that the appeal site was outside of the development boundary and did not, therefore, comply with Policy GEN3 was fatal in itself. That it would be consistent with much of the development plan did not outweigh or reduce the harm that would be caused. Whilst the Inspector didn't agree with the Council's conclusions in respect of GEN3 she did not consider that compliance with a large number of policies, which is most usually the case with any proposal, necessarily represents compliance with the development plan as a whole.
- 7.09 The presumption in favour of sustainable development is activated when there are deficiencies in the development plan. The Council considered that the landscape harm was sufficient to outweigh the economic and social benefits of the proposal such that it would not be sustainable development.
- 7.10 Overall the Inspector did not consider that the Council has acted unreasonably in terms of paragraphs 7, 8, 9, 13, 16 of Annex 3 of the Circular or otherwise. She therefore finds that unreasonable behaviour resulting in unnecessary expense, as described in the Circular has not been demonstrated and that a full award of costs is not justified.

LIST OF BACKGROUND DOCUMENTS

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

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