

FLINTSHIRE COUNTY COUNCIL

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

DATE: **5TH SEPTEMBER 2012**

REPORT BY: **HEAD OF PLANNING**

SUBJECT: **APPEAL BY REDROW HOMES NW AGAINST THE DECISION OF FLINTSHIRE COUNTY COUNCIL TO REFUSE PLANNING PERMISSION FOR THE ERECTION OF 45NO. DWELLINGS AND ASSOCIATED GARAGES AND PARKING INCLUDING THE PROVISION OF 4NO. AFFORDABLE UNITS AND THE DEMOLITION OF EXISTING OUTBUILDINGS ON LAND AT OVERLEA DRIVE, HAWARDEN, FLINTSHIRE.**

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, Flintshire.

4.00 APPLICATION VALID DATE

4.01 23/11/2010

5.00 PURPOSE OF REPORT

5.01 To inform Members of the appeal decision against a refusal of planning permission for the erection of 45 No. dwellings and associated garages and parking, including the provision of 4 No. affordable units & demolition of current out-buildings on land at Overlea Drive, Hawarden. The application was refused by Committee contrary to officer recommendation on 23rd May 2012 and was the subject of a Local Public Inquiry, held over the course of 3 days

between the 4th and 6th July 2012.

5.02 The appeal was **ALLOWED** but an application for a partial award of costs against the Council was **DISMISSED** by the Inspector.

6.00 REPORT

6.01 In considering the appeal the Inspector identified the main issues in the case to be:-

1. whether or not adequate and suitable provision would be made for space and facilities for children's play;
2. whether or not adequate and suitable provision would be made for affordable housing;
3. effects on the amenity of neighbouring residents, particularly in respect of overshadowing and visual impact;
4. effects on highway safety of the immediate road network; and
5. whether or not provisions for foul and surface water drainage would be adequate and would avoid harmful effects on the existing drainage systems in the area.

In relation to the above issues the Inspector views are summarised as follows:

6.02 Whether or not adequate and suitable provision would be made for space and facilities for children's play;

The Inspector noted that the scheme made provision for open space but not formal play space. The Inspector noted the provisions of Policy SR5 of the Flintshire Unitary Development Plan (FUDP) and the fact that it identified a need for some 880 m² of children's play space upon the site, 275 m² of which should be formal play space. The Inspector noted that it was common ground between the Appellant and the Council that the requirement for sports ground provision could be met by a contribution towards larger off-site facilities, and noted that the offered Section 106 Undertaking from the Appellant makes adequate provision for a contribution towards this.

6.03 In respect of the issue of formal play space, The Inspector accepted the invitation to consider a layout plan, Revision M, which was submitted in connection with a subsequently refused application. This plan included an area of equipped play space in the north west of the site. He considered that its position on the periphery of the site afforded limited opportunities for natural surveillance and indicated its positioning was an afterthought, although this was understandable given discussions between officers and the appellant. He concluded that the issue for consideration was whether acceptable provision could be made.

6.04 He considered there to be ample space to accommodate the required play provision and was satisfied the matter could be dealt with by the use of a suitable planning condition and concluded that the proposals

could make adequate and suitable provision for space and facilities for children's play in accordance with UDP Policy SR5.

6.05 Whether adequate and suitable provision would be made for affordable housing;

The Inspector that a need for affordable housing had been identified by The Council across the County and noted the provision made as part of the application amounted to a terrace of 4 dwellings which were proposed to be gifted to the Council. He noted that this provision was made following liaison between officers and the Appellant, in consultation with the Local Member, and in preference to 30% by number, some 13 dwellings.

6.06 He considered the wording of the policy and its strict application as advocated by the Council in its decision. However, whilst accepting this application to be a reasonable interpretation, he considered that the policy has to be examined in a wider context than merely its wording. He noted the reasoned justification to the policy clearly advocates negotiation and variety in type and tenure of provision and concluded the Housing Strategy had rightly taken these provisions into account in offering her advice upon the issue. He noted that the appellant would not benefit financially via the provisions for affordable housing which were proposed as the cost was higher to 'gift' 4No. units than to provide 13No. shared equity units.

6.07 In considering the arguments advanced in respect of how to interpret 'local need', the Inspector concluded that whilst the evidence of need exists in county wide studies, the officers in considering the issue of local need had rightly had regard to other relevant considerations which he considered demonstrated a practical and focussed approach to the assessment of local need. He observed that in so doing, it was inconceivable that officers did not remain aware of the county wide picture.

6.08 The Inspector also examined concerns raised in relation to the positioning of the proposed affordable units. He concluded that whilst the proposed terrace could perhaps have been better integrated, he considered that by virtue of its design, materials and quality, it was not distinguishable from the remainder of the market housing upon the site and was therefore reflective of national planning guidance in this regard. He noted the proposed positioning was good for access and integration to the existing community.

6.09 In conclusion, the Inspector took the view that provision of 4 gifted units in preference to 13 shared equity units was in accord with the requirements of Policy HSG10 as exceptional circumstances to justify the exception had been demonstrated. He also concluded that the location of the units was not so unacceptable as to justify a refusal upon this ground.

- 6.10 Effects on the amenity of neighbouring residents.
The Inspector noted that concerns related to a perception of the proposals giving rise to an overbearing impact, with consequent loss of amenity and overshadowing of private amenity areas resulting in the same.
- 6.11 Whilst the Inspector noted that the current open aspect and associated levels of privacy it afforded which was currently enjoyed by existing residents would be eroded by the proposals, he reasoned the harm was not so significant as to be unacceptable. He considered that the proposals met, and in many cases, exceeded the Councils Local Planning Guidance Note 2 – Space around Dwellings. He did however consider that the relationship of proposed Plot 1 to 65 Overlea Drive could be considered to have an overbearing visual relationship and, concurred with the appellant that this plot could be deleted by condition, which he duly concluded so to do.
- 6.12 In considering the representations with regard to the issue of overshadowing, the Inspector noted such effect would only be significant in winter months when the sun is low in the sky and consequently shadow effects are less pronounced. He therefore reasoned that this would not materially affect existing amenity levels.
- 6.13 He concluded that the proposals would not unacceptably harm amenity and would not therefore be contrary to the applicable policies.
- 6.14 Effects on highway safety of the immediate road network
The Inspector noted the current position in respect of the junction of Fieldside with Gladstone Way and the limited visibility currently afforded to vehicles emerging from Fieldside. He noted the concern that the increased use of this junction by an anticipated 10 extra vehicles per hour arising from the proposals would exacerbate risks to highway safety.
- 6.15 The Inspector referred to recent planning permissions granted by the Local Planning Authority in respect of improvements to the Fieldside junction, most notably, improvements to provide increased visibility to the north of the junction. He considered that whilst visibility to the south would remain substandard, the improvements afforded to the north represented a considerable improvement in the safety of the junction as a whole. He considered that this far outweighed the small increase in risk which may be attributable to an increase in use of the junction arising from the proposals.
- 6.16 He therefore concluded that the proposals did not give rise to increased risks to highway safety and were not contrary to the applicable policies.
- 6.17 Adequacy and impacts of foul and surface water drainage proposals.
The Inspector noted that proposals for foul drainage were not in

dispute. He noted that proposals for surface water drainage were not the subject of objection from any statutory drainage body or the Council. He considered the proposed sustainable drainage system was consistent with the aims of national and local policy upon the issue and also that existing off site pinch points in the surface water drainage regime were to be the subject of improvements agreed between the appellant and Dwr Cymru Welsh Water.

6.18 He acknowledged that surface water drainage was presently problematic in the area but noted that the potential solutions to this problem could only be fully assessed following the draining and demolition of the redundant reservoir. He considered an appropriately worded condition would suffice to ensure that suitable surface water proposals were agreed. He noted that many of the problems currently encountered and attributable to wet and boggy ground would be addressed via the drainage improvements proposed.

6.19 He concluded that the proposed development could be adequately drained without adverse impacts upon the surrounding area.

7.00 CONCLUSION

7.01 For the reasons outlined above, the Inspector concluded that the proposals were acceptable subject to appropriate conditions and the provisions of the S.106 Undertaking provided by the appellant. The wording of the imposed conditions can be found in the copy of the Appeal Decision appended to this report.

The S.106 Undertaking provides for the following;

1. 4No. affordable dwellings to be constructed and gifted to the Council at the nominal cost of £1.
2. A sum of £66,500 towards educational requirements to be apportioned as £38,500 towards Primary School education needs and £28,000 towards Secondary School needs in the locality. Such sum to be payable in 2 equal payments upon occupation of the 23rd and 35th dwelling respectively.
3. A sum of £25,000 for utilisation in providing or upgrading recreational facilities within 3 miles of the development site. Such sum payable on occupation of the 10th dwelling.
4. Provisions for the establishment of a Management Company to manage and maintain the public open space and play area.

8.00 COSTS

8.01 The appellant sought a partial award of costs on the basis that they had been put to unreasonable and unnecessary expense in preparing evidence in response to the Council's reason for refusal relating to overbearing impacts upon amenity. The appellant considered that the Council's decision, following the legal and professional advice in respect of its reason for refusal, to withdraw the reason for refusal amounted to unreasonable behaviour.

- 8.02 The Council advised of the relevant considerations in respect of applications for costs and highlighted the specific provisions set out in Paragraphs 12, 13 and 15 of Annex 2 to Circular 23/93 – Awards of costs incurred in Planning and Other Proceedings, which relate to the withdrawal of a reason for refusal. The Council advised of the reasonableness of taking the course of action it did and contended that its actions were in full accord with the advice of the circular.
- 8.03 The Council also noted that whilst the appellants had produced evidence in relation to the issue, notwithstanding the Council's actions, this evidence would have been required in any event to defend the case presented by other Rule 6 parties and third parties in attendance. Furthermore, the contention was made to the Inspector that this evidence had not been produced specifically in connection with this appeal but had been produced in support of a further application submitted subsequent to that which was the subject of this appeal.
- 8.04 **CONCLUSION**
The Inspector commented that irrespective of the outcome of an appeal, costs would only be awarded where a party was considered to have acted unreasonably such that the offended party has incurred unnecessary expense, accepting the assertion of the Council that costs do not necessarily follow the event.
- 8.05 He considered that the Council's actions in not defending the reason for refusal were responsible, as the appellant had been advised well in advance of the Inquiry, thereby minimising its risk to an award of costs.
- 8.06 The Inspector concurred that the evidence to which the costs claim related, was produced for the most part, in support of the 2nd application and concluded that expense incurred by the appellant in its preparation was associated with that application and not this appeal. Moreover, he agreed that such evidence was still required to be produced to address the case pursued by other Rule 6 and third parties.
- 8.07 He concluded that whilst he considered that the Council had acted irresponsibly in adopting the reason for refusal in the first instance, no additional or unnecessary expense had been incurred by the appellant as a result for the reasons given above and therefore unreasonable behaviour, as described within Circular 23/93, could not be demonstrated and therefore the costs claim was **DISMISSED**.

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