



Penderfyniad ar yr Apêl

Ymweliad safle a wnaed ar 29/3/22

gan **H W Jones, BA (Hons) BTP MRTPI**

**Arolygydd a benodir gan Weinidogion
Cymru**

Dyddiad: 21/06/2022

Appeal Decision

Site visit made on 29/3/22

by **H W Jones, BA (Hons) BTP MRTPI**

**an Inspector appointed by the Welsh
Ministers**

Date: 21/06/2022

Appeal Ref: CAS-01503-Y8F4K2

Site address: Tan y Bryn, Bryn Road, Flint, CH6 5HU

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs N Wallace against the decision of Flintshire County Council.
 - The development proposed is the erection of up to 18 No. Dwellings with associated works.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr and Mrs N Wallace against Flintshire County Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application seeks outline permission with all matters reserved for subsequent approval. I have treated the illustrative site layout and access plans accompanying the application as being for indicative purposes only.
4. The appellants have submitted an executed s106 unilateral undertaking. Given my decision on the appeal it is not necessary for me to reach a finding on its provisions.

Main Issues

5. The Council's first reason for refusal is based on 'overdevelopment'. Its subsequent statement of case clarifies that there are 2 elements to this concern, identified in the first 2 of the main issues set out below.
6. The main issues in this case are the effect of the proposed development on:
 - (i) the character and appearance of the area;
 - (ii) the living condition of prospective and neighbouring residents;

- (iii) highway safety; and
- (iv) the ecology of the area, particularly protected species.

Reasons

Character and Appearance

7. Tan y Bryn is a detached dwelling with access onto Bryn Road. In addition to outbuildings and enclosed garden areas that surround the house there are also more extensive, landscaped grounds all of which is included in the appeal site. Within the south-eastern corner of the site there is a flat-roofed former World War 2 Air Raid Shelter. The site lies within the built-up limit of Flint in an area primarily characterised by residential properties including terraced, semi-detached and detached buildings of various styles and sizes.
8. The site slopes quite steeply towards the road and also slopes downwards in a northerly direction. The illustrative layout shows a proposed row of roadside houses with another row behind, all of which, save for a pair of semi-detached dwellings, would be detached. The scale parameters detailed in the submission suggest that they would range from single to 2 storey in height. They would be served by rear gardens, with parking either in front gardens or nearby. Topographical detail include illustrative cross sections which show significant proposed recontouring of ground levels, most notably in the reduction of the ground levels by the equivalent of a storey height towards the higher ground levels.
9. The Council opines that the density of the proposed development is not commensurate with the prevailing form and pattern of development in the immediate area. It considers that the characteristics of the site and surroundings would mean that the scheme would be over imposing, at odds with its surroundings. No detail is provided of the specific concerns in this respect. There is no acknowledgement that the site levels could be altered nor of the variety of building densities that characterise the site's environs.
10. The Council acknowledges that the proposed density of housing, at 23 per hectare, falls below the 30dph specified as a minimum in policy HSG8 of the Flintshire Unitary Development Plan (UDP). It appears to me that the density is broadly similar to the housing estate that bounds the southern boundary whilst some of the terraced housing to the east would be at a higher density. The Council calculates the surrounding density to be 21dph. I agree with it that a lower density than sought in the UDP is justified given the site's constraints, particularly its topography. Whatever the actual densities of nearby development, there is no reason to believe that the proposed development would appear at odds with its surroundings given the wide range of housing styles that provide a visual context. The precise details of the development would be a matter for further consideration in response to a reserved matters application.
11. The scheme would inevitably give rise to the loss of some attractive landscaping within the site and along the frontage. However, much of the main features are along the side and rear boundaries which could be protected from development. The extent of loss within the site, particularly of specimen trees, is a matter to be considered at the reserved matters stage alongside any new landscaping works. The same approach applies to the roadside frontage.
12. The scheme would not constitute overdevelopment in relation to the character of the site or the surrounding area. Whilst the proposed development would cause the loss

of some landscaping features, it would not unacceptably harm the character or appearance of the area. As such there is no conflict with criterion c. i. of policy HSG3 of the UDP.

Living Conditions

13. The second aspect of the Council's concern of overdevelopment relates to the living conditions of existing residents and prospective occupiers. Although it refers to criterion c. i. of policy HSG3 in this respect, that is concerned with matters of character. Nonetheless, the protection of living conditions is sought by criterion d. of policy GEN1 of the UDP.
14. The Council's appeal statement states that the rear amenity space proposed falls short of the guidance as set out in the adopted supplementary planning guidance (SPG) note no. 2, Space Around Dwellings and describes it as unusable. It also asserts that there would be unacceptable overlooking. However, no detail is provided to substantiate these assertions, which are at odds with those of the Council's professional officers as recorded in the committee report.
15. In terms of private open space provision and the separation from neighbours, the illustrative layout does not appear materially different to the existing provision at the neighbouring housing estate to the south. Subject to further consideration of details such as the position of openings, screening measures and finished floor levels, I am satisfied that an acceptable effect on living conditions can be secured for future residents and their neighbours.
16. On this main issue, and mindful of the extent to which details can be controlled at reserved matters stage, I am satisfied that the development would not have a significant adverse impact on nearby residents and thus accords with policy GEN1, d. I am also satisfied that the scheme has the potential to provide adequate outdoor amenity space for prospective occupiers in line with the SPG.

Highway Safety

17. Although the means of access is a reserved matter it is inevitable that access would be gained on to Bryn Road, which links the residential estate road of Bryn Mor Drive with Halkyn Road. The illustrative plans show a single point of access centrally positioned on the road frontage.
18. The submitted plans demonstrate that an access arrangement can be achieved on the site which would meet the Council's requirements in terms of its layout and the provision of visibility splays. I agree that an acceptable layout can be secured. The concerns of the Council and most local objectors relate to the suitability of the road network serving the site, specifically Bryn Road which for the most part is a single carriageway track
19. For much of its length Bryn Road has no footway or street lighting provision and has steeply sloping sections and tight bends. It provides access to dwellings that are loosely distributed along both sides of the road. In terms of motorised vehicles it is lightly trafficked. Local residents explain that it is well used as a pedestrian link to the town and to the local school, as my site visit confirmed. It is also used by cyclists and mobility carriages.
20. There are limited passing opportunities for motor vehicles, mainly in the form of private driveway entrances. A short section of Bryn Road, where it emerges onto the modern housing estate of Bryn Mor has been laid out to modern standards with a two-lane carriageway flanked by footways. It is a spur road from the main estate road of

Bryn Mor Drive and serves 2 properties and an electricity substation, and effectively terminates at a point adjacent to the southern end of the appeal site frontage at which point it narrows to single track. The scheme proposes to effectively 'extend' the estate road along the site frontage. This would involve works to an unadopted section of the road, on land within the appellants' ownership. The precise detail of such work is reserved for future consideration.

21. It is common ground that, with the exception of its southern extremity, Bryn Road is not well suited to accommodate vehicular traffic, given the inconvenience to drivers having to reverse in the face of on-coming traffic and the absence of dedicated pedestrian or cyclist provision.
22. The appeal site provides the opportunity to link to an existing pedestrian route onto Northop Road which would provide access to nearby local facilities, including shops, a high school and bus stops. The site is 1km or so away from the town centre which includes a railway station. I agree with the appellants' assessment that the site is in a highly accessible location with good pedestrian access and that improved pedestrian connectivity would promote active travel.
23. Regardless of destination, occupiers of the proposed dwellings would have the choice of two routes when travelling from the site. For many journeys including to the town centre, the shortest route would be northwards along Bryn Road. However, I agree with the appellants' traffic consultant that such a route would not be an attractive proposition given its narrow, steeply sloping alignment and the potential for delays when meeting oncoming traffic. In contrast, the route to Halkyn Road via Bryn Mor Drive would be along a much better carriageway such that most drivers are likely to prefer it. Indeed, the extension of the estate road would not only benefit users of Bryn Road but may encourage those travelling to properties closer to that end of the road to use the southern route.
24. Local objectors suggest that existing residents on the southern part of Bryn Road travel along its length rather than southwards. I accept that the route taken by future residents would be a matter of individual choice; for the reasons explained I consider that the likelihood is that most would travel along the easier route especially as there would be no discernible time benefit in taking the shorter route even on unhindered journeys. The appellants have also suggested that when the detailed access arrangements are being designed consideration could be given to arrangements that would discourage motorists from accessing or leaving the site from the north. Those visitors reliant on satellite navigation directions may be taken along Bryn Road, but they would be a small proportion of the additional flows generated by the development.
25. Concerns have also been raised in relation to the wider highway network, however there is no evidence to demonstrate that the additional traffic associated with the proposal would materially affect the capacity of the road network, or otherwise have a harmful effect. Whilst the appellants' technical traffic data is questioned by objectors, I am satisfied that it provides a reliable estimate of 10 vehicles per hour. Whilst vehicles associated with the construction of the development may cause some inconvenience to users of Bryn Road this could be minimised by considerate working practises which could be secured through a planning condition.
26. For the foregoing reasons I am satisfied that the scheme would have an acceptable effect on highway safety. It would accord with criterion e) of Policy GEN1 which seeks the provision of appropriate, safe and convenient access for all users. It would also accord with Policy AC13 which seeks that approach roads are of adequate

standard to accommodate the traffic likely to be generated and that safe vehicular access can be provided.

Ecology

27. The application was accompanied by a Preliminary Ecological Appraisal (PEA) which considers the potential effect on protected species. It identifies the site has providing habitat for foraging badgers and the potential foraging, emigration corridors and hibernation for great crested newts and reptiles. It describes potential avoidance and mitigation measures and concludes that there would be no detrimental effect on the favourable conservation status of any of these protected species. These findings are endorsed by the Council's Ecologist and accordingly I am satisfied that the scheme is acceptable in relation to these species.
28. In relation to bats, which are also a protected species, the PEA explains that there are records of Common Pipistrelle and Soprano Pipistrelle bats within 1km of the site and records of other species within 5km. It identifies a moderate potential for bats in the roof of the dwelling with also potential for roosting in trees. The hedgerows and mature tree lines also provide valuable flight-lines for foraging and commuting bats and the vegetation on site provides good foraging habitat for bats. The PEA identifies that further survey work is required to determine bat activity on site and important flight lines. The Council's Ecologist confirms that this will be necessary as it would have implications for the development of the site.
29. The submitted layout does not show the retention of any of the trees or other vegetation within the site. Whilst this is only indicative it is reasonable to assume that achieving the density of development proposed would involve the loss of much of the vegetation.
30. Several objectors have raised concerns regarding the impact of developing the site on ecological features. The Council's decision to refuse permission does not cite concerns in relation to the potential impact on bats. Its committee report explains that its Ecologist raises 'no fundamental objection' and recommends that any permission should include a condition requiring bat emergence surveys with appropriate mitigation where required.
31. Planning Policy Wales (PPW) provides specific advice on the approach to protected species in the determination of planning applications. More detail is contained in Technical Advice Note 5: Nature and Conservation & Planning and paragraph 6.2.2 advises that "It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted" and that permission "should not be granted subject to a condition that protected species surveys are carried out and, in the event that protected species are found to be present, mitigation measures are submitted for approval". It goes on to state that such surveys should only be sought when there is a reasonable likelihood of protected species being present. That test has clearly been established in this case.
32. As the objection of the Town Council notes, without additional survey work the potential impact on local bat populations cannot be ascertained. It follows that the potential efficacy and practicality of any mitigation measures cannot be established. This is a consideration relevant to the assessment of the acceptability of the principle of the development. Thus, on this main issue I find that the scheme would have the potential to unacceptably harm the local bat population and is therefore contrary to criterion c. of policy GEN1 of the UDP. The scheme also fails to include measures for

the enhancement of biodiversity as sought by Future Wales and PPW. Although such enhancement could be sought by planning condition, it is a matter best addressed at the earliest opportunity in the design process.

Other Matters

33. I have account of the other concerns raised by local residents and their elected representatives. Concerns over surface water flooding is a matter for the Sustainable Drainage Systems Approval Body. Other concerns include the effect on local infrastructure. Noting that there are no objections from the specialist consultees in relation to these matters, and the scope to secure mitigating through planning conditions and a unilateral undertaking, none of these matters justify withholding permission for the scheme.

Conclusion

34. The site lies within the settlement boundary of Flint, a settlement in which the UDP is generally supportive of additional housing. The site lies within a location that performs well in relation to sustainable transport patterns and in this respect its development aligns well with Planning Policy Wales. Thus, I afford significant weight to the proposed contribution to the local supply of housing. I also acknowledge that I have found the scheme acceptable in relation to three of the main issues. However, such considerations do not justify permitting the potentially harmful impact on local bat populations that has been identified. I shall therefore dismiss the appeal.

35. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives.

H W Jones

Inspector