

FLINTSHIRE COUNTY COUNCIL

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

DATE: **12TH OCTOBER 2016**

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

SUBJECT: **APPEAL BY WHITE ACRE ESTATES AGAINST THE DECISION OF FLINTSHIRE COUNTY COUNCIL TO REFUSE PLANNING PERMISSION FOR THE OUTLINE APPLICATION FOR THE ERECTION OF UPTO 40 RESIDENTIAL DWELLINGS WITH ASSOCIATED ACCESS AND ALL OTHER MATTERS RESERVED AT RHOS ROAD, PENYFFORDD – ALLOWED.**

1.00 APPLICATION NUMBER

1.01 053656

2.00 APPLICANT

2.01 WHITE ACRE ESTATES

3.00 SITE

3.01 RHOS ROAD,
PENYFFORDD.

4.00 APPLICATION VALID DATE

4.01 **01.05.16**

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 erection of up to 40 residential dwellings on land at Rhos Road, Penyffordd. The appeal was dealt with by written representations and was ALLOWED.

6.00 REPORT

6.01 Background

The Inspector noted that the site adjoins but is outside the settlement limit and its development would be contrary to Flintshire Unitary Development Plan. He noted that the Council does not have a 5 year supply of housing land and the need to increase supply is an important consideration. This application was refused on 20 January 2016 on the basis that there was no capacity in the foul drainage network. The Council considered that the proposed development could not progress quickly and would not contribute to meeting the current shortfall in housing land. The appellant appealed against this decision.

6.02 A Hydraulic Modelling Assessment (HMA) has now been completed through Dwr Cymru Welsh Water (DCWW). The results show three available options to resolve any potential detriment to the network. These solutions could be achieved within 12 months; were acceptable to the developer and do not affect the viability of the scheme. Officers reported this matter to the appropriate Planning Committee on 22 June. The recommendation was that planning permission be granted because the impediment to the speedy delivery of the dwellings had been overcome and the development would therefore be sustainable. Members decided to refuse the application contrary to this advice.

6.03 The Inspector considered that the main issues are:

- the effect of the proposed development on the character and appearance of the area and the 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.

6.04 The effect of the proposed development on the character and appearance of the area and the countryside

The appeal site is outside the settlement boundary as defined in the Flintshire Unitary Development Plan (UDP) and thus contrary to UDP Policy GEN3, supported by strategic Policy STR1. The proposed development clearly does not fall within any of the exceptions listed in Policy GEN3. This policy is consistent with the aims of Planning Policy Wales Edition 8 in directing development to existing settlements and conserving the countryside.

6.05 The appeal site adjoins the built-up edge of Penyfford and the existing dwellings on Fford Derwen and at Rhos y Brunner Farm. The latter are served by an existing access to Rhos Road. The remaining site boundaries are defined by Rhos Road and the A550. The site is well enclosed by mature hedgerows and trees along the roadside boundaries. There is an existing play area at the end of Fford Derwen, which adjoins the northern corner of the site. To the south on the other

side of Rhos Road, there is a further area of undeveloped land. The site contains a single mature oak tree on one field boundary.

- 6.06 The development of the site would result in the loss of open land on the approach to the settlement. The site is well-enclosed in views from the main roads and this mature vegetation can be retained as part of the development. The A550 also forms a logical boundary for the settlement at this location. The impact on the open countryside beyond the site would therefore be limited. The Council agreed with the conclusions of the appellant's Landscape and Visual Impact Assessment that the impact would be low. There would be some effect on Rhos Road as there would be some loss of vegetation in order to provide access. However, this would be limited and could be mitigated by the proposed planting. Overall, the Inspector agrees with the Council report that the harm would not be significant.
- 6.07 5 year housing land supply
Planning Policy Wales requires Local Planning Authorities to ensure that sufficient land is genuinely 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.
- 6.08 The Unitary Development Plan is beyond its end date and it is for the decision-maker to consider whether the Plan policies are outdated for the purposes of determining planning applications. 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. The Council accepts that there is not a 5 year supply of land for housing. The latest Joint Housing Land Availability Study (JHLAS) in April 2014 showed a supply of 3.7 years. 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. Technical Advice Note 1 – *Joint Housing Land Availability Studies (TAN1)*⁴ advises that “Where the current JHLAS 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”.
- 6.09 Penyfford and Penymynydd is a Category B settlement and the Unitary Development Plan allocated a growth rate of 15% to such settlements. The Council confirmed that the growth rate had reached 27% to date, which is close to the figure anticipated in 2009 and referred to by the Unitary Development Plan Inspector in her report on that Plan. She did not consider that the growth rates in the Plan should be considered to be prescriptive. Given the status of the settlement, the growth already experienced and the range of facilities available, the Inspector did not consider that exceeding the specified growth rate is significant.

6.10 Other Matters

The highway authority had no objection to the proposal subject to conditions. Agents for the owner of the land across the road argued that access to that site should not be prejudiced by this proposal. There are several potential options for access including a roundabout and junction spacing arrangements. These options can be explored once the detailed proposals for development for the other site are known. The highway authority's requirement for a 3m wide strip set back into the roadside boundary in order to accommodate a cycleway and footway is not acceptable. This would result in the loss of the mature hedges to the detriment of the character and environment of the area. This was a particular concern to an Inspector in a 2007 decision nearby. Whilst circumstances have changed since then, the retention of as much hedgerow as possible is still an important consideration. The layout and design of the dwellings would be reserved matters for future consideration and so the objections to the illustrative layout are not relevant.

6.11 The important vegetation on the site can be retained and that along the A550 safeguarded separately from the curtilages of dwellings. The submitted tree survey categorised the mature Oak tree as poor and not worthy of retention. There was no objection to the development from NRW or the Council on ecological grounds. The submitted agricultural land classification report concluded that the land is Grade 3b and not subject to any policy protection. The other issues raised were addressed in the Council's committee reports. None were found to warrant the refusal of planning permission. The Inspector saw no evidence that lead him to disagree with those conclusions.

6.12 Conditions

The Inspector considered the suggested conditions and the appellant's comments thereon in the light of the guidance in Welsh Government Circular 16/20145. The two year commencement condition is necessary because this planning permission is being granted to meet a pressing need and therefore the development should be delivered quickly. This also addresses any issue in regard to the fact that this is an application for outline planning permission. The appellant agreed with this point and accepted that this condition was necessary in the circumstances. Given this short timescale it is not reasonable or necessary for the required improvements to the foul drainage infrastructure to be completed before development commences. Demand on the infrastructure would only be generated upon occupation of any of the dwellings. The Inspector amended the suggested condition accordingly. The importance of the retention of the existing trees and hedgerows has been discussed above and must be ensured by appropriate landscaping conditions.

6.13 Unilateral undertaking

The provision of an element of affordable housing and open space/play area in appropriate residential developments is required by the Unitary Development Plan. The Council also has published guidance requiring contributions towards education provision. To that end a signed obligation under section 106 of the Act securing the provision of and contributions towards affordable housing, open space/ play areas and education facilities was submitted with the appeal. The Council confirmed that it is necessary, reasonable in scale and kind and directly related to the development. The Council is content with the provisions of the Undertaking in relation to contributions for and provision of affordable housing, education and open space/play areas.

6.14 The Inspector had no evidence that the contributions made would result in 5 or more contributions for the same provision. He is satisfied that the obligation meets national policy as set out in Circular 13/971 and the 3 statutory tests set out in Regulation 122 of The Community Infrastructure Levy Regulations 2010. In these circumstances he considers that this obligation would be fairly and reasonably related to the development proposed and that it passes the above statutory tests and policy requirements. Thus he affords the obligation significant weight in his decision.

7.00 CONCLUSION

7.01 The proposed development would not accord with the Policy GEN3 of the UDP because the site is outside the settlement limit. However, the site is adjacent to the limit and is well enclosed with a logical boundary limiting incursion into the open countryside. The site is on the edge of a settlement that is well served by a range of local facilities, bus services and a train station. The UDP Inspector considered local services to be good. The Council accepts that the site is in a sustainable location in terms of facilities and services. The appellant has undertaken an analysis of the sustainability of candidate sites put forward for the new Local Development Plan. The UDP Inspector did not recommend inclusion of the appeal site purely because more land was not needed at that time.

7.02 The Council cannot demonstrate a 5-year supply of housing land and the development would meet that urgent need for housing. Welsh Government policy and guidance indicates that the need to increase housing supply is an important consideration in these circumstances. The only obstacle to the speedy delivery of housing has been overcome i.e. the foul drainage issue. The proposal would also bring economic benefits during construction and provide affordable housing in line with the Council's requirements. The open space and education contributions would also be a benefit.

- 7.03 A 2015 decision in relation to a proposed residential development at Ewloe (also in Flintshire) was brought to the Inspector's attention. The Inspector warned that "*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.*" The Inspector found that the proposed development would be sustainable and this particular location would be appropriate. Having taken all relevant matters raised into account, he concludes that the benefits of the proposal outweigh the conflict with the development plan.
- 7.04 For the reasons given above, he concluded that the appeal should be **ALLOWED.**

LIST OF BACKGROUND DOCUMENTS

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

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