

FLINTSHIRE COUNTY COUNCIL

REPORT TO: PLANNING & DEVELOPMENT CONTROL
COMMITTEE

DATE: WEDNESDAY, 23 MAY 2012

REPORT BY: HEAD OF PLANNING

SUBJECT: ERECTION OF 45NO. DWELLINGS, ASSOCIATED
GARAGES AND PARKING AND DEMOLITION OF
EXISTING BUILDINGS AT OVERLEA DRIVE,
HAWARDEN, DEESIDE

1.00 APPLICATION NUMBER

1.01 048032

2.00 APPLICANT

2.01 Redrow Homes NW Ltd & Mr & Mrs Dutton

3.00 SITE

3.01 Land at Overlea Drive, Hawarden, Deeside, Flintshire.

4.00 APPLICATION VALID DATE

4.01 23.11.2010

5.00 PURPOSE OF REPORT

5.01 Following the resolution at the 2nd November 2011 meeting of Planning and Development Control Committee to refuse the above planning application, an appeal has been lodged by the applicant against this decision. This appeal is to be dealt with by means of a Public Inquiry.

5.02 The Public Inquiry is scheduled to be held over 2 days on the 4th and 5th July 2012. Final proofs of evidence in respect of this matter must be presented 4 weeks before that date. Therefore, the LPA only has until the 6th June to compile its case.

5.03 Upon receipt of legal advice from Counsel appointed to appear at the appeal Public Inquiry, this report seeks a direction from Members in respect of the stance to adopt at the appeal in respect of one of the reasons for refusal which was attached to the decision.

6.00 REPORT

6.01 Members will recall refusing to grant planning permission for the development proposed under the above planning application. For the avoidance of doubt, the proposals were the development of land for the erection of 45 dwellings, with associated works. Reason 1 attached to that refusal reads as follows:

“The proposals are considered to result in a form of development which would, by virtue of the form, elevation and inadequate separation distances between the proposed dwellings and the existing dwellings on Penlan Drive and Overlea Crescent, would result in an overbearing impact to the detriment of the levels of residential amenity currently enjoyed by the occupants of those dwellings. Accordingly, the proposals are considered to be contrary to the provisions of Policy B5 of the Clwyd County Structure Plan, First Alteration; Policy HSG5 of the Structure Plan : Second Alteration - Flintshire Edition; Policies G1 and H1 of the Alyn and Deeside Local Plan and Policies GEN1 and D1 emerging Flintshire Unitary Development Plan and advise as contained within Planning Policy Wales 2011.”

6.02 Counsel has been instructed in respect of the appeal and an independent planning consultant appointed to present the Council's case. The strength of the given reasons for refusal have been assessed in each case and whilst it is considered that an arguable case can be presented in respect of Reasons for Refusal 2 and 3, Counsel's advice in respect of Reason 1 (above) is that a case to support this reason cannot be advanced.

6.03 The prospects of a successful case being presented should be considered in the context of Guidance in the Welsh Office Costs Circular. This circular advises that:

Planning authorities are at risk of an award of costs against them if they prevent or delay development which should clearly be permitted having regard to the Development Plan, national policy statements and any other material considerations.

6.04 Consequently, Authorities will be expected to produce evidence to show clearly why the development cannot be permitted. Planning authorities will be expected to produce evidence at appeal stage to substantiate each reason for refusal with reference to the Development Plan and all other material considerations including any relevant judicial authority. If they cannot do so, they risk a costs award against them for any unsubstantiated reason for refusal. This continues to be the ground on which costs are most commonly applied for and awarded against a planning authority. The key test will be whether evidence is produced on appeal which provides a respectable basis for the authority's stance, in the light of a ***R v. SSE ex parte North Norfolk DC*** [1994] 2 PLR 78.

- 6.05 Whilst Local Planning Authorities are not bound to accept the recommendation of their officers, if officers' professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. If they fail to do so, costs may be awarded against the authority.
- 6.06 The Costs Circular therefore makes it abundantly clear that the LPA must be able to produce evidence in order to support the refusal of consent.
- 6.07 In coming to the view expressed in respect of Reason for Refusal 1, regard has been had to information submitted by the applicant in connection with a further application submitted in respect of the appeal proposals and at the appeal site. Members may recall that as part of this application, details were provided which clearly demonstrated that the development exceeds the standards set out in the Council's Local Planning Guidance Note 2 – Space about Dwellings.
- 6.08 In addition, and whilst not expressly a part of the reason for refusal, overshadowing has been considered by both the Local Planning Authority and the appellant. An assessment provided by the appellant robustly demonstrates that there is no material impact upon existing properties arising from overshadowing at any time of the year.
- 6.09 There is nothing objectionable about the height of the proposed dwellings at two storeys. Nor can there be anything objectionable about housing development taking place on this elevated site. This is because the site is allocated for housing development within the UDP. Reason for Refusal 1 refers to the form and elevation of the proposals being objectionable together with the inadequate separation distance. Once it is agreed, as it must be on an application of the LPA's own standard, that the separation is adequate, there is no evidential basis for the reason for refusal.
- 6.10 Accordingly, it is the advice of the Local Planning Authorities appointed professional witness that there is no rational evidential basis for Reason for Refusal 1.
- 6.11 Furthermore, given this professional expert opinion, the advice of the Councils appointed Counsel in this matter is that an attempt to defend this reason at the appeal proceedings will attract an application for costs which is likely to succeed.
- 6.12 Members will appreciate that accepting this recommendation would in no way prejudice the rights of third parties, or other participants at the Inquiry who have Rule 6 status, from making representations to the Inspector upon this issue.

7.00 RECOMMENDATIONS

7.01 That the Local Planning Authority should not present evidence to defend Reason for Refusal 1 at appeal proceedings.

Contact Officer: David Glyn Jones
Telephone: 01352 703281
Email: glyn_d_jones@flintshire.gov.uk